

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

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DES MOINES, IOWA  
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UNITED STATES OF AMERICA,

Plaintiff,

v.

ALBERT A. WHEELDON,

Defendant.

CRIMINAL NO. 01-134

JURY INSTRUCTIONS

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MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING INSTRUCTIONS:

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## INSTRUCTION NO. 1

### INTRODUCTION

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of 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. 2

### DUTY OF JURY

Now that you have heard the evidence the time has come to instruct you as to the law governing this case. You are to consider all the instructions together, without attaching special importance to the order in which they are presented. You shall apply these instructions as a whole to the facts as you find them to have been established by the evidence, and return your verdict accordingly.

You as jurors are the sole judges of the facts. 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 are to determine the facts from the evidence and the reasonable inferences arising therefrom, using your own common sense and experience but without indulging in guesswork or speculation. You are not to be influenced in any degree by a feeling of sympathy for or prejudice against the parties or their counsel. No language used by the Court in these instructions and no statements, conduct, remarks, or rulings of the Court during the progress of the trial should be considered by you as an indication that the Court has any opinion as to the facts of the case or what your verdict should be. You are to follow the instructions now given you in your deliberations. You are not to be concerned with the wisdom of any rule of law. You must follow my instructions on the law, even if you thought the law was different or should be different. Regardless of your opinion as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

## INSTRUCTION NO. 3

### EVIDENCE

I have mentioned the word “evidence.” The “evidence” in this case consists of:

- 1) the testimony of witnesses,
- 2) the documents and other things received as exhibits,
- 3) the facts that have been stipulated -- this is, formally agreed to by the parties,
- 4) the facts that have been judicially noticed -- this is, facts which I say you may, but are not required to, accept as true, even without evidence.

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 lawyers representing the parties in the case are not evidence.
- 2) Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
- 3) Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
- 4) Anything you saw or heard about this case outside the courtroom is not evidence.

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

## INSTRUCTION NO. 4

### DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence—such as the testimony of an eyewitness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of a defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

## INSTRUCTION NO. 5

### CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 6

EXPERT WITNESSES

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

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

INSTRUCTION NO. 7

INDICTMENT

A Federal Grand Jury has Returned an Indictment against the defendant, ALBERT A. WHEELDON as follows:

1) Count One alleges the defendant, ALBERT A. WHEELDON, from on or about February 1996 through August 2000, in the Southern District of Iowa, willfully and knowingly did embezzle, steal, purloin, and convert to his own use moneys and things of value, *i.e.*, monthly Social Security disability benefits in the total amount of approximately \$56,000.00, of the Social Security Administration, a department and agency of the United States, in violation of 18 U.S.C. § 641.

2) Count 2 alleges the defendant, ALBERT A. WHEELDON, on or about June 15, 2000, in the Southern District of Iowa, in a matter within the jurisdiction of the Social Security Administration, a department of the United States, knowingly and willfully falsified and concealed a material fact, in that the Defendant represented to the SSA that he had not worked for wages or been self-employed outside his home from October 1, 1990 through June 21, 2000, whereas, as the defendant then and there well knew, he had been self-employed as the owner and operator of a lawn and property maintenance business involving the mowing of lawns and removal of snow, in violation of 18 U.S.C. § 1001(a)(1).

3) Count 3 alleges the defendant, ALBERT A. WHEELDON, from in or about October 2000, including in or about June 2001, in the Southern District of Iowa, in connection with a case under Title 11 of the United States Code captioned "In the matter of Albert A. Wheeldon, Debtor," Bankruptcy No. 00-04213-CJ (U.S. Bankruptcy Court for the Southern District of Iowa) knowingly and fraudulently concealed from the trustee, creditors, and the U.S. Trustee, certain

property belonging to the estate of the debtor, namely his property maintenance business and equipment used in the business, in violation of 18 U.S.C. § 152(1)

4) Count 4 alleges the defendant, ALBERT A. WHEELDON, on or about November 6, 2000, in the Southern District of Iowa, in connection with a case under Title 11 of the United States Code captioned "In the matter of Albert A. Wheeldon, Debtor," Bankruptcy No. 00-04213-CJ (U.S. Bankruptcy Court for the Southern District of Iowa) knowingly and fraudulently made a false account, in that he represented in the "Schedule B" he filed with the Bankruptcy Court that he had no machinery, fixtures, equipment, and supplies used in a business, in violation of 18 U.S.C. § 152(2)

5) Count 5 alleges the defendant, ALBERT A. WHEELDON, on or about November 6, 2000, in the Southern District of Iowa, in connection with a case under Title 11 of the United States Code captioned "In the matter of Albert A. Wheeldon, Debtor," Bankruptcy No. 00-04213-CJ (U.S. Bankruptcy Court for the Southern District of Iowa) knowingly and fraudulently made a false account, in that he represented in the "Schedule I" he filed with the Bankruptcy Court that he was unemployed and had no regular income from the operation of a business, in violation of 18 U.S.C. § 152(2).

6) Count 6 alleges the defendant, ALBERT A. WHEELDON, on or about November 6, 2000, in the Southern District of Iowa, in connection with a case under Title 11 of the United States Code captioned "In the matter of Albert A. Wheeldon, Debtor," Bankruptcy No. 00-04213-CJ (U.S. Bankruptcy Court for the Southern District of Iowa) knowingly and fraudulently made a false account, in that he represented in the "Schedule J" filed with the Bankruptcy Court that he had no regular expenses from the operation of a business, in violation of 18 U.S.C. § 152(2).

7) Count 7 alleges the defendant, ALBERT A. WHEELDON, after filing on November 6, 2000, in the Southern District of Iowa, a case under Title 11 of the United States Code captioned "In the matter of Albert A. Wheeldon, Debtor," Bankruptcy No. 00-04213-CJ (U.S. Bankruptcy Court for the Southern District of Iowa), in a personal capacity, with the intent to defeat the provisions of Title 11, knowingly and fraudulently transferred his property, namely his business, machinery, equipment, customer lists, and the good will of the business, to another, in violation of 18 U.S.C. § 152(7).

The defendant, ALBERT A. WHEELDON, has pleaded not guilty to these charges.

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 him. 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 crime charged.

There is no burden upon a defendant to prove that he is innocent.

INSTRUCTION NO. 8

DEFINITION OF "ON OR ABOUT"

You will have observed that in the Indictment the phrase "on or about" is used with reference to certain dates. It is not necessary that the government prove that all alleged acts occurred on or within the exact dates set forth in the Indictment. The government need only prove that the act charged in the Indictment occurred within a reasonable time of the dates or over an interval of time that includes the dates.

INSTRUCTION NO. 9

PRESUMPTION OF INNOCENCE

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial and alone is sufficient to find him not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against the defendant.

INSTRUCTION NO. 10

ELEMENTS OF THE OFFENSE—COUNT 1

The crime of theft of Government property as charged in the Count One of the Indictment has three essential elements which are:

*One*, the defendant voluntarily, intentionally and knowingly embezzled, stole, purloined, or converted, money or a thing of value to his own use; and

*Two*, the money or thing of value belonged to the United States and had a value in excess of One Thousand Dollars (\$1,000); and

*Three*, the defendant did so with intent to deprive the owner of the use or benefit of the money or thing of value or property so taken.

The word "value" means the face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

A "thing of value" can be tangible or intangible property.

It is not necessary to prove that the defendant knew that the Government owned the property at the time of the wrongful taking so long as it is established, beyond a reasonable doubt, that the Government did in fact own the money or property involved, that it had a value in excess of One Thousand Dollars (\$1,000), and that the defendant knowingly and willfully embezzled, stole, purloined, or converted it.

To "embezzle" means voluntarily and intentionally to take or to convert to one's use the property of another which property came into the defendant's possession lawfully.

For you to find the defendant guilty of the crime charged under Count One, the government must prove all of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count One.

INSTRUCTION NO. 11

ELEMENTS OF THE OFFENSE—COUNT 2

The crime of making false statements in a matter with a governmental agency, as charged in Count Two of the Indictment, has four essential elements, which are:

*One*, On or about June 15, 2000, the defendant knowingly, voluntarily and intentionally falsified or concealed a material fact, *i.e.*, that he had worked for wages or been self-employed outside his home from October 1, 1990 through June 21, 2000, in a matter within the jurisdiction of the Social Security Administration, a department of the United States;

*Two*, the defendant did so by use of a trick, scheme or device, that is, a course of action intended to deceive others;

*Three*, the fact was material to the Social Security Administration; and

*Four*, the issue of whether defendant had worked for wages or was self-employed outside his home from October 1, 1990 through June 21, 2000 was a matter within the jurisdiction of Social Security Administration. You may find that this element has been satisfied if you find that the Social Security Administration's function includes reviewing the employment or wage-earning status of persons applying for Social Security benefits.

A fact is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of the agency. However, whether a fact is "material" does not depend on whether a course of action intended to deceive others actually succeeded.

For you to find the defendant guilty of the crime charged under Count Two, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count Two.

## INSTRUCTION NO. 12

### DEFINITIONS FOR USE IN COUNTS 3 THROUGH 7

With respect to the crimes charged in Counts 3 through 7 of the Indictment:

1) The term "debtor" means the person or corporation for whom a bankruptcy case has been commenced.

When a debtor files a petition seeking protection from creditors under the bankruptcy laws, a "bankruptcy estate" is created, which is comprised of all property belonging to the debtor, wherever located, and by whomever held, as of the time of the filing of the bankruptcy case. The "bankruptcy estate" also includes proceeds, products, rents, or profits of or from the property of the estate, but it does not include earnings from services performed by an individual after the case is filed.

2) "Concealment" means not only hiding property or assets, it also includes preventing the discovery of assets, transferring property or withholding information required to be made known. Concealment of property of the estate may include transferring property to a third party or entity, destroying the property, withholding knowledge concerning the existence or whereabouts of the property, or knowingly doing anything else by which the defendant acts to hinder, unreasonably delay or defraud any creditors. The United States need not prove that the concealment was successful.

3) To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another, or bringing about a financial gain to oneself or another.

INSTRUCTION NO. 13

ELEMENTS OF THE OFFENSE-COUNT 3

The crime of bankruptcy fraud, as charged in Count Three of the Indictment, has four essential elements, which are:

*One*, on or about October 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Southern District of Iowa, in which Albert A. Wheeldon was the Debtor;

*Two*, a property maintenance business and equipment used in that business was a part of the bankruptcy estate of the Debtor;

*Three*, the defendant knowingly concealed the property maintenance business and equipment used in that business from the trustee, creditors, and the U.S. Trustee charged with the custody and control of that property; and

*Four*, such concealment was done with the intent to defraud.

For you to find the defendant guilty of the crime charged under Count Three, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count Three.

INSTRUCTION NO. 14

ELEMENTS OF THE OFFENSE—COUNT 4

The crime of bankruptcy fraud, as charged in Count Four of the Indictment, has four essential elements, which are:

*One*, on or about November 6, 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Southern District of Iowa, in which Albert A. Wheeldon was the Debtor;

*Two*, the defendant made a false account in relation to the bankruptcy proceeding, *i.e.*, he represented in the Schedule B he filed with the Bankruptcy Court that he had no machinery, fixtures, equipment or supplies used in a business.

*Three*, the defendant knew the account was false when it was made;

*Four*, the defendant did so with the intent to defraud.

For you to find the defendant guilty of the crime charged under Count Four, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count Four.

INSTRUCTION NO. 15

ELEMENTS OF THE OFFENSE—COUNT 5

The crime of bankruptcy fraud, as charged in Count Five of the Indictment, has four essential elements, which are:

*One*, on or about November 6, 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Southern District of Iowa, in which Albert A. Wheeldon was the Debtor;

*Two*, the defendant made a false account in relation to the bankruptcy proceeding, *i.e.*, he represented in the Schedule I he filed with the Bankruptcy Court that he was unemployed and had no regular income from the operation of a business.

*Three*, the defendant knew the account was false when it was made;

*Four*, the defendant did so with the intent to defraud.

For you to find the defendant guilty of the crime charged under Count Five, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count Five.

INSTRUCTION NO. 16

ELEMENTS OF THE OFFENSE—COUNT 6

The crime of bankruptcy fraud, as charged in Count Six of the Indictment, has four essential elements, which are:

*One*, on or about November 6, 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Southern District of Iowa, in which Albert A. Wheeldon was the Debtor;

*Two*, the defendant made a false account in relation to the bankruptcy proceeding, *i.e.*, he represented in the Schedule J he filed with the Bankruptcy Court that he had no regular expenses from the operation of a business.

*Three*, the defendant knew the account was false when it was made;

*Four*, the defendant did so with the intent to defraud.

For you to find the defendant guilty of the crime charged under Count Six, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count Six.

For you to find the defendant guilty of the crime charged under Count Six, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count Six.

INSTRUCTION NO. 17

ELEMENTS OF THE OFFENSE—COUNT 7

The crime of bankruptcy fraud, as charged in Count Seven of the Indictment, has three essential elements, which are:

*One*, the defendant knowingly transferred his property, namely his business, machinery, equipment, customer lists, and the good will of the business, to another;

*Two*, the defendant made such transfers after the filing of a case by him under Title 11;

*Three*, the defendant did so with the intent to defeat the provisions of Title 11.

To act with intent to defeat the provisions of Title 11 means to act knowingly and with the intent to engage in some act contrary to the United States Bankruptcy Code.

For you to find the defendant guilty of the crime charged under Count Seven, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count Seven.

INSTRUCTION NO. 18

PROOF OF INTENT OR KNOWLEDGE

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

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

INSTRUCTION NO. 19

REASONABLE DOUBT

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. 20

STATUTES

The Indictment charges the defendant, Albert W. Wheeldon, with violating Title 18, United States Code, Sections 152(1),(2) and (7) 641, and 1001(a)(1).

Sections 152(1), (2) and (7) of Title 18, United States Code, provides in part:  
A person who--

(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;

(2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;...

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation...

shall have violated the laws of the United States.

Section 641 of Title 18, United States Code, provides in part:

Whoever embezzles, steals, purloins, or knowingly converts to his use...any ...money, or thing of value of the United States [in a value exceeding \$1,000]...

shall have violated the laws of the United States.

Section 1001(a)(1) of Title 18, United States Code, provides in part:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully... falsifies, conceals, or covers up by any trick, scheme, or device a material fact...

shall have violated the laws of the United States.

INSTRUCTION NO. 21

FORM OF VERDICT

Submitted to you with these instructions are verdict forms for the crimes charged. When you reach your verdict, have your foreperson sign the appropriate verdict forms. All twelve jurors must agree unanimously to the verdict reached on each count. When you have reached your verdicts, notify the Marshal.

INSTRUCTION NO. 22

ELECTION OF A FOREPERSON/DUTY TO DELIBERATE

In conducting your deliberations and returning your verdict, 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 agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

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

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

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

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

*Fifth*, your verdict must be based solely on the evidence and on the law which I have

given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. [The form reads: (read form)]. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

October 3, 2001  
DATE

Robert W. Pratt  
ROBERT W. PRATT  
U.S. DISTRICT COURT JUDGE