

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

CRIMINAL ACTION NO. 3:00CR-115-H

UNITED STATES OF AMERICA

PLAINTIFF

v.

PETER W. JANNACE

DEFENDANT

**JURY INSTRUCTIONS**

MEMBERS OF THE JURY:

Now that you have heard all the evidence and the argument of the attorneys, it is my duty to give you instructions regarding the law that you must follow in deciding this case.

It is your duty to decide whether the United States has proved beyond a reasonable doubt the specific facts necessary to find the defendant, Peter Jannace, 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, prejudice, or bias for or against the defendant or the United States. Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth from the evidence presented and to apply that truth to the legal instructions I shall give you.

You must follow the law as I explain it to you whether you agree with the 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. The

defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all. The United States has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the defendant not guilty.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a real doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt, therefore, is proof that is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the United States has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

As I explained previously, you must decide what the facts are from the evidence that you saw and heard here in court. You may consider only the evidence that I have admitted in this case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

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 draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which reason and common sense lead you to make.

In saying that you must consider all the evidence, I do not mean that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness.

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 he or she have any particular reason not to tell the truth? Did he or she 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 he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You have heard the testimony of several expert witnesses. An expert witness has special knowledge or experience that allows the witness to give an opinion. You do not have to accept an expert's opinion. In deciding how much weight to give an expert's testimony, you should consider the witness's qualifications and how the expert reached the conclusions. Remember that you alone decide how much of a witness's testimony to believe and how much weight it deserves.

A defendant has an absolute right not to testify. A defendant need not prove anything. Therefore, the fact that a defendant did not testify or did not call any witnesses cannot be considered by you in any way during your deliberations.

Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Remember, witnesses are not the property of either defendant or the United States; they merely give testimony which you should consider. Concentrate on that, not the numbers.

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

Also, do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case.

In this case, the indictment charges twenty-four (24) separate offenses called “counts.” I will not read it to you because you will be given a copy of the indictment for your use during deliberations. The number of counts is not evidence of guilt, and this should not influence your decision in any way. The defendant is on trial only for the particular crimes charged in the indictment. It is your duty to consider separately the evidence that relates to each count, and to return a separate verdict for each count. For each count, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular count. Your decision on one count, whether it is guilty or not guilty, should not influence your decision on any of the other counts.

Finally, I want to say a word about the dates mentioned in the indictment. The

indictment charges that crimes or events happened “on or about” certain specified dates. The United States does not have to prove that the crimes or events happened on that exact date. But the United States must prove that the crime happened reasonably close to that date.

Now I will explain the law governing each of the offenses charged in the indictment that you must consider and I will give you guidance on how to apply that law.

## INSTRUCTION NO. 1

Title 18 of the United States Code, Section 1341, makes it a crime for anyone to use U.S. mail facilities in carrying out a scheme to defraud. Counts 1, 3, 5, 7, 9, 10, 12, 14, 16, and 18 of the superceding indictment charge the defendant with committing this crime. From the indictment, you can determine the precise dates and alleged fraudulent representations for each separate count.

To find the defendant guilty on any individual count, you must be convinced that the United States has proved each of the following beyond a reasonable doubt:

- First:** That the defendant knowingly and willfully devised or made up a scheme to defraud another out of money by means of materially false representations as described in the indictment; **and**
- Second:** That the defendant did so with the intent to defraud; **and**
- Third:** That the defendant used the mail, or caused the mail to be used in furtherance of some essential step in the scheme to defraud.

To act “knowingly” means to do an act voluntarily and intentionally and not because of mistake or accident.

To act “wilfully” means to commit an act voluntarily and purposefully and with specific intent to disobey or disregard the law.

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 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.

The phrase "scheme to defraud" includes any deliberate plan or course of action intended to deceive or cheat another out of money by employing material falsehoods, concealing material facts, or omitting material facts. It also includes a deliberate plan to obtain money from another by means of material false representations or promises.

A statement or representation is "false" when it is untrue when made or effectively conceals or omits a material fact.

A fact is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction.

To act with "intent to defraud" means to act knowingly and with the intention or purpose to deceive or cheat. An intent to defraud ordinarily involves the desire or purpose of causing another to experience some financial loss, or bringing about some financial gain for oneself or another.

The use of the United States mails is an essential element of the offense of mail fraud.

The government is not required to prove that the defendant actually mailed anything, or that the defendant even intended that the mails would be used to further, or to advance, or to carry out the scheme to defraud.

The government must prove beyond a reasonable doubt, however, that the mails were in

fact used in some manner to further, or to advance, or to carry out the scheme to defraud. The government must also prove that the use of the mails would follow in the ordinary course of business or events or that the use of the mails by someone was reasonably foreseeable.

It is not necessary for the government to prove that the item itself mailed was false or fraudulent or contained any false or fraudulent statement, representation, or promise, or contained any request for money or thing of value.

The government must prove beyond a reasonable doubt, however, that the use of the mails furthered, advanced, or carried out in some way the scheme to defraud.

Good faith is a complete defense to the crime of mail fraud. Consider the “good faith” definition contained in Instruction No. 3 as a part of these instructions for mail fraud.

Please record your verdict on the verdict form as to each count for which you reach a unanimous decision.



## INSTRUCTION NO. 2

Title 18 of the United States Code, Section 1347 makes it a crime for anyone to knowingly and willfully execute, or attempt to execute, a scheme or artifice to defraud any health care benefit program; or to obtain by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program in the connection with the delivery of or payment for health care benefits, items or services. Counts 2, 4, 6, 8, 11, 13, 15, 17, 19, 20, 21, 22, 23, and 24 of the superceding indictment charge the defendant with committing this crime. From the indictment, you can determine the precise dates and alleged fraudulent representations for each separate count.

To find the defendant guilty on any individual count, you must be convinced that the United States has proved each of the following beyond a reasonable doubt:

- First:** That defendant knowingly and willfully executed or attempted to execute a scheme to defraud a health care benefit program; or to obtain money of any health care benefit program, by means of material false or fraudulent pretenses, representations, or promises as charged in the indictment; **and**
- Second:** That defendant did so in connection with the delivery of, or payment for health care benefits, items or services; **and**
- Third:** That defendant did so with the intent to defraud.

A “health care benefit program” is any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item or service for which

payment may be made under a plan or contract.

The terms “knowingly,” “willfully,” “scheme to defraud,” “material,” “false representation,” and “intent to defraud” have the same definitions as I gave you previously in the instructions for mail fraud.

Good faith is a complete defense to the crime of health care fraud. Consider the “good faith” definition contained in Instruction No. 3 as a part of these instructions for health care fraud.

Please record your verdict on the verdict form as to each count for which you reach a unanimous decision.

### INSTRUCTION NO. 3

Good faith is a complete defense to the crimes of mail fraud and health care fraud. The fraud statutes are meant to impose criminal punishment only on those people who knowingly defraud or attempt to defraud, or knowingly obtain money or property or attempt to obtain money or property by means of false or fraudulent pretenses, representations, or promises. Good faith on the part of the defendant is inconsistent with the intent to defraud.

While the term “good faith” has no precise definition, it means, among other things, a belief or opinion honestly held, an absence of malice or ill will, and an intention to avoid taking unfair advantage of another. A person who acts, or causes another person to act, on belief or an opinion honestly held is not punishable under these statutes merely because the opinion or belief turns out to be inaccurate, incorrect, or wrong. An honest mistake in judgment or an error in management does not rise to the level of intent to defraud.

A defendant does not act in “good faith” if, even though he honestly holds a certain opinion or belief, the defendant also knowingly makes false or fraudulent pretenses, representations, or promises to others.

The burden of proving good faith does not rest with the defendant, because the defendant does not have any obligation to prove anything in this case. It is the government’s burden to prove to you, beyond a reasonable doubt that the defendant acted with the intent to defraud. If the evidence in the case leaves you with a reasonable doubt as to whether the defendant acted with an intent to defraud, you must acquit.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

To find the defendant guilty, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.

To find him not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. It is your duty as jurors to consult with one another, and to deliberate with a view toward reaching agreement, if you can do so without violence to individual judgment. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say.

You must decide the case for yourself, but only after an impartial consideration of the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember, you are the judges of the facts. Your only interest is to seek the truth from the evidence in the case.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

If you decide that the government has proved the defendant guilty, then it will be my job

to decide what the appropriate punishment should be. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict. Your job is to look at the evidence and decide if the government has proved the defendant guilty beyond a reasonable doubt.

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

A Verdict Form has been prepared for your convenience. You will take this form to the jury room and, if and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date, and sign the forms which set forth the verdict with respect to each count in the case. You will then return with your verdict to the courtroom.

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**VERDICT FORM**

**WE, THE JURY**, find Peter W. Jannace,

As to Count 1

\_\_\_\_\_ GUILTY

\_\_\_\_\_ NOT GUILTY

As to Count 2

\_\_\_\_\_ GUILTY

\_\_\_\_\_ NOT GUILTY

As to Count 3

\_\_\_\_\_ GUILTY

\_\_\_\_\_ NOT GUILTY

As to Count 4

\_\_\_\_\_ GUILTY

\_\_\_\_\_ NOT GUILTY

As to Count 5

\_\_\_\_\_ GUILTY

\_\_\_\_\_ NOT GUILTY

As to Count 6

\_\_\_\_\_ GUILTY

\_\_\_\_\_ NOT GUILTY

As to Count 7

\_\_\_\_\_ GUILTY

\_\_\_\_\_ NOT GUILTY

As to Count 8

\_\_\_\_\_

\_\_\_\_\_

	GUILTY	NOT GUILTY
As to Count 9	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 10	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 11	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 12	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 13	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 14	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 15	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 16	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 17	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 18	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 19	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 20	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 21	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 22	<u>GUILTY</u>	<u>NOT GUILTY</u>
As to Count 23	<u>GUILTY</u>	<u>NOT GUILTY</u>

As to Count 24

\_\_\_\_\_  
GUILTY

\_\_\_\_\_  
NOT GUILTY

\_\_\_\_\_  
FOREPERSON

Date: \_\_\_\_\_