

Appeals Court Refuses to Overturn Tax Fraud Conviction

Cross References

- *Steele*, 11th Circuit Court of Appeals, April 17, 2019

A district court jury convicted Donald Steele of five counts of assisting in the preparation of fraudulent tax returns and one count of witness tampering. Steele appealed the ruling claiming that the district court erred by not permitting the defense to call IRS agent David Tucker to the stand to contradict testimony given by one of Steele's co-workers, Daphne Stewart, who had testified that Steele had the opportunity to commit tax fraud. The defense focused on exploiting the fact that Steele was not listed as the preparer on any of the fraudulent tax returns, he lacked the technical know-how to file fraudulent returns, it was others at the tax preparation firm, including his wife who had committed the tax fraud, and that he mainly was only responsible for greeting customers.

The appeals court stated that excluding the impeachment evidence would not have changed the outcome because there was an overwhelming amount of other evidence showing that Steele was in fact guilty of committing tax fraud.

During the district court trial, the IRS presented testimony from three types of witnesses:

- 1) Customers of the tax preparation firm who testified that they had turned over their financial information to Steele and that he had told them their returns had been filed, some who also testified that Steele later tried to persuade them to tell the IRS that somebody else had prepared their tax returns,
- 2) A tax preparation firm employee named Daphne Stewart, and
- 3) Investigating agents from the IRS.

The jury returned a guilty verdict on Counts 3 through 7, assisting in the preparation and presentation of fraudulent tax returns, and Count 9, witness tampering.

Counts 3 and 4 arose from Alisa Tate's tax returns which improperly claimed business losses. Tate testified that she gave her financials to Steele and did not interact with any other employee from the tax preparation firm. Her returns claimed deductions to which she was not entitled. For example, a deduction for expenses and losses from a non-existent home-furnishings business. Tate testified this information was false and she had no idea where Steele got it from.

On cross-examination, Tate stated that although she did not physically watch Steele prepare her tax returns, she assumed he prepared her returns since he was the only person she spoke with at the tax preparation firm. Her returns listed others as the preparers, but she testified that she had never met them before.

Counts 5 and 6 arose from Jeannet Washington's tax returns. She gave Steele her financial information and waited at the tax preparation firm while her taxes were being prepared. She testified that Steele told her that he had finished her returns and showed her the amount she could expect in the form of a refund.

Washington testified that her returns listed improper medical and dental expenses, charitable contributions, and educational expenses for her son. She was also incorrectly listed as the head of household. Her tax returns listed others as the preparers, but Washington said she never worked with those individuals.

Counts 7 and 9 centered on Katrina Taylor, who also testified her tax returns were falsified without telling her. She said she waited while Steele prepared her tax return, and he called her back to sign it after he had completed it. Taylor's return included improper deductions for expenses relating to education, and it listed the wrong place of employment. Taylor testified that another person was identified as the preparer of her return, but she had never met her.

Taylor also testified that out of the blue, Steele approached her outside of her job. She said that Steele said he charged her too much for preparing her taxes and that the IRS had inquired about her returns. Steele then gave her a check for \$200, stating that the check was for any overcharging, but if the IRS ever asked, she should tell them that a lady with red hair had prepared her taxes. Taylor testified that she understood Steele's actions as asking her to lie to the IRS, complete with an accompanying \$200 bribe.

IRS Agent Tucker soon thereafter met with Taylor. According to Taylor, Steele hounded her during her meeting by calling her multiple times. Taylor answered one of Steele's calls during the meeting with Agent Tucker and put it on speaker phone. Steele then said, "Are they still there?" When Taylor replied yes, Steele hung up.

The IRS also called Daphne Stewart, one of Steele's co-workers to testify. Stewart said she prepared tax returns for three months in 2010 alongside Steele at the tax preparation firm. According to Stewart, she usually arrived at work around 9AM or 10AM and left around 3PM or 4PM, and Steele was always there when she arrived and when she left. Stewart said that when she arrived at work in the mornings, Steel would often tell her that the returns they had been working on the previous day had been transmitted to the IRS. As Stewart recalled the work environment, no other employee reviewed Stewart's and Steele's work before the returns were submitted to the government.

One time, after Stewart had completed her mother's return, Steele told Stewart that before he submitted the return to the IRS, he added a disabled dependent who had thousands in education expenses so she could get more money. For adding these additional deductions, Steele told her that her mother owed him \$500. Stewart admitted that she also increased her customers' tax refunds by a few hundred dollars.

Eventually Stewart quit her job after she heard the IRS was investigating inflated returns that had been prepared at the tax preparation firm. Stewart testified that she later met with Steele, and that Steele told her that if the IRS happened to call, then she should tell agents that Steele's wife did all of the work and transmitted all of the returns.

On cross-examination, the defense counsel asked Stewart if she had previously told the IRS that she worked from 8AM to 8PM. Stewart responded that if the IRS agents had recorded her as saying this, then they had misheard her. When the defense counsel questioned her about whether she had told the IRS agents that others reviewed Steele's and her work before the tax returns were transmitted, Stewart testified that she never told them that.

IRS Agent Tucker had prepared a memorandum after interviewing Stewart, and this memorandum apparently reflected that Stewart had in fact made the statements in controversy. The government objected when counsel asked questions based on IRS Agent Tucker's memorandum of his interview with Stewart because the memorandum was not in evidence. But the district court overruled the government's objection, and the defense counsel continued his references to Agent Tucker's memorandum. After the defense forced Stewart to admit she had filed false tax returns for herself and her customers, the defense pointed out that she had told Agent Tucker that she knew her tax returns were inaccurate, but did it anyway, because she needed the extra money.

After the IRS rested its case against Steele, the defense tried to call Agent Tucker to the stand so that they could impeach Stewart's testimony that Steele worked longer hours than she did and that their work was not subject to supervisory review, using contrary statements Stewart had given to Agent Tucker. The government objected, in part because Agent Tucker's testimony would be hearsay. Ultimately the district court sustained the government's objection.

Steele then took the stand on his own behalf. He testified that he had no training preparing taxes and that he did not file any tax returns. While he conceded that he would sometimes receive customer's W-2s, he insisted he never prepared or submitted their tax returns. He also stated he did not keep long hours and that it was Stewart who was the one who worked from 8AM until 8PM. Steele also denied trying to dissuade any witness from cooperating with the IRS.

The jury returned a verdict convicting Steele on four counts of tax fraud and one count of witness tampering. Steele was sentenced to 36 months imprisonment for each of Counts 3 through 7, and 42 months imprisonment for Count 9, all to be served concurrently.

On appeal, Steele raised two interrelated challenges to the district court's refusal to allow him to call Agent Tucker to impeach Stewart's testimony. First, Steele contended that the district court erred in denying him the opportunity to present Agent Tucker's testimony, since it would not have constituted hearsay but rather, impeachment testimony. He further asserted that this was not a collateral issue because, left un rebutted, Stewart's testimony established Steele had the opportunity to commit tax fraud. Second, he argued the district courts exclusion of Agent Tucker's testimony violated his Fifth Amendment right to present witnesses in his own defense and his Sixth Amendment right to compulsory process for witnesses in his favor.

The appeals court stated even if Steele could show the district court erred in not allowing Tucker's testimony to impeach Stewart's testimony, overwhelming evidence would have still convicted Steele.

For all four tax-fraud convictions, each victim testified that he or she had given W-2s and other financial information to Steele, waited at the tax preparation firm while their returns were completed, and identified Steele as the person who told them that the returns had been completed and the general amount they could expect for a refund. They all further attested that their returns claimed deductions that had no basis in reality. And they likewise testified that Steele was the only person they interacted with at the tax preparation firm.

In particular, Jeannet Washington testified that she watched Steele fill out the returns, and once he completed them, he told her how much she could expect by way of a tax refund. Katrina Taylor's testimony supported the conviction for witness tampering. She testified that she gave Steele her W-2 and her last pay stub and waited at the tax preparation firm for her return to be completed. Steele eventually called her back to his desk and had her sign the completed return. Months later, Steele offered her \$200 to tell the IRS that a lady with red hair did her taxes.

The appeals court stated that although Steele tries to paint Stewart as the government's star witness because she gave direct evidence that he had the opportunity to commit tax fraud, it was in fact evidence provided by Tate, Taylor, and Washington that Steele had the opportunity to falsify their returns.

The appeals court stated that impeaching Stewart's testimony would not have changed the outcome, because Steele was convicted of assisting in falsifying returns, so whether or not he physically submitted returns to the IRS did not matter. Steele also took the stand, testifying that he had never prepared taxes, let alone prepare false returns, never worked long hours, and never persuaded witnesses to tell the IRS that somebody else had prepared false returns. In doing so, he ran the risk that the jury would conclude the opposite of his testimony was true. If the jury inferred from Steele's testimony that he had falsified tax returns and tampered with witnesses, the jury could have relied on Steele's own testimony as substantive evidenced of his guilt.

The appeals court also noted that Stewart's testimony was of little, if any significance, because Steele falsified two of the returns before Stewart even started working at the tax preparation firm. Stewart also gave absolutely no testimony about Steele's attempted witness tampering.

The appeals court stated that considering the glut of evidence demonstrating Steele's guilt, any errors the district court committed were harmless beyond a reasonable doubt. The judgment of the district court was affirmed.