UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
v.	:	
THOMAS WEBSTER,	:	**Criminal No.: 21-cr-208 (APM)**
Defendant.	:	

[DRAFT] JURY INSTRUCTIONS

Ladies and gentlemen, the time has now come when all of the evidence is in. It is now up to me to instruct you on the law. Before we talk about the specific charges alleged here and some of the specific issues in this case, I want to take a few moments to talk about some general rules of law. Some of these will repeat what I told you in my preliminary instructions.

Function of the Court

My function is to conduct this trial in an orderly, fair, and efficient manner; to rule on questions of law; and to instruct you on the law that applies in this case.

It is your duty to accept the law as I instruct you. You should consider all the instructions as a whole. You may not ignore or refuse to follow any of them.

Function of the Jury

Your function, as the jury, is to determine what the facts are in this case. You are the sole judges of the facts. While it is my responsibility to decide what is admitted as evidence during the trial, you alone decide what weight, if any, to give to that evidence. You alone decide the credibility or believability of the witnesses.

You should determine the facts without prejudice, fear, sympathy, or favoritism. You should not be improperly influenced by anyone's race, ethnic origin, or gender. Decide the case solely from a fair consideration of the evidence.

You may not take anything I may have said or done as indicating how I think you should decide this case. If you believe that I have expressed or indicated any such opinion, you should ignore it. The verdict in this case is your sole and exclusive responsibility.

Jury's Recollection Controls

If any reference by the court or the attorneys to the evidence does not coincide with your own recollection of the evidence, it is your recollection that should control during your deliberations.

Notetaking by Jurors

During the trial, I have permitted those jurors who wanted to do so to take notes. You may take your notebooks with you to the jury room and use them during your deliberations if you wish. As I told you at the beginning of the trial, your notes are only to be an aid to your memory. They are not evidence in the case, and they should not replace your own memory of the evidence. Those jurors who have not taken notes should rely on their own memory of the evidence. The notes are intended to be for the notetaker's own personal use.

Burden of Proof – Presumption of Innocence

Every defendant in a criminal case is presumed to be innocent. This presumption of innocence remains with the defendant throughout the trial unless and until the government has proven he is guilty beyond a reasonable doubt. This burden never shifts throughout the trial. The law does not require the defendant to prove his innocence or to produce any evidence at all. If you find that the government has proven beyond a reasonable doubt every element of a particular

offense with which the defendant is charged, it is your duty to find him guilty of that offense. On the other hand, if you find the government has failed to prove any element of a particular offense beyond a reasonable doubt, you must find the defendant not guilty of that offense.

Reasonable Doubt – Defined

The government has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not, or, in some cases, that its truth is highly probable. In criminal cases such as this one, the government's proof must be more powerful than that. It must be beyond a reasonable doubt. Reasonable doubt, as the name implies, is a doubt based on reason—a doubt for which you have a reason based upon the evidence or lack of evidence in the case. If, after careful, honest, and impartial consideration of all the evidence, you cannot say that you are firmly convinced of the defendant's guilt, then you have a reasonable doubt.

Reasonable doubt is the kind of doubt that would cause a reasonable person, after careful and thoughtful reflection, to hesitate to act in the graver or more important matters in life. However, it is not an imaginary doubt, nor a doubt based on speculation or guesswork; it is a doubt based on reason. The government is not required to prove guilt beyond all doubt, or to a mathematical or scientific certainty. Its burden is to prove guilt beyond a reasonable doubt.

Nature of Charges Not to be Considered

One of the questions you were asked when we were selecting this jury was whether the nature of the charges would affect your ability to render a fair and impartial verdict. There was a reason for that question. You must not allow the nature of the charges themselves to affect your verdict. You must consider only the evidence that has been presented in this case in rendering a fair and impartial verdict.

Number of Witnesses

The weight of the evidence is not necessarily determined by the number of witnesses testifying for each side. Rather, you should consider all the facts and circumstances in evidence to determine which of the witnesses you believe. You might find that the testimony of a smaller number of witnesses on one side is more believable than the testimony of a greater number of witnesses on the other side or you might find the opposite.

Considering the Evidence in the Case

During your deliberations, you may consider only the evidence properly admitted in this trial. The evidence in this case was the sworn testimony of the witnesses, the exhibits that were admitted into evidence, and the facts stipulated to by the parties.

During the trial, you were told that the parties had stipulated—that is, agreed—to certain facts. You should consider any stipulation of fact to be undisputed evidence.

When you consider the evidence, you are permitted to draw, from the facts that you find have been proven, such reasonable inferences as you feel are justified in the light of your experience. You should give any evidence such weight as in your judgment it is fairly entitled to receive.

Statements of Counsel – Not Evidence

The statements and arguments of the lawyers are not evidence. They are only intended to assist you in understanding the evidence. Similarly, the questions of the lawyers are not evidence.

Indictment Not Evidence

The indictment is merely the formal way of accusing a person of a crime. You must not consider the indictment as evidence of any kind—you may not consider it as any evidence of the defendant's guilt or draw any inference of guilt from it.

Direct and Circumstantial Evidence

There are two types of evidence from which you may determine what the facts are in this case—direct evidence and circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness's testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence.

Let me give you an example. Assume a person looked out a window and saw that snow was falling. If he later testified in court about what he had seen, his testimony would be direct evidence that snow was falling at the time he saw it happen. Assume, however, that he looked out a window and saw no snow on the ground, and then went to sleep and saw snow on the ground after he woke up. His testimony about what he had seen would be circumstantial evidence that it had snowed while he was asleep.

The law says that both direct and circumstantial evidence are acceptable as a means of proving a fact. The law does not favor one form of evidence over another. It is for you to decide how much weight to give to any particular evidence, whether it is direct or circumstantial. You are permitted to give equal weight to both. Circumstantial evidence does not require a greater degree of certainty than direct evidence. In reaching a verdict in this case, you should consider all of the evidence presented, both direct and circumstantial.

Inadmissible and Stricken Evidence

The lawyers in this case sometimes objected when the other side asked a question, made an argument, or offered evidence that the objecting lawyer believed was not proper. You must not hold such objections against the lawyer who made them or the party s/he represents. It is the lawyers' responsibility to object to evidence that they believe is not admissible.

If, during the course of the trial, I sustained an objection to a lawyer's question, you should ignore the question, and you must not speculate as to what the answer would have been. If, after a witness answered a question, I ruled that the answer should be stricken, you should ignore both the question and the answer and they should play no part in your deliberations. Likewise, exhibits as to which I have sustained an objection or that I ordered stricken are not evidence, and you must not consider them in your deliberations.

Credibility of Witnesses

In determining whether the government has proved its case, you must consider and weigh the testimony of all the witnesses who have appeared before you.

You are the sole judge of the credibility of the witnesses. In other words, you alone are to determine whether to believe any witness and the extent to which any witness should be believed.

In reaching a conclusion as to the credibility of any witness, you may consider any matter that may have a bearing on the subject. You may consider the demeanor and the behavior of the witness on the witness stand; the witness's manner of testifying; whether the witness impresses you as a truthful person; whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness had a full opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case, or friendship or hostility toward other people concerned with this case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear it differently; an innocent mis-recollection, like a failure of recollection, is not an uncommon experience. In weighing the effect of the

inconsistency or discrepancy, always consider whether it pertains to a matter of important or unimportant detail, and whether the inconsistency or discrepancy results from innocent error or intentional falsehood.

You may consider the reasonableness or unreasonableness, the probability or improbability, of the testimony of a witness in determining whether to accept it as true and accurate. You may consider whether the witness has been contradicted or supported by other credible evidence.

If you believe that any witness has shown him or herself to be biased or prejudiced, for or against either side in this trial, you may consider and determine whether such bias or prejudice has colored the testimony of the witness so as to affect the desire and capability of that witness to tell the truth.

You should give the testimony of each witness such weight as in your judgment it is fairly entitled to receive.

Preparation of Witness

You have heard testimony about witnesses meeting with attorneys and/or investigators before they testified. You are instructed that it is perfectly proper for a lawyer or investigator to interview a witness in preparation for trial.

Police Officer's or Law Enforcement Agent's Testimony

A police officer's or law enforcement agent's testimony should be considered by you just as any other evidence in the case. In evaluating the officer's or agent's credibility you should use the same guidelines that you apply to the testimony of any witness. In no event should you give either greater or lesser weight to the testimony of any witness merely because he or she is a police officer or law enforcement agent.

Right of Defendant Not to Testify [*If Defendant as Witness not given]

Every defendant in a criminal case has an absolute right not to testify. Each Defendant in this case has chosen to exercise this right. You must not hold this decision against him. There are many reasons entirely consistent with innocence for which a person may decide not to testify. It would be improper for you to speculate as to the reason or reasons for his decision, and you must not draw any inference of guilt from his decision.

Defendant as Witness [*If Right of Defendant Not to Testify not given]

A defendant has a right to become a witness in his own behalf. His testimony should not be disbelieved merely because he is the defendant. In evaluating his testimony, however, you may consider the fact that the defendant has a vital interest in the outcome of this trial. As with the testimony of any other witness, you should give the defendant's testimony as much weight as in your judgment it deserves.

Transcript of Tape Recording

A transcript of a recording was furnished for your convenience and guidance as you listened to the video to clarify portions of the video which are difficult to hear and to help you identify speakers. The video, however, is the evidence in the case; the transcript is not. If you notice any difference between the transcript and the video, you must rely only on the video and not the transcript. In addition, if you cannot determine from the video that particular words were spoken, you must disregard the transcript as far as those words are concerned.

Redacted Documents

During the course of this trial, a number of exhibits were admitted in evidence. Sometimes only those parts of an exhibit that are relevant to your deliberations were admitted. Where this has occurred, the irrelevant parts of the exhibit were blacked out or otherwise

removed, or a video played without audio. There are a variety of reasons why only a portion of an exhibit is admitted, including that the other portions are inadmissible or implicate an individual's privacy. As you examine the exhibits, and you see where there appear to be omissions, you should consider only the portions that were admitted. You should not guess as to what has been taken out, and you should not hold it against either party. You are to decide the facts only from the evidence that is before you.

Proof of State of Mind

Someone's intent or knowledge ordinarily cannot be proved directly, because there is no way of knowing what a person is actually thinking, but you may infer someone's intent or knowledge from the surrounding circumstances. You may consider any statement made or acts done or omitted by Mr. Webster, and all other facts and circumstances received in evidence which indicate his intent or knowldge.

It is entirely up to you, however, to decide what facts to find from the evidence received during this trial. You should consider all the circumstances in evidence that you think are relevant in determining whether the government has proved beyond a reasonable doubt that the defendant acted with the necessary state of mind.

Aiding and Abetting

You may find Mr. Webster guilty of the crime charged in the indictment without finding that he personally committed each of the acts that make up the crime or that he was present while the crime was being committed. Any person who in some way intentionally participates in the commission of a crime can be found guilty either as an aider and abettor or as a principal offender. It makes no difference which label you attach. The person is as guilty of the crime as he would be if he had personally committed each of the acts that make up the crime.

To find that a defendant aided and abetted in committing a crime, you must find that the defendant knowingly associated himself with the commission of the crime, that he participated in the crime as something he wished to bring about, and that he intended by his actions to make it succeed.

Some affirmative conduct by the defendant in planning or carrying out the crime is necessary. Mere physical presence by Mr. Webster at the place and time the crime is committed is not by itself sufficient to establish his guilt. [However, mere physical presence is enough if it is intended to help in the commission of the crime.] [It is not necessary that you find that [name of defendant] was actually present while the crime was committed.]

The government is not required to prove that anyone discussed or agreed upon a specific time or method of committing the crime. [The government is not required to prove that the crime was committed in the particular way planned or agreed upon.] [Nor need the government prove that the principal offender and the person alleged to be the aider and abettor directly communicated with each other.]

[I have already instructed you on the elements of [each of] the offense[s] with which Mr. Webster is charged. With respect to the charge of [name of offense], regardless of whether Mr. Webster is an aider and abettor or a principal offender, the government must prove beyond a reasonable doubt that Mr. Webster personally acted with [insert mens rea required for the charged offense]. *[Repeat as necessary for additional offenses, e.g., with respect to the charge of [name of offense], the government must prove beyond a reasonable doubt that each defendant personally acted with [insert mens rea]]*. [*When there are alternate mental states that would satisfy the mens rea element of the offense, such as in second-degree murder (specific intent to kill or seriously injure or conscious disregard of an extreme risk of death or serious bodily injury), the Court may*

want to instruct that the principal and the aider and abettor do not need the same mens rea as each other.]]

[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 in committing the crime.]

Ladies and gentlemen, I would now like to talk with you about the specific offenses charged in this case.

Count One: Assaulting, Resisting, or Impeding Certain Officers Using a Deadly or Dangerous Weapon 18 U.S.C. § 111(a)(1), (b))

Count One of the Indictment charges the defendant with forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with an officer and employee of the United States, and any person assisting such an officer and employee, while the officer is engaged in the performance of his official duties, while using a deadly or dangerous weapon, which is a violation of federal law.

I am going to instruct you on this charge and also on the lesser included offense of assaulting, resisting, opposing or impeding certain officers. After I give you the elements of these crimes, I will tell you in what order you should consider them.

Elements of greater offense

In order to find the defendant guilty of assaulting, resisting, opposing or impeding certain officers using a deadly or dangerous weapon, you must find the following elements beyond a reasonable doubt:

1. First, the defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with Officer N.R., an officer from the Metropolitan Police Department.
2. Second, the defendant did such acts forcibly.
3. Third, the defendant did such acts voluntarily and intentionally.
4. Fourth, the person assaulted, resisted, opposed, impeded, intimidated, or interfered with was an officer or an employee of the United States who was then engaged in the performance of his official duties, or any person assisting such an officer or employee in the performance of that officer's duties.

5. Fifth, the defendant made physical contact with the officer or employee of the United States who was then engaged in the performance of his official duties, or any person assisting such an officer or employee in the performance of that officer's duties, or acted with the intent to commit another felony.
6. Sixth, in doing such acts, the defendant used a deadly or dangerous weapon.

Elements of lesser included offense

In order to find the defendant guilty of assaulting, resisting, opposing or impeding certain officers, you must find the following elements beyond a reasonable doubt:

1. First, the defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with Officer N.R., an officer from the Metropolitan Police Department.
2. Second, the defendant did such acts forcibly.
3. Third, the defendant did such acts intentionally.
4. Fourth, the person assaulted, resisted, opposed, impeded, intimidated, or interfered with was an officer or an employee of the United States who was then engaged in the performance of his official duties, or any person assisting such an officer or employee in the performance of that officer's duties.
5. Fifth, the defendant made physical contact with the officer or employee of the United States who was then engaged in the performance of his official duties, or any person assisting such an officer or employee in the performance of that officer's duties, or acted with the intent to commit another felony.

Order of considering the charges

Now I am going to instruct you as to the order in which you should consider these offenses. You should consider first whether Mr. Webster is guilty of assaulting, resisting, opposing or

impeding certain officers using a deadly or dangerous weapon. If you find Mr. Webster guilty, do not go on to the other charge. If you find Mr. Webster not guilty, go on to consider assaulting, resisting, opposing or impeding certain officers. And if, after making all reasonable efforts to reach a verdict on assaulting, resisting, opposing or impeding certain officers using a deadly or dangerous weapon, you are not able to do so, you are allowed to consider assaulting, resisting, opposing or impeding certain officers.

This order will be reflected in the verdict form that I will be giving you.

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.

You are instructed that Officer Noah Rathbun 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.[1] 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.[2]

Count Two: Obstructing Officers During a Civil disorder (18 U.S.C. § 231(a)(3))

Count Two of the Indictment charges the defendant 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.

You may find Mr. Webster guilty of Count Two if you determine that Mr. Webster either committed *or* attempted to commit the acts described in the above paragraph. You need not conclude that he both committed *and* attempted to commit the acts described in the above paragraph. I will instruct you as to both the commission of the offense and the attempted commission of the offense below. You may consider these two alternatives in any order you wish.

Elements

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

[1] *United States v. Arrington*, 309 F.3d 40, 45 (D.C. Cir. 2002).
[2] 2 FED. JURY PRAC. & INSTR. § 24:07 (6th ed.).

1. First, 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. Second, at the time of the defendant'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.
3. 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.

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

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.

The term "commerce" means commerce or travel between one state, including the District of Columbia, and any other state, including the District of Columbia. It also means commerce wholly within the District of Columbia.

The term "federally protected function" means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof.

The term "department" includes executive departments. The Department of Homeland Security, which includes the United States Secret Service, is an executive department.

The term "agency" includes any department, independent establishment, commission, administration, authority, board, or bureau of the United States.

The term "law enforcement officer" means any officer or employee of the United States or the District of Columbia while engaged in the enforcement or prosecution of any criminal laws of the United States or the District of Columbia.

For the U.S. Capitol Police and Metropolitan Police Department on January 6, 2021, the term "official duties," means policing the U.S. Capitol Building and Grounds, and enforcing federal law and D.C. law in those areas.

Attempt

In Count Two, the defendant is charged with attempt to commit the crime of obstructing officers during a civil disorder. An attempt to obstruct officers during a civil disorder is a federal crime even if the defendant did not actually complete the crime of obstructing officers during a civil disorder.

In order to find the defendant guilty of attempt to commit the crime of obstructing officers during a civil disorder, you must find that the government proved beyond a reasonable doubt each of the following elements:

1. First, that the defendant intended to commit the crime of obstructing officers during a civil disorder, as I have defined that offense above.

2. Second, that the defendant took a substantial step toward committing obstructing officers during a civil disorder, which strongly corroborates or confirms that the defendant 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 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 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 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.

Count III: Entering or Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (18 U.S.C. § 1752(a)(1), (b)(1)(A))

Count Three of the Indictment charges the defendant with entering or remaining in a restricted building or grounds while using or carrying a deadly or dangerous weapon, which is a violation of federal law.

I am going to instruct you on this charge and also on the lesser included offense of entering or remaining in a restricted building or grounds. After I give you the elements of these crimes, I will tell you in what order you should consider them.

Elements of greater offense

In order to find the defendant guilty of entering or remaining in a restricted building or grounds while using or carrying a deadly or dangerous weapon, you must find that the government proved each of the following elements beyond a reasonable doubt:

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

Elements of lesser included offense

In order to find the defendant guilty of entering or remaining in a restricted building or grounds, you must find that the government proved beyond a reasonable doubt elements 1 and 2 of the greater offense, listed immediately above.

Order of Considering the Charges

As with Count I, you should consider first whether Mr. Webster is guilty of the greater offense. If you find him not guilty of the greater offense, or if you cannot reach a verdict through reasonable efforts on the greater offense, you may go on to consider the lesser offense.

This order will be reflected in the verdict form that I will be giving you.

Definitions

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

The term "knowingly" has the same meaning described in the instructions for Count Two. The term "deadly or dangerous weapon" has the same meaning described in the instructions for Count One.

Count Four: Disorderly or Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (18 U.S.C. § 1752(a)(2), (b)(1)(A))

Count Four of the Indictment charges the defendant with disorderly or disruptive conduct in a restricted building or grounds while using or carrying a deadly or dangerous weapon, which is a violation of federal law.

I am going to instruct you on this charge and also on the lesser included offense of disorderly or disruptive conduct in a restricted building or grounds. After I give you the elements of these crimes, I will tell you in what order you should consider them.

Elements

In order to find the defendant guilty of disorderly or disruptive conduct in a restricted building or grounds while using or carrying a deadly or dangerous weapon, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds.
2. Second, that the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.

3. Third, that the defendant'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 the defendant used or carried a deadly or dangerous weapon during and in relation to the offense.

Elements of lesser included offense

In order to find the defendant guilty of disorderly or disruptive conduct in a restricted building or grounds, you must find that the government proved beyond a reasonable doubt elements 1 through 3 of the greater offense, listed immediately above.

Order of considering the charges

As with Counts I and III, you should consider first whether Mr. Webster is guilty of the greater offense. If you find him not guilty of the greater offense, or if you cannot reach a verdict through reasonable efforts on the greater offense, you may go on to consider the lesser offense.

This order will be reflected in the verdict form that I will be giving you.

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.

The terms "restricted building or grounds," "knowingly," and "deadly or dangerous weapon" have the same meanings described in the instructions above.

Count V: Engaging in Physical Violence in a Restricted Building or Grounds wit a Deadly or Dangerous Weapon (18 U.S.C. § 1752(a)(4), (b)(1)(A))

Count Five of the Indictment charges the defendant with knowingly engaging in any act of physical violence against a person or property in a restricted building or grounds while using or carrying a deadly or dangerous weapon, which is a violation of federal law.

I am going to instruct you on this charge and also on the lesser included offense of knowingly engaging in any act of physical violence against a person or property in a restricted building or grounds. After I give you the elements of these crimes, I will tell you in what order you should consider them.

Elements

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, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, 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.
2. Second, that the defendant did so knowingly.
3. Third, that the defendant used or carried a deadly or dangerous weapon during and in relation to the offense.

Elements of lesser included offense

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, you must find that the government proved beyond a reasonable doubt elements 1 and 2 of the greater offense, listed immediately above.

Order of considering the charges

As with Counts I, III, and IV, you should consider first whether Mr. Webster is guilty of the greater offense. If you find him not guilty of the greater offense, or if you cannot reach a verdict through reasonable efforts on the greater offense, you may go on to consider the lesser offense.

This order will be reflected in the verdict form that I will be giving you.

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.

The terms "restricted building and grounds," "knowingly," and "deadly or dangerous weapon" have the same meanings described in the instructions above.

Count VI: Engaging in an Act of Physical Violence in the Capitol Grounds or Capitol Buildings (40 U.S.C. § 5104(e)(2)(F))

Count Six of the Indictment charges the defendant with engaging in an act of physical violence in the United States Capitol Grounds or any of the Capitol Buildings, which is a violation of federal law.

Elements

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

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

Definitions

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.

The terms "United States Capitol Grounds," "willfully," and "knowingly," have the same meanings described in the instructions above.

Multiple Counts

Each count of the indictment charges a separate offense. You should consider each offense, and the evidence which applies to it, separately, and you should return separate verdicts as to each count unless I instruct you to do otherwise. The fact that you may find the defendant guilty or not guilty on any one count of the indictment should not influence your verdict with respect to any other count of the indictment.

~~[At any time during your deliberations you may return your verdict of guilty or not guilty with respect to any count.]~~

Character of Defendant

Mr. Webster has introduced testimony that [he has a good reputation in the community for [character trait] [in the witness's opinion, [name of defendant] is a [character trait] person]. Such evidence may indicate to you that it is unlikely that a [character trait] person would commit the crime charged or it may not. You may consider this evidence along with other evidence in the case [including evidence that contradicts Mr. Webster's character evidence] and give it as much weight as you think it deserves.

Notwithstanding the evidence of character, if, after weighing all the evidence, you are convinced beyond a reasonable doubt that Mr. Webster is guilty of the crime charged, it is your

duty to find him or her guilty. On the other hand, evidence of good character alone may create a reasonable doubt as to a defendant's guilt, although without it the other evidence would be convincing.

Evaluation of Prior Inconsistent Statement of a Witness

~~[*When more than one of the following Parts is being given, the court should give the following paragraph first*:~~

~~The law treats prior inconsistent statements differently depending on the [nature of the statements and the] circumstances in which they were made. I will now explain how you should evaluate those statements.]~~

_____You have heard evidence that Officer Rathbun made a statement on an earlier occasion and that this statement may be inconsistent with his testimony here at trial. It is for you to decide whether the witness made such a statement and whether in fact it was inconsistent with the witness's testimony here. If you find such an inconsistency, you may consider the earlier statement in judging the credibility of the witness, but you may not consider it as evidence that what was said in the earlier statement was true.

~~PART B (for use when prior statements made under oath are introduced):~~

~~You [also] have heard evidence that [name of witness] made an earlier statement under oath, subject to the penalty of perjury at [a prior proceeding] [the grand jury] [a deposition] and that this statement may be inconsistent with [his] [her] testimony here at trial. If you find that the earlier statement is inconsistent with the witness's testimony here in court, you may consider this inconsistency in judging the credibility of the witness. You also may consider this earlier statement as evidence that what was said in the earlier statement was true.~~

~~**Evaluation of Prior Consistent Statement of a Witness**~~

~~You have heard evidence that [name of witness] [name of defendant] made a statement on an earlier occasion and that this statement may be consistent with his/her testimony here at trial. This earlier statement was brought to your attention [both] to help you in evaluating the credibility of the witness [and as evidence in this case]. If you find that the earlier statement is consistent with the witness's present testimony in court, you may consider this consistency [both] in judging the credibility of the witness here at trial [but you may not use it] [and] as proof that what was said in the earlier statement was true.~~

~~It is for you to decide whether a witness made a statement on an earlier occasion and whether it was in fact consistent with the witness's in-court testimony here.~~

Statements of the Defendant – Substantive Evidence [*To Be Determined]

You have heard evidence that Mr. Webster made statements to the police about the crime charged. [You should consider all the circumstances, [including whether the police recorded the statement], in deciding whether he made the statement.] [If you find that he did make the statement,] [Y]ou must decide how much weight to give the statement. For example, you may consider whether he made the statement voluntarily and understood what he was saying. You may consider whether he was forced, threatened, or pressured, either physically or psychologically, and whether he was promised any reward or benefit for making the statement. You may consider all the conversations between him/her and the police. You may consider whether the police warned him of his rights. You may consider where and when the statement was given; the duration of any questioning; who was present during some or all of the questioning of the defendant; [and whether the police recorded some or all of the conversations]. You may consider the age, education, experience, intelligence and the physical and mental condition of the defendant.

Self-Defense

Every person has the right to use a reasonable amount of force in self-defense if (1) he has a reasonable belief that the use of force was necessary to defend himself or another against the immediate use of unlawful force and (2) the use of no more force than was reasonably necessary in the circumstances.[4]

If you find that Mr. Webster actually and reasonably believed that he was in imminent danger of [death or serious] bodily harm and that Mr. Webster had reasonable grounds for that belief, then Mr. Webster has a right to self-defense even if Mr. Webster also had other possible motives, such as feelings of anger toward the Officer Rathbun or a desire for revenge. A defendant's other possible motives do not defeat an otherwise valid claim of self-defense but can be considered in evaluating whether the Mr. Webster actually and reasonably believed that he was in imminent danger of [death or serious] bodily harm.

Self-defense is a defense to the charges in Counts I, II, III, IV, V, and VI. Mr. Webster is not required to prove that he acted in self-defense. Where evidence of self-defense is present, the government must prove beyond a reasonable doubt that Mr. Webster did not act in self-defense. If the government has failed to do so, you must find Mr. Webster not guilty.

Self-Defense – Amount of Force Permissible

A person may use a reasonable amount of force in self-defense. A person may use an amount of force which, at the time of the incident, he actually and reasonably believes is necessary to protect himself from imminent bodily harm.

Even if the other person is the aggressor and Mr. Webster is justified in using force in self-defense, he may not use any greater force than he actually and reasonably believes to be necessary

[4] *United States v. Urena*, 659 F.3d 903, 906–07 (9th Cir. 2011) (quoting United States v. Biggs, 441 F.3d 1069, 1071 (9th Cir. 2006)).

under the circumstances [to prevent the harm s/he reasonably believes is intended] [to save his/her life or avoid serious bodily harm].

In deciding whether Mr. Webster used excessive force in defending himself, you may consider all the circumstances under which he acted. A person acting in the heat of passion caused by an assault does not necessarily lose his claim of self-defense by using greater force than would seem necessary to a calm mind. In the heat of passion, a person may actually and reasonably believe something that seems unreasonable to a calm mind.

Self-Defense – Amount of Force Permissible Where Appearances Are False, Redbook 9.502(A)

If Mr. Webster actually and reasonably believes it is necessary to use force to prevent imminent bodily harm to himself, he may use a reasonable amount of force even though afterwards it turns out that the appearances were false.

Self-Defense – Where Defendant Might Have Been the Aggressor, Redbook 9.504(A)

If you find that Mr. Webster was the aggressor ~~[or] [provoked imminent danger of bodily harm upon himself]~~, he cannot rely upon the right of self-defense to justify his use of force.

~~[One who knowingly and unnecessarily places himself in a position in conscious disregard of a substantial risk that his presence will provoke a violent confrontation cannot claim self-defense.]~~

Mere words without more by Mr. Webster, however, do not constitute aggression ~~[or] [provocation]~~.

~~[A finding that the defendant knowingly and unnecessarily placed himself in a position in conscious disregard of a substantial risk that his presence would provoke a violent confrontation does not negate the government's burden to prove his specific intent to [describe specific intent required for charged offense(s)] beyond a reasonable doubt.]~~

~~[If you find, however, that, after the confrontation began, Mr. Webster became subject to an unreasonable amount of force in [repelling his aggression] [responding to his provocation] then Mr. Webster may use a reasonable amount of responsive force in self-defense.]~~

Before I excuse you to deliberate, I want to discuss a few final matters with you:

Selection of Foreperson

When you return to the jury room, you should first select a foreperson to preside over your deliberations and to be your spokesperson here in court. There are no specific rules regarding how you should select a foreperson. That is up to you. However, as you go about the task, be mindful of your mission—to reach a fair and just verdict based on the evidence. Consider selecting a foreperson who will be able to facilitate your discussions, who can help you organize the evidence, who will encourage civility and mutual respect among all of you, who will invite each juror to speak up regarding his or her views about the evidence, and who will promote a full and fair consideration of that evidence.

Cautionary Instruction on Communication and Research

I would like to remind you that, in some cases, there may be reports in the newspaper or on the radio, internet, or television concerning this case. If there should be such media coverage in this case, you may be tempted to read, listen to, or watch it. You must not read, listen to, or watch such reports because you must decide this case solely on the evidence presented in this courtroom. If any publicity about this trial inadvertently comes to your attention, do not discuss it with other jurors or anyone else. Just let me or my clerk know as soon after it happens as you can, and I will then briefly discuss it with you.

As you retire to the jury room to deliberate, I also wish to remind you of an instruction I gave you at the beginning of the trial. During deliberations, you may not communicate with anyone not on the jury about this case. This includes any electronic communication such as email or text or any blogging about the case. In addition, you may not conduct any independent

investigation during deliberations. This means you may not conduct any research in person or electronically via the internet or in another way.

Communications Between Court and Jury During Jury's Deliberations

If it becomes necessary during your deliberations to communicate with me, you may send a note by deputy, signed by your foreperson or by one or more members of the jury. No member of the jury should try to communicate with me except by such a signed note, and I will never communicate with any member of the jury on any matter concerning the merits of this case, except in writing or orally here in open court.

Bear in mind also that you are never, under any circumstances, to reveal to any person—not the clerk or me—how jurors are voting until after you have reached a unanimous verdict. This means that you should never tell me, in writing or in open court, how the jury is divided on any matter—for example, 6-6 or 11-1, or in any other fashion—or whether the vote favors the government, the defendant, or is on any other issue in the case.

Jurors' Duty to Deliberate

It is your duty as jurors to consult with one another and to deliberate expecting to reach an agreement. You must decide the case for yourself but you should do so only after thoroughly discussing it with your fellow jurors. You should not hesitate to change an opinion when convinced that it is wrong. You should not be influenced to vote in any way on any question just because another juror favors a particular decision or holds an opinion different from your own. You should reach an agreement only if you can do so in good conscience. In other words, you should not surrender your honest beliefs about the effect or weight of evidence merely to return a verdict or solely because of other jurors' opinions.

Attitude and Conduct of Jurors in Deliberations

The attitude and conduct of jurors at the beginning of their deliberations are matters of considerable importance. It may not be useful for a juror, upon entering the jury room, to voice a strong expression of an opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may cause that juror to hesitate to back away from an announced position after a discussion of the case. Furthermore, many juries find it useful to avoid an initial vote upon retiring to the jury room. Calmly reviewing and discussing the case at the beginning of deliberations is often a more useful way to proceed. Remember that you are not partisans or advocates in this matter, but you are judges of the facts.

Unanimity of Verdict

A verdict must represent the considered judgment of each juror, and in order to return a verdict, each juror must agree on the verdict. In other words, your verdicts must be unanimous.

Possible Punishment Not Relevant

The question of possible punishment of the defendant in the event of a conviction is not a concern of yours and should not enter into or influence your deliberations in any way. The duty of imposing sentence in the event of a conviction rests exclusively with me. Your verdict should be based solely on the evidence in this case, and you should not consider the matter of punishment at all.

Exhibits During Deliberations

I will be sending into the jury room with you the exhibits that have been admitted into evidence, [except for the ~~[weapon(s)] [ammunition] [unsealed drugs] [other contraband]~~ [recordings only partially admitted]]. You may examine any or all of them as you consider your

verdicts. Please keep in mind that exhibits that were only marked for identification but were not admitted into evidence will not be given to you to examine or consider in reaching your verdict.

If you wish to see or hear portions of the video or audio recordings that I have admitted into evidence, you will have those exhibits available to you for deliberation.

Furnishing the Jury with a Copy of the Instructions

I will provide you with a copy of my instructions. During your deliberations, you may, if you want, refer to these instructions. While you may refer to any particular portion of the instructions, you are to consider the instructions as a whole and you may not follow some and ignore others. If you have any questions about the instructions, you should feel free to send me a note. Please return your instructions to me when your verdict is rendered.

Verdict Form Explanation

You will be provided with a Verdict Form for use when you have concluded your deliberations. The form is not evidence in this case, and nothing in it should be taken to suggest or convey any opinion by me as to what the verdict should be. Nothing in the form replaces the instructions of law I have already given you, and nothing in it replaces or modifies the instructions about the elements which the government must prove beyond a reasonable doubt. The form is meant only to assist you in recording your verdict.

Delivering the Verdict

When you have reached your verdict, just send me a note telling me you have reached your verdict, and have your foreperson sign the note. Do not tell me what your verdict is. The foreperson should fill out and sign the verdict form that will be provided. We will then call you into the courtroom and ask you your verdict in open court.

Excusing Alternate Jurors

The last thing I must do before you begin your deliberations is to excuse the alternate jurors. As I told you before, the selection of alternates was an entirely random process; it's nothing personal. We selected two seats to be the alternate seats before any of you entered the courtroom. Since the rest of you have remained healthy and attentive, I can now excuse the jurors in seats 5 and 7.

Before you leave, I am going to ask you to tear out a page from your notebook, and to write down your name and daytime phone number and hand this to the clerk. I do this because it is possible, though unlikely, that we will need to summon you back to rejoin the jury in case something happens to a regular juror. Since that possibility exists, I am also going to instruct you not to discuss the case with anyone until we call you. My earlier instruction on use of the Internet still applies; do not research this case or communicate about it on the Internet. In all likelihood, we will be calling you to tell you there has been a verdict and you are now free to discuss the case; there is, however, the small chance that we will need to bring you back on to the jury. Thank you very much for your service, and please report back to the jury office to turn in your badge on your way out.

You may now retire to begin your deliberations.