

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
	:	Case No: 21-cr-00599
v.	:	
	:	
DONNIE DUANE WREN, and	:	
	:	
THOMAS HARLEN SMITH,	:	
	:	
Defendants.	:	

JOINT PROPOSED JURY INSTRUCTIONS

Pursuant to the Court’s November 28, 2022, Pretrial Order, the parties hereby propose the following jury instructions, subject to issues that arise during trial:

1. Notetaking by Jurors, Redbook 1.105
2. Furnishing the Jury with a Copy of the Instructions, Redbook 2.100
3. Function of the Court, Redbook 2.101
4. Function of the Jury, Redbook 2.102
5. Jury’s Recollection Controls, Redbook 2.103
6. Evidence in the Case, Redbook 2.104
7. Statements of Counsel, Redbook 2.105
8. Indictment Not Evidence, Redbook 2.106
9. Burden of Proof, Redbook 2.107
10. Reasonable Doubt, Redbook 2.108
11. Direct and Circumstantial Evidence, Redbook 2.109
12. Credibility of Witnesses, Redbook 2.200
13. Nature of Charges Not to Be Considered, Redbook 2.110

14. Number of Witnesses, Redbook 2.111
15. Inadmissible and Stricken Evidence, Redbook 2.112, *as applicable*
16. Police Officer's Testimony, Redbook 2.207
17. Right of Defendant Not to Testify, Redbook 2.208 *or* Defendant as Witness, Redbook 2.209, *as applicable*
18. Count One, 18 U.S.C. § 231(a)(3) – Smith [see proposal below]
19. Count Two, 18 U.S.C. § 231(a)(3) – Wren and Smith [see proposal below]
20. Count Three, 18 U.S.C. § 1512(c)(2) and 18 U.S.C. § 2 – Smith [see proposal below]
21. Count Four, 18 U.S.C. § 111(a)(1) – Wren and Smith [see proposal below]
22. Count Five, 18 U.S.C. § 111(a)(1) – Smith [see proposal below]
23. Count Six, 18 U.S.C. § 111(a)(1) and (b) – Smith [see proposal below]
24. Count Seven, 18 U.S.C. § 1752(a)(1) – Wren [see proposal below]
25. Count Eight, 18 U.S.C. § 1752(a)(2) – Wren [see proposal below]
26. Count Nine, 18 U.S.C. § 1752(a)(4) – Wren [see proposal below]
27. Count Ten, 18 U.S.C. § 1752(a)(1) and (b)(1)(A) – Smith [see proposal below]
28. Count Eleven, 18 U.S.C. § 1752(a)(2) and (b)(1)(A) – Smith [see proposal below]
29. Count Twelve, 18 U.S.C. § 1752(a)(4) and (b)(1)(A) – Smith [see proposal below]
30. Count Thirteen, 40 U.S.C. § 5104(e)(2)(D) – Wren and Smith [see proposal below]
31. Count Fourteen, 40 U.S.C. § 5104(e)(2)(F) – Wren and Smith [see proposal below]
32. Proof of State of Mind, Redbook 3.101
33. Lesser Included Offense(s), Redbook 2.401
34. Multiple Counts- One Defendant, Redbook 2.402
35. Multiple Defendants and Multiple Counts, Redbook 2.404
36. Defense Theory of the Case, Redbook 9.100 [Reserved]
37. Self-Defense, Redbook 9.500 [Reserved]

38. Amount of Force Permissible, Redbook 9.501 [Reserved]
39. Defense of a Third Person, Redbook 9.510 [Reserved]
40. Unanimity—General, Redbook 2.405
41. Verdict Form Explanation, Redbook 2.407
42. Redacted Exhibits, Redbook 2.500
43. Exhibits During Deliberations, Redbook 2.501
44. Selection of Foreperson, Redbook 2.502
45. Cautionary Instruction on Publicity, Communication, and Research, Redbook 2.508
46. Communication Between Court and Jury During Jury’s Deliberations, Redbook 2.509
47. Attitude and Conduct of Jurors in Deliberations, Redbook 2.510
48. Excusing Alternate Jurors, Redbook 2.511
49. *Right to Revolt (Defendant’s proposed instruction, to which the government objects)*

Proposed Instruction No. 18
Count One - Civil Disorder

Count One of the indictment charges THOMAS SMITH with committing or attempting to commit an act to obstruct, impede, or interfere with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, which is a violation of federal law.

In order to find SMITH guilty of this offense, you must find the following three elements beyond a reasonable doubt:

First, SMITH 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.

Second, at the time of SMITH's actual or attempted act, the law enforcement officer or officers were engaged in the lawful performance of their official duties incident to and during a civil disorder.

Third, the civil disorder in any way or degree obstructed, delayed, or adversely affected either commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function.

Defendant's proposed modification to element three, to which the government objects:

Third, the civil disorder must have substantially obstructed, delayed or adversely affected either commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. United States v. Lopez, 514 U.S. 549 (1995); United States v. Morrison, 529 U.S. 598 (2000).

Definitions

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, you may consider all of the evidence, including what the defendant did or said.¹

The term "civil disorder" means any public disturbance involving acts of violence by groups of three or more persons, which (a) causes an immediate danger of injury to another individual, (b) causes an immediate danger of damage to another individual's property, (c) results in injury to another individual, or (d) results in damage to another individual's property.²

The term "commerce" means commerce or travel between one state, including the District of Columbia, and any other state, including the District of Columbia; between points

¹ See Seventh Circuit Pattern Criminal Jury Instructions; see also *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005).

² 18 U.S.C. § 232(1).

within any state or the District of Columbia, but through any place outside thereof; or wholly within the District of Columbia.³

Attempt

In Count One, SMITH is also charged with attempt to commit an act to obstruct, impede, or interfere with law enforcement officers lawfully carrying out their official duties incident to a civil disorder. An attempt to obstruct, impede, or interfere with law enforcement officers carrying out their official duties incident to a civil disorder is a crime even if SMITH did not actually complete the crime of obstructing, impeding or interfering with the law enforcement officers.

In order to find SMITH guilty of attempting to commit an act to obstruct, impede, or interfere with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, you must find that the government proved beyond a reasonable doubt each of the following two elements:

First, that SMITH intended to commit the crime of obstructing, impeding or interfering with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, as I have defined that offense above.

Second, that SMITH took a substantial step toward committing an act of obstructing, impeding or interfering with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, which strongly corroborates or confirms that SMITH intended to commit that crime.

With respect to the first element of attempt, you may not find the defendant guilty of attempt to commit obstructing, impeding or interfering with law enforcement officers during a civil disorder merely because he thought about it. You 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 to commit it.

With respect to the substantial step element, you may not find the defendant guilty of attempt to commit obstructing, impeding or interfering with law enforcement officers during a civil disorder merely because he made some plans to or some preparation for committing that crime. Instead, you must find that the defendant took some firm, clear, undeniable action to accomplish his intent to commit obstructing, impeding or interfering with law enforcement officers during a civil disorder. 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.⁴

³ 18 U.S.C. § 232(2).

⁴ Seventh Circuit Pattern Criminal Jury Instructions; Third Circuit Pattern Jury Instructions 7.01.

Proposed Instruction No. 19
Count Two - Civil Disorder

Count Two of the indictment charges the defendants with committing or attempting to commit an act to obstruct, impede, or interfere with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, which is a violation of federal law.

In order to find the defendants guilty of this offense, you must find the following three elements beyond a reasonable doubt:

First, the defendants 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.

Second, at the time of the defendants' actual or attempted act, the law enforcement officer or officers were engaged in the lawful performance of their official duties incident to and during a civil disorder.

Third, the civil disorder in any way or degree obstructed, delayed, or adversely affected either commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function.

Defendant's proposed modification to element three, to which the government objects:

Third, the civil disorder must have substantially obstructed, delayed or adversely affected either commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. United States v. Lopez, 514 U.S. 549 (1995); United States v. Morrison, 529 U.S. 598 (2000).

Definitions

The terms "knowingly," "civil disorder," and "commerce" have the same meaning as defined in Count One.

Attempt

In Count Two, WREN is also charged with attempt to commit an act to obstruct, impede, or interfere with law enforcement officers lawfully carrying out their official duties incident to a civil disorder. An attempt to obstruct, impede, or interfere with law enforcement officers carrying out their official duties incident to a civil disorder is a crime even if WREN did not actually complete the crime of obstructing, impeding or interfering with the law enforcement officers.

In order to find WREN guilty of attempting to commit an act to obstruct, impede, or interfere with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, you must find that the government proved beyond a reasonable doubt each of the following two elements:

First, that WREN intended to commit the crime of obstructing, impeding or interfering with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, as I have defined that offense above.

Second, that WREN took a substantial step toward committing an act of obstructing, impeding or interfering with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, which strongly corroborates or confirms that WREN intended to commit that crime.

With respect to the first element of attempt, you may not find WREN guilty of attempt to commit obstructing, impeding or interfering with law enforcement officers during a civil disorder merely because he thought about it. You must find that the evidence proved beyond a reasonable doubt that WREN's mental state passed beyond the stage of thinking about the crime to actually intending to commit it.

With respect to the substantial step element, you may not find WREN guilty of attempt to commit obstructing, impeding or interfering with law enforcement officers during a civil disorder merely because he made some plans to or some preparation for committing that crime. Instead, you must find that WREN took some firm, clear, undeniable action to accomplish his intent to commit obstructing, impeding or interfering with law enforcement officers during a civil disorder. However, the substantial step element does not require the government to prove that WREN did everything except the last act necessary to complete the crime.⁵

⁵ Seventh Circuit Pattern Criminal Jury Instructions; Third Circuit Pattern Jury Instructions 7.01.

Proposed Instruction No. 20

Count Three - Obstruction of an Official Proceeding and Aiding and Abetting

Count Three of the indictment charges THOMAS SMITH with corruptly obstructing an official proceeding, which is a violation of the law. Count Three also charges SMITH with attempt to obstruct or impede an official proceeding and aiding and abetting others to commit that offense. The Court will first explain the elements of the substantive offense, along with its associated definitions. Then, the Court will explain how to determine whether SMITH attempted the offense and whether SMITH aided and abetted the offense.

Elements

In order to find SMITH guilty of corruptly obstructing an official proceeding, you must find that the government proved each of the following four elements beyond a reasonable doubt:

First, SMITH attempted to or did obstruct or impede an official proceeding.

Second, SMITH intended to obstruct or impede the official proceeding.

Third, SMITH acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding.

Fourth, SMITH acted corruptly.

Definitions

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. As used in Count 2, the term “official proceeding” means Congress’s Joint Session to certify the Electoral College vote.

The term “knowingly” has the same meaning as described in the instructions for Count One.

To act “corruptly,” the defendant must use unlawful means or have a wrongful or 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 or unlawful.

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.

Attempt

In Count Three, SMITH is also charged with attempt to commit the crime of obstruction of an official proceeding. An attempt to commit obstruction of an official proceeding is a crime even if SMITH did not actually complete the crime of obstruction of an official proceeding.

In order to find SMITH guilty of attempt to commit obstruction of an official proceeding, you must find that the government proved beyond a reasonable doubt each of the following two elements:

First, that SMITH intended to commit the crime of obstruction of an official proceeding, as I have defined that offense above.

Second, that SMITH took a substantial step toward committing obstruction of an official proceeding which strongly corroborates or confirms that SMITH intended to commit that crime.

With respect to the first element of attempt, you may not find the defendant guilty of attempt to commit obstruction of an official proceeding merely because he thought about it. You 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 to commit it.

With respect to the substantial step element, you may not 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, you 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

In this case, the government further alleges that SMITH aided and abetted others in committing obstruction of an official proceeding as charged in Count Three. 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 you find 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 SMITH guilty of obstruction of an official proceeding because he aided and abetted others in committing this offense, you must find that the government proved beyond a reasonable doubt the following five requirements:

First, that others committed obstruction of an official proceeding by committing each of the elements of the offense charged, as I have explained above.

Second, that SMITH knew that obstruction of an official proceeding was going to be committed or was being committed by others.

Third, that SMITH performed an act or acts in furtherance of the offense.

Fourth, that SMITH knowingly performed that act or acts for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense of obstruction of an official proceeding.

Fifth, that SMITH did that act or 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, you 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, you 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 you 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, you may not find the defendant guilty of the 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.

Proposed Instruction No. 21

Count Four - Assaulting, Resisting, or Impeding Certain Officers 18 U.S.C. § 111(a)(1)

Count Four of the Indictment charges the defendants with forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with an officer of the United States or any person assisting officers of the United States who are engaged in the performance of their official duties, which is a violation of federal law. Count Four of the Indictment additionally charges that the defendants, in the commission of such acts, made physical contact with the person and acted with the intent to commit another felony.

I am going to instruct you on this charge and explain the various elements that you must consider.

Elements of Section 111(a) offense

In order to find the defendants guilty of forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with a person assisting officers of the United States who are engaged in the performance of their official duties, while making physical contact with the person or acting with the intent to commit another felony, you must find the following elements beyond a reasonable doubt:

1. First, the defendants assaulted, resisted, opposed, impeded, intimidated, or interfered with officers from the Metropolitan Police Department.
2. Second, the defendants did such acts forcibly.
3. Third, the defendants did such acts voluntarily and intentionally.
4. Fourth, the person assaulted, resisted, opposed, impeded, intimidated, or interfered with was assisting officers of the United States who were then engaged in the performance of their official duties.
5. Fifth, the defendants made physical contact with and assaulted a person who was assisting officers of the United States who were then engaged in the performance of their official duties, or acted with the intent to commit another felony. For purposes of this element, “another felony” refers to the offense charged in Count Two for WREN and Counts One or Three for SMITH.

Definitions

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.

Proposed Instruction No. 22

Count Five - Assaulting, Resisting, or Impeding Certain Officers 18 U.S.C. § 111(a)(1)

Count Five of the Indictment charges THOMAS SMITH with forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with an officer of the United States or any person assisting officers of the United States who are engaged in the performance of their official duties, which is a violation of federal law. Count Five of the Indictment additionally charges that SMITH, in the commission of such acts, made physical contact with the person and acted with the intent to commit another felony.

I am going to instruct you on this charge and explain the various elements that you must consider. The definitions of all terms are the same as those in Count Four.

Elements of Section 111(a) offense

In order to find SMITH guilty of forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with a person assisting officers of the United States who are engaged in the performance of their official duties, while making physical contact with the person or acting with the intent to commit another felony, you must find the following elements beyond a reasonable doubt:

1. First, SMITH assaulted, resisted, opposed, impeded, intimidated, or interfered with an officer from the Metropolitan Police Department.
2. Second, SMITH did such acts forcibly.
3. Third, SMITH did such acts voluntarily and intentionally.
4. Fourth, the person assaulted, resisted, opposed, impeded, intimidated, or interfered with was assisting officers of the United States who were then engaged in the performance of their official duties.
5. Fifth, SMITH made physical contact with and assaulted a person who was assisting officers of the United States who were then engaged in the performance of their official duties, or acted with the intent to commit another felony. For purposes of this element, “another felony” refers to the offense charged in Counts One or Three.

Proposed Instruction No. 23
Count Six - Assaulting, Resisting, or Impeding Certain Officers Using a Deadly or Dangerous Weapon 18 U.S.C. § 111(a)(1), (b)

Count Six of the Indictment charges THOMAS SMITH with forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with any person assisting officers of the United States who are engaged in the performance of their official duties, which is a violation of federal law. Count Six of the Indictment additionally charges that SMITH, in the commission of such acts, used a deadly or dangerous weapon and made physical contact with the person and acted with the intent to commit another felony.

I am going to instruct you on this charge and explain the various elements that you must consider. I will also instruct you on the lesser included offense of assaulting, resisting, opposing, impending, intimidating, or interfering with any person assisting officers of the United States who are engaged in the performance of their official duties. After I give you the elements of these crimes, I will tell you in what order you should consider them.

Elements of Section 111(b) offense

In order to find SMITH guilty of forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with a person assisting officers of the United States who are engaged in the performance of their official duties, while using a deadly or dangerous weapon, you must find the following elements beyond a reasonable doubt:

1. First, SMITH assaulted, resisted, opposed, impeded, intimidated, or interfered with Officer Anthony Campanale, an officer from the Metropolitan Police Department.
2. Second, SMITH did such acts forcibly.
3. Third, SMITH did such acts voluntarily and intentionally.
4. Fourth, the person assaulted, resisted, opposed, impeded, intimidated, or interfered with was assisting officers of the United States who were then engaged in the performance of their official duties.
5. Fifth, in doing such acts, SMITH used a deadly or dangerous weapon.⁶

Elements of Section 111(a) offense

In order to find the defendant guilty of forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with a person assisting officers of the United States who are engaged in the performance of their official duties, while making physical contact with the person or acting with the intent to commit another felony, you must find the following elements beyond a reasonable doubt:

⁶ When charging an offense under Section 111(b), the government does not need to further prove the elements of Section 111(a)'s enhanced penalty provision—"physical contact" or "intent to commit another felony." See *United States v. Stands Alone*, 11 F.4th 532, 535 (7th Cir. 2021) ("[A] defendant violates § 111(b) by causing bodily injury to a federal officer while committing one or more of the following acts: assault, resist, oppose, impede, intimidate, and interfere."); *United States v. Siler*, 734 F.3d 1290, 1297 (11th Cir. 2013) ("[P]hysical contact is not required as a predicate act or element of § 111(b) so long as acts encompassed in the first separate crime were committed and in doing so the defendant used a deadly or dangerous weapon or inflicted bodily injury.").

1. First, SMITH assaulted, resisted, opposed, impeded, intimidated, or interfered with Officer Anthony Campanale, an officer from the Metropolitan Police Department.
2. Second, SMITH did such acts forcibly.
3. Third, SMITH did such acts voluntarily and intentionally.
4. Fourth, the person assaulted, resisted, opposed, impeded, intimidated, or interfered with was assisting officers of the United States who were then engaged in the performance of their official duties.
5. Fifth, SMITH made physical contact with and assaulted a person who was assisting officers of the United States who were then engaged in the performance of their official duties, or acted with the intent to commit another felony. For purposes of this element, “another felony” refers to the offenses charged in Counts Two and Three.

Order of considering the charges

Now I am going to instruct you as to the order in which you should consider the above offenses. You should consider first whether SMITH is guilty of assaulting, resisting, opposing, impeding, intimidating, or interfering with any person assisting officers of the United States who are engaged in the performance of their official duties, while using a deadly or dangerous weapon or inflicting bodily injury. You should then consider whether SMITH is guilty of assaulting, resisting, opposing, impeding, intimidating, or interfering with any person assisting officers of the United States who are engaged in the performance of their official duties, while making physical contact with the person or acting with the intent to commit another felony.

This order will be reflected in the verdict form that I will be giving you. All terms have the same meaning as described in the instructions for Count Four.

You are instructed that Officer Campanale is an officer of the Metropolitan Police Department and that it was a part of the official duty of such officer to assist federal officers in protecting the U.S. Capitol complex on January 6, 2021, and detaining individuals who lacked authorization to enter the restricted area around the complex. 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.

An object is a “deadly or dangerous weapon” if it is capable of causing serious bodily injury or death to another person and the defendant used it in that manner. In determining whether the object is a “deadly or dangerous weapon,” you may consider both physical capabilities of the object used and the manner in which the object is used.

Proposed Instruction No. 24
Count Seven - Entering or Remaining in a Restricted Building or Grounds⁷

Count Seven of the Indictment charges DONNIE WREN with entering or remaining in a restricted building or grounds.

In order to find WREN guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that WREN entered or remained in a restricted building without lawful authority to do so.
2. Second, that WREN 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.

Defendant’s requested language, to which the government objects:

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

The government acknowledges that “the President” is included in the statutory definition; however, the is phrase is immaterial to the facts of this case.

The term “knowingly” has the same meaning as described in the instructions for Count One.

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, you cannot find the defendant guilty of Count Six unless you are 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.

⁷ 18 U.S.C. §§ 1752, 3056; *United States v. Jabr*, 4 F.4th 97, 101 (D.C. Cir. 2021).

Proposed Instruction No. 25
Count Eight – Disorderly or Disruptive Conduct in a Restricted Building⁸

Count Eight of the indictment charges DONNIE WREN with disorderly or disruptive conduct in a restricted building or grounds which is a violation of federal law.

In order to find WREN guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that WREN engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building.
2. Second, that WREN did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.
3. Third, that WREN's conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

Definitions

“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.⁹

Defendant's proposed definitions, to which the government objects:

“Disorderly conduct” is that which “tends to disturb the public peace, offend public morals, or undermine public safety.” “Disorderly,” Black’s Law Dictionary (9th ed. 2009); see also “Disorderly,” Oxford English Dictionary (2nd ed. 1989) (“Not according to order or rule; in a lawless or unruly way; tumultuously, riotously.”)

Conduct is “disruptive” if it “tend[s] to disrupt some process, activity, condition, etc.” “Disruptive,” Merriam-Webster.com Dictionary (Nov. 3 2022).

The term “restricted building” has the same meaning as described in the instructions for Count Seven.

The term “knowingly” has the same meaning as described in the instructions for Count One.

⁸ 18 U.S.C. § 1752.

⁹ Redbook 6.643.

Proposed Instruction No. 26

Count Nine – Engaging in Physical Violence in a Restricted Building or Grounds

Count Nine of the indictment charges DONNIE WREN with engaging in an act of physical violence in a restricted building or grounds, which is a violation of federal law.

In order to find WREN guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First: that WREN engaged in any act of physical violence against any person in any restricted building or grounds.
2. Second: that WREN did so knowingly.

Definitions

The term “knowingly” has the same meaning described in the instructions for Count One.

The term “restricted building” has the same meaning as described in the instructions for Count Seven.

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

Proposed Instruction No. 27
Count Ten – Entering or Remaining in a Restricted Building or Grounds¹⁰

Count Ten of the indictment charges THOMAS SMITH with entering or remaining in a restricted building or grounds while using or carrying a dangerous or deadly weapon, which is a violation of federal law.

In order to find SMITH guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that SMITH entered or remained in a restricted building without lawful authority to do so.
2. Second, that SMITH did so knowingly.
3. Third, that SMITH used or carried a deadly or dangerous weapon during and in relation to the offense.

Definitions

The term “restricted building” has the same meaning as described in the instructions for Count Seven.

The term “knowingly” has the same meaning as that described for Count One.

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, you cannot find SMITH guilty of Count Ten unless you are 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.

The term “deadly weapon” has the same meaning described in the instructions for Count Six.

¹⁰ 18 U.S.C. §§ 1752, 3056; *United States v. Jabr*, 4 F.4th 97, 101 (D.C. Cir. 2021).

Proposed Instruction No. 28
Count Eleven – Disorderly or Disruptive Conduct in a Restricted Building¹¹

Count Eleven of the indictment charges THOMAS SMITH with disorderly or disruptive conduct in a restricted building or grounds, while using or carrying a dangerous or deadly weapon, which is a violation of federal law.

In order to find SMITH guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that SMITH engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building.
2. Second, that SMITH did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.
3. Third, that SMITH’s conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.
4. Fourth, that SMITH used or carried a deadly or dangerous weapon during and in relation to the offense.

Definitions

“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.¹²

Defendant’s proposed definitions, to which the government objects:

“Disorderly conduct” is that which “tends to disturb the public peace, offend public morals, or undermine public safety.” “Disorderly,” Black’s Law Dictionary (9th ed. 2009); see also “Disorderly,” Oxford English Dictionary (2nd ed. 1989) (“Not according to order or rule; in a lawless or unruly way; tumultuously, riotously.”)

Conduct is “disruptive” if it “tend[s] to disrupt some process, activity, condition, etc.” “Disruptive,” Merriam-Webster.com Dictionary (Nov. 3 2022).

The terms “restricted building” and “knowingly” have the same meanings as described in the instructions for Count Seven and One, respectively.

The term “deadly weapon” has the same meaning described in the instructions for Count Six.

¹¹ 18 U.S.C. § 1752.

¹² Redbook 6.643.

Proposed Instruction No. 29

Count Twelve – Engaging in Physical Violence in a Restricted Building or Grounds¹³

Count Twelve of the indictment charges THOMAS SMITH with engaging in physical violence in a restricted building or grounds, while using or carrying a dangerous or deadly weapon, which is a violation of federal law.

In order to find SMITH guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that SMITH engaged in any act of physical violence against any person in any restricted building or grounds.
2. Second, that SMITH did so knowingly.
3. Third, that SMITH used or carried a deadly or dangerous weapon during and in relation to the offense.

Definitions

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.¹⁴

The terms “restricted building” and “knowingly” have the same meanings as described in the instructions for Count Seven and One, respectively.

The term “deadly weapon” has the same meaning described in the instructions for Count Six.

¹³ 40 U.S.C. § 5014(a)(1) (modified).

¹⁴ Redbook 6.643.

Proposed Instruction No. 30
Count Thirteen – Disorderly Conduct in a Capitol Building¹⁵

Count Thirteen of the indictment charges DONNIE WREN and THOMAS SMITH with violent entry and disorderly and disruptive conduct in a Capitol Building, which is a violation of federal law.

In order to find the defendants guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendants engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings.
2. Second, that the defendants did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress.
3. Third, that the defendants acted willfully and knowingly.

The term “United States Capitol Buildings” includes the United States Capitol located at First Street, Southeast, in Washington, D.C.¹⁶

The term “disorderly or disruptive conduct” has the same meaning described in the instructions for Count Eleven defining “disorderly conduct” and “disruptive conduct.”

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.¹⁷

Defendant’s requested definition:

A defendant acts “willfully” if he acted with a bad purpose or knowledge that his conduct was unlawful. While the government must show that a defendant knew that the conduct was unlawful, the government does not need to prove that the defendant was aware of the specific law that his conduct violated.” Bryan v. United States, 524 U.S. 184, 191 (1998).

The term “knowingly” has the same meaning as that described in the instructions for Count One.

¹⁵ 40 U.S.C. § 5104(e)(2)(D).

¹⁶ 40 U.S.C. § 5101

¹⁷ See *United States v. Bryan*, 524 U.S. 184, 190 (1998).

Proposed Instruction No. 31
Count Fourteen – Act of Physical Violence in the Capitol Grounds or Buildings¹⁸

Count Fourteen of the indictment charges DONNIE WREN and THOMAS SMITH with engaging in an act of physical violence in the Capitol Building or Grounds, which is a violation of federal law.

In order to find the defendants guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendants engaged in any act of physical violence in any of the United States Capitol Buildings or Grounds.
2. Second, that the defendants acted willfully and knowingly.

Definitions

The term “United States Capitol Buildings” has the same meaning described in the instruction for Count Thirteen.

The term “knowingly” has the same meaning as that described in the instructions for Count One.

The term “willfully” has the same meaning as that described in the instructions for Count Thirteen.

The term “act of physical violence” has the same meaning as that described in the instructions for Count Nine.

¹⁸ 40 U.S.C. § 5104(e)(2)(F).

Defendant's proposed instruction, to which the government objects:

Right to Revolt

The Declaration of Independence states three basic ideas: (1) God made all men equal and gave them the rights of life, liberty, and the pursuit of happiness; (2) the main business of government is to protect these rights; (3) if a government tries to withhold these rights, the people have a right and duty to revolt and to set up a new government.

If you find that the defendants subjectively believed, however mistaken, that the government was destructive of these ends or somehow engaged in a plot or design to reduce the people to rule under a despot, then you must find the defendants not guilty of all charges.

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