

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

05-CR-075-S

ERNEST KWASI BANKAS,

Defendant.

Attached for the parties' consideration are draft voir dire questions, jury instructions and a verdict form.

Entered this 22nd day of November, 2005.

BY THE COURT:

/s/

STEPHEN L. CROCKER

Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

STATEMENT OF THE CASE
AND VOIR DIRE

v.

05-CR-075-S

ERNEST KWASI BANKAS,

Defendant.

Statement of the case: This is a criminal case, in which the defendant, Ernest Kwasi Bankas, is charged with student loan fraud involving the federal Stafford Loan program and the Great Lakes Higher Education Guarantee Corporation. The defendant has entered a plea of not guilty to the charges.

1. Have any of you heard of this case before today? Would this affect your ability to serve impartially as a juror in this case?

2. Scheduling: this case will begin today and will conclude by this Wednesday. Are any of you actually unable to sit as jurors because of this schedule?

3. Is there anything about the nature of the charges in this case that might affect your ability to be impartial in this case?

4. The court reads Federal Criminal Jury Instructions of the Seventh Circuit:

Presumption of Innocence. The defendant is presumed to be innocent of the charges. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all

the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

Burden of Proof. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his innocence or to produce any evidence.

Indictment Not Evidence. The indictment in this case is the formal method of accusing the defendant of crimes and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

The defendant has an absolute right not to testify. The fact that the defendant does not testify cannot be considered by you in any way in arriving at your verdict.

Would any of you be unable or unwilling to follow these instructions?

5. Ask counsel to introduce themselves, the defendant, and the case agent. Ask whether jurors know them.

6. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

7. Do any of you in the jury box know each other from before today?

8. How many of you or members of your immediate family ever applied for or obtained a student loan for college, technical school, graduate school, professional school or some other type of school? Please tell us:

1) Whether this involved the Stafford Loan program;

2) The names of any other loan programs involved;

3) Whether this involved the Great Lakes Higher Education Guarantee Program;

4) The names of any other entity involved with the loans, such as banks, government agencies, or academic institutions;

5) Whether the loan still is being paid; and

6) Whether the loan ever went into default or was alleged to be in default.

Would any of this affect your ability to be impartial in this case?

9. Have any of you or members of your immediate family had any negative experiences with a student loan, starting with the application and continuing through repayment? [Sidebar] Would this affect your ability to be impartial in this case?

10. Do any of you hold strong feelings either for or against student loans or student loan programs? [Sidebar] Would this affect your ability to be impartial in this case?

11. Have any of you or any members of your family ever had any experience with any other sort of loan from any source that might affect your ability to be impartial in a case of this nature? [Sidebar]

12. Have any of you, any members of your family or close friends ever been employed by the Stafford Loan program, the Great Lakes Higher Education Guarantee Corporation or by any other entity or business that grants or collects loans of any sort? Would this affect your ability to be impartial in this case?

13. Have any of you, your family or close friends ever been the victim or believe that you have been the victim of any actual or attempted fraud or swindle, whether related to loans or otherwise? Would this affect your ability to be impartial in this case?

14. The defendant in this case has earned several advanced degrees, including a law degree and [a] Ph.D.[s] in _____. Would this affect your ability to be impartial in this case?

15. The defendant is a native of the Republic of Ghana in Africa who has been a naturalized United States citizen since 1995. Is there anything about the defendant's racial or national background that would affect your ability to be impartial in this case?

16. Do any of you, by virtue of past dealings with the United States government, or for any reason, have any bias for or against the government in a criminal case?

17. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?

18. Have any of you ever belonged to any organization or group that excluded people because of their race, nationality, gender, or religion?

19. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, or any prison? Would this affect your ability to be impartial in this case?

20. Would any of you judge the testimony of a witness whose national, racial or ethnic background is not the same as yours differently from other witnesses solely because of this witness's nationality, race or ethnic background?

21. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?

22. If the defendant were to choose to testify, would any of you judge the defendant's credibility differently from other witnesses solely because it was the defendant who was testifying?

23. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

24. Have any of you, your relatives, or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

25. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

26. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case? [Sidebar]

27. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts.

28. If at the conclusion of the trial you were to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?

29. If at the conclusion of the trial you were not to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty?

30. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

31. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

JURY INSTRUCTIONS

v.

05-CR-75-C

ERNEST KWASI BANKAS,

Defendant.

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

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

Your second duty is to apply the law that I give you to the facts. You must follow my instructions on the law, even if you disagree with them. Each of the instructions is important. You must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear or public opinion to influence you. Do not allow any person's race, color, religion, national ancestry or sex to influence you.

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

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness. In evaluating the testimony of any witness, you may consider among other things: the witness's age; the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things the witness testified about; the witness's memory; any interest, bias, or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.

You should use common sense in weighing the evidence. Consider the evidence in light of your own observations in life. You are allowed to draw reasonable inferences from facts. In other words, you may look at one fact and conclude from it that another fact exists. Any inferences you make must be reasonable and must be based on the evidence in the case.

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

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

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

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

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

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

It is proper for a lawyer to interview any witness in preparation for trial.

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

You have received evidence of statements said to be made by the defendant to _____ . You must decide whether the defendant made any of the statements attributed to him. If you find that a defendant did make the statement, then you must decide what weight, if any, you believe the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself, and the circumstances under which the statement was made.

The defendant has an absolute right not to testify. In arriving at your verdict, you must not consider the fact that the defendant did not testify.

You have heard evidence of acts of defendant other than those charged in the indictment. Specifically, you've heard evidence that the defendant _____ . You may consider this evidence only on the question _____ . You should consider this evidence only for these limited purposes.

You have heard evidence that _____ have been convicted of crimes. You may consider this evidence only in deciding whether the testimony of any of these witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You have heard [reputation/opinion] evidence about the character trait of _____
_____ for truthfulness [or untruthfulness]. You should consider this evidence
in deciding the weight that you will give to _____'s testimony.

You have heard [reputation and/or opinion] evidence about the defendant's character
trait for [truthfulness, peacefulness, etc]. You should consider character evidence together
with all the other evidence in the case and in the same way.

You have heard evidence that before the trial, witnesses made statements that may
be inconsistent with their testimony here in court. If you find that it is inconsistent, you may
consider the earlier statement only in deciding the truthfulness and accuracy of that witness's
testimony in this trial. You may not use it as evidence of the truth of the matters contained
in that prior statement. If that statement was made under oath, you may also consider it as
evidence of the truth of the matters contained in that prior statement.

You have heard evidence that _____ have been convicted of crimes.
You may consider this evidence only in deciding whether the testimony of any of these
witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for
any other purpose.

A statement made by the defendant before trial that is inconsistent with the
defendant's testimony here in court may be used by you as evidence of the truth of the
matters contained in it, and also in deciding the truthfulness and accuracy of that
defendant's testimony in this trial.

_____ has admitted lying under oath. You may give the testimony of this witnesses such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care.

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

Certain summaries are in evidence. They truly and accurately summarize the contents of voluminous books, records or documents, and should be considered together with and in the same way as all other evidence in the case.

Certain summaries are in evidence. Their accuracy has been challenged by [the government] [the defendant]. Thus, the original materials upon which the exhibits are based have also been admitted into evidence so that you may determine whether the summaries are accurate.

THE INDICTMENT

The defendant is charged in the indictment as follows:

[court reads the indictment].

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

The defendant is not on trial for any act or any conduct not charged in the indictment.

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

The government has the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

The indictment charges that the offenses were committed "on or about" certain dates. The government must prove that the offenses happened reasonably close to those dates but it is not required to prove that the alleged offenses happened on those exact dates.

THE ELEMENTS OF COUNTS 1 THROUGH 4

To sustain any of the charges against the defendant in Counts 1 through 4, the government must establish all of these elements beyond a reasonable doubt:

- (1) On or about the dates stated in the count that you are considering, the defendant obtained funds exceeding \$200;
- (2) These funds had been provided to the defendant under the federal higher education student assistance program pursuant to Title 20, Chapter 28, Subchapter IV of the United States Code;
- (3) These funds were insured under the federal higher education student assistance program pursuant to Title 20, Chapter 28, Subchapter IV of the United States Code;
- (4) The defendant obtained these funds by fraud; and

(5) The defendant acted knowingly and willfully.

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

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

To obtain funds by fraud means that the defendant intended to deceive or cheat another person or entity in order to obtain these funds.

To act knowingly means that a defendant realized what he was doing and was aware of the nature of his conduct and did not act through ignorance, mistake or accident. Knowledge may be proved by a defendant's conduct and by all the facts and circumstances surrounding the case.

To act willfully means that the defendant acted voluntarily and intentionally.

[*Note*: an “intent to defraud” encompasses the notion of willfulness. *See, e.g., United States v. Stephens*, 421 F.3d 503, 509 (7th Cir. 2005)(wire fraud case). Hence, the statutory language “knowingly and willfully . . . obtains by fraud” is redundant. The adverb “willfully” modifies the other verbs in the statute and even then does not require a level of intent equal to fraud. *See Bates v. United States*, 522 U.S. 23, 32-33 (1997) (there is no “intent to defraud” element in § 1097(a)’s “willfully ... misapplies” clause); *United States v. Ranum*, 96 F.3d 1020, 1030 (7th Cir. 1996) (a “willful” false statement on a student loan application is one that is not the result of mistake or oversight)]

Good faith, or the absence of an intent to defraud, constitutes a complete defense to the charge of wire fraud. The good faith defense requires a genuine belief by the

defendant that the representations or promises alleged to be fraudulent were true at the time he made them.

A defendant's honest and genuine belief that he will be able to perform in the future what he promised in the past is not a defense to a fraud charge if the defendant also knowingly made false and fraudulent representations.

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 specific intent to defraud as alleged in Counts 1 through 4 of the indictment.

The government is not required to produce direct evidence to establish the defendant's intent. The government may prove the defendant's intent by means of circumstantial evidence alone. In determining the defendant's intent, you may consider all of his statements, acts and omissions, as well as all other facts and circumstances in evidence that indicate the defendant's state of mind.

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

An offense may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

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

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

Upon retiring to the jury room, select one of your number as your presiding juror. This person will preside over your deliberations and will be your representative here in court. A verdict form has been prepared for you. [*Court reads the verdict form*]

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

Each count of the indictment charges the defendant with having committed a separate offense. You must consider each count and the evidence relating to it separate and apart from every other count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

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

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

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

If it becomes necessary during your deliberations to communicate with the court, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court. You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case. You must not reveal to any person, including the court, your numerical split on any verdict question until you have reached a unanimous verdict on every defendant and every count.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

VERDICT

v.

05-CR-75-S

ERNEST KWASI BANKAS,

Defendant.

COUNT 1

We, the Jury in the above-entitled cause, find the defendant,

("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

COUNT 2

We, the Jury in the above-entitled cause, find the defendant, Ernest Kwasi Bankas,

("Guilty" or "Not Guilty")

of the offense charged in Count 2 of the indictment.

COUNT 3

We, the Jury in the above-entitled cause, find the defendant, Ernest Kwasi Bankas,

("Guilty" or "Not Guilty")

of the offense charged in Count 3 of the indictment.

COUNT 4

We, the Jury in the above-entitled cause, find the defendant, Ernest Kwasi Bankas,

("Guilty" or "Not Guilty")

of the offense charged in Count 4 of the indictment.

Presiding Juror

Madison, Wisconsin

Date:_____