

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

Plaintiff,

PRELIMINARY JURY
INSTRUCTIONS

v.

AMMON BUNDY, RYAN BUNDY,
SHAWNA COX, DAVID LEE FRY,
JEFF WAYNE BANTA, KENNETH
MEDENBACH, and NEIL WAMPLER,

Defendants.

Members of the jury, now that you have been sworn to try this case according to the law and to the evidence, I am giving you these Preliminary Jury Instructions to assist you as we proceed. You each have a copy of these Preliminary Instructions to consult as you choose throughout the trial.

Because these Preliminary Instructions are based on what the Court anticipates the trial evidence will be, it may be necessary for me to update them at the end of the case based on what evidence is actually received. When I give the matter to you for your deliberations at the end of the case, I will give you Final Jury Instructions which supersede these Preliminary Instructions if they differ in any respect.

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DUTY TO DELIBERATE

After you have heard all of the witnesses' testimony and the parties' closing arguments, it will be your duty to deliberate, which means to weigh and to evaluate all of the evidence calmly and dispassionately and, in that process, to decide what the facts are. To the facts as you find them, you must apply the law as I give it to you, whether you agree with the law or not, which is just as you promised to do in the Oath that you just took. In the meantime you must keep an open mind regarding the issues you will be asked to decide. As you deliberate at the end of the case, you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy, and you must ultimately decide the case solely on the evidence received during the trial and on these instructions.

You must follow all of the Court's instructions throughout the trial and not single out some and ignore others; they all are equally important. Please do not read into any of the Court's instructions or into anything I say or do during the trial any suggestion that I have any opinion as to what verdicts you should return at the end of the case - those decisions are entirely up to you.

Because you must base your verdicts only on the evidence and on the Court's instructions, it is essential that you not be exposed to any information about the case or to the issues it

involves except here during open court proceedings in the presence of the parties. Except for discussing the case with your fellow jurors during your deliberations at the end of the case:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, social media, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way by anyone about your jury service or anything about this case, you must respond that the Court has ordered you not to discuss the matter and to report any such contact to the court.

Do not read, watch, listen, or respond to any news, media or other accounts or commentary about the case or anything to do with it; do not do any research, such as searching the Internet, consulting dictionaries, or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure each of the parties has a fair trial based on the same evidence that each party has had an opportunity to address here in open court. A

juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify me or the Courtroom Deputy immediately. In any event, at the beginning of each day's proceedings, I will ask you if you have been exposed to anything about the case since court last recessed.

PRESUMPTION OF INNOCENCE
GOVERNMENT'S BURDEN OF PROOF BEYOND A REASONABLE DOUBT

The fact that federal criminal charges have been brought against the Defendants - Ammon Bundy, Ryan Bundy, Shawna Cox, David Lee Fry, Jeff Wayne Banta, Kenneth Medenbach, and Neil Wampler - is not evidence and does not prove anything.

Each of the Defendants has pleaded Not Guilty to each of the charges against them, and each is presumed to be innocent of any wrongdoing. This constitutional presumption of innocence remains in full force and effect unless and until the government proves a particular Defendant is guilty of one or more particular charges beyond a reasonable doubt.

The sole burden of proof in this case, therefore, is on the government which has the burden to prove every element of each of the charges against each of the Defendants beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced that a particular Defendant is guilty of a

particular charge. It is not required, however, that the government prove guilt beyond all possible doubt. A reasonable doubt is a doubt based on reason and common sense, but not one based purely on speculation or guesswork. A reasonable doubt may arise from a careful and impartial consideration of all of the evidence or from lack of evidence.

If, after careful and impartial consideration of all of the evidence at the end of the case, you are not convinced beyond a reasonable doubt that the government has proved a particular Defendant guilty of a particular charge, it is your duty to find that Defendant not guilty of that charge. On the other hand, if after such careful and impartial consideration of all of the evidence, you are convinced beyond a reasonable doubt that the government has proved a particular Defendant is guilty of a particular charge, it is your duty to find that Defendant guilty of that charge.

In deciding whether the government has proved any of the Defendants guilty beyond a reasonable doubt of any of the charges, you must not consider what sentence or punishment the Court may impose in the event you find any Defendant guilty of any charge.

EVALUATING THE EVIDENCE

What is Evidence

In deciding the facts, you may consider only the evidence received in the case, which consists of:

1. the sworn testimony of each witness;
2. the exhibits which have been received into evidence and which will be with you in the jury room; and
3. any agreed facts that have been pointed out to you.

What is Not Evidence

The following things are not evidence, and you may not consider them in deciding what the facts are:

1. Arguments, statements, and questions by the lawyers or by the self-represented parties (Defendants Ryan Bundy, Shawna Cox, and Kenneth Medenbach) are not evidence. The lawyers (and the self-represented parties when they speak other than under oath from the witness stand) are not speaking as witnesses. Although you must consider their questions to understand the answers of a witness, and, thus, to evaluate the witness's testimony as a whole, the questions themselves are not evidence. Similarly, what the lawyers and the self-represented parties say in their opening statements, closing arguments, and at other times (not from the witness stand), is intended to help you interpret the evidence, but it is not evidence. If you remember the evidence differently from how they describe it, your memory

of the evidence controls.

2. Objections by the lawyers and the self-represented parties are not evidence. They may raise an objection when they believe a question or a witness's answer is improper under the rules of evidence or the Court's previous rulings. Remember not to concern yourself with why an objection is made. Instead, simply follow my ruling about the objection. If I "overrule" the objection, the question may be answered, and the answer is in evidence for you to consider. If I "sustain" an objection, you must disregard the question and any part of the answer you may have heard; it is not evidence.

3. Testimony or any other matter that I tell you to disregard is not evidence and you must not consider it in your deliberations.

4. Finally, anything you may see or hear when court is not in session is not evidence. This is true even if what you see or hear out of court is about the case or is said or done by someone connected with the case. Remember, you must decide the case solely on the evidence received during the trial and on the Court's instructions of law.

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is the direct proof of a fact, such as the testimony of an eyewitness about what the witness personally saw or heard or did.

Circumstantial evidence is indirect evidence; that is, proof of one or more facts from which you could find that another fact exists even though the other fact has not been proved directly. The law does not prefer one kind of evidence over the other. You should consider both kinds of evidence and then decide how much weight to give to any particular piece of evidence.

Evidence Admitted for Limited Purpose

There may be times during the trial when some evidence is received for a limited purpose only and I instruct you about the limited way you may consider each such item of evidence. As you deliberate, you must follow all limiting instructions I give you during the trial, and you must consider any evidence which is admitted for a limited purpose only for that limited purpose and not for any other purpose.

Evaluating Witness Testimony

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or to hear or to know the things testified to;
2. the witness's memory;

3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and whether the witness has any bias or prejudice;
5. whether other evidence, including earlier statements by the witness, contradicted the witness's testimony;
6. the reasonableness of the witness's testimony in light of all the evidence; and
7. any other factors you find bear on the believability of a witness, including whether any witness has previously been convicted of a felony crime.

A Defendant's Decision Not to Testify

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that one or more Defendants chooses not to testify.

A Defendant's Decision to Testify

On the other hand, although a defendant in a criminal case has a constitutional right not to testify, a defendant may waive that right and choose to testify. You should evaluate the testimony of any Defendant who chooses to testify in the same manner as you evaluate the testimony of all of the other witnesses.

Self-Represented Defendant

A defendant in a criminal case has a constitutional right to self-representation, and Defendants Ryan Bundy, Shawna Cox, and

Kenneth Medenbach have chosen to represent themselves in this trial with the services of a "standby" lawyer to assist each of them. The decisions of these Defendants to represent themselves have no bearing on whether he or she is guilty or not guilty and must not affect your consideration of the case.

Evidence About Other Acts of the Defendants or Others

You are here only to determine whether each Defendant is guilty or not guilty of the particular charges at issue, and your determination must be made only from the evidence in the case. The Defendants are not on trial for any other conduct or offense.

Statements by a Defendant

You may hear testimony or other evidence that one or more Defendants made certain statements. It is for you to decide (1) whether any Defendant or Defendants made a particular statement, (2) if so, the meaning of such statements in the context of all the evidence; and (3) how much weight you should give to evidence about such statement. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the Defendant or Defendants may have made it.

Eyewitness Identification

You may hear testimony of eyewitness identification. In deciding how much weight to give to such testimony, you may consider the factors already stated in these instructions as to

evaluating witness testimony. In addition, in evaluating eyewitness identification testimony, you may also consider:

(1) the capacity and opportunity of the eyewitness to make observations based upon the conditions at the particular time the eyewitness made the identification, including lighting, distance and length of time to observe;

(2) whether the identification was the product of the eyewitness's own recollection or was the result of subsequent influence or suggestiveness;

(3) any inconsistent identifications made by the eyewitness;

(4) the witness's familiarity with the subject identified;

(5) the strength of any earlier and/or later identifications;

(6) lapses of time between the observations on which the identification is based and the eyewitness's identification(s);
and

(7) the totality of circumstances surrounding the eyewitness's identification.

Opinion Testimony

You may hear testimony from persons who, because of education or experience, are permitted to provide background evidence and to state opinions together with the reasons for such opinions. Opinion testimony of any kind should be judged like any other testimony. You may accept it or reject it, and give it

as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all of the other evidence in the case.

THE CHARGES AGAINST THE DEFENDANTS

The government has charged the Defendants, Ammon Bundy, Ryan Bundy, Shawna Cox, David Lee Fry, Jeff Wayne Banta, Kenneth Medenbach, and Neil Wampler, with committing various crimes in violation of three different criminal statutes as follows:

In **Count One** the government charges each of these Defendants with "Conspiracy to Impede Officers of the United States" in violation of 18 United States Code § 372.

In **Count Two** the government charges Defendants Ammon Bundy, Ryan Bundy, Shawna Cox, David Lee Fry, and Jeff Wayne Banta with Possession of Firearms and Dangerous Weapons in Federal Facilities in violation of 18 United States Code § 930(b).

In **Count Four** the government charges Defendant Kenneth Medenbach with Theft of Government Property in violation of 18 United States Code § 641.

In **Count Five** the government charges Defendant Ryan Bundy with Theft of Government Property in violation of 18 United States Code § 641.

Please note that **Count Three** is not pending in this trial.

Separate Consideration of Charges

Each count charges a separate crime against one or more of the Defendants. Although each of these charges have been joined for this trial, you must decide each charge against each Defendant separately. Your verdict on any count as to any Defendant should not control your verdict on any other count or as to any other Defendant.

Remember each of the Defendants have pleaded Not Guilty to each of the charges against them, and they are presumed to be innocent of any wrongdoing. That presumption of innocence remains in full force and effect as to each of the charges unless and until the government overcomes the presumption by proving a Defendant guilty of a particular charge beyond a reasonable doubt.

CONSPIRACY CHARGE AGAINST THE DEFENDANTS (COUNTS ONE)

Conspiracy Generally

Before I instruct you as to the elements the government must prove beyond a reasonable doubt in order for you to find any Defendant guilty of the Conspiracy charge in Count One, I will explain in general the law relating to the crime of conspiracy.

A conspiracy is a kind of criminal partnership - an agreement of two or more persons to engage in illegal conduct.

The crime of conspiracy is the agreement itself to do

something unlawful; it does not matter whether the illegal act they agreed upon was actually committed or completed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy, but it is not enough that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another.

Thus, with respect to Count One, the government must prove beyond a reasonable doubt that there was an agreement between two or more persons to prevent officers of the United States from discharging the duties of their office by force, intimidation, or threat. The government must also prove beyond a reasonable doubt that a particular Defendant became a member of such conspiracy knowing of its illegal object and specifically intending to help accomplish that illegal object regardless whether the particular Defendant or other individuals may have also had other, lawful reasons for their conduct.

A person becomes a member of a conspiracy by willfully participating in the unlawful plan with the specific intent to advance or further some unlawful object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. In addition, one who willfully joins an existing conspiracy is as responsible for it as the originators.

On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

Co-Conspirator Statements and Actions

Evidence will be admitted that certain persons who are alleged to be co-conspirators said or did certain things. The acts and statements of any conspiracy member are treated as the acts and statements of all conspiracy members only if the acts or statements were performed or spoken during the existence of and in furtherance of the conspiracy.

In order to consider a co-conspirator statement as evidence against another defendant, you first must find that (1) the conspiracy alleged was in existence at the time the statement was made; (2) the person who made the statement (the declarant) and the defendant were participants in the conspiracy; and (3) the declarant made the statement during and in furtherance of the conspiracy.

With these principles in mind as to the general law of conspiracy, I will now instruct you on the elements the government must prove beyond a reasonable doubt in order for you

to find any Defendant guilty of the Conspiracy charged in Count One.

**ELEMENTS OF COUNT ONE: CONSPIRACY TO IMPEDE OFFICERS
OF THE UNITED STATES**

As noted, each of the Defendants are charged in Count One with **Conspiracy to Impede Officers of the United States** in violation of 18 United States Code § 372. In order for any Defendant to be found guilty of Count One, the government must prove as to that Defendant each of the following elements beyond a reasonable doubt:

First, beginning on or about November 5, 2015, and continuing through on or about February 12, 2016, there was an agreement between two or more persons, and an object of that agreement was to prevent an officer or officers of the United States Fish and Wildlife Service and/or Bureau of Land Management from discharging the duties of his or her office by force, intimidation, or threat; and

Second, the particular Defendant became a member of the conspiracy knowing of that objective and specifically intending to help accomplish it.

As to the phrase "on or about" a range of dates, although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed in a range of dates reasonably near the dates alleged in a particular charge, it is

not necessary for the government to prove that the offense was committed precisely on the dates charged.

In order for speech or expressive conduct to qualify as "intimidation" or a "threat" in this context, the speaker or actor must intend his or her words or conduct to intimidate or to be a threat, and those words or conduct must also be such that a reasonable person observing them would foresee that they would be interpreted as a serious expression of intent to harm or assault.

To prove a particular Defendant entered into an agreement an object of which was to impede an officer of the United States by "threat" or "intimidation," the government must prove the threatened action was illegitimate. In other words, it is neither a "threat" nor "intimidation" in this context if a person threatens to take a legitimate action.

A person acts "knowingly" if the person is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of a defendant's words, acts, or omissions, along with all the other evidence, in deciding whether a particular Defendant acted knowingly.

A person acts "intentionally" or "with intent" if the person has a purpose or conscious desire to perform an act or to cause a result.

For purposes of Count One, the term "officer of the United States Fish and Wildlife Service and/or Bureau of Land

Management" means any person who is employed either full-time or part-time by the United States Fish and Wildlife Service or Bureau of Land Management.

CONSTITUTIONALLY PROTECTED SPEECH AND CONDUCT

In determining whether the government has proved any Defendant guilty of the conspiracy charged in Count One, you must consider Defendants' assertion that they were engaging in lawful speech and conduct, including political protest, protected by either the First Amendment or Second Amendment to the United States Constitution.

Protected Speech and Expression Under the First Amendment

Defendants' political beliefs are not on trial. Defendants cannot be convicted based on unpopular beliefs. Although speech and assembly are generally protected by the First Amendment, that protection is not absolute, and it is not a defense to the conspiracy charged in Count One.

For example, "threats" and "intimidation," as defined in these instructions, are not protected by the First Amendment.

On the other hand, a defendant's speech that merely encourages others to commit a crime is protected by the First Amendment unless that defendant intended the speech and expressive conduct to incite an imminent lawless action that was likely to occur.

Thus, you may consider the intent of a Defendant's speech and expressive conduct in deciding whether the government proved beyond a reasonable doubt that any Defendant agreed with another to impede an officer of the United States Fish and Wildlife Service and/or Bureau of Land Management by force, intimidation, or threats.

Right to Possess Firearms Under the Second Amendment

Under the Second Amendment to the United States Constitution a person has the right "to keep and bear arms," that is to own, to possess, and to carry firearms. As with First Amendment rights, however, this Second Amendment right is not absolute and is not a defense to the conspiracy charged in Count One. Nevertheless, you may consider evidence as to the reasons any Defendant may have possessed or carried firearms when you consider whether the government proved any Defendant agreed with another to impede an officer of the United States Fish and Wildlife Service and/or Bureau of Land Management by force, intimidation, or threats.

ELEMENTS OF COUNT TWO: POSSESSION OF FIREARMS AND DANGEROUS WEAPONS IN FEDERAL FACILITIES

As noted, Defendants Ammon Bundy, Ryan Bundy, Shawna Cox, David Lee Fry, and Jeff Wayne Banta are charged in Count Two with **Possession of Firearms and Dangerous Weapons in Federal Facilities** in violation of 18 United States Code § 930(b). In

order for any of these Defendants to be found guilty of Count Two, the government must prove as to that Defendant each of the following elements beyond a reasonable doubt:

First, beginning on or about January 2, 2016, and continuing through February 12, 2016, the particular Defendant possessed or caused to be present a firearm or other dangerous weapon;

Second, in a federal facility;

Third, the particular Defendant acted knowingly; and

Fourth, the particular Defendant -- or someone the Defendant intentionally aided and abetted -- acted with the intent that the firearm or other dangerous weapon be used in the commission of a crime (in this case Conspiring to Impede Officers of the United States) at least in part within that federal facility.

The term "federal facility" means a building or part of a building owned or leased by the federal government, where federal employees are regularly present for the purpose of performing their official duties.

The terms "on or about," "knowingly," and "with intent" mean the same in this context as for Count One.

Aiding and Abetting: Count Two

A Defendant may be found guilty of Possession of Firearms and Dangerous Weapons in Federal Facilities (Count Two) even if the Defendant personally did not commit the act or acts constituting the crime but aided and abetted another in its

commission. To prove a Defendant guilty of Possession of Firearms and Dangerous Weapons in Federal Facilities by aiding and abetting, the government must prove each of the following beyond a reasonable doubt:

First, Possession of Firearms and Dangerous Weapons in Federal Facilities, as defined in these Instructions, was committed by someone;

Second, the Defendant aided, counseled, commanded, induced or procured that person with respect to at least one element of Possession of Firearms and Dangerous Weapons in Federal Facilities;

Third, the Defendant acted with the intent to facilitate Possession of Firearms and Dangerous Weapons in Federal Facilities, as defined in these instructions; and

Fourth, the Defendant acted before the crime was completed.

It is not enough that the Defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the Defendant acted with the knowledge and intention of helping that person commit Possession of Firearms and Dangerous Weapons in Federal Facilities.

A defendant acts with the intent to facilitate the crime when the defendant actively participates in a criminal venture

with advance knowledge of the crime.

The government is not required to choose between proving whether the Defendant personally committed the crime or whether the Defendant aided and abetted another in committing the crime. The government, however, is required to prove beyond a reasonable doubt either that the Defendant personally committed the crime or that the Defendant aided and abetted another in doing so as defined in these instructions.

ELEMENTS OF COUNT FOUR: THEFT OF GOVERNMENT PROPERTY

As noted, Defendant Kenneth Medenbach is charged in Count Four with **Theft of Government Property** in violation of 18 United States Code § 641. In order for Defendant Kenneth Medenbach to be found guilty of Count Four, the government must prove each of the following elements beyond a reasonable doubt:

First, the Defendant knowingly stole and converted to Defendant's use a 2012 Ford F-350 truck, with the intention of depriving the owner of the use or benefit of the Ford F-350 truck;

Second, the Ford F-350 truck belonged to the United States; and

Third, the value of the truck was more than \$1,000.00.

The term "knowingly" in this context means the same as for Count One.

ELEMENTS OF COUNT FIVE: THEFT OF GOVERNMENT PROPERTY

As noted, Defendant Ryan Bundy is charged in Count Five with **Theft of Government Property** in violation of 18 United States Code § 641. In order for Defendant Ryan Bundy to be found guilty of Count Five, the government must prove each of the following elements beyond a reasonable doubt:

First, the Defendant knowingly stole and converted to his own use or the use of another cameras and related equipment with the intention of depriving the owner of the use of this property;

Second, the cameras and related equipment belonged to the United States; and

Third, the value of the cameras and related equipment was more than \$1,000.00.

The term "knowingly" in this context means the same as for Count One.

Aiding and Abetting: Count Five

A Defendant may be found guilty of Theft of Government Property (Count Five) even if the Defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a Defendant guilty of Possession of Theft of Government Property by aiding and abetting, the government must prove each of the following beyond a reasonable doubt:

First, Theft of Government Property, as defined in these Instructions, was committed by someone;

Second, the Defendant aided, counseled, commanded, induced or procured that person with respect to at least one element of Theft of Government Property;

Third, the Defendant acted with the intent to facilitate Theft of Government Property, as defined in these instructions; and

Fourth, the Defendant acted before the crime was completed.

It is not enough that the Defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the Defendant acted with the knowledge and intention of helping that person commit Theft of Government Property.

A defendant acts with the intent to facilitate the crime when the defendant actively participates in a criminal venture with advance knowledge of the crime.

The government is not required to choose between proving whether the Defendant personally committed the crime or whether the Defendant aided and abetted another in committing the crime. The government, however, is required to prove beyond a reasonable doubt either that the Defendant personally committed the crime or

that the Defendant aided and abetted another in doing so as defined in these instructions.