

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7185  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

WILLIAM MULLENDORE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
CR G90 31 MO

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August 17, 1993

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

William Mullendore appeals his conviction of failure to file income tax returns in violation of 26 U.S.C. § 7203. Finding no error, we affirm.

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\* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Mullendore did not file a federal income tax return for 1983, 1984, or 1985. His adjusted gross income was \$22,306.39 in 1983, \$26,778.55 in 1984, and \$20,500.65 in 1985. The Internal Revenue Service ("IRS") calculated his gross income by adding his employment compensation, interest on bank accounts, and the amount withdrawn from an individual retirement account ("IRA"). Mullendore had filed his income tax returns until 1982.

In 1985, IRS agents became curious and wrote to Mullendore about his failure to file an income tax return for 1983. In one notice, the IRS warned Mullendore that it could summon him before the IRS, complete his tax form for him, or consider a criminal prosecution. Later, an IRS agent scheduled a meeting with Mullendore for November 16, 1986. Mullendore responded that he would be unable to attend but might be able to meet at some other time. He added that he believed himself to be in compliance "with the laws promulgated by congress under the proper constitutional authority."

In 1987, in a request under the Freedom of Information Act, Mullendore asked that the Department of the Treasury disclose to him a specific code section that imposed income tax liability on him. An official of that department responded that such information was not properly the subject of a request for disclosure under the Freedom of Information Act or the Privacy Act.

In February 1984, a local newspaper published a letter to the editor from Mullendore in which he labeled the IRS a "terrorist

organization" and encouraged readers to, among other things, "[c]onfront some attorneys under oath to show or quote the specific laws that compel tax returns and direct income taxes." Also in 1984, Mullendore attempted to pay his Greenville, Mississippi, property taxes with a "public office money certificate." In that certificate, Mullendore promised to pay the amount he owed the city in the "money of account of the United States . . . pending official determination of the substance of said money."

The bank refused to honor the certificate and returned it to the tax collector's office, which returned the certificate to Mullendore and requested payment. Mullendore returned the certificate to the tax collector and stated that his purpose in using the certificate was to determine whether "Article 1, Section 10 of the United States Constitution [is] still binding on the State of Mississippi[.]" Mullendore later explained to the tax collector that the constitutional provision at issue prohibited states from making anything but gold and silver legal tender for payment of debts; Mullendore was unaware of any provisions making federal reserve notes legal tender. Eventually, the state chancery court ruled against Mullendore, and he paid his property taxes.

From 1977 to 1984, Mullendore had an IRA in a bank. IRA's then were considered "tax shelters." Mullendore did not submit an income tax return in 1984 listing the amount he withdrew from his IRA in that year, despite a printed warning that the withdrawal might be subject to taxes and penalties.

Mullendore testified that he was audited by the IRS shortly

after his marriage in the late 1970's. After the audit, Mullendore began to question the IRS's authority. He purchased a legal dictionary, read the Constitution and reported decisions, and associated with like-minded people. Eventually, he decided that wages and salary are not "income" as defined by 26 U.S.C. § 61.

According to Mullendore, "income," for purposes of the federal income tax, means profits and gains gotten from investments, capital gains, or by corporations. "Compensation for services," which section 61 explicitly includes as income, does not include wages and evidently applies only to corporations. Nobody ever showed Mullendore any provision of the tax code other than section 61 to prove that wages are taxable income or that payment of taxes on wages is non-voluntary. Mullendore had filed his returns before 1983 because he had not discovered yet that his wages were not income. Mullendore suggested that the government should have pursued a civil action rather than a criminal prosecution.

Mullendore was convicted of failure to file income tax returns for 1983, 1984, and 1985. The magistrate judge denied his motion for a new trial, and the district court affirmed the conviction.

## II.

### A.

Mullendore first contends that the information charging him with failure to file was defective because it "did not state a sufficient statutory basis to constitute an offense against the United States." His contention is unavailing.

"An indictment is sufficient if it contains the elements of the offense charged, informs the defendant of the charges, and enables the defendant to plead acquittal or conviction and avoid future prosecutions for the same offense." United States v. Hatch, 926 F.2d 387, 391-92 (5th Cir.), cert. denied, 111 S. Ct. 2239 (1991). "The elements of . . . failing to make a return, 26 U.S.C. § 7203, are willfulness and failure to make a return when due." United States v. Doyle, 956 F.2d 73, 74 (5th Cir. 1992). The information against Mullendore alleges the amounts of gross income he received in 1983, 1984, and 1985; that he was required to report that gross income on his income tax returns; that he knew of his duty to file returns; and that he willfully failed to file. The information was not defective.

B.

Mullendore next contends that the magistrate judge improperly instructed the jury.

[This Court] will reverse a conviction on the grounds of improper jury instructions only if the instructions taken as a whole do not correctly reflect the issues and the law. Similarly, failure to include an instruction requested by the defendant warrants reversal only if absence of that instruction results in a charge not adequately addressing the issues and the law of the case.

Hatch, 926 F.2d at 395 (citations omitted).

1.

The magistrate judge charged the jury, "You are instructed that a good faith misunderstanding of the law would negate

willfulness but mere disagreement with the law would not. A person's disagreement with the government's tax collection systems and policies does not constitute a good faith misunderstanding of the law." Mullendore objected to the second sentence, arguing that there was no evidence that he disagreed with the tax code. The magistrate judge gave the instruction, reasoning that Mullendore's testimony that the IRS should have pursued his civilly rather than criminally constituted a disagreement with tax collection policy. Mullendore now contends that the instruction amounted to a directed verdict against him because it suggested that his belief that wages are not subject to taxation was nothing more than a disagreement with federal tax policy.

A finding that a defendant harbored a good-faith misunderstanding of tax law negates a finding of willfulness. A mere disagreement with federal tax policy, however, does not constitute a good-faith misunderstanding of tax law. United States v. Cheek, 498 U.S. 192, 201-06 (1991). The magistrate judge's instruction therefore correctly stated the law. Further, the jury could have inferred from the evidence that Mullendore simply was averse to paying his taxes. The instruction thus was appropriate.

2.

Mullendore proposed that the magistrate judge instruct the jury that "[e]vidence has been presented that the defendant, William A. Mullendore, acted with a good faith belief that he was not violating the tax laws." Reasoning that Mullendore's proposed

instruction would be a comment on the evidence, the magistrate judge instead instructed that "[t]he defendant, William A. Mullendore, contends that he acted with a good faith belief that wages do not constitute income and that he was, therefore, not violating the tax laws."

Mullendore contends that the magistrate judge, by using the word "contends," transformed his factual defense into a legal argument that precluded the jury from finding that he harbored a good-faith misunderstanding of tax law. Mullendore's contention is meritless and deserves no further comment.

3.

The magistrate judge instructed the jury that "[g]ross income includes any compensation for services rendered including wages, salary, and interest." Mullendore contends that the instruction precluded the jury from finding that he harbored a good-faith belief that wages are not included in the definition of gross income.

"The jury must know the law as it actually is respecting a taxpayer's duty to file before it can determine the guilt or innocence of the accused for failing to file as required." United States v. Barnett, 945 F.2d 1296, 1300 (5th Cir. 1991), cert. denied, 112 S. Ct. 1487 (1992). The claim "that wages are not taxable income has been repeatedly rejected." Capps v. Eggers, 782 F.2d 1341, 1343 (5th Cir. 1986). The district court's instruction was proper.

4.

The magistrate judge instructed the jury as follows:

A person is required to file a federal income tax return for tax years 1983 and 1984 if he had gross income in excess of \$3300.00. A person is required to file a federal income tax return for tax year 1985 if he had gross income in excess of \$3430.00.

Mullendore had proposed that the magistrate judge also should have instructed the jury

that the financial records offered into evidence that establish the defendant had a gross income for each year of the information may not be considered by you as proof of his guilt of the offense for which he is charged, but may be considered by you as evidence that the Government believes that the defendant had a sufficient gross income that would require the defendant to file an income tax return for each year mentioned in the information. It cannot be considered for any other purpose.

Mullendore contends that the magistrate judge's failure to give his proposed instruction tilted the balance too far toward the government on the issue of Mullendore's good-faith misunderstanding. His contention is without merit.

First, the magistrate judge correctly instructed the jury that individuals are obliged to file income tax returns if their incomes exceeded certain levels. See 26 U.S.C. § 7203. Second, the records that indicated that Mullendore's income exceeded those threshold levels and that he failed to file returns were evidence that the jury properly could have considered as proof of his guilt. The magistrate judge, therefore, properly rejected Mullendore's proposed instruction.



5.

The magistrate judge also rejected Mullendore's proposed instructions defining the terms "negate" and "protest." A trial court need not define terms "unless they are outside the common understanding of a juror or are so technical or specific as to require a definition." United States v. Chenault, 844 F.2d 1124, 1131 (5th Cir. 1988). "Negate" and "protest" are not terms outside the common understanding of adults who possess an average vocabulary. Nor, in the context of Mullendore's prosecution, are they terms of art that required definition. The magistrate judge, therefore, need not have defined those terms.

C.

Finally, Mullendore contends that the evidence at trial is insufficient to support his conviction. His contention is unavailing.

A reviewing court will affirm a jury verdict so long as there is evidence sufficient to allow a reasonable jury to find a defendant guilty beyond a reasonable doubt. The reviewing court will view the evidence and all inferences from the evidence in the light most favorable to the verdict. United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982) (en banc), aff'd 462 U.S. 356 (1983). As is mentioned above, "[t]he elements of . . . failing to make a return, 26 U.S.C. § 7203, are willfulness and failure to make a return when due." Doyle, 956 F.2d at 74. A subjective, good-faith misunderstanding of tax law precludes a finding of willfulness. A

mere disagreement with tax policy, however, is not a good-faith misunderstanding. Whether a defendant harbors a good-faith misunderstanding is a question for the jury. Cheek, 498 U.S. at 201-06.

The evidence was sufficient for the jury to convict Mullendore of willful failure to file. Mullendore did not dispute that he earned income in the amounts that the government proved; nor did he dispute that he did not file income tax returns. Mullendore asserted that he believed that wages were not "income" under the tax code and that, therefore, he did not need to file returns.

The government, however, produced evidence from which the jury could have inferred that Mullendore merely was averse to paying his taxes and disagreed with the government's tax policies and procedures. First, Mullendore litigated what legal tender was acceptable for the payment of his Greenville property taxes. While Mullendore finally did pay his property taxes, the jury could have concluded that he had attempted to avoid paying those taxes and had intended not to pay any taxes at all. Second, Mullendore filed income tax returns for the years before 1983. The jury could have concluded that Mullendore knew of his obligation to pay income taxes and decided to disregard that obligation.

Third, Mullendore suggested that the government should have settled its dispute with him in a civil action rather than a criminal prosecution. The jury could have concluded that Mullendore merely disagreed with IRS procedures and policies. Fourth, Mullendore did not meet with the IRS agent when requested

to do so. Finally, the jury was free to disregard Mullendore's testimony about his beliefs.

AFFIRMED.