

**1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 12-106-1
	:	
v.	:	
	:	
FRIDAY JAMES	:	

Norma L. Shapiro, J. **September , 2013**

MEMORANDUM

Friday James (“James”) was indicted on twenty-seven counts of willfully aiding and assisting in preparation and filing of materially false tax returns in violation of 26 U.S.C. § 7206(2) (“Section 7206(2)”). He was convicted by a jury on twenty-six of the twenty-seven counts.¹

James filed a timely post-trial motion for judgment of acquittal under Federal Rule of Criminal Procedure 29. He argues the government failed to prove his guilt on eleven of the counts on which he was convicted: Counts Two, Five, Six, Seven, Eleven, Twelve, Fifteen, Sixteen, Nineteen, Twenty-three, and Twenty-seven. The court will deny the motion for acquittal on all counts because the government offered sufficient evidence at trial for a reasonable jury to convict James of the charges against him.

I. BACKGROUND

Between 2008 and 2009, James provided tax preparation services to the clients of Frika Tax Services (“Frika”), the small tax preparation business he owned in Philadelphia, Pennsylvania.

¹ The jury acquitted James on Count Eight of the superseding indictment.

James, who received at least six weeks of training as a tax preparer with Liberty Tax Services in the early 2000's,² was the principal tax preparer for the office; the business charged clients a flat fee to prepare and submit annual federal income tax returns to the Internal Revenue Service ("IRS").

James participated in the IRS paperless Electronic Filing Program. As part of the program, he applied for and was issued an individualized preparer tax identification number ("PTIN"), P00616006, to be used as an electronic signature, and an electronic filing identification number ("EFIN"), 237459. These numbers allowed him to submit returns online; they are designed to inform the IRS of the identity the individual who prepares and submits each electronically filed federal tax return.

At trial, the government presented twenty-two witnesses, including Shirley Ball, a witness coordinator for the IRS Criminal Investigations Division; Victoria Chambliss, a Frika employee who also worked with James at Liberty Tax Services; IRS Special Agent Brandy Taylor, who conducted an undercover investigation of James that involved hiring him to prepare and file a federal tax return for her assumed identity; and sixteen Frika clients. The evidence established that many of the returns submitted using James' PTIN and EFIN numbers claimed large and fraudulent refunds for unreimbursed employee business expenses (Form 2106, line items 27 and 29), itemized deductions (Form 1040 and its accompanying Schedule A), and The First Time Home Buyer's Credit (Form 5405). Many of James' clients testified that they were ultimately required to pay unexpected back tax liabilities to the IRS arising out of the services James provided, sometimes in large amounts.

² James may have also trained as a tax preparer by attending the H&R Block intensive Income Tax Course and subsequent required continuing education; this fact was not clearly established at trial. *See* Doc. No. 71, Tr. at 49 – 59.

II. DISCUSSION

Federal Rule of Criminal Procedure 29 provides that, “the court on the defendant’s motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” Fed.R.Crim.P. 29. James bears a heavy burden to show insufficiency of the evidence; the court must “review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence.” *United States v. Smith*, 294 F.3d 473, 476 (3d Cir. 2002). The court must “draw all reasonable inferences in favor of the jury’s verdict,” and should only find insufficient evidence to sustain a conviction when the prosecution’s failure to prove its case is clear. *Id.* at 476-77.

James disputes there was sufficient evidence at trial from which a reasonable jury could conclude beyond a reasonable doubt he was guilty of the contested eleven counts. To sustain a conviction for violation of Section 7206(2), the government must prove beyond a reasonable doubt that: (1) James aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a return; (2) the return was fraudulent or false as to a material matter; and (3) the defendant’s conduct was willful. 26 U.S.C. § 7260(2); *United States v. La Haye*, 548 F.2d 474, 475 (3d Cir. 1977).

The term willfully connotes a voluntary, intentional violation of a legal known duty. *United States v. Pomponio*, 429 U.S. 10, 13 (1976). The statute makes all forms of willful assistance in preparing a false return an offense, not just the mere filing of a false return. *See e.g., United States v. McCrane*, 527 F.2d 906, 913 (3d Cir. 1975), *vacated on other grounds*, 247 U.S. 909, *reaff’d in relevant part on remand*, 547 F.2d 204 (3d Cir. 1976). *See also United States v. Nealy*, 729 F.2d 961 (4th Cir. 1984)(there need not be actual physical preparation of the return if the

evidence demonstrates the defendant provided aid, assistance, and advice in the preparation of the false tax return or took actions that caused the taxpayer to file the false return). The relevant inquiry is whether the defendant engaged in some affirmative participation which at least encouraged preparing or presenting a false return. *United States v. Graham*, 758 F.2d 879, 885 (3rd Cir. 1985). A defendant asserting a good faith defense is not required to have been objectively reasonable in his misunderstanding of his legal duties or belief that he was in compliance with the law. *Cheek v. United States*, 498 U.S. 192, 202-03 (1991); *United States v. Pomponio*, 429 U.S. at 12.

The income tax return may be materially false by a reason of an understatement of income, overstatement of lawful deductions, or because deductible expenses are mischaracterized on the return; the proper test for determining materiality is whether the misrepresentation or concealment had a natural tendency as a matter of law to influence the relevant governmental decision. See *Kungys v. United States*, 485 U.S. 759, 771-72 (1988).

A. Count Two

Count Two concerns Barry Thompson's ("Thompson") 2009 federal tax return. Thompson testified that his 2009 return was false with respect to claimed charitable giving and unreimbursed business expenses, including laundry services, vehicle expenses, meals and entertainment, and mileage. Doc. No. 71, Tr. at 138:6 – 141:8. Thompson had personal knowledge that James filed his 2008 return, but he was unclear about what happened with regard to the preparation and submission of the 2009 return.³ The 2008 return claimed fraudulent unreimbursed business expenses substantially similar in type and amount to those present on his

³ James was found guilty of violating Section 7206(2) with respect to Thompson's 2008 federal tax return. He does not seek acquittal on that count.

2009 return. *Id.* at 133: 1-20; *see* Gov't Trial Exhibit 23, 24. James was listed as the paid preparer on the 2009 return; his PTIN and EFIN numbers were used to file the 2009 return; and the return contained a jurat stating:⁴

If I am the paid preparer, under the penalties of perjury, I declare that I have examined this electronic return, and to the best of my knowledge and belief, it is true, correct, and complete. This declaration is based on all information of which I have any knowledge.

A reasonable jury could have inferred James willfully aided, assisted counseled and/or advised in the preparation of Thompson's materially false 2009 return based on the circumstantial evidence, the presence of James' personal identification numbers on the return, and the declaration contained in the documents. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Two; the motion for acquittal on this count will be denied.

B. Count Five

Count Five concerns Harry Chambliss' ("Chambliss") 2008 federal tax return. Chambliss testified that his 2008 return was false with respect to unreimbursed business expenses and the First Time Home Buyer's Credit. Doc. No. 73, Tr. at 1-10. Victoria Chambliss, his wife, was an employee of Frika Tax Services when her husband's 2008 return was prepared; Chambliss testified that his wife "took care of" identifying an individual to prepare his taxes. *Id.* at 16:5-7. Victoria Chambliss testified that she recommended that he have his taxes prepared by Frika Tax Services because, ". . . he's always had Mr. James prepare his tax." Doc. No. 71, Tr. at 116:11-12. The evidence showed that James' PTIN and EFIN numbers were used to file Chambliss' 2008 return, and the return contained the jurat electronically signed by James. *See* Gov't Trial Exhibit 23. A reasonable jury could infer James willfully aided, assisted,

⁴ All jurats attached to federal tax returns electronically filed in 2008 and 2009 contained this same language.

counseled and/or advised in the preparation of Chambliss' materially false 2008 return based on the circumstantial evidence and the presence of James' personal identification numbers on the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Five; the motion for acquittal on this count will be denied.

c. Count Six

Count Six concerns Nathaniel Clarke's ("Clarke") 2008 federal tax return. Clarke testified that his 2008 return was false with respect to unreimbursed business expenses and the First Time Home Buyer's Credit. Doc No. 71, Tr. at 90:18 – 91:25; 93:6-25. Clarke, a Minnesota resident, had James prepare his 2008 tax return after he and James spoke over the phone. Clarke knew he was speaking to James because he contacted James directly based on a personal recommendation; James also introduced himself during the call. *Id.*; Tr. at 97:16-18. James' PTIN and EFIN numbers were used to file Clarke's 2008 return, and the return contained a jurat electronically signed by James. *See* Gov't Trial Exhibit 8.

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of Clarke's materially false 2008 tax return based on the evidence of their conversation and the presence of James' personal identification numbers on the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Six; the motion for acquittal on this count will be denied.

D. Count Seven

Count Seven concerns Clarke's 2009 federal tax return. Clarke testified that the 2009 return was fraudulent and contained false information. Doc. No. 71, Tr. at 95:21-25. He also testified that, as was the case in 2008, he sent his W-2 to Friday James for preparation of the 2009 return. *See e.g.*, Doc. No. 71, Tr. at 102: 15-25; 104:14-22. Clarke and James spoke over the phone, and James confirmed that he had all the necessary documents to prepare Clarke's 2009 return. *Id.* at 105:10-11. James' PTIN and EFIN numbers were used to file Clarke's 2009 return, and the return contained a jurat electronically signed by James. *See* Gov't Trial Exhibit 9.

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of Clarke's materially false 2009 return based on the communications between the two men and the presence of James' personal identification numbers on the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Seven; the motion for acquittal on this count will be denied.

E. Count Eleven

Count Eleven concerns Edward Jones' ("Jones") 2008 federal tax return. Jones testified that his 2008 return was false with respect to unreimbursed business expenses and the First Time Home Buyer's Credit. Doc. No. 73, Tr. at 36:8-21; 37:1-7. He testified that he met with James regarding the preparation of his 2008 tax return and discussed the details of the return before James filed it.⁵ Doc. No. 73, Tr. at 35: 3-7; 37:10. James' PTIN and EFIN numbers were used to

⁵ Counsel for defendant emphasized that Jones may have previously stated to an IRS agent that he had a conversation with a 25-27 year-old African American employee of Frika about the First Time Home Buyers Credit. Doc. No. 73, Tr. at 43:18-25. At trial, Jones acknowledged he could not recall whether the young man assisted him with the preparation of his 2008 or 2009 return. *Id.* at 45:1-6. The mere participation of an additional Frika employee in the process of filing Jones' 2008 return does not prevent the jury from finding James guilty on this count.

file Jones' 2008 federal tax return, and the return contained a jurat electronically signed by James. *See* Gov't Trial Exhibit 18.

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of Jones' materially false 2008 return based on the evidence of communications between the two men and the presence of James' personal identification numbers on the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Eleven; the motion for acquittal on this count will be denied.

F. Count Twelve

Count twelve concerns Jones' 2009 federal tax return. Jones testified that his 2009 return was false with respect to unreimbursed business expenses. Doc. No. 73, Tr. at 38:12-24. James' PTIN and EFIN numbers were used to file Jones' 2009 return, and the return contained a jurat electronically signed by James. *See* Gov't Trial Exhibit 19.

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of Jones' materially false 2009 return based on the presence of James' personal identification numbers on the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Twelve; the motion for acquittal on this count will be denied.

G. Count Fifteen

Count Fifteen concerns Nyawo Abu's ("Abu") 2008 federal tax return. Abu testified that her 2008 return was false with respect to unreimbursed business expenses and the First Time Home Buyer's Credit. Doc. No. 73, Tr. at 49:22; 50:15-16. James prepared her 2008 tax return after a meeting they had in his office. Doc. No. 73, Tr. at 47:15; 50:9-13. James' PTIN and EFIN numbers were used to file Abu's 2008 federal tax return, and the return contained a jurat electronically signed by James. *See Gov't Trial Exhibit 1.*

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of Abu's materially false 2008 return based on the evidence of a meeting in James' office and the presence of James' personal identification numbers on the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Fifteen; the motion for acquittal on this count will be denied.

H. Count Sixteen

Count Sixteen concerns Abu's 2009 federal tax return. Abu testified that her 2009 return was false with respect to unreimbursed business expenses. Doc. No. 73, Tr. at 52:20-24; 53:3-6. James filed the 2009 return after she dropped off the relevant documents at Frika. *Id.* at 17-21. James' PTIN and EFIN numbers were used to file Abu's 2009 federal tax return, and the return contained a jurat electronically signed by James. *See Gov't Trial Exhibit 2.*

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of Abu's materially false 2009 return based on her testimony and the presence of James' personal identification numbers on the return. The evidence at trial, viewed

in the light most favorable to the government, was sufficient for a rational jury to convict on Count Sixteen; the motion for acquittal on this count will be denied.

I. Count Nineteen

Count Nineteen concerns Fattemah Dedmon's ("Dedmon") 2008 federal tax return.

Dedmon testified that her 2008 return was false with respect to unreimbursed business expenses. Doc. No. 73, Tr. at 6:11-21; 7:1-5. James prepared her 2008 tax return after she dropped off her documents at Frika and spoke with James regarding the process. Doc. No. 73, Tr. at 4:11; 11:17-19. James' PTIN and EFIN numbers were used to file Dedmon's 2008 federal tax return, and the return contained a jurat electronically signed by James. *See* Gov't Trial Exhibit 10.

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of Dedmon's materially false 2008 return based on her testimony and the presence of James' personal identification numbers on the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Nineteen; the motion for acquittal on this count will be denied.

J. Count Twenty-three

Count Twenty-three concerns Solomon Johnson's ("Johnson") 2009 federal tax return.

Johnson testified that his 2009 tax return was false with respect to unreimbursed business expenses. Doc. No. 72, Tr. at 96:17-25. He testified that he discussed his 2009 return with James after James prepared the document; at trial, Johnson acknowledge a variety of fraudulently claimed expenses on the return that he could not explain and which were not substantiated. *Id.* at

94:11-12. James' PTIN and EFIN numbers were used to file Johnson's 2009 federal tax return, and the return contained a jurat electronically signed by James. *See* Gov't Trial Exhibit 17.

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of Johnson's 2009 federal tax return based on Johnson's testimony and the presence of James' personal identification numbers on the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Twenty-three; the motion for acquittal on this count will be denied.

K. Count Twenty-seven

Count Twenty-seven concerns the tax return James prepared for IRS Special Agent Brandy Taylor ("Agent Taylor"); Agent Taylor approached James and requested he prepare a return for her assumed identity, Brandy Thomas. Doc. No. 73, Tr. at 65:1-11. At trial, the jurors viewed the undercover video of Agent Taylor's visit to Frika; the video featured James preparing Brandy Thomas' return with the assistance of other employees. Agent Taylor testified that the return prepared by James was materially false with respect to unreimbursed business expenses. Doc. No. 73, Tr. at 66:14-24; 69:22. The IRS Account Transcript attached to the return demonstrates that it was ultimately filed with, but not processed by, the IRS. *See* Gov't Trial Exhibit 27. A preparer can be guilty of filing a false return on behalf of an undercover agent. *See United States v. Poltonowicz*, 353 Fed.Appx. 690, 692 (3d Cir. 2009). James's PTIN and EFIN numbers were used to file the return, and the return contained a jurat electronically signed by James. *Id.*

A reasonable jury could have found that James willfully aided, assisted, counseled and/or advised in the preparation of the materially false 2009 Brandy Taylor federal return based on the

evidence presented at trial, and the presence of James' personal identification numbers of the return. The evidence at trial, viewed in the light most favorable to the government, was sufficient for a rational jury to convict on Count Twenty-seven; the motion for acquittal on this count will be denied.

XII. CONCLUSION

The court will deny James' motion for acquittal as to Counts Two, Five, Six, Seven, Eleven, Twelve, Fifteen, Sixteen, Nineteen, Twenty-three, and Twenty-seven because the evidence clearly demonstrates, either directly or by reasonable inference, that James took part in the preparation of the returns for which he was convicted. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA	:	CRIMINAL NO. 12-106-1
	:	
v.	:	
	:	
FRIDAY JAMES	:	

Norma L. Shapiro, J.

September , 2013

ORDER

AND NOW, this day of September, 2013, upon consideration of defendant's Motion for Judgment of Acquittal (paper no. 77), the response in opposition (paper no. 78), and all other relevant papers of record, it is **ORDERED** that the Motion for Judgment of Acquittal under Fed.R.Crim.P. 29 is **DENIED** as to Counts Two, Five, Six, Seven, Eleven, Twelve, Fifteen, Sixteen, Nineteen, Twenty-three, and Twenty-seven for the reasons stated in the attached memorandum.

J.