

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

Case No.: 1:21-CR-312-JEB

UNITED STATES OF AMERICA,

v.

BRADLEY BENNETT

Defendant.

Defense Proposed Jury Instructions

ELEMENTS OF THE CHARGED OFFENSES

I will now instruct you on the specific offenses charged in the indictment. The indictment in this case contains six counts:

1. Count 1: Obstruction of an Official Proceeding, and Aiding and Abetting, in violation of 18 U.S.C. § 1512(c)(2),
2. Count 2: Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1),
3. Count 3: Disorderly and Disruptive Conduct in a Restricted Building, in violation of 18 U.S.C. § 1752(a)(2),
4. Count 4: Entering and Remaining in the Gallery of Congress, in violation of 40 U.S.C. § 5104(e)(2)(B)
5. Count 5: Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C.

§5104(e)(2)(D), and

6. Count 6: Parading, Demonstrating or Picketing in a Capitol Building, in violation of 40 U.S.C. §5104(e)(2)(G).

Count 1¹ Elements of the Offense 18 U.S.C. §1512(c)(2)
(Obstruction of an Official Proceeding)

For you to find the defendant guilty of the crime charged in Count One of the Indictment, you must find that the government has proven each of the following elements beyond a reasonable doubt:

1. First, that the defendant attempted to and did obstruct or impede any official proceeding.
2. Second, the defendant intended to obstruct or impede the official proceeding;
3. Third, the defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding, and;
4. Fourth, that the defendant acted corruptly.

Definitions

The term “official proceeding” is a formal hearing before a tribunal.² 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

¹ See *United States v. Guy Reffitt*, 21-cr-32 (DLF), Final Jury Instructions, ECF No. 119 at 25; *United States v. Thomas Robertson* 21-cr-34 (CRC), Final Jury Instructions, ECF No. 86 at 12-13.

² *United States v. Ermoian*, 752 F.3d 1165, 1172 (9th Cir. 2013). Defense counsel acknowledges that this meaning was not accepted by several judges in this court in opinions issued in response to motions to dismiss this charge. However, in *United States v. Sandlin*, 21-cr-088 (DLF), ECF No. 63 at 7, the court did agree that “official proceeding” is one that must be akin to a formal hearing.

reasonable doubt that the official proceeding was reasonably foreseeable to the defendant.

A person acts “knowingly” if he realizes what he is doing and is aware of the nature of the 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.

An act is done “corruptly” if it is done voluntarily, intentionally, and dishonestly, either to bring about an unlawful result or a lawful result by some unlawful method, with a hope or expectation or other financial gain or to obtain an unlawful benefit for himself or an associate.³ “Corruptly” is wrongful, immoral, depraved, or evil.⁴ ‘corruptly’ means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.⁵ The defendant must also act with “consciousness of wrongdoing,” which means 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 addition, the First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government for grievances. Accordingly, an

³*Reffitt*, ECF 119 at 25; *See also United States v. Aguilar*, 515 U.S. 593, 616-17 (1995) (Scalia, J. concurring); *See also United States v. Montgomery*, 578 F. Supp. 3d 54, 83 (D.D.C. 2021) (“The predominant view among the courts of appeals is that the ‘corruptly’ standard requires at least an ‘improper purpose’ and an ‘intent to obstruct.’”); *See also United States v. Friske*, 640 F.3d 1288 (11th Cir. 2011) (a violation of §1512(c)(2) requires proof of engaging in conduct “knowingly and dishonestly with the specific intent to subvert, impede or obstruct [the proceeding].”).

⁴*US v. Fischer*, 64 F.4th 329, 339 (2023) citing *Arthur Anderson LLP v. US*, 54 U.S. 696, 705, 125 S. Ct. 2129, 2136, 191 L.Ed.2d 1008 (2005)

⁵ *US v. Caldwell*, 581 F.Supp.3d 1, 17 (2021)

individual who does no more than lawfully exercise those rights does not act corruptly.⁶

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.⁷

If you find Mr. Bennett guilty of any of the other charges in the indictment, that finding alone is not sufficient to determine that he acted corruptly for purposes of Count 1, Obstruction of an Official Proceeding. The “unlawful purpose” and corrupt intent must be directly tied to the official proceeding.

The word “attempt” in the first element means that the defendant had the intent to do the act and took a substantial step towards completing it. In connection with that, it would not be enough to show merely that the defendant 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. Nor would it be sufficient if the defendant simply made plans to commit the offense; the evidence must show that the defendant took clear steps to carry out his intent. If you find either that defendant knowingly committed the act or attempted to commit it, the first element is satisfied.⁸

Aiding and Abetting⁹

A person may be guilty of an offense because he personally committed the offense himself or because 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

⁶ US v. Thomas, 21-CR-552 (DLF) Jury Instructions (D.E. 190)

⁷ *Reffitt*, ECF No. 119 at 25-26.

⁸ *United States v. Riley Williams*, 21-cr-618 (ABJ), Final Jury Instructions, ECF No. 122 at 29.

⁹ 18 U.S.C. § 2(a); Third Circuit Model Jury Instructions 7.02; *See also United States v. Riley Williams*, 21-cr-618 (ABJ), Final Jury Instructions, ECF No. 122 at 29-31; *United States v. Hale-Cusanelli*, 21-cr-37 (TNM), Final Jury Instructions, ECF No. 84 at 29-30.

person whom the accomplice aids and abets is known as the principal.

In this case, the government alleged that Mr. Bennett aided and abetted others in committing Obstruction of an Official Proceeding as charged in the indictment. In order to find Mr. Bennett guilty of obstruction of an official proceeding because he aided and abetted the commission of this offense, you must find that the government proved beyond a reasonable doubt each of the following four requirements:

First: that others committed the offense charged by committed each of the elements of the offense charged, as I have explained those elements to you in these instructions.

Second: that Mr. Bennett had advance knowledge that the offense charged was going to be committed or was being committed by others.¹⁰

Third: That Mr. Bennett knowingly did some act for the purpose of aiding, assisting, facilitating, or encouraging others in committing the specific offense charged and with the intent that others commit that specific offense;

Fourth: That Mr. Bennett performed an act in furtherance of the offense charged.

In deciding whether Mr. Bennett had the required knowledge and intent to satisfy the third requirement for aiding and abetting, you may consider both direct and circumstantial evidence including Mr. Bennett's words and actions and other facts and circumstances. However, evidence that Mr. Bennett 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 him guilty as an aider and abetter. If the evidence shows that Mr. Bennett knew the offense was being committed or was about to be committed, but does not also prove beyond a reasonable doubt that it was Mr. Bennett's intent and purpose to aid, assist, encourage, facilitate or otherwise associate himself with the offense, you may not find him guilty of the offense as an aider and abetter. The government must prove beyond a reasonable

¹⁰ See *Rosemond v. United States*, 572 U.S. 65, 81-82 (2014) ("The District Court erred...because it did not explain that Rosemond needed advance knowledge of a firearm's presence.").

doubt that Mr. Bennett in some way participated in the offense committed by others as something Mr. Bennett wished to bring about and to make succeed.

**Count 2: Entering and Remaining in a Restricted Building or Grounds, in
violation of 18 U.S.C. § 1752(a)(1)**

On or about January 6, 2021, in the District of Columbia, **Bradley Bennett**, did unlawfully and knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was temporarily visiting, without lawful authority to do so, in violation of 18 U.S.C. § 1752(a)(1).

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

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

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.

**Count 3: Disorderly and Disruptive Conduct in a Restricted Building, in violation
of 18 U.S.C. §1752(a)(2)**

Charges that Bradley Bennett did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its

grounds, where the Vice President was temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions, in violation of 18 U.S.C. § 1752(a)(2).

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. The defendant engaged in disorderly or disruptive conduct in any restricted building or grounds;
2. He did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions; and
3. His conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

The term “restricted building or grounds” has the same meaning as defined in the instructions for Count Two.

“Disorderly conduct” occurs when a person acts in such a manner as to cause another person to be in reasonable fear that a person or property in a person’s immediate possession is likely to be harmed or taken, uses words likely to produce violence on the part of others, 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.

Count 4: Entering and Remaining in the Gallery of Congress, in violation of 40

U.S.C. §5104(e)(2)(B)

Charges Mr. Bennett with entering or remaining in the Gallery of Congress.

Elements

To find Mr. Bennett guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that Mr. Bennett entered or remained in the Gallery of either house of Congress without lawful authorization to do so; and

2. Second, that he acted willfully and knowingly.

Definitions

A person acts “knowingly” if he realizes what she is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether Mr. Bennett knowingly entered or remained in the Gallery of Congress, you may consider all of the evidence, including what Mr. Bennett did, said or perceived.

A person who enters or remains in the Gallery of Congress with a good faith belief that he is entering or remaining with lawful authority is not guilty of this crime. Thus, you cannot find Mr. Bennett guilty of this count 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 Gallery of Congress.

Count 5: Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C.

§5104(e)(2)(D),

Charges that: On or about January 6, 2021, within the District of Columbia, Bradley Bennett, willfully and knowingly engaged in disorderly and disruptive conduct within the United States Capitol Grounds and in any of the Capitol Buildings with the intent to impede, disrupt, and disturb the orderly conduct of a session of Congress and either House of Congress, and the orderly conduct in that building of a hearing before or any deliberation of, a committee of Congress or either House of Congress, in violation of 40 U.S.C. § 5104(e)(2)(D).

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. The defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings;

2. He did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress; and
3. He acted willfully and knowingly.

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

The terms “disorderly conduct” and “disruptive conduct” have the same meanings as defined in the instructions for Count Three.

A defendant acts “willfully” if he knew his conduct was unlawful and intended to do something that the law forbids. That is, to find that defendant acted “willfully,” you must find that the evidence proved beyond a reasonable doubt that the defendant acted with a purpose to disobey or disregard the law. “Willfully” does not, however, require proof that the defendant had any evil motive or bad purpose other than the purpose to disobey or disregard the law, nor does it require proof that the defendant be aware of the specific law or rule that his conduct may be violating. I instruct you that, for purposes of Count Four, “the orderly conduct of a session of Congress or either House of Congress” includes all the actions of the Joint Session of Congress convened on January 6, 2021, to certify the Electoral College vote from the 2020 presidential election.

**Count 6: Parading, Demonstrating or Picketing in a Capitol Building, in violation
of 40 U.S.C. §5104(e)(2)(G).**

Charges that: On or about January 6, 2021, within the District of Columbia, Bradley Bennett, willfully and knowingly paraded, demonstrated, and picketed in any United States Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

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. The defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings; and
2. He acted willfully and knowingly.

The terms “parade” and “picket” have their ordinary meanings. The term “demonstrate” refers to conduct that would disrupt the orderly business of Congress by, for example, impeding or obstructing passageways, hearings, or meetings, but does not include activities such as quiet praying.

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

The term “willfully” has the same meaning as defined in the instructions above.

/s/ Leza Lee Driscoll
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This the 6th day of October, 2023.

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