

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA :
 :
 v. : Docket No. 15-1446
 :
DOREEN HENDRICKSON :

**APPELLANT DOREEN HENDRICKSON'S
REPLY TO THE GOVERNMENT'S RESPONSE TO
APPELLANT'S MOTION FOR RELEASE PENDING APPEAL**

Appellant, Doreen Hendrickson replies to the Government's Response to Appellant's Motion for Release Pending Appeal:

I. THE GOVERNMENT IMPROPERLY ARGUES THAT UNANIMITY WAS NOT REQUIRED IN ORDER TO CONVICT MRS. HENDRICKSON OF CONTEMPT.

The government argues that a unanimity jury instruction was not required because the orders allegedly violated by Mrs. Hendrickson represented a single injunction that could be violated in two ways rather than two separate injunctions that could only be violated by separate and distinct acts, as argued by Mrs. Hendrickson. (6th Cir. Doc. 19, p. 5) ("The indictment simply charged defendant with violating the injunction in two ways"); ("The indictment alleged that defendant violated both prongs of the injunction by filing a false return and by failing to file amended 2002 and 2003 returns"). So arguing, the government tacitly concedes that if Judge Edmunds' Order *did* set forth two separate injunctive orders that were allegedly violated by two distinct acts, then a unanimity instruction *was* required.

A plain reading of Judge Edmunds' Order clearly establishes that it set forth two distinct injunctions. This is reflected in the Indictment, which separately identifies the injunctions and distinctly correlates each injunction with an allegedly violative act. Further, the government ignores the fact that each of the "prongs" in the purportedly singular injunction could not have been violated simultaneously with the other "prong": failing to file amended 2002 and 2003 returns could not have violated the directive to not file returns in the future based on the incorrect view ascribed to Cracking the Code and vice versa.

The government further argues that Judge Edmunds' injunctions were a single injunction because they were supposedly aimed at addressing the subject matter of the case underlying the issuance of the order in question; Mrs. Hendrickson's filing of allegedly false returns in 2002 and 2003. (6th Cir. Doc. 19, pp. 5-6). Contrary to the government's argument, this perceived subject matter does not convert the two disparate injunctions set forth in Judge Edmunds' Order into one, indistinct injunction. (*See* 6th Cir. Doc. 19, p. 5). Rather, Judge Edmunds' Order embodies in one document two distinct injunctions, regardless of whether the entry of each injunction was aimed at addressing Mrs. Hendrickson previous filing of allegedly false tax returns.¹

¹ As mentioned in her Motion for Release Pending Appeal, this Court cannot credibly glean some motivation on behalf of Judge Edmunds based on the manner in which the Order in question was drafted given that the Order was entirely written by the government's attorney. (Notes of Testimony ("N.T."), 07/23/14, p. 56). In fact, while Judge Edmunds found that Mr. Hendrickson's 2002 and 2003 returns

Finally, the government argues that the district court's failure to give a unanimity instruction was harmless because there was ample evidence that both injunctions were violated by Mrs. Hendrickson. This argument lacks any merit whatsoever. Because of the improper instruction, there is no indication that Mrs. Hendrickson's jury concluded to a proper legal standard that there was ample evidence that *either* of the injunctions were violated. The instruction in question did not pertain to some peripheral matter; it went to the heart of Mrs. Hendrickson's case. Thus, contrary to the government's argument, if this Court finds the district court erred in not delivering a unanimity instruction, a new trial must be ordered.

II. MRS. HENDRICKSON'S SIXTH AMENDMENT RIGHTS WERE VIOLATED DUE TO STANDBY COUNSEL'S FAILURE TO ASK HER QUESTIONS AS DIRECTED.

On this point, the government presents a straight-forward waiver argument.² Even if the government were correct that Mrs. Hendrickson waived this argument by not objecting to what occurred at the time of trial,³ as discussed in Mrs. Hendrickson's Motion, she would still be entitled to relief under a plain error

were "false," she did so without any valid basis. Judge Edmunds held no hearings of any kind, evidentiary or otherwise, and made her "finding" despite Mrs. Hendrickson's repeated and un rebutted sworn statements that her were returns were not false, and her demand for a trial in the case.

² The government's waiver argument is distinct from the district court's clearly erroneous conclusion that Mrs. Hendrickson "acquiesced" to standby counsel's actions at trial. (6th Cir. Doc. 18, pp. 11-12).

³ Mrs. Hendrickson does not concede that this argument is waived on appeal. (*See* 6th Cir. Doc. 18, pp. 12-13).

standard. (6th Cir. Doc. 18, p. 15) (Sixth Amendment violation in question not subject to harmless error / plain error analysis). The government did not contest the inapplicability of a plain error analysis in its Response.

Otherwise, the government's argues that the testimony in question would have been cumulative and that Mrs. Hendrickson was permitted to present her First Amendment arguments at trial. This is simply untrue and does not address the harm caused to Mrs. Hendrickson due to counsel's interference.⁴ The subject matter of the questions not asked substantiate Mrs. Hendrickson's argument that she did not act willfully in committing the "contemptuous" actions or non-actions. (6th Cir. Doc. 18, p. 16) (*citing United States v. Bishop*, 412 U.S. 346, 361 (1973) ("an offense committed 'willfully' is not met [] if a taxpayer has relied in good faith on a prior decision of this Court"). While she was permitted to introduce and argue the subject matter in question during her first trial, counsel's interference denied Mrs. Hendrickson this critical feature of her defense and a new trial is certainly warranted.

III. THE DISTRICT COURT ERRED IN CALCULATING MRS. HENDRICKSON'S SENTENCING GUIDELINE RANGE.

In its Response, the government addressed the manner in which the district court sentenced Mrs. Hendrickson by emphasizing that this was "not a simple failure to file case," and then defends the district court's decision by discussing Mrs. Hendrickson's case as if she were prosecuted under the tax code for her conduct in

⁴ Mrs. Hendrickson reminds the Court that, at her first trial, where standby counsel did ask all the questions he was directed to ask, the jury did not find her guilty.

2002 and 2003. (6th Cir. Doc. 19, pp. 10-11). This argument illustrates the district court's sentencing error. The matter before this Court was *not* a criminal tax case, but rather a contempt case involving allegedly criminal conduct that occurred from 2007 onward. It simply did not involve a \$20,380 tax refund distributed years prior to that time.

The government is correct: this is *not* a tax case. The district court was obligated to sentence Mrs. Hendrickson based on the conduct at issue, which did not involve a \$20,380 tax refund. A contempt conviction does not offer the government and/or the district court the opportunity to punish Mrs. Hendrickson based on any peripheral aspect of the civil tax matter from which the order she was convicted of contemptuously violating was born. Neither of the two injunctions charged in the Indictment involve this \$20,380 figure and it was error for the court to ground its sentencing on this unrelated aspect of the underlying civil case.

III. CONCLUSION

For the reasons set forth above and in her Motion, the Court should order Doreen Hendrickson released pending the outcome of her appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served this 29th day of June, 2015, via the Court's Electronic Case Filing ("ECF") System, upon the following:

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