

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	1:21-cr-00177-CRC
	:	
	:	
DANIEL D. EGTVEDT,	:	
	:	
Defendant.	:	

AMENDED AND CORRECTED PROPOSED LEGAL INSTRUCTIONS
(in lieu of proposed jury instructions)

The United States of America, by and through the United States Attorney for the District of Columbia, submit this set of amended and corrected Proposed Legal Instructions (PLI). This amended and corrected set of PLI correct an earlier version by adding the required fourth element to COUNT FOUR, changing the word "knowing" in one instance to "knowingly," providing a definition for "forcibly," and adding certain other definitions and a paragraph regarding the required *mens rea* for a defendant to be convicted of assault, under 18 U.S.C. § 111(a)(1), when an assault complainant is assisting a federal officer and is not himself or herself an actual federal officer.¹

¹Pursuant to the Court's order from the bench yesterday, the government attempted to reach an agreement with the defense to provide these new PLI as a joint submission. However, at the time of this filing, the defense has still not yet advised the government whether they agree with the additional definitions-- which pertain to the terms "assault," "resist," "oppose," "impede," "intimidate," and "interfere with"--and the new section regarding *mens rea* for non- federal officer complainants under 18 U.S.C. § 111(a)(1). The government first proposed

COUNT ONE (violation of 18 U.S.C. § 111(a)(1))

In order to find the defendant guilty of this offense, the fact-finder must find the following elements beyond a reasonable doubt:

1. The defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with Officer M.M., an officer from the U.S. Capitol Police;
2. The defendant did such acts forcibly;
3. The defendant did such acts voluntarily and intentionally;
4. Officer M.M. was an officer and employee of the United States who was then engaged in the performance of her official duties; and
5.
 - a. The defendant acted with the intent to commit another felony, to wit, either the offense of Civil Disorder (COUNT THREE) or the offense of Obstruction of an Official Proceeding (COUNT FOUR); or
 - b. The defendant committed an assault that involved physical contact with Officer M.M.

these additions to the defense after the court session on December 7, 2022. The specific changes that the defense has not yet weighed in on are set out in *italics* and **red font** on page 4, *infra*.

COUNT TWO (violation of 18 U.S.C. § 111(a)(1))

In order to find the defendant guilty of this offense, the fact-finder must find the following elements beyond a reasonable doubt:

1. The defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with Officer M.D., an officer from the Metropolitan Police Department;
2. The defendant did such acts forcibly;
3. The defendant did such acts voluntarily and intentionally;
4. Officer M.D. was a person assisting officers of the United States who were then engaged in the performance of their official duties; and
5.
 - a. The defendant acted with the intent to commit another felony, to wit, either the offense of Civil Disorder (COUNT THREE) or the offense of Obstruction of an Official Proceeding (COUNT FOUR); or
 - b. The defendant committed an assault that involved physical contact with Officer M.D.

The defendant acted "forcibly" if he used force, attempted to use force, or threatened to use force against the officer. A threat to use force at some unspecified time in the future is not sufficient to establish that the defendant acted forcibly.

The term "assault" means any intentional attempt or threat to inflict injury upon someone else, when coupled with an apparent present ability to do so. A finding that one used force (or attempted or threatened to use it) isn't the same as a finding that he attempted or threatened to inflict injury. In order to find that the defendant committed an "assault," you must find beyond a reasonable doubt that the defendant acted forcibly and that the defendant intended to inflict or intended to threaten injury.

The terms "resist," "oppose," "impede," "intimidate," and "interfere with" carry their everyday, ordinary meanings.

It is not necessary to show that the defendant knew the person being forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with was, at that time, assisting federal officers in carrying out an official duty so long as it is established beyond a reasonable doubt that the victim was, in fact, assisting a federal officer acting in the course of his duty and that the defendant intentionally forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with that officer.

COUNT THREE (violation of 18 U.S.C. § 231(a)(3))

In order to find the defendant guilty of this offense, the fact-finder must find the following elements beyond a reasonable doubt:

1. The defendant knowingly committed an act or attempted to commit an act with the intended purpose of obstructing, impeding, or interfering with one or more law enforcement officers;
2. At the time of the defendant's actual or attempted act, the law enforcement officer or officers was/were engaged in the lawful performance of his/her/their official duties incident to and during a civil disorder; and
3. The civil disorder in any way or degree obstructed, delayed, or adversely affected: commerce; the movement of any article or commodity in commerce; or the conduct or performance of any federally protected function.

Attempt

An attempt to commit this offense is a crime even if the defendant did not actually complete the crime. In order to find the defendant guilty of an attempt to commit this offense, the fact-finder must find beyond a reasonable doubt each of the following two elements:

1. That the defendant intended to commit this offense, and
2. That the defendant took a substantial step toward committing this offense which substantial step strongly corroborates or confirms the defendant intended to commit this offense.

COUNT FOUR (violation of 18 U.S.C. §§ 2, 1512(c)(2))

In order to find the defendant guilty of this offense, the fact-finder must find the following elements beyond a reasonable doubt:

1. The defendant attempted to or did obstruct an official proceeding;
2. The defendant acted with the intent to obstruct or impeded the official proceeding;
3. The defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be obstruct or impede the official proceeding; and
4. The defendant acted corruptly.

The term "official proceeding" includes a proceeding before the Congress. The official proceeding need not be pending or about to be instituted at the time of the offense. If the official proceeding was not pending or about to be instituted, the government must prove beyond a reasonable doubt that the official proceeding was reasonably foreseeable to the defendant. For purposes of COUNT FOUR, the term "official proceeding" means Congress's Joint Session to certify the Electoral College vote.

A person acts "knowingly" if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, the fact-finder is permitted to

consider all of the evidence, including what the defendant did or said.

To act "corruptly," the defendant must use unlawful means or act with an unlawful purpose, or both.

The defendant must also act with "consciousness of wrongdoing." "Consciousness of wrongdoing" means with an understanding or awareness that what the person is doing is wrong.

Not all attempts to obstruct or impede an official proceeding involve acting corruptly. For example, a witness in a court proceeding may refuse to testify by invoking his constitutional privilege against self-incrimination, thereby obstructing or impeding the proceeding, but he does not act corruptly. In contrast, an individual who obstructs or impedes a court proceeding by bribing a witness to refuse to testify in that proceeding, or by engaging in other independently unlawful conduct, does act corruptly.

While the defendant, to be guilty, must have acted with intent to obstruct the official proceeding, this need not have been his sole purpose. A defendant's unlawful intent to obstruct an official proceeding is not negated by the simultaneous presence of another purpose for his conduct. However, the fact that the defendant's mere presence may have had the unintended effect of obstructing or impeding a

proceeding does not establish that the defendant acted with the intent to obstruct or impede that proceeding.

Attempt

An attempt to commit this offense is a crime even if the defendant did not actually complete the crime. In order to find the defendant guilty of an attempt to commit this offense, the fact-finder must find beyond a reasonable doubt each of the following two elements:

1. That the defendant intended to commit this offense, and
2. That the defendant took a substantial step toward committing this offense which substantial step strongly corroborates or confirms the defendant intended to commit this offense.

With respect to the first element of attempt, a fact-finder cannot find the defendant guilty of attempt to commit obstruction of an official proceeding merely because he thought about it. The fact-finder must find that the evidence proved beyond a reasonable doubt that the defendant's mental state passed beyond the stage of thinking about the crime to actually intending commit it.

With respect to the substantial step element, a fact-finder cannot find the defendant guilty of attempt to commit obstruction of an official proceeding merely because he made some plans to or some preparation for committing that crime.

Instead, the fact-finder must find that the defendant took some firm, clear, undeniable action to accomplish his intent to commit obstruction of an official proceeding. However, the substantial step element does not require the government to prove that the defendant did everything except the last act necessary to complete the crime.

Aiding and Abetting

A person may be guilty of an offense if he aided and abetted another person in committing the offense. A person who has aided and abetted another person in committing an offense is often called an accomplice.

The person whom the accomplice aids and abets is known as the principal. It is not necessary that all the people who committed the crime be caught or identified. It is sufficient if the fact-finder finds beyond a reasonable doubt that the crime was committed by someone and that the defendant knowingly and intentionally aided and abetted that person in committing the crime.

In order to find the defendant guilty of obstruction of an official proceeding because he aided and abetted others in committing this offense, a fact-finder must find that the government proved beyond a reasonable doubt the following five requirements:

1. That others committed obstruction of an official proceeding by committing each of the elements of that offense;
2. That the defendant knew that obstruction of an official proceeding was going to be committed or was being committed by others.
3. That the defendant performed an act or acts in furtherance of the offense.
4. That the defendant knowingly performed that act or those acts for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense of obstruction of an official proceeding; and
5. That the defendant did that act or those acts with the intent that others commit the offense of obstruction of an official proceeding.

To show that the defendant performed an act or acts in furtherance of the offense charged, the government needs to show some affirmative participation by the defendant which at least encouraged others to commit the offense. That is, a fact-finder must find that the defendant's act or acts did, in some way, aid, assist, facilitate, or encourage others to commit the offense. The defendant's act or acts need not further aid, assist, facilitate, or encourage every part or phase of the offense charged; it is enough if the defendant's act or acts further

aid, assist, facilitate, or encourage only one or some parts or phases of the offense. Also, the defendant's acts need not themselves be against the law.

In deciding whether the defendant had the required knowledge and intent to satisfy the fourth requirement for aiding and abetting, the fact-finder may consider both direct and circumstantial evidence, including the defendant's words and actions and other facts and circumstances.

However, evidence that the defendant merely associated with persons involved in a criminal venture or was merely present or was merely a knowing spectator during the commission of the offense is not enough for the fact-finder to find the defendant guilty as an aider and abettor. If the evidence shows that the defendant knew that the offense was being committed or was about to be committed, but does not also prove beyond a reasonable doubt that it was the defendant's intent and purpose to aid, assist, encourage, facilitate, or otherwise associate himself with the offense, the fact-finder cannot find the defendant guilty of obstruction of an official proceeding as an aider and abettor. The government must prove beyond a reasonable doubt that the defendant in some way participated in the offense committed by others as something the defendant wished to bring about and to make succeed.

COUNT FIVE (violation of 18 U.S.C. § 1752(a)(1))

In order to find the defendant guilty of entering or remaining in a restricted building or grounds, a fact-finder must find that the government proved each of the following elements beyond a reasonable doubt:

1. That the defendant entered or remained in a restricted building without lawful authority to do so; and
2. That the defendant did so knowingly.

The term "restricted building" means any posted, cordoned off, or otherwise restricted area of a building where a person protected by the Secret Service is or will be temporarily visiting.

The term "person protected by the Secret Service" includes the Vice President and the immediate family of the Vice President.

A person acts "knowingly" if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant knowingly entered or remained in a restricted building, a fact-finder may consider all of the evidence, including what the defendant did or said.

A person who enters a restricted area with a good faith belief that he is entering with lawful authority is not guilty of this offense. Thus, the fact-finder cannot find the

defendant guilty of this offense unless he is convinced beyond a reasonable doubt that he did not have a good faith belief of his lawful authority to enter or remain in the restricted building.

COUNT SIX (violation of 18 U.S.C. § 1752(a)(2))

In order to find the defendant guilty of disorderly or disruptive conduct in a restricted building or grounds, a fact-finder must find that the government proved each of the following elements beyond a reasonable doubt:

1. That the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building;
2. That the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of government business or official functions;
3. That the defendant's conduct in fact impeded or disrupted the orderly conduct of government business or official functions.

"Disorderly conduct" occurs when a person is unreasonably loud and disruptive under the circumstances, or interferes with another person by jostling against or unnecessarily crowding that person.

"Disruptive conduct" is a disturbance that interrupts an event, activity, or the normal course of a process.

The term "restricted building" means any posted, cordoned off, or otherwise restricted area of a building where a person

protected by the Secret Service is or will be temporarily visiting.

The term "knowingly" has the same meaning as described above with respect to COUNT FIVE.

COUNT SEVEN (violation of 18 U.S.C. § 1752(a)(4))

In order to find the defendant guilty of knowingly engaging in any act of physical violence against a person or property in a restricted building or grounds, a fact-finder must find that the government proved each of the following elements beyond a reasonable doubt:

1. That the defendant engaged in an act of physical violence against a person or property in, or in proximity to, a restricted building or grounds; and
2. Second, that the defendant did so knowingly.

The term "act of physical violence" means any act involving an assault or other infliction of death or bodily harm on an individual, or damage to or destruction of real or personal property. The terms "restricted building and grounds," and "knowingly" have the same meanings as described above.

COUNT EIGHT (violation of 40 U.S.C. § 5104(e)(2)(D))

In order to find the defendant guilty of this offense, a fact-finder must find that the government proved each of the following elements beyond a reasonable doubt:

1. That the defendant engaged in disorderly or disruptive

- conduct in any of the United States Capitol buildings;
2. That the defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress; and
 3. That the defendant acted willfully and knowingly.

The term "United States Capitol buildings" includes the United States Capitol located at First Street, Southeast, in Washington, D.C.

The term "disorderly or disruptive conduct" has the same meaning as "disorderly conduct" and "disruptive conduct," as those terms are described above.

A person acts "willfully" if he acts with the intent to do something that the law forbids, that is, to disobey or disregard the law. "Willfully" does not, however, require proof that the defendant be aware of the specific law or rule that his conduct may be violating.

The term "knowingly" has the same meaning as described above.

COUNT NINE (violation of 40 U.S.C. § 5104(e)(2)(F))

In order to find the defendant guilty of this offense, a fact-finder must find that the government proved each of the following elements beyond a reasonable doubt:

1. That the defendant engaged in an act of physical violence in any of the United States Capitol buildings; and

2. That the defendant acted willfully and knowingly.

The term "act of physical violence" means any act involving an assault or other infliction of death or bodily harm on an individual, or damage to or destruction of real or personal property.

The term "United States Capitol buildings" includes the United States Capitol located at First Street, Southeast, in Washington, D.C.

Respectfully submitted,

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