UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. RALPH JOSEPH CELENTANO III, *Defendant*.	Criminal Action No. 22-186 (TJK)

FINAL JURY INSTRUCTIONS

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.

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 is different from your own memory of the evidence, it is your memory that should control during your deliberations.

Evidence in the Case

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

The statements and arguments of the lawyers are not evidence. They are intended only 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 evidence of the defendant's guilt or draw any inference of guilt from it.

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, it is your duty to find the defendant not guilty of that offense.

Reasonable Doubt

The government has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is necessary only 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 on 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.

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.

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 itself would affect your ability to reach a fair and impartial verdict. We asked you that question because you must not allow the nature of a charge to affect your verdict. You must consider only the evidence that has been presented in this case in reaching 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.

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 she or 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.

Redacted Documents and Tapes

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, I have required the irrelevant parts of the statement to be blacked out or deleted. Thus, as you examine the exhibits, and you see or hear a statement 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.

Credibility of Witnesses

In determining whether the government has proved the charges against the defendant beyond a reasonable doubt, you must consider the testimony of all the witnesses who have testified.

You are the sole judges of the credibility of the witnesses. You alone determine whether to believe any witness and the extent to which a witness should be believed. Judging a witness's credibility means evaluating whether the witness has testified truthfully and also whether the witness accurately observed, recalled, and described the matters about which the witness testified.

As I instructed you at the beginning of trial and again just now, you should evaluate the credibility of witnesses free from prejudices and biases.

You may consider anything else that in your judgment affects the credibility of any witness. For example, 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; whether the witness has any reason 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 has friendship or hostility toward other people concerned with this case.

In evaluating the accuracy of a witness's memory, you may consider the circumstances surrounding the event, including any circumstances that would impair or improve the witness's ability to remember the event, the time that elapsed between the event and any later recollections of the event, and the circumstances under which the witness was asked to recall details of the event.

You may consider whether there are any inconsistencies or discrepancies between what the witness says now and what the witness may have previously said. You may also consider any consistencies or inconsistencies between the witness's testimony and any other evidence that you credit. You may consider whether any inconsistencies are the result of lapses in memory, mistake, misunderstanding, intentional falsehood, or differences in perception.

You may consider the reasonableness or unreasonableness, and 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 evidence that you credit.

If you believe that any witness has shown him or herself to be biased or prejudiced for or against either side in this trial, or motivated by self-interest, 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.

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.

Defendant as Witness

A defendant has a right to become a witness on 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.

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 by the defendant, and all other facts and circumstances received in evidence which indicate his intent or knowledge.

You may infer, but are not required to infer, that a person intends the natural and probable consequences of acts he intentionally did or intentionally did not do. 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.

While a defendant must act with the intent as I describe below for each charged crime, this need not be the defendant's sole purpose. A defendant's unlawful intent is not negated by the simultaneous presence of another purpose for the defendant's conduct.

Multiple Counts – One Indictment

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. 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.

Unanimity – General

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 verdict on each count must be unanimous.

Summary of Indictment

With these preliminary instructions in mind, let us turn to the charges against the defendant, as contained in the indictment. As we have already discussed, the indictment itself is not evidence, but a formal description of the charges against the defendant.

Count One charges the defendant with assaulting, resisting, or impeding certain officers. Count Two charges him with obstructing, impeding, or interfering with certain officers incident to and during the commission of a civil disorder. Count Three charges him with unlawfully entering and remaining in a restricted building or grounds. Count Four charges him with disorderly and disruptive conduct in a restricted building or grounds. Count Five charges him with engaging in physical violence in a restricted building or grounds. Count Six charges him with an act of physical violence in the Capitol grounds or buildings. And Count Seven charges him with obstruction

of an official proceeding and aiding and abetting the same. I will now address each of those charges in more detail.

Assaulting, Resisting, or Impeding Certain Officers

Count One charges that on or about January 6, 2021, in the District of Columbia, the defendant forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with an officer or an employee of the United States who was engaged in the performance of their official duties, while making physical contact with the person or acting with the intent to commit another felony, which is a violation of federal law.

Elements

To find the defendant guilty of this offense, you must find the following five elements beyond a reasonable doubt.

First, the defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with Officer Kendrick Ellis of the United States Capitol Police.

Second, the defendant did such acts forcibly.

Third, the defendant did such acts voluntarily and intentionally.

Fourth, Officer Kendrick Ellis was an officer or an employee of the United States who was then engaged in the performance of his official duties.

Fifth, the defendant made physical contact with Officer Kendrick Ellis, or acted with the intent to commit another felony. For purposes of this element, "another felony" refers to either or both of the offenses charged in Count Two or Count Seven.

Element five requires either that (1) the defendant made physical contact with Officer Kendrick Ellis or (2) that he acted with the intent to commit another felony. The government is not required to prove both of those conditions. However, the government must prove at least one

of those two conditions beyond a reasonable doubt. If the government has not proved at least one of those conditions beyond a reasonable doubt, your verdict on Count One must be not guilty. As to either or both conditions, to find this element satisfied, you must be unanimous. For example, if some of you find only that the defendant made physical contact with an officer or an employee of the United States, and the remaining jurors find only that he acted with the intent to commit another felony, that is not enough. You must be unanimous as to one or the other or both. Moreover, if you find that the defendant acted with the intent to commit another felony, you must unanimously agree as to which other felony or felonies the defendant acted with the intent to commit.

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. All of the acts alleged—assault, resist, oppose, impede, intimidate, and interfere with—are modified by the word "forcibly." Thus, before you can find the defendant guilty, you must find, beyond a reasonable doubt, that he 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) is not 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 officers of the United States Capitol Police were acting as part of their official duties to protect the U.S. Capitol complex on January 6, 2021 and detain 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.

Defense of Another

The defendant has offered evidence that he acted in defense of another. The use of force is justified when a person reasonably believes that force is necessary for the defense of another against the immediate use of unlawful force.

To find that the defendant was justified in using force against law-enforcement officers, you must first find that the exercise of force by law enforcement was unlawful because it was objectively unreasonable—that is, excessive—viewed from the perspective of a reasonable law-enforcement officer. If you find that the exercise of force by law enforcement was unlawful, you may consider whether the defendant reasonably defended another from that unlawful exercise of force.

In addition, if you find that the person the defendant asserts he was protecting from imminent bodily harm was the initial aggressor, the defendant cannot rely on the right of defense of another to justify his use of force.

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

The question is not whether, looking back on the incident, you believe that the use of force in defense of another was necessary. The question is whether the defendant, under the circumstances as they appeared to him at the time of the incident, actually believed another was in imminent danger of bodily harm and could reasonably hold that belief.

Defense of another may be considered as a defense to Count One in the indictment. The defendant is not required to prove that he acted in defense of another. Where evidence of defense of another is present, consistent with this entire instruction, the government must prove beyond a reasonable doubt that the defendant did not act in defense of another. If the government has failed to do so, you must find the defendant not guilty on Count One.

Interference with Officers During a Civil Disorder

Count Two charges that on or about January 6, 2021, in the District of Columbia, the defendant committed or attempted to commit an act to obstruct, impede, or interfere with officers who were lawfully carrying out their official duties incident to a civil disorder, which is a violation of federal law.

Elements

To find the defendant guilty of this offense, you must find the following three elements beyond a reasonable doubt:

First, the defendant knowingly committed an act or attempted to commit an act with the intended purpose of obstructing, impeding, or interfering with law-enforcement officers.

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

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

Element three requires either (1) that the civil disorder obstructed, delayed, or adversely affected commerce or the movement of an article or commodity in commerce, or (2) that the civil disorder obstructed, delayed, or adversely affected the conduct or performance of a federally protected function. The government is not required to prove both of those conditions. However, the government must prove at least one of those two conditions beyond a reasonable doubt. If the government has not proved at least one of those conditions beyond a reasonable doubt, your verdict must be not guilty on Count Two. As to either or both conditions, to find this element satisfied, you must be unanimous. For example, if some of you find only that the civil disorder obstructed, delayed, or adversely affected commerce or the movement of an article or commodity in commerce, and the remaining jurors find only that the civil disorder obstructed, delayed, or adversely affected the conduct or performance of a federally protected function, that is not enough. You must be unanimous as to one or the other or both.

Committing or attempting to commit this offense are not separate offenses but alternative ways in which the government alleges that the defendant committed this same offense in Count Two. 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.

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 alternatively charged with attempting to interfere with officers during a civil disorder. As I mentioned, attempting to commit this offense is not a separate offense, but an alternative way in which the government alleges that the defendant committed this same offense in Count Two.

To find the defendant guilty of attempting to interfere with officers during a civil disorder, you must find that the government proved beyond a reasonable doubt each of the following two elements:

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

Second, the defendant took a substantial step toward interfering with officers during a civil disorder.

With respect to the first element of attempt, you may not find the defendant guilty of attempt to interfere with 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 interfere with 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 civil disorder. However, the substantial-step element does not require the government to prove that the defendant did everything except the last step necessary to complete the crime.

Defense of Another

Defense of another, as described earlier in these instructions, may also be considered as a defense to Count Two of the indictment, but only as to the defendant's acts with respect to Officer Kendrick Ellis. Defense of another may not be considered a defense to Count Two for any other act or attempted act on the part of the defendant, or in any other way.

Entering or Remaining in a Restricted Building or Grounds

Count Three charges that on or about January 6, 2021, in the District of Columbia, the defendant entered or remained in a restricted building or grounds, which is a violation of federal law.

Elements

To find the defendant guilty of this offense, you must find that the government proved each of the following two 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, meaning that the defendant knew the building or grounds were restricted and he knew he lacked lawful authority to enter or remain there.

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.

Disorderly or Disruptive Conduct in a Restricted Building or Grounds

Count Four charges that on or about January 6, 2021, in the District of Columbia, the defendant engaged in disorderly or disruptive conduct in a restricted building or grounds, which is a violation of federal law.

Elements

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 engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds.

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

Third, 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.

Definitions

The term "restricted building or grounds" has the same meaning as I have already described to you in the instructions for Count Three.

The term "knowingly" has the same meaning as I have already described to you 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.

Engaging in Physical Violence in a Restricted Building or Grounds

Count Five charges that on or about January 6, 2021, in the District of Columbia, the defendant engaged in an act of physical violence against a person or property in a restricted building or grounds, which is a violation of federal law.

Elements

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

First, the defendant engaged in an act of physical violence against a person or property in, or in proximity to, a restricted building or grounds.

Second, the defendant did so knowingly.

Definitions

The term "restricted building or grounds" has the same meaning as I have already described to you in the instructions for Count Three.

The term "knowingly" has the same meaning as I have already described to you in the instructions for Count Two.

The term "act of physical violence" means any act involving an assault with intent to harm, injure, or otherwise inflict death or bodily harm on an individual, or damage to, or destruction of, real or personal property. In connection with bodily harm, the act must consist of force capable of causing physical pain or injury to another person.

Defense of Another

Defense of another, as described earlier in these instructions, may also be considered as a defense to Count Five of the indictment, but only as to the defendant's acts with respect to Officer Kendrick Ellis. Defense of another may not be considered a defense to Count Five for any other act or attempted act on the part of the defendant, or in any other way.

Act of Physical Violence in the Capitol Grounds or Buildings

Count Six charges that on or about January 6, 2021, in the District of Columbia, the defendant engaged in physical violence within the United States Capitol Grounds or in any of the Capitol Buildings, which is a violation of federal law.

Elements

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

First, the defendant engaged in an act of physical violence in the United States Capitol Grounds or any of the Capitol Buildings.

Second, the defendant acted willfully and knowingly.

Definitions

The term "act of physical violence" has the same meaning as I have already described to you in the instructions for Count Five.

The term "willfully" means to act with a bad purpose or knowledge that the defendant's conduct was unlawful. While the government must show that the defendant knew that the conduct was unlawful, the government does not need to prove that the defendant was aware of the specific law that his conduct violated.

The term "knowingly" has the same meaning as I have already described to you in the instructions for Count Two.

The term "United States Capitol Grounds" includes all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled "Map showing areas comprising United States Capitol Grounds," dated June 25, 1946, approved by the Architect of the Capitol, and recorded in the Office of the Surveyor of the District of Columba in book 127, page 8. You are instructed that the West Front of the United States Capitol is part of the "United States Capitol Grounds" for purposes of this count.

Defense of Another

Defense of another, as described earlier in these instructions, may also be considered as a defense to Count Six of the indictment, but only as to the defendant's acts with respect to Officer Kendrick Ellis. Defense of another may not be considered a defense to Count Six for any other act or attempted act on the part of the defendant, or in any other way.

Obstruction of an Official Proceeding

Count Seven charges that on or about January 6, 2021, within the District of Columbia and elsewhere, the defendant attempted to, or did, corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically Congress's certification of the Electoral College vote, which is a violation of federal law.

Elements

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

First, the defendant attempted to or did obstruct or impede an official proceeding, specifically Congress's Joint Session to certify the Electoral College vote.

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

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.

Fourth, the defendant acted corruptly.

Definitions

The term "official proceeding" includes a proceeding before the Congress. The official proceeding need not be pending or about to be instituted at the time of the offense. If the official proceeding was not pending or about to be instituted, the government must prove beyond a reasonable doubt that the official proceeding was reasonably foreseeable to the defendant. As used in Count Seven, the term "official proceeding" means Congress's Joint Session to certify the Electoral College vote.

The term "knowingly" has the same meaning as I have already described to you in the instructions for Count Two.

To act "corruptly," the defendant must use an independently unlawful means or act with an unlawful purpose, or both. The defendant must also act with "consciousness of wrongdoing." "Consciousness of wrongdoing" means with an understanding or awareness that what the person is doing is wrong or unlawful. Not all attempts to obstruct or impede an official proceeding involve acting corruptly. For example, a witness in a court proceeding may refuse to testify by invoking his constitutional privilege against self-incrimination, thereby obstructing or impeding the proceeding, but he does not act corruptly. In addition, the First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government to redress grievances. Accordingly, an individual who does no more than lawfully exercise those rights does not act corruptly. In contrast, an individual who obstructs or impedes a court proceeding by engaging in conduct such as offering illegal bribes, engaging in violence, committing fraud, or through other independently unlawful conduct, does act corruptly. Often, acting corruptly involves acting with the intent to secure an unlawful advantage or benefit either for oneself or for another person.

While the defendant must act with intent to obstruct the official proceeding, this need not be his sole purpose. A defendant's unlawful intent to obstruct is not negated by the simultaneous presence of another purpose for his conduct.

Included with this charge is that defendant aided and abetted others to commit this offense.

Attempt

In Count Seven, the defendant is alternatively charged with attempt to commit the crime of obstructing an official proceeding. Attempting to commit this offense is not a separate offense, but an alternative way in which the government alleges that the defendant committed this same offense in Count Seven.

To find the defendant guilty of attempting to obstruct an official proceeding, you must find that the government proved beyond a reasonable doubt each of the following two elements:

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

Second, the defendant took a substantial step toward obstructing an official proceeding.

With respect to the first element of attempt, you may not find the defendant guilty of attempt to obstruct an official proceeding merely because he thought about it. You must find that the evidence proved beyond a reasonable doubt that the defendant's mental state passed beyond the stage of thinking about the crime to actually intending to commit it.

With respect to the "substantial step" element, you may not find the defendant guilty of attempt to obstruct an official proceeding merely because he made some plans to or some preparation for committing that crime. Instead, you must find that the defendant took some firm, clear, undeniable action to accomplish his intent to commit the crime. However, the substantial-step element does not require the government to prove that the defendant did everything except the last step necessary to complete the crime.

Aiding and Abetting

In Count Seven, the defendant is alternatively charged with aiding and abetting the crime of obstructing an official proceeding. A person may be guilty of obstructing an official proceeding because he personally committed the offense or because he aided and abetted another person in committing the offense. Aiding and abetting others to commit this offense is not a separate offense, but an alternative way in which the government alleges that the defendant committed this same offense in Count Seven.

To find the defendant guilty of aiding and abetting the obstruction of an official proceeding, you must find that the government proved beyond a reasonable doubt each of the following five elements:

First, others committed a crime by committing each of the elements of the offense charged, or attempted to do so, as I have explained those elements to you in the instructions for Count Seven.

Second, the defendant knew that the offense charged was going to be committed or was being committed by others.

Third, the defendant performed an act or acts in furtherance of the offense charged.

Fourth, the defendant knowingly performed that act or those acts for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense.

Fifth, the defendant did that act or those acts with the intent that others commit the offense.

To show that the defendant performed an act or acts in furtherance of the offense charged, the government needs to show some affirmative participation by the defendant which at least encouraged others to commit the offense. That is, you must find that the defendant's act or acts did, in some way, aid, assist, facilitate, or encourage others to commit the offense. The defendant's act or acts need not further aid, assist, facilitate, or encourage every part or phase of the offense charged; it is enough if the defendant's act or acts further aid, assist, facilitate, or encourage only one or some parts or phases of the offense. Also, the defendant's acts need not themselves be against the law.

In deciding whether the defendant had the required knowledge and intent to satisfy the fourth and fifth requirements for aiding and abetting, you may consider both direct and circumstantial evidence, including the defendant's words and actions and other facts and circumstances.

However, evidence that the defendant merely associated with persons involved in a criminal venture or was merely present or was merely a knowing spectator during the commission of the offense is not enough for you to find the defendant guilty as an aider and abettor. If the evidence shows that the defendant knew that the offense was being committed or was about to be committed but does not also prove beyond a reasonable doubt that it was the defendant's intent and purpose to aid, assist, encourage, facilitate, or otherwise associate himself with the offense, you may not find the defendant guilty of the offense as an aider and abettor. The government must prove beyond a reasonable doubt that the defendant in some way participated in the offense committed by others as something the defendant wished to bring about and to make succeed.

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 Publicity, Communication, and Research

I would like to remind you that, in some cases, although not necessarily this one, 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.

Communication 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 the clerk or marshal, 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, the marshal, 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 7-5 or 11-1, or in any other fashion—whether the vote is for conviction or acquittal or on any other issue in the case.

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.

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. 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.

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 to be only 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.

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 that 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 alternate seats before any of you entered the courtroom. I will now excuse those jurors in seats 8 and 11. Before you two 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 on your way out.

You may now retire to begin your deliberations.