

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 v. : CASE NO. 21-cr-263 (TSC)
 :
 RUSSELL DEAN ALFORD :

JOINT PROPOSED JURY INSTRUCTIONS

Pursuant to this Honorable Court’s Pretrial Scheduling Order (Doc. 48), the parties jointly submit (1) proposed jury instructions that the parties jointly request, (2) instructions proposed by Mr. Alford to which the government objects, and (3) each party’s version of the offense instructions for each of the four counts in the Information.

I. Jointly requested jury instructions.

The parties jointly request the following instructions from the District of Columbia Redbook.

1. Note Taking 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. Information Not Evidence, Redbook 2.106, [**adapted**]¹
9. Burden of Proof, Redbook 2.107
10. Reasonable Doubt, Redbook 2.108
11. Direct and Circumstantial Evidence, Redbook 2.109

¹ The parties agree that the word “Information” be substituted for the word “Indictment” in the Redbook charge.

12. Nature of Charges Not To Be Considered, Redbook 2.110
13. Number of Witnesses, Redbook 2.111
14. Inadmissible and Stricken Evidence, Redbook 2.112, *as applicable*
15. Credibility of Witnesses, Redbook 2.200
16. Police Officer's or Law Enforcement Official's Testimony, Redbook 2.207 [**adapted**]²
17. Right of Defendant Not to Testify, Redbook 2.208 *or* Defendant as Witness, Redbook 2.209, *as applicable*
18. Evaluation of Prior Inconsistent Statement of a Witness, Redbook 2.216, *as applicable*
19. Evaluation of Prior Consistent Statement of a Witness, Redbook 2.217, *as applicable*
20. Proof of State of Mind, Redbook 3.101
21. Multiple Counts – One Defendant, Redbook 2.402
22. Unanimity—General, Redbook 2.405
23. Verdict Form Explanation, Redbook 2.407
24. Redacted Documents and Tapes, Redbook 2.500, *as applicable*
25. Exhibits During Deliberations, Redbook 2.501
26. Selection of Foreperson, Redbook 2.502
27. Communication Between Court and Jury During Jury's Deliberations, Redbook 2.509
28. Attitude and Conduct of Jurors in Deliberations, Redbook 2.510
29. Excusing Alternate Jurors, Redbook 2.511

² The parties agree that the instruction, as adapted to include "law enforcement official" as well as "police officer," should read: "A police officer or law enforcement official's testimony should be evaluated by you just as any other evidence in the case. In evaluating the police officer or law enforcement official'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 is a police officer or law enforcement official."

II. Instructions requested by Mr. Alford.

Mr. Alford requests the following instructions. The government opposes them, except as otherwise noted. Mr. Alford reserves the right to request a Theory of the Case instruction at a later date. *See* Redbook 9.100.

a. **IMPROPER CONSIDERATIONS: POLITICAL AND SOCIAL VIEWS, GENERAL VIEWS OF THE EVENTS OF JAN. 6, 2021**³

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence.

It would be improper for you to consider, in reaching your decision as to whether the government sustained its burden of proof, any personal feelings you may have about the defendant's political or social views.

It would be equally improper for you to allow any feelings you might have about the events of January 6, 2021, or the crimes charged, to interfere with your decision-making process.

All persons are entitled to the presumption of innocence and the government has the burden of proof, as I will discuss in a moment.

To repeat, your verdict must be based exclusively upon the evidence or the lack of evidence in the case.

³ **Authority:** Adapted from "Instruction 2-11 Improper Considerations: Race, Religion, National Origin, Sex or Age," 1 Modern Federal Jury Instructions-Criminal P 2.01 (2022). *See also* *Irvin v. Dowd*, 366 U.S. 717, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961); *United States v. Bell*, 506 F.2d 207 (D.C. Cir. 1974); *Carter v. United States*, 427 F.2d 619 (D.C. Cir. 1970); *United States v. Kazin*, 559 F. App'x 32, 35 (2d Cir. 2014) (noting the district court's instruction to the jury that "[t]he defendant's not on trial for having extremist religious views or political views, and [that such evidence cannot] act as a substitute for proof beyond a reasonable doubt of the elements[.]")

b. ACCOUNTABILITY FOR CONDUCT OF ANOTHER⁴

You are about to be asked to decide whether or not the government has proven Mr. Alford guilty beyond a reasonable doubt. You are not being asked whether any other person has been proven guilty.

You may not infer that Mr. Alford is guilty merely from the fact that he was present at a time and place where others may have committed a crime.

You may not infer that Mr. Alford is guilty merely from the fact that he may have associated with others who may have committed a crime.

Your verdict should be based solely upon the evidence or lack of evidence as to Mr. Alford, in accordance with my instructions and without regard to whether the guilt of other people has, or has not, been proven.

⁴ **Authority:** Adapted from “Instruction 2-18: Jury To Consider Only This Defendant,” 1 Modern Federal Jury Instructions-Criminal P 2.01 (2022); Adapted from “Instruction 6-3 Impermissible To Infer Participation from Mere Presence,” 1 Modern Federal Jury Instructions-Criminal P 6.03 (2022) (cmt.) (“When the defendant is charged as a principal in a substantive crime—such as selling narcotics—and claims he did not do it even though he was present, the court should instruct the jury that it is impermissible to infer guilt from mere presence.”); “Instruction 6-4 Impermissible To Infer Participation from Association,” 1 Modern Federal Jury Instructions-Criminal P 6.03 (2022); *United States v. Farhane*, 634 F.3d 127 (2d Cir. 2011); *United States v. Cooley*, 1 F.3d 985 (10th Cir. 1993); *United States v. Gaskins*, 690 F.3d 569 (D.C. Cir. 2012).

c. SPECIALIZED OPINION TESTIMONY, Redbook 2.215 [**adapted**]⁵

Expert witnesses are sometimes permitted to testify because they have become expert in some art, science, profession, or calling.

In this case, you heard the testimony of Dr. Emily Ward, who testified about inattentional blindness. If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness who possesses knowledge, skill, experience, training, or education may testify concerning such matters. If you find that Dr. Ward's testimony is not based on sufficient education or experience, that the reasons supporting her testimony are not sound, or that the testimony is outweighed by other evidence, you may completely or partially disregard it. You should consider this evidence with all the other evidence in the case and give it as much weight as you think it fairly deserves.

⁵ The government will not oppose this instruction, as adapted here, in the event the Court denies its Motion in Limine to exclude Dr. Ward's testimony (Doc. 54), and she does in fact testify at trial.

d. CAUTIONARY INSTRUCTION ON PUBLICITY, COMMUNICATION, AND RESEARCH, Redbook 2.508 [adapted]⁶

I would like to remind you that some cases are covered by the media. 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.

The events at the United States Capitol on January 6, 2021, have been heavily covered by local, national, and international media; have been the subject of documentaries and congressional hearings; and continue to be discussed and analyzed in a variety of forums.

It would be improper for you to seek out such information, and you must not do so. 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, text, social media, 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. This prohibition extends to any and all internet communication or social media applications, including but not limited to: Facebook, Instagram, Snapchat, Whisper, Twitter, and YouTube.

⁶ The government opposes this instruction as adapted. The government does not oppose the unadapted, Redbook version.

e. DUTY TO DELIBERATE⁷

Your verdict, whether guilty or not guilty, must be unanimous—in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case.

⁷ **Authority:** Eleventh Circuit Pattern Jury Instructions Criminal, Basic Instruction No. B11 (2020).

f. “KNOWINGLY” AND “WILLFULLY” – DEFINITIONS⁸

The word “knowingly” means that an act was done voluntarily and deliberately and not because of a mistake or by accident.

The word “willfully” means that the act was done voluntarily and purposely with the specific intent to violate a known legal duty, that is, with the intent to do something the law forbids. Disagreement with the law or a belief that the law is wrong does not excuse willful conduct.

⁸ Excerpted in pertinent part from Eleventh Circuit Pattern Jury Instructions (Criminal), No. B91.B, “On or About; Knowingly; Intentional Violation of a Known Legal Duty” (rev. 2022).

III. Mr. Alford's proposed offense instructions.

Count 1: Entering or Remaining in a Restricted Building, 18 U.S.C. § 1752(a)(1)

Count One of the information charges Mr. Alford with unlawfully entering or remaining in a restricted building or grounds.

In order for you to find Mr. Alford guilty of Count One, the government must prove each of the following elements beyond a reasonable doubt:

- First, Mr. Alford knowingly entered or remained in a restricted building or grounds;
- Second, that Mr. Alford knew at the time that the building or grounds were restricted;
- Third, Mr. Alford entered or remained in the restricted building or grounds without lawful authority.

The government must prove beyond a reasonable doubt that Mr. Alford either knowingly entered, or knowingly remained, in a restricted building or grounds, without lawful authority. In order to convict on this count, you must unanimously agree on which of these things Mr. Alford did, if either.

“Knowingly” means that an act was done voluntarily and deliberately and not because of a mistake or by accident.

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 temporarily visiting.

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

A person who enters or remains in a restricted area with a good faith belief that he is entering or remaining with lawful authority is not guilty of this offense. Thus, you cannot find Mr.

Alford guilty of Count One 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.

Count 2: Disorderly and Disruptive Conduct in a Restricted Building or Grounds, 18 U.S.C. § 1752(a)(2)

Counts Two charges Mr. Alford with disorderly or disruptive conduct in a restricted building or grounds.

In order for you to find Mr. Alford guilty of Count Two, the government must prove each of the following elements beyond a reasonable doubt:

- First, that Mr. Alford knowingly engaged in disorderly or disruptive conduct.
- Second, that Mr. Alford's conduct occurred in an area that Mr. Alford knew to be a restricted building or grounds.
- Third, that Mr. Alford acted with the intent to impede, disrupt, or disturb the orderly conduct of government business or official functions.
- Fourth, that Mr. Alford's conduct actually impeded or disrupted the orderly conduct of government business or official functions.

The government must prove beyond a reasonable doubt that Mr. Alford engaged in either disorderly conduct or disruptive conduct. In order to convict on this count, you must unanimously agree on which of these things Mr. Alford did, if either.

In order to find that that Mr. Alford acted "with the intent to impede, disrupt, or disturb the orderly conduct of government business or official functions," you must determine that Mr. Alford had the purpose of causing that outcome, and consciously acted to cause that outcome.

"Knowingly" means that an act was done voluntarily and deliberately and not because of a mistake or by accident.

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 temporarily visiting.

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

“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 3: Engaging in Disorderly or Disruptive Conduct in a Capitol Building with the Intent to Impede, Disrupt, or Disturb the Orderly Conduct of a Session of Congress while in a Capitol building, 40 U.S.C. § 5104(e)(2)(D)

Count Three charges Mr. Alford with engaging in disorderly or disruptive conduct in a Capitol Building, with the intent to impede, disrupt, or disturb the orderly conduct of a congressional session.

In order to prove Mr. Alford guilty of Count Three, the government must prove each of the following elements beyond a reasonable doubt;

- First, that Mr. Alford was knowingly and willfully on the United States Capitol grounds or in a United States Capitol building;
- Second, that he willfully and knowingly engaged in disorderly or disruptive conduct;
- Third, that he acted with the intent to impede, disrupt or disturb the orderly conduct of a session of the United States Congress;

The government must prove beyond a reasonable doubt that Mr. Alford knowingly and willfully engaged in either disorderly conduct or disruptive conduct. In order to convict on this count, you must unanimously agree on which of these things Mr. Alford did, if either.

The word “willfully” means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted “willfully,” the person need not be aware of the specific law or rule that his conduct may be violating.⁹

“Knowingly” means that an act was done voluntarily and deliberately and not because of a mistake or by accident.

⁹ Eleventh Circuit Pattern Jury Instruction No. B91.B (March 2022).

“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.

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

Count 4: Parading, Demonstrating, or Picketing in a Capitol Building, 40 U.S.C. § 5104(e)(2)(G)¹⁰

Count Four charges Mr. Alford with parading, demonstrating, or picketing in a Capitol building.

In order to prove Mr. Alford guilty of Count Four, the government must prove each of the following elements beyond a reasonable doubt:

- First, that Mr. Alford was knowingly and willfully in a United States Capitol building;
- Second, Mr. Alford willfully and knowingly paraded, demonstrated, or picketed.

The government must prove beyond a reasonable doubt that Mr. Alford knowingly and willfully picketed, paraded, or demonstrated in a Capitol building. In order to convict on this count, you must unanimously agree on which of these things Mr. Alford did, if any.

The word “willfully” means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted “willfully,” the person need not be aware of the specific law or rule that his conduct may be violating.

“Knowingly” means that an act was done voluntarily and deliberately and not because of a mistake or by accident.

The terms “demonstrating,” “parade,” and “picket” have their ordinary meanings.

¹⁰ Adapted from D.C. Redbook Instruction No. 6.644, Unlawful Demonstrating in a Capitol Building.

IV. The government’s proposed offense instructions.

Count One

Entering and Remaining in a Restricted Building

Count One of the Information charges the defendant with entering or remaining in a restricted building or grounds, which is a violation of federal law.

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

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.

Count Two

Disorderly and Disruptive Conduct in a Restricted Building

Count Two of the Information charges the defendant with disorderly or disruptive conduct in a restricted building or grounds, which is a violation of federal law.

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, or in proximity to, any restricted building or grounds;
2. The defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions; and
3. 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.

The term "restricted building or grounds" and "knowingly" have the same meanings as I have already described to you in the instructions for Count One.

"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.

Count Three

Disorderly Conduct in a Capitol Building

Count Three of the Information charges the defendant with violent entry and disorderly and disruptive conduct in a Capitol Building, which is a violation of federal law.

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

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

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

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

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

I instruct you that, for purposes of Count Three, “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 for the 2020 presidential election.

Count Four

Parading, Demonstrating, or Picketing in a Capitol Building

Count Four of the Information charges the defendant with parading, demonstrating, or picketing in a Capitol Building, which is a violation of federal law.

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 U.S. Capitol Buildings; and
2. The defendant 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 terms “U.S. Capitol Buildings,” “knowingly,” and “willfully” have the same meanings as defined in the instructions for Counts One and Three.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2022, I electronically filed the foregoing via this Court's CM/ECF system, which will send notice of such filing to all counsel of record.

Respectfully submitted,

/s/ James T. Gibson

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