

Case No. 201709-4-CA

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IN THE  
UTAH COURT OF APPEALS

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STATE OF UTAH,  
*Plaintiff/Appellee,*

*v.*

SCOTT ALAN RASMUSSEN  
*Defendant/Appellant.*

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Brief of Appellant

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Appeal from a conviction for one count of tax evasion, a second degree felony, and three counts of failure to render a tax return, a third degree felony, all in violation of Utah Code Ann. § 76-8-1101, in the Third Judicial District, Salt Lake County, the Honorable Roger S. Dutson presiding. Appellant is incarcerated.

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**ORAL ARGUMENT REQUESTED**

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Case No. 20170904-CA

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Brief of Appellant

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**STATEMENT OF JURISDICTION**

This appeal is from a conviction for one count of tax evasion, a second degree felony, and three counts of failure to render a tax return, a third degree felony, all in violation of Utah Code Ann. § 76-8-1101, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Roger S. Dutson, presiding. Jurisdiction is conferred upon this Court pursuant to Utah Code Ann. § 78A-4-103(2)(e) (2018).

**INTRODUCTION**

Scott Alan Rasmussen has a good faith disagreement with the Utah State Tax Commission. The Tax Commission claims he owes income tax. Rasmussen believes he doesn't. This dispute dates back to 2002 when, after extensive research, Rasmussen concluded that he is a "common law

employee” whose wages and compensation do not constitute reportable income and that, therefore, he had no duty to file income tax returns.

But he knew he had a duty to notify the government, and so in 2002 he filed W-4 forms stating his exempt status. The Internal Revenue Service acquiesced, and for more than a decade his exempt status was unchallenged. Then, in 2013, the Utah State Tax Commission notified Rasmussen that he owed back taxes. Rasmussen responded with a detailed memorandum explaining the legal basis for his exemption. But the Tax Commission rejected Rasmussen’s rationale and he was ultimately charged with 12 counts of criminal tax violations. Jurors acquitted him of most of the charges, but convicted on four. Rasmussen appeals.

### **STATEMENT OF THE ISSUE**

Whether the trial court failed to properly instruct the jury on Rasmussen’s “good faith” belief that he was not required to file income tax returns.

*Standard of Review:* Where a defendant is legally entitled to have a particular instruction given to the jury, the trial court’s failure to do so is reviewed for an abuse of discretion. *Miller v. Utah Dep’t of Transp.*, 2012 UT 54, ¶13, 285 P.3d 1208.

*Preservation:* This issue is preserved by defense counsel's objection to removing language concerning good faith as a defense to all of the counts. R514, 516,

## STATEMENT OF THE CASE

### A. Summary of facts.

Scott Rasmussen is not a tax protester. Nor does he believe that taxes are unconstitutional or otherwise illegal. Rather, he simply believes, based on his own extensive research, that a "common law employee," such as himself, has no "income," as that term is defined in the tax code and other government publications, and therefore is exempt from the require to pay income tax or file tax returns.

For those reasons, he has filed no tax returns for more than a decade. For those reasons, he also went to prison.

*"I dug into it."*

While working as a manufacturing engineer for Boeing, Rasmussen and his wife paid income tax from 1989 through 1999. R581. Then, after paying his taxes for 2000, he received a "nice letter" from the IRS stating that he owed an additional \$2500. R581. "I got mad and paid it." *Id.* But

when he was assessed a deficiency again the following year – this time for \$3000 – he decided to research the basis for his tax liability. *Id.*

At trial, he explained his thinking: “Well, first of all, why am I paying taxes? What’s it all about? You know? What does it mean to pay taxes? You know? So I dug into it.” R582.

*The “aha!” moment*

Rasmussen spent many countless hours in the evening researching his tax liability. His conclusions, although contrary to standard interpretations of the tax code, display an internal logic and are grounded in statutes, tax publications, and case law. *See* R574-607 (Rasmussen testimony) and State’s Exhibit 16 (Memorandum of Points and Authorities (“Rasmussen Memo.”)).

Rasmussen testified that the “aha!” moment came when he was reviewing IRS publications 560 and 15, which discuss the difference between an independent contractor, a statutory employee, and a common law employee. R586; *see* Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), I.R.S. Pub. No. 560, Cat. No. 46574N (February 3, 2014), <https://www.irs.gov/pub/irs-prior/p560--2013.pdf>; Employer's Tax Guide, I.R.S. Pub. No. 15, Cat. No. 10000W (February 5, 2013), <https://www.irs.gov/pub/irs-prior/p15--2013.pdf> “Publication

560 addresses a common law employee under definitions you need to know, and it says right in there a common law employee is not self-employed." *Id.* He concluded that "if you file a 1040 and you don't know any better you automatically became a business. Okay? And it's known as a sole proprietorship." R583. "So I am realizing, wow, okay, I'm not a business while I am at work, but yet somehow when I pay taxes I'm a business." R586.

As Rasmussen saw it, only businesses had "income" because only "profit" constitutes "income" for tax purposes. *See* R583. "The point that I've been trying to make all along is that in order to pay taxes, you necessarily have to be a business entity. The State has been unable to identify which type of business entity that I am. So I don't mind complying, but I wish that they would have been able to be more explicit about the basis, the fundamental fact of why I need to pay taxes on my employment pay." R690.

In his memorandum, Rasmussen discusses the "3 Categories of Control" – Behavioral Control, Financial Control, and the Relationship, of the parties—which determine whether a worker is a business/independent contractor, who generates taxable income, or an employee, who does not. R724; *see also* Independent Contractor vs.

Employee, I.R.S. Topic 762, <https://www.irs.gov/taxtopics/tc762>. One criterion defining an employee is the “extent to which the worker can realize a profit or incur a loss.” R724. Rasmussen concluded:

I am a *common law employee*. I do not consider my payroll *wages* as *income*, as would an independent contractor. I have no opportunity for *profit or gain*, as would an independent contractor. Therefore, I have no realized tax liability, unlike an independent contractor, and no requirement to file an income tax return. I am mindful that this is in regard to my employment *wages* only.

R724 (emphasis in original). At trial, he testified: “I decided to terminate my business as a sole proprietor, because all I recognized was a loss, because I had—I had no—I was in no position to see a profit. So what I did was I filed exempt on my W-4 form.” *Id.*

In 2002, Rasmussen filed a W-4 form along with a handwritten note to the IRS explaining that he was exempt from paying income tax. R586-87. In response, the IRS wrote: “We are returning the document checked at the right (Form W-4). Please keep them for your records unless otherwise indicated.” Rasmussen interpreted this response as tacit agreement from the IRS to his asserted exemption:

After receiving this reply from the IRS, I thought that if I were in error the IRS would have taken this opportunity to do its “due diligence” to clarify the matter and straighten me out. Neither myself nor any of my Employers have received a “lock in letter” or “Modification Notice” since I

began filing EXEMPT in June 2002. I have assumed that all my employers have followed the requirements as stated in Publication 505 (2002). And that both the IRS and Utah Tax Commission were aware of my *Exempt from withholding*.

R725 (emphasis in original); see also R602-03.

Each year for more than a decade, Rasmussen filed W-4s. *See* Defendant's Exhibit 1 (W-4 forms for 2010-12). His exempt status was never challenged until 2013 when he received a letter from the Commission informing him that he owed taxes. R689. After receiving the letter, Rasmussen "dug into it" again and renewed his research into state and federal tax law. R590.

In his memorandum, Rasmussen quotes from a Commission publication titled "Who Must File a Utah Income Tax Return." It states that the "following individuals must file individual tax returns:

1. Every Utah resident or part-year resident who must file a federal income tax return;
2. Every nonresident with income from Utah sources who must file a federal return; and
3. Taxpayers wanting a refund of any income tax overpaid.

R722. Rasmussen concluded: "I understand this to mean that if there is no requirement to file a federal income tax return, then there is no requirement to file a state income tax return. Both returns are contingent upon recognized income. Either both returns (Federal and State) are

required or both are not required." *Id.*

**B. Procedural history.**

Rasmussen was charged by Information with six counts of intent to evade, a second degree felony, and six counts of failing to render a tax return, a third degree felony, for the years 2011 to 2016. R82-87. He was also charged with one count of pattern of unlawful activity, a second degree felony, for 2006 through 2016. R87-88.

On the second day of trial, the court granted a defense motion to dismiss the pattern of unlawful activity after determining that Rasmussen acted alone, had not conspired or attempted to indoctrinate anyone, and therefore could not be considered an "enterprise" for purposes of the statute. R568-69. In his ruling, the judge stated: "I think normally we think of enterprise as some kind of a business or some type of an organization for funneling the energies and activities into criminal conduct. This case appears to me to be a case where if the defendant is guilty of the other offenses that are charged that he was doing it on his own. There doesn't appear to be any other persons involved in this activity." R568.

The jury convicted Rasmussen on four counts, but acquitted him on eight other charges. R659. Rasmussen was convicted on one count of tax evasion for 2016 and three counts of failure to render tax returns for 2014 through 2016. R659; *see also* Jury Instructions 8, 10, 11, and 12.

Rasmussen was sentenced to zero to five years on the three counts of failure to file and one to 15 years on the single count of tax evasion. R691. He was also ordered to pay restitution of \$23,930, an amount that later reduced by stipulation to \$11,597. *Id.*; *see* R313-14. He was ordered to begin his sentence “forthwith” on October 20, 2017, and he remains incarcerated.

### **SUMMARY OF ARGUMENT**

Rasmussen’s extensive research into his tax liability and his unwavering conclusion that he is exempt from income tax demonstrates a good faith belief that he did not owe taxes. If the trial court had adequately instructed the jury on the “good faith” defense, there is a reasonable probability that Rasmussen would have been acquitted on all counts. The trial court should have explicitly instructed the jury that Rasmussen’s good faith belief, which was premised on his exhaustive review of official tax code rules and publications, exempted him from tax liability. The trial court’s rejection of such an instruction was prejudicial error that requires reversal of Rasmussen’s convictions.

## ARGUMENT

### THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN OMITTING A JURY INSTRUCTION ON RASMUSSEN'S "GOOD FAITH" DEFENSE OF HIS EXEMPT STATUS.

#### A. Ignorance of the law is no excuse—except when it comes to tax law.

As the United States Supreme Court has stated: “The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system.” *Cheek v. U.S.*, 498 U.S. 192, 199, 111 S.Ct. 604 (1991); *see also, e.g., United States v. Rosenfield*, 469 F.2d 598, 601 (3d Cir. 1972) (in failure-to-file case, “ignorance of a crime is no excuse, but ignorance of a duty may be where, as here, willfulness is an element of the crime”).

But even that bedrock legal principle has at least one exception. Because of the complexity of the tax laws, most jurisdictions accept the proposition that a defendant may be acquitted of certain criminal tax charges if the violations are premised on a good faith misinterpretation of the tax code. *Cheek*, 498 U.S. at 199. The “proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws.” *Id.* at 199-200.

In recognition of this legal complexity, Congress “softened the impact” of tax code violations by stating that defendant cannot be convicted of tax evasion unless the government proves beyond a reasonable doubt a specific intent to violate the law. *Id.* at 200. Supreme Court jurisprudence has dovetailed with Congressional intent by interpreting the term “willfully” in criminal tax statutes to mean “an act done with a bad purpose” or “with an evil motive.” *United States v. Murdock*, 290 U.S. 389, 394-94, 54 S.Ct. 223 (1933). “Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct.” *Id.*, at 396, 54 S.Ct., at 226.<sup>1</sup>

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<sup>1</sup> Many courts have limited the “good faith” defense. For example, at least two federal courts of appeal have stated that good faith is not a defense to fraud. *United States v. Hildebrandt*, 961 F.2d 116, 119 (8th Cir. 1992) (“The *Cheek* holding was premised on the complexity of the tax laws, and Hildebrandt was convicted under a general criminal statute containing a straightforward prohibition against making false, fictitious, or fraudulent statements to the government”); *United States v. Hollis*, 971 F.2d 1441, 1444 (10th Cir. 1992) (good faith exception not available to defendants charged with bank mail and bank fraud). Nonetheless, the United States Supreme Court has declined to limit the good faith defense to cases involving income tax evasion or failure to file. In *Ratzlaf v. United States*, 510 U.S. 135, 141, 114 S.Ct. 655 (1994), the court held that good faith may also excuse currency structuring, which “is not inevitably nefarious” and is often undertaken for legal purposes.

Many jurisdictions, including the 10<sup>th</sup> Circuit Court of Appeals, which includes Utah, have stated that the good faith defense is available even if a defendant's interpretations of the tax laws are irrational. "We must remind ourselves here that the good-faith defense need not be rational, if there is sufficient evidence from which a reasonable jury could conclude that even irrational beliefs were truly held." *United States v. Mann*, 884 F.2d 532, 537 (10<sup>th</sup> Cir. 1989).

In *Mann*, the defendant was convicted of failure to file tax returns, despite evidence that he believed he was exempt, in part because he believed wages were not income. *Id.* at 534. The 10<sup>th</sup> Circuit reversed, holding that a defendant "cannot be held to guilty knowledge of falsity of his statements simply because a reasonable man under the same or similar circumstances would have known of the falsity of such statements." *Id.* (citation and internal punctuation omitted).

The *Mann* case offers a template for the robust good faith defense that should have been available to Rasmussen. Mann was convicted of mail fraud, wire fraud and willful failure to file income tax returns over a 10-year period. Mann testified that his failure to file was based on years of research, including United States Supreme Court decisions that led him to believe he was not required to file income tax returns. *Id.* at 534. Among Mann's theories was his belief, similar to Rasmussen's, that taxes applied only to

corporations and that wages are not income. *Id.* But, unlike Rasmussen, Mann widely disseminated his views, which he compiled and published in the *Spotlight*, a magazine with worldwide subscription. *Id.* He also publicized his views through a purchased advertisement on a radio station. *Id.*

On appeal, the 10<sup>th</sup> Circuit affirmed Mann's conviction for mail fraud, but reversed the convictions for wire fraud and failure to file. *Id.* at 536. The court held that the evidence was sufficient to support failure to file, but held that the trial court erred when it did not explicitly instruct the jury regarding Mann's good faith defense. *Id.* As the court stated: "We have held that a defendant's good-faith belief that he is not required to file a return is a valid defense in this context, and the beliefs need not be reasonable if actually held in good faith." *Id.*

With regard to the requisite mental state, the court held that a "general instruction" on willfulness was insufficient. *Id.* at 537. "[T]he general instruction on willfulness given here is not adequate in this circuit to present the defense of good faith." *Id.* In support, the 10<sup>th</sup> Circuit cited *Mathews v. United States*, 485 U.S. 58, 108 S.Ct. 883, 887 (1988), which held: "As a general proposition a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor." Three years later, the United States

Supreme Court reiterated the importance of instructing the jury on the need for finding that the tax evader acted willfully. *Cheek v. U.S.*, 498 U.S. 192, 111 S.Ct. 604 (1991). “[I]t was error for the court to instruct the jury that petitioner’s asserted beliefs that wages are not income and that he was not a taxpayer within the meaning of the Internal Revenue Code should not be considered by the jury in determining whether Cheek had acted willfully.” *Id.* at 206-07.

Some jurisdictions, including Utah, have been reluctant to follow the lead of the Supreme Court and Congress in to “soften the impact” of criminal tax violations. In *State v. Smith*, 2003 UT App 179, 72 P.3d 692, *cert. denied*, 84 P.3d 239 (2003), the Utah Court of Appeals affirmed a trial judge’s refusal to instruct the jury that a defendant who acted in good faith could not be convicted of failure to file a tax return and willful evasion. The *Smith* panel also cited *State v. Stringham*, 2001 UT App 13, ¶20, 17 P.3d 1153, which held that a separate good faith instruction was unnecessary because “a jury finding that the defendant has acted knowingly and willfully is inconsistent with a finding that the defendant acted in good faith” (citation and internal punctuation omitted). The *Smith* panel concluded that jury instructions on the question of good faith were adequate because, when read as a whole, they defined intentional or willful conduct in terms that “ensured that a jury

finding of good faith would lead to acquittal.” *Smith*, 2003 UT App 179 at ¶23 (citation and internal punctuation omitted).

Nonetheless, more recent Utah cases suggest that an explicit good faith or “mistake of law” defense insulates a defendant from liability. “[T]he taxpayer can escape the penalty if he or she can show that he or she based the nonpayment of taxes on a legitimate, good faith interpretation of an arguable point of law.” *Benjamin v. Utah State Tax Com’n*, 2011 UT 14, ¶32, 250 P.3d 39 (2011) In *State v. Steele*, 2010 UT App 185, 236 P.3d 161 (2010), this Court recognized that a mistake of law provides a defense where the mistake shows a lack of specific intent to violate the law. *Id.* at ¶31.

Although we acknowledge that the Mistake of Law Statute indicates a legislative intent that a mistake of law defense must be based upon a reasonable reliance on official statements of the law, we also recognize that a good faith belief, although objectively unreasonable, could arguably negate a specific intent.

*Id.* at ¶32. In *State v. Eyre*, 2008 UT 16, 179 P.3d 792 (2008), the Utah Supreme Court reversed the defendant’s conviction on six counts of felony tax evasion because the state had not proven the amount of the defendant’s tax deficiency and a relatively minor deficiency could show that the defendant had acted in good faith. The court stated:

Even where the State may have been able to prove that a tax was due and owing, that tax may have been small enough that the jury could have found that Eyre in good faith believed that he did not have a tax deficiency and did not file as a result.

The probability of this result is sufficient to undermine our confidence in the verdicts rendered by the jury.

*Id.* at ¶19.

Like most people, Rasmussen paid income tax throughout much of his adult life. But in 2002, after receiving what he regarded as excessive tax deficiencies, Rasmussen decided to research the basis for the government's authority to assess income tax against him. After countless hours reviewing an estimated 75 volumes of IRS tax publications, R582, he concluded that he was a "common law employee" and that, as such, his wages and compensation were not "income" as that term is defined for tax purposes. R583. As argued below, a properly worded good faith instruction would have resulted in a different verdict for Rasmussen because jurors would have been given the option to find that his extensive research into tax law led him to the reasonable belief that he was exempt and not required to file tax returns.

**B. The court's general instructions on willfulness and intent were inadequate because they did not fully apprise jurors that Rasmussen's good faith was a complete defense.**

The trial court erred in refusing to explicitly instruct jurors that Rasmussen was acting on his good faith belief that he was not required to file income tax returns—and that his good faith belief was a complete

defense. This error prejudiced the verdict against Rasmussen and requires reversal.

The court's "failure to give requested jury instructions constitutes reversible error only if their omission tends to mislead the jury to the prejudice of the complaining party or insufficiently or erroneously advises the jury on the law." *State v. Van Oostendorp*, 2017 UT App 85, ¶12, 397 P.3d 877 (citation omitted). In prosecutions for tax violations, clear and explicit instructions on good faith are critical to properly guide and avoid misleading the jury. "[I]nstructions on willfulness, on aspects of intent, on untruth of representations or fraudulent statements are *not* sufficient for this purpose. There must be a full and clear submission of the good faith defense as such." *United States v. Hopkins*, 744 F.2d 716, 718 (10th Cir.1984) (en banc) (emphasis in original).

Here, the jury instructions did not provide a "full and clear submission" of Rasmussen's good faith belief that he was not required to pay income tax. Indeed, the court explicitly rejected the defense's proposed good faith instruction, which read:

The government must prove beyond a reasonable doubt that Rasmussen knew that the law imposed a duty on him, and Rasmussen intentionally and voluntarily violated that duty. A person who acts on a good faith misunderstanding as to the requirements of the law does not act willfully even if his understanding of the law is wrong or unreasonable.

Nevertheless, merely disagreeing with the law does not constitute a good faith misunderstanding of the law.

R188.

The trial court removed this instruction, stating that “[i]t goes too far.” R516. In fact, the instruction is an accurate statement of the law as articulated in the U.S. Supreme Court’s *Cheek* opinion and in the Utah Supreme Court’s holdings in *Eyre* and *Steel*.

In *Cheek*, the Supreme Court explicitly held that the mens rea element for tax violations is proven only by “negating a defendant’s claim of ignorance of the law or a claim that because of a misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws.” *Cheek*, 498 U.S. at 202. The court reasoned that it would be contradictory to allow a defendant to be convicted of violating a duty imposed by a criminal statute, even though he was “ignorant of it, misunderstand[s] the law, or believe[s] that the duty does not exist.” *Id.*; see also *Steele*, 2010 UT App 185, ¶32 (“[W]e also recognize that a good faith belief, although objectively unreasonable, could arguably negate a specific intent”); *Eyre*, 2008 UT 16, ¶19 (if properly instructed, jurors could have found that defendant’s tax filings were made in good faith).

A separate instruction on good faith is not required in the prosecution of most offenses, see, e.g. *United States v. Chavis*, 461 F.3d 1201, 1209 (10th

Cir.2006) (good faith instruction is not necessary “because [e.g.] a finding of the intent to defraud . . . necessarily implies that there was no good faith”), although a number of courts have endorsed the use of a separate good faith instruction when appropriate. *See, e.g., United States v. Favato*, 533 F. App'x 127, 131 (3d Cir. 2013) (district court properly submitted separate instruction explaining that good faith “would be a complete defense— inconsistent with his acting knowingly, intentionally, or willfully. These instructions correctly stated the law . . .”).

Here, the statements on “good faith” in Rasmussen’s jury instructions were parsimonious and limited to only the *mens rea* instructions on two of the six charges of failure to file. In each instance, the instructions mention good faith by nesting it within the *mens rea* element instructions 10 and 12: “You cannot convict him [Rasmussen] of this offense unless, based on the evidence, you find beyond a reasonable doubt” that he failed to render tax returns “(3) Knowingly and intentionally, *without a reasonable good faith basis*; . . .” Instruction 10 (emphasis added). Apprising jurors that Rasmussen was guilty if he acted “without a reasonable good faith basis” regarding *two* of the 12 counts misstates the law because a good faith belief would have been a defense to *all* 12 counts. Rasmussen was charged with six counts of failure to file and six counts of tax evasion, each of which requires willfulness, which is, as a matter of law, negated by good faith.

More specifically, the negative wording in the Jury Instructions – “without a reasonable good faith basis” – properly advises the jury that *a lack of good faith* may be a basis for guilt, but does not affirmatively advise jurors that *the presence* of good faith requires acquittal.

Finally, and perhaps most fundamentally, the *mens rea* instruction misstates the law because it provided jurors with an unnecessary and redundant opportunity to return a guilty verdict. As defined by this Court, acting “knowingly and willfully” is the same as acting “without good faith.” *See Stringham*, 2001 UT App 13, ¶20 (“[I]f a jury instruction ‘already contains a specific statement of the government’s burden to prove the[ ] elements of the crime, the good faith instruction is simply a redundant version of the instruction on those elements’”) (*quoting United States v. Gross*, 961 F.2d 1097, 1103 (3d Cir. 1992)); *see also Favato*, 533 F. App’x at 131 (district court properly submitted separate instruction explaining that good faith “would be a complete defense—inconsistent with his acting knowingly, intentionally, or willfully”). Because lack of good faith is presented as a separate element of the crime, without any explanation of good faith generally or an instruction presence of good faith is a defense, jurors could have found that even though Rasmussen did not act “knowingly and intentionally,” he nonetheless is guilty because he acted “without a reasonable good faith basis.” Such an interpretation would have been

reasonable, but wrong. In short, the instruction misstates the law and likely prejudiced the outcome of the trial.

### CONCLUSION

For the foregoing reasons, this Court should reverse and remand for a new trial.

Respectfully submitted on, November 14, 2018.

*/s/: Brett J. DelPorto*  
BRETT J. DELPORTO (6862)  
Counsel for Appellant

### CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 4,440 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2011 in Book Antiqua 13 point. I also certify that this brief contains no non-public information.

*/s/: Brett J. DelPorto*  
BRETT J. DELPORTO (6862)

### CERTIFICATE OF DELIVERY

I, BRETT J. DELPORTO, hereby certify that I have caused the foregoing to be filed by email at [court of appeals](#) on November 14, 2018, and a copy delivered

by email at [criminalappeals@agutah.gov](mailto:criminalappeals@agutah.gov) to the Utah Attorney General's Office,  
Heber M. Wells Building, 160 East 300 South, 6th Floor, P. O. Box 140854, Salt  
Lake City, Utah 84114-0854, this 15<sup>th</sup> day of November, 2018.

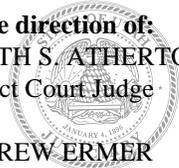
/s/ Brett J. DelPorto  
BRETT J. DELPORTO

Addendum A  
Sentencing, Judgment, and Commitment

The Order of the Court is stated below:

Dated: October 20, 2017  
09:49:20 AM

At the direction of:  
/s/ JUDITH S. ATHERTON  
District Court Judge  
by  
/s/ ANDREW ERMER  
District Court Clerk



3RD DISTRICT COURT - SALT LAKE  
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH ATTORNEY GENERAL, : MINUTES  
Plaintiff, : SENTENCE, JUDGMENT, COMMITMENT  
vs. :  
SCOTT ALAN RASMUSSEN, : Case No: 161910347 FS  
Defendant. : Judge: JUDITH S ATHERTON  
: Date: October 20, 2017

PRESENT

Clerk: andrew  
Prosecutor: PALUMBO, MICHAEL D  
Defendant Present  
The defendant is not in custody  
Defendant's Attorney(s): HANSEEN, SAMUEL J

DEFENDANT INFORMATION

Date of birth: July 7, 1957  
Sheriff Office#: 396129  
Audio  
Tape Number: N42 Tape Count: 9:22-9:38

CHARGES

- 8. FAIL TO RENDER A PROPER TAX RETURN - 3rd Degree Felony  
Plea: Not Guilty - Disposition: 08/30/2017 Guilty
- 10. FAIL TO RENDER A PROPER TAX RETURN - 3rd Degree Felony  
Plea: Not Guilty - Disposition: 08/30/2017 Guilty
- 11. TAX EVASION - 2nd Degree Felony  
Plea: Not Guilty - Disposition: 08/30/2017 Guilty
- 12. FAIL TO RENDER A PROPER TAX RETURN - 3rd Degree Felony  
Plea: Not Guilty - Disposition: 08/30/2017 Guilty
- 13. PATTERN OF UNLAW ACTIVITY - 2nd Degree Felony  
Plea: Not Guilty - Disposition: 08/30/2017 Dismissed w/ Prejudi

HEARING

00292

SENTENCE PRISON

Based on the defendant's conviction of FAIL TO RENDER A PROPER TAX RETURN a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

Based on the defendant's conviction of FAIL TO RENDER A PROPER TAX RETURN a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

Based on the defendant's conviction of TAX EVASION a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of FAIL TO RENDER A PROPER TAX RETURN a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

Prison sentences to run concurrent with each other.

Restitution Amount: \$23930.00 Plus Interest

End Of Order - Signature at the Top of the First Page

Case No: 161910347 Date: Oct 20, 2017

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CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 161910347 by the method and on the date specified.

EMAIL: PRISON RECORDS udc-records@utah.gov

EMAIL: ADC TRANSPORT ADC-Transportation@slco.org

10/20/2017

/s/ ANDREW ERMER

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

\_\_\_\_\_

Deputy Court Clerk

Addendum B:  
Constitutional Provisions, Statutes, and Rules

Proposed Legislation

West's Utah Code Annotated

Title 76. Utah Criminal Code

Chapter 8. Offenses Against the Administration of Government

Part 11. Taxation

U.C.A. 1953 § 76-8-1101

§ 76-8-1101. Criminal offenses and penalties relating to revenue and taxation--

Rulemaking authority--Statute of limitations

Currentness

(1)(a) As provided in [Section 59-1-401](#), criminal offenses and penalties are as provided in Subsections (1)(b) through (e).(b)(i) Any person who is required by Title 59, Revenue and Taxation, or any laws the State Tax Commission administers or regulates to register with or obtain a license or permit from the State Tax Commission, who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor.

(ii) Notwithstanding [Section 76-3-301](#), for purposes of Subsection (1)(b)(i), the penalty may not:

(A) be less than \$500; or

(B) exceed \$1,000.

(c)(i) With respect to a tax, fee, or charge as defined in [Section 59-1-401](#), any person who knowingly and intentionally, and without a reasonable good faith basis, fails to make, render, sign, or verify any return within the time required by law or to supply any information within the time required by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony.

(ii) Notwithstanding [Section 76-3-301](#), for purposes of Subsection (1)(c)(i), the penalty may not:

(A) be less than \$1,000; or

(B) exceed \$5,000.

(d)(i) Any person who intentionally or willfully attempts to evade or defeat any tax, fee, or charge as defined in [Section 59-1-401](#) or the payment of a tax, fee, or charge as defined in [Section 59-1-401](#) is, in addition to other penalties provided by law, guilty of a second degree felony.

(ii) Notwithstanding [Section 76-3-301](#), for purposes of Subsection (1)(d)(i), the penalty may not:

(A) be less than \$1,500; or

(B) exceed \$25,000.

(e)(i) A person is guilty of a second degree felony if that person commits an act:

(A) described in Subsection (1)(e)(ii) with respect to one or more of the following documents:

(I) a return;

(II) an affidavit;

(III) a claim; or

(IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and

(B) subject to Subsection (1)(e)(iii), with knowledge that the document described in Subsection (1)(e)(i)(A):

(I) is false or fraudulent as to any material matter; and

(II) could be used in connection with any material matter administered by the State Tax Commission.

(ii) The following acts apply to Subsection (1)(e)(i):

(A) preparing any portion of a document described in Subsection (1)(e)(i)(A);

(B) presenting any portion of a document described in Subsection (1)(e)(i)(A);

(C) procuring any portion of a document described in Subsection (1)(e)(i)(A);

(D) advising in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A);

(E) aiding in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A);

(F) assisting in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A); or

(G) counseling in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A).

(iii) This Subsection (1)(e) applies:

(A) regardless of whether the person for which the document described in Subsection (1)(e)(i)(A) is prepared or presented:

(I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or

(II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and

(B) in addition to any other penalty provided by law.

(iv) Notwithstanding [Section 76-3-301](#), for purposes of this Subsection (1)(e), the penalty may not:

(A) be less than \$1,500; or

(B) exceed \$25,000.

(v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Tax Commission may make rules prescribing the documents that are similar to Subsections (1)(e)(i)(A)(I) through (III).

(2) The statute of limitations for prosecution for a violation of this section is the later of six years:

(a) from the date the tax should have been remitted; or

(b) after the day on which the person commits the criminal offense.

### **Credits**

Laws 1987, c. 3, § 57; [Laws 2001, c. 177, § 2, eff. July 1, 2001](#); [Laws 2004, c. 67, § 2, eff. May 3, 2004](#); [Laws 2008, c. 382, § 2183, eff. May 5, 2008](#); [Laws 2009, c. 336, § 2, eff. March 25, 2009](#); [Laws 2014, c. 52, § 2, eff. May 13, 2014](#).