

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

UNITED STATES OF AMERICA,

v.

VINCENT GILLESPIE,

Defendant.

Criminal Case No. 22-60 (BAH)

Chief Judge Beryl A. Howell

INSTRUCTIONS TO THE JURY

The attached instructions were read to the jury in the trial of the captioned case on December 22, 2022, and given to the jury for deliberations on December 22, 2022.

Date: December 22, 2022



A handwritten signature in black ink that reads "Beryl A. Howell".

BERYL A. HOWELL
Chief Judge

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Ladies and gentlemen, now is the time, it is my duty and responsibility as the trial judge to give you instructions as to the law that applies to this case and to the evidence that has been presented. And it is your sworn duty to base your verdict upon the law given in these instructions and upon the evidence that has been admitted in this trial.

I see a number of you still have your pens ready to take notes, but I am going to provide each of you with a copy of these instructions, so you do not need to take notes. Just listen. 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. You may not follow some and ignore others of the instructions. If you have any questions about the instructions, you should feel free to send me a note. I will give you instructions on how to do that at the end of these instructions. The copy of these instructions given to you will be returned to me when you render your verdict in the case.

As I stated in my preliminary instructions to you at the beginning of the trial, 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.

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.

As human beings, we all have personal likes and dislikes, opinions, prejudices, and biases. Generally, we are aware of these things, but you also should consider the possibility that you have implicit biases, that is, biases of which you may not be consciously aware. Personal prejudices, preferences, or biases have no place in a courtroom, where our goal is to arrive at a just and impartial verdict. All people deserve fair treatment in our system of justice regardless of any personal characteristics, such as race, national or ethnic origin, religion, age, disability, sex, gender identity or expression, sexual orientation, education, or income level, or any other personal characteristic. You should determine the facts 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.

If any reference by me or any of the attorneys to the evidence is different from your own memory of the evidence, it is your memory that should control during your deliberations.

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, had agreed—to certain facts, and 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 light of your experience. You should give any evidence such weight as in your judgment it is fairly entitled to receive.

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

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 Vincent Gillespie 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 Mr. Gillespie 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 Mr. Gillespie not guilty of that offense. As I mentioned during the preliminary instructions I gave you at the very beginning of the trial, the government has the burden of proving Mr. Gillespie guilty beyond a reasonable doubt as to each element of each charge against him. In civil cases, by contrast, it is only necessary to prove a fact is more likely true than not, or, in some cases, that truth is highly probable.

In criminal cases such as this one, the government's proof must be more powerful than that. It must be beyond a reasonable doubt. Reasonable doubt, as the name implies, is a doubt based on reason—a doubt for which you have a reason based upon the evidence or lack of evidence in the case. If, after careful, honest, and impartial consideration of all the evidence, you cannot say that you are firmly convinced of Mr. Gillespie'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 of 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. It is a burden to prove guilt beyond a reasonable doubt.

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.

I'm going to 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 he 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.

One of the questions you were asked when we were selecting this jury was whether the nature of the charges would affect your ability to reach a fair and impartial verdict. We asked you that question because you must not

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allow the nature of the charges to affect your verdict. You must consider only the evidence that has been presented in this case in reaching a fair and impartial verdict.

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.

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 they represent. 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.

EVALUATION OF TESTIMONY

Now 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, or described the matters about which the witness testified.

As I instructed you at the beginning of the trial and again today, 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 having an accurate memory; whether the witness has any reason for not telling the truth; whether the witness had a meaningful opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case, stands to gain anything by testifying, 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 the time that elapsed between the event and any later recollection of the event, and the circumstances under which the witness was asked to recall detail of the event.

You may consider whether there are any consistencies or inconsistencies in a witness's testimony or between the witness's testimony and any previous statements made by the witness. 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, the probability or improbability, of the testimony of

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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.

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

The defendant's testimony should be evaluated by you just as any other evidence in the case. In evaluating the defendant's testimony, however, you may consider the fact that the defendant has an 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.

Someone's intent or knowledge 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 statements made or acts done by defendant Vincent Gillespie, and all other facts and circumstances received in evidence which may 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 did not do. It is entirely up to you 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 this defendant Vincent Gillespie acted with the necessary state of mind.

CHARGES

Now I'm going to review the charges. At the beginning of the trial, I gave you preliminary instructions that generally stated the different types of charges that the government has brought against Mr. Gillespie. He is charged with committing offenses charged in eight separate counts. I will read those charges to you now and then explain the definitions of terms used in the charges and the elements of each charge. When no formal definition is provided for a term, please rely on your everyday understanding of the word. Again, keep in mind that you will have a copy of these instructions when you deliberate, so you need not write this down.

Now before discussing the charges, I will define the term "knowingly." I am going to define that term for you because this term will appear in many of the charges. 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 the evidence, including what the defendant did or said.

COUNT ONE – Assaulting, Resisting, or Impeding Certain Officers

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Count One charges that: On or about January 6, 2021, in the District of Columbia, **VINCENT GILLESPIE** did forcibly assault, resist, oppose, impede, intimidate, or interfere with an officer and employee of the United States, that is, an officer of the United States Capitol Police, or any person assisting officers of the United States, that is, an officer from the Metropolitan Police Department, while such officer was engaged in the performance of official duties, and where the acts in violation of this section involve making physical contact with the officer or acting with the intent to commit another felony, in violation of 18 U.S.C. § 111(a)(1).

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 assaulted, resisted, opposed, impeded, intimidated, or interfered with an officer from the Metropolitan Police Department or United States Capitol Police;
2. The defendant did such acts forcibly;
3. The defendant did such acts voluntarily and intentionally;
4. The person assaulted, resisted, opposed, impeded, intimidated, or interfered with was a person assisting officers of the United States who were then engaged in the performance of their official duties or was an officer of the United States when engaged in the performance of their official duties; and
5. The defendant made physical contact with a person assisting officers of the United States who were then engaged in the performance of their official duties, or acted with the intent to commit another felony. For purposes of this element, “another felony” refers to the offense charged in Count Two or Count Eight.

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 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 Metropolitan Police Department were acting in their official duties to assist federal officers of the United States Capitol Police and in protecting the U.S. Capitol complex on January 6, 2021. It is not necessary to show that the defendant knew that 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.

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COUNT TWO – Civil Disorder

Count Two charges that: On or about January 6, 2021, in the District of Columbia, **VINCENT GILLESPIE** did commit or attempt to commit an act to obstruct, impede, or interfere with officers who were lawfully carrying out their official duties incident to a civil disorder, in violation of 18 U.S.C. § 231(a)(3).

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 with the intended purpose of obstructing, impeding, or interfering with law enforcement officers;
2. At the time of the defendant's actual act, law enforcement officers were engaged in the lawful performance of their 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.

If you find defendant **VINCENT GILLESPIE** guilty of this offense, you must also answer two questions that follow Count Two on the Verdict Form asking whether the jury unanimously agrees that the government has shown 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. You may find that the civil disorder affected both commerce and the conduct of a federally protected function. In that case, you will answer both of the questions that follow Count Two. Alternatively, you may find that the government has only shown that a civil disorder affected either commerce or a federally protected function. In that case, you will answer YES to only one of the two questions that follow Count Two.

Committing or attempting to commit this offense are not separate offenses but alternative ways in which the government alleges that defendant **VINCENT GILLESPIE** 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.

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.

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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, **VINCENT GILLESPIE** is alternatively charged with attempt to commit the crime of 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 defendant **VINCENT GILLESPIE** committed this same offense in Count Two.

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

1. The defendant intended to commit the crime of civil disorder, as I have defined that offense above; and
2. The defendant took a substantial step toward committing civil disorder.

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

With respect to the “substantial step” element, you may not find the defendant guilty of attempt to commit 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.

COUNT THREE – Entering and Remaining in a Restricted Building or Grounds

Count Three charges that: On or about January 6, 2021, in the District of Columbia, **VINCENT GILLESPIE** 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).

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 “knowingly” has the meaning I have already described to you at the beginning of the charges.

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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 FOUR – Disorderly and Disruptive Conduct in a Restricted Building or Grounds

Count Four charges that: On or about January 6, 2021, in the District of Columbia, **VINCENT GILLESPIE** 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 U.S. 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).

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 Three or for all the charges.

“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 FIVE – 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, **VINCENT GILLESPIE** did knowingly engage in any act of physical violence against a person or property in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the U.S. 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)(4).

To find 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 an act of physical violence against a person or property in, or in proximity to, a restricted building or grounds; and
2. The defendant did so knowingly.

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The term “act of physical violence” means any act involving an assault with intent to harm or injure or other infliction of 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.

The terms “restricted building and grounds” and “knowingly” have the same meanings described in the instructions above.

COUNT SIX – Disorderly and Disruptive Conduct in a Capitol Building

Count Six charges that: On or about January 6, 2021, in the District of Columbia, **VINCENT GILLESPIE** 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. 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 above.

A person acts “willfully” if he acts with an 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 above.

I instruct you that, for purposes of Count Six, “the orderly conduct of a session of Congress or either House of Congress” includes all the actions of the Joint Session of Congress at the times it was convened on January 6, 2021, to certify the Electoral College vote for the 2020 presidential election.

COUNT SEVEN – Act of Physical Violence in the Capitol Grounds or Buildings

Count Seven charges that: On or about January 6, 2021, in the District of Columbia, **VINCENT GILLESPIE** willfully and knowingly engaged in an act of physical violence within the United States Capitol Grounds and in any of the Capitol Buildings, in violation of 40 U.S.C. § 5104(e)(2)(F). And I should say, when I refer to “U.S.C.,” it’s short hand for United States Code which codifies all federal laws.

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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 an act of physical violence in the United States Capitol Grounds or any of the Capitol Buildings; and
2. The defendant acted willfully and knowingly.

I have already defined the term “act of physical violence” for you in connection with Count Five and it has the same meaning here.

The term “U.S. 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 Columbia in book 127, page 8. You are instructed that the West Front of the United States Capitol, including the Lower West Terrace, is part of the “United States Capitol Grounds” for purposes of this count.

The terms “willfully” and “knowingly” have the same meanings described in the instructions above.

COUNT EIGHT – Obstruction of an Official Proceeding

Count Eight charges that: On or about January 6, 2021, within the District of Columbia and elsewhere, **VINCENT GILLESPIE** attempted to, and did corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress’s certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15–18, in violation of 18 U.S.C. §§ 1512(c)(2) and 2.

Included with this charge is that defendant aided and abetted others to commit this offense. Attempting or aiding and abetting others to commit this offense are not separate offenses but alternative ways in which the government alleges that defendant **VINCENT GILLESPIE** committed this same offense in Count Eight.

I will first explain the elements of the substantive offense, along with its associated definitions. And then I will explain how to determine whether the defendant attempted the offense and whether the defendant aided and abetted the offense.

In order 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:

1. The defendant attempted to or did obstruct or impede an official proceeding;
2. The defendant intended to obstruct or impede the official proceeding;
3. 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. The defendant acted corruptly.

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 Eight, the term “official proceeding” means Congress’s Joint Session to certify the Electoral College vote.

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The term “knowingly” has the same meaning described in the instructions above.

To act “corruptly,” the defendant must use unlawful means or have a wrongful or 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.

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

Attempt

In Count Eight, **VINCENT GILLESPIE** is alternatively charged with attempt to commit the crime of obstruction of an official proceeding.

In order to find the defendant guilty of attempt to commit obstruction of an official proceeding, you must find that the government proved beyond a reasonable doubt each of the following two elements:

3. The defendant intended to commit the crime of obstruction of an official proceeding, as I have defined that offense above; and
4. The defendant took a substantial step toward committing obstruction of an official proceeding.

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

Aiding and Abetting

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

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

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

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

I have already instructed you on the elements of the offense with which **VINCENT GILLESPIE** is charged in Count Eight. With respect to the charge of Obstruction of an Official Proceeding, regardless of whether **VINCENT GILLESPIE** is an aider and abettor or a principal offender, the government must prove beyond a reasonable doubt that **VINCENT GILLESPIE** personally acted knowingly, corruptly, and with intent to obstruct or impede the official proceeding.

DELIBERATIONS AND LOGISTICAL MATTERS

Now I'm going to turn to your deliberations and other logistical matters. I am almost at the end. 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 as the jury 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 fair and full consideration of that evidence.

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.

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

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.

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You will be provided with a Verdict Form for your 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 given to you, and nothing in it replaces or modifies the instructions about the elements which the government must prove beyond a reasonable doubt. The form is meant only to assist you in recording your verdict.

The question of possible punishment of the defendant in the event of a conviction is not a concern for you and should not enter into or influence your deliberations in any way. The duty of imposing sentence in the event of any 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.

I would like to remind you that, in some cases, there may be reports on the Internet, television, radio, or newspaper concerning this case or other reporting related to the events at the U.S. Capitol on January 6, 2021. You may be tempted to read, listen to, or watch it. And you must not do so because you must decide this case solely on the evidence presented in this courtroom. If any publicity about this trial or related events inadvertently comes to your attention, do not discuss it with other jurors or anyone else. Just let Ms. Gumiel know and I will speak to you briefly about it.

As you retire to the jury room to deliberate, I also wish to remind you about an instruction I gave you at the beginning of the trial. During your deliberations, you may not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a phone, smart phone, iPhone, computer, tablet, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or social media service such as Facebook, LinkedIn, YouTube, Twitter, or Instagram to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me if you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the Internet or available through social media might be wrong, incomplete, or inaccurate, and you are only permitted to discuss this case with your fellow jurors during deliberations because they have seen and heard the same evidence as you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your by fellow jurors or the parties in the case. And this would unfairly and adversely impact the judicial process.

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

I will be sending into the jury room with you all of 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 any exhibits that were only marked for identification but were not admitted into evidence will not be given to you to examine or

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consider in reaching your verdict. When you go back to your jury room, it is going to take us a few minutes to take everything that is delivered to you so it will not be immediate as soon as you get to the jury room.

If it becomes necessary during your deliberations to communicate with me, you may send a note by the court security officer who will be stationed outside the jury room, it will be 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 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 that you are never, under any circumstances, to reveal to any person—not any member of the courthouse staff, the court security officer, or me in a note—how jurors are voting until after you have reached a unanimous verdict. This means you should never tell me, in writing or in open court, how the jury may be divided on any matter—for example, 6-6 or 7-5, or in any other fashion—whether the vote is for conviction or acquittal or on any other issue in the case.

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That concludes my final instructions.