

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

UNITED STATES OF AMERICA :
 :
 v. : **Case No. 1:21-CR-00642(JDB)**
 :
 DARRELL NEELY, :
 :
 Defendant. :

DEFENDANT’S PROPOSED JURY INSTRUCTIONS

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby proposes the following preliminary and final jury instructions, subject to issues that arise during trial.

I. Preliminary Instructions

1. Preliminary Instruction Before Trial, Redbook 1.102
2. Stipulations, Redbook 1.103(A)
3. Notetaking by Jurors, Redbook 1.105

II. Final Instructions

1. Furnishing the Jury with a Copy of the Instructions, Redbook 2.100
2. Function of the Court, Redbook 2.101
3. Function of the Jury, Redbook 2.102
4. Jury’s Recollection Controls, Redbook 2.103
5. Evidence in the Case, Redbook 2.104
6. Statements of Counsel, Redbook 2.105
7. Indictment Not Evidence, Redbook 2.106
8. Burden of Proof, Redbook 2.107
9. Reasonable Doubt, Redbook 2.108

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11. Nature of Charges Not To Be Considered, Redbook 2.110
12. Number of Witnesses, Redbook 2.111
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14. Credibility of Witnesses, Redbook 2.200
15. Police Officer's Testimony, Redbook 2.207
16. Right of Defendant Not to Testify, Redbook 2.208 **[if applicable after trial]**
17. Character of Defendant, Redbook 2.213 **[if applicable after trial]**
18. Count One, Civil Disorder in violation of 18 U.S.C. § 231(a)(3) and 2.
19. Count Two, Theft of Government Property, in violation of 18 U.S.C. §231.
20. Count Three Entering or Remaining in a Restricted Building or Grounds in violation of 18 U.S.C. §1752(a)(1) **[see proposal below]**
21. Count Four, Disorderly or Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2) **[see proposal below]**
22. Count Five, Disorderly or Disruptive Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D) **[see proposal below]**
23. Count Six, Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G) **[see proposal below]**
24. Other Crimes Evidence, Redbook 2.321(B) **[see proposal below]**
25. Proof of State of Mind, Redbook 3.101
26. Multiple Counts – One Defendant, Redbook 2.402
27. Unanimity—General, Redbook 2.405
28. Verdict Form Explanation, Redbook 2.407

29. Redacted Documents and Tapes, Redbook 2.500
30. Exhibits During Deliberations, Redbook 2.501
31. Selection of Foreperson, Redbook 2.502
32. Possible Punishment Not Relevant, Redbook 2.505
33. Cautionary Instruction on Publicity, Communication, and Research, Redbook 2.508
34. Communication Between Court and Jury During Jury's Deliberations, Redbook 2.509
35. Excusing Alternate Jurors, Redbook 2.511
36. Limiting Instruction: Statements of Others (*United States v. Thompson*, Case No. 1:21-cr-00161-RBW, Docket Entry. 83 at 12 (D.D.C. Apr. 14, 2022)) [**if Applicable**] [**see proposal below**]
37. Proposed Defense Theory of the Case [**see proposal below**]
38. Proposed Limiting Instruction

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 Ms. Carpenter acted knowingly, you may consider all of the evidence, including what he did, said, or perceived.

CIVIL DISORDER

(18 U.S.C. §§ 231)

Count one of the indictment charges Mr. Neely with entering or remaining in a restricted building or grounds, 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 knowingly committed an act or attempted to commit an act with the intended purpose of obstructing, impeding, or interfering with a law enforcement officer;
2. At the time of the defendant’s actual or attempted act, the law enforcement officer, was engaged in the lawful performance of his official duties incident to and during a civil disorder; and
3. 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.

Theft of government property

(18 U.S.C. § 641)

Count Two of the indictment charges Mr. Neely with Theft of Government Property with entering or remaining in a restricted building or grounds, 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:

First, that the personal property described in the indictment, a United State Capitol Police riot shield, belonged to the United States government;

Second, that the defendant stole or knowingly converted such property to the defendant's own use; and

Third, that the defendant did so knowing the property was not his and with intent to deprive the owner of the use of the property.

It is not necessary to prove that the defendant knew that the United States government owned the property at the time of the wrongful taking. To "steal" or "knowingly convert" means to wrongfully take money, property, or thing of value belonging to another with intent to deprive the owner of its use or benefit either temporarily or permanently. Any appreciable change of the location of the property with the intent to deprive constitutes a stealing whether or not there is an actual removal of it from the owner's premises.

Entering and remaining in a restricted building or grounds

(18 U.S.C. § 1752(a)(1))

Count Three of the indictment charges Mr. Neely with entering or remaining in a restricted building or grounds, 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:

First, the defendant entered or remained in a restricted building or grounds without lawful authority to do so.

Second, the defendant did so knowingly.

The government must prove beyond a reasonable doubt that the defendant either knowingly entered, or knowingly remained in, a restricted building or grounds without lawful authority, or both.

The definition of “knowingly” is the same definition used for Count One and throughout these instructions.

ENTERING OR REMAINING IN A RESTRICTED BUILDING OR GROUNDS –
“RESTRICTED BUILDING OR GROUNDS”

(18 U.S.C. § 1752(c); 18 U.S.C. § 3056)

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.

**DISORDERLY OR DISRUPTIVE CONDUCT IN A RESTRICTED BUILDING OR
GROUNDS – ELEMENTS**
(18 U.S.C. § 1752(a)(2))

Count Four of the indictment charges Mr. Neely with disorderly or disruptive conduct in a restricted building or grounds, 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:

First, the defendant engaged in disorderly or disruptive conduct.

Second, the defendant did so knowingly and with intent to impede or disrupt the orderly conduct of Government business or official functions.

Third, the defendant's conduct was in a restricted building or grounds.

Fourth, the defendant's conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

The government must prove beyond a reasonable doubt only that the defendant engaged in either disorderly or disruptive conduct, or both.

The term "restricted building or grounds" has the same meaning as that described for Count Two. The term "knowingly" is the same definition throughout these instructions.

**DISORDERLY OR DISRUPTIVE CONDUCT IN A RESTRICTED BUILDING OR
GROUNDS – “DISORDERLY OR DISRUPTIVE CONDUCT”**

(Adapted from Redbook 6.643)

The term “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.

**DISORDERLY OR DISRUPTIVE CONDUCT IN A CAPITOL BUILDING –
ELEMENTS**

(40 U.S.C. § 5104(e)(2)(D))

Count Five of the indictment charges Mr. Neely with disorderly or 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 four elements beyond a reasonable doubt:

First, the defendant was inside the United States Capitol Building.

Second, the defendant uttered loud, threatening, or abusive language, or engaged in disorderly or disruptive conduct.

Third, the defendant acted with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress.

Fourth, the defendant acted willfully and knowingly.

The terms within these elements were previously defined.

For the purposes of Count Five, “the orderly conduct of a session of Congress or either House of Congress” includes the actions of the Joint Session of Congress convened on January 6, 2021, to certify the Electoral College Presidential Election of 2020.

**PARADING, DEMONSTRATING, OR PICKETING IN A CAPITOL BUILDING –
ELEMENTS**

(40 U.S.C. § 5104; *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000))

Count Six of the indictment charges Mr. Neely 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 three elements beyond a reasonable doubt:

First, the defendant was inside the United States Capitol Building.

Second, the defendant paraded, demonstrated, or picketed.

Third, the defendant acted willfully and knowingly.

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

The terms within these elements were previously defined.

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.

LIMITING INSTRUCTION: STATEMENTS OF OTHERS

(United States v. Thompson, 21-cr-00161-RBW, ECF No. 83 at 12 (D.D.C. Apr. 14, 2022))

You have heard evidence regarding statements made by former President Donald Trump on January 6, 2021. This evidence has been admitted for a limited purpose and that is its potential impact on the intent required to establish the defendant's guilty on the offenses he is charged with committing in this case, if you conclude that the defendant heard those statements. You are not to consider that evidence for any other purpose. Former President Donald Trump actually had the power to authorize or make legal the alleged crimes charged in this case. Again, the evidence regarding their statements may only be used in your assessment as to whether the defendant had the required intent to commit the crimes for which he has been charged.

DEFENSE THEORY OF THE CASE – PROPOSED INSTRUCTION

Mr. Neely has pleaded not guilty to all charges. Mr. Neely intended to go to the Capitol grounds as a journalist and when he got there, there was no indication that he couldn't go onto Capitol grounds to participate in first amendment protected speech activity. When Mr. Neely was inside the Capitol he was neither disorderly nor destructive.

PROPOSED INSTRUCTION – LIMITATIONS OF EVIDENCE

The court has admitted certain evidence, primarily videos and testimony. The government has offered these allegedly to show knowledge of Mr. Neely. I instruct you that you may not consider it against Mr. Neely unless the government has shown that the defendant either was present at the time, heard what was happening at the time, or engaged in communication with someone

Respectfully submitted,

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Certificate of Service

I certify that a copy of the forgoing was filed electronically for all parties of record on this 7th day of May, 2023.

/s/ kira west
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