UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATHAN WEEDEN,

Defendant.
_____/

No. 2:23-cr-7

Hon. Robert J. Jonker
United States District Judge

GOVERNMENT'S PROPOSED SUPPLEMENTAL JURY INSTRUCTION RE: 18 U.S.C. § 241 SPECIFIC INTENT

May it please the Court, the United States proposes the following supplemental jury instruction regarding the specific intent requirement under 18 U.S.C. § 241, amending its prior proposed instruction on the element to include language and authorities supporting reactions to the vandalism as a relevant consideration. The government reserves the right, with the Court's permission, to supplement or modify these requested instructions based on the evidence and defenses presented at trial.

Respectfully submitted,

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/s/ Nils R. Kessler

Dated: January 5, 2024

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COUNT 1 – 18 U.S.C. § 241: THIRD ELEMENT – SPECIFIC INTENT

(1) The third element requires the government to prove that the defendant knowingly and voluntarily joined the agreement to accomplish the unlawful objective described above, understanding the conspiracy's main purpose, and intending to help advance or achieve its goals.

(2) This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

(3) But proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

(4) A defendant's knowledge and intent can be proved indirectly by facts and circumstances that lead to a conclusion that he knew the conspiracy's main purpose. This evidence may include such things as the defendant's words, actions, and reactions to the circumstances. It may also include evidence of the manner in which others reacted to the defendant's actions; although this evidence is not conclusive by itself, the synagogue congregants' reactions to the vandalism may be considered as evidence of the defendant's intent. It is up to the government to convince you that such facts and circumstances existed in this particular case.

(5) It is not necessary for you to determine that the defendant was thinking in legal terms. That is, you do not need to find that the defendant or any co-conspirators understood the legal basis of the federal right to use and hold property, which I have just described. Rather, you need only find that the defendant entered the agreement with a bad purpose, knowing it to be an unlawful agreement to interfere with property rights, but deciding to further its purpose anyway.

Authority:

In General

Sixth Circuit Pattern Jury Instruction (2023 ed.) 3.03 DEFENDANT'S CONNECTION TO THE CONSPIRACY (as modified to include language "such as the defendant's words, actions, and reactions to the circumstances," reactions of victims, and point (5)).

Anderson v. United States, 417 U.S. 211, 223 (1974) ("It is established that since the gravamen of the offense under § 241 is conspiracy, the prosecution must show that the offender acted with a specific intent to interfere with the federal rights in question.").

United States v. Price, 383 U.S. 787, 806 n.20 (1966) (requiring specific intent be proven in a § 241 case and noting that there is "no basis for distinction" between § 241 and § 242 with respect to the specific intent requirement.).

Screws v. United States, 325 U.S. 91, 106 (1945) (defining a "willful" act as one committed either "in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite.").

United States v. Prabhu Ramamoorthy, 949 F.3d 955, 961 (6th Cir. 2020) ("A specific intent crime requires additional bad purpose.") (internal citations omitted).

United States v. Robinson, 813 F.3d 251, 256 (6th Cir. 2016) (listing as a § 241 element the specific intent to commit the deprivation.).

United States v. Lanham, 617 F.3d 873, 885 (6th Cir. 2010) (same).

United States v. Epley, 52 F.3d 571, 575-76 (6th Cir. 1995) (same).

United States v. Brown, 49 F.3d 1162, 1165–66 (6th Cir. 1995) (same).

United States v. Couch, 59 F.3d 171 (6th Cir. 1995) (upholding the following instruction in the § 242 context: ". . . an act is done willfully if it is done voluntarily *and intentionally, and with the specific intent to do something which the law forbids; that is, with an intent to violate a specific protected right.* ") (Emphasis in original).

United States v. O'Dell, 462 F.2d 224, 231 (6th Cir. 1972) ("A willful effort to deprive a citizen of such right, or to intimidate him in its exercise, if mounted under color of state law, violates 18 U.S.C. § 242. A conspiracy to effect such

ends, whether directed against citizens or mere inhabitants of the United States, is punishable under 18 U.S.C. § 241.").

Thinking in legal terms not required

Screws v. United States, 325 U.S. 91, 106 (1945) ("The fact that the defendants may not have been thinking in constitutional terms is not material" to whether they acted willfully).

United States v. Brown, 49 F.3d 1162, 1165–66 (6th Cir. 1995) (holding in the § 241 context that "[t]he United States need not prove that the defendant actually knew it was a constitutional right being conspired against or violated.") (internal citations omitted).

United States v. O'Dell, 462 F.2d 224, 232, n10 (6th Cir. 1972) (holding in a § 242 and § 241 case that "In determining whether such specific intent existed, the jury in any new trial need not, in order to convict, determine that Appellants actually knew that it was a Constitutional right that they were violating or conspiring against.") (*citing Screws*, 325 U.S. at 106).

United States v. Johnstone, 107 F.3d 200, 209-10 (3d Cir. 1997) ("You may find that a defendant acted with the required specific intent even if you find that he had no real familiarity with the Constitution or with the particular constitutional right involved . . .").

Eighth Circuit Model Jury Instructions, No. 6.18.242 (Deprivation of Civil Rights (18 U.S.C. § 242) ("You may find the defendant acted willfully even if you find that [he/she] had no real familiarity with the Constitution or with the particular constitutional right involved.) (2023 ed.).

Fifth Circuit Pattern Jury Instructions (Criminal Cases), No. 2.12 (18 U.S.C. § 242) ("To find that the defendant was acting willfully, it is not necessary for you to find that the defendant knew of a specific Constitutional provision or federal law that his [her] conduct violated.") (2019 ed.).

A slight connection is sufficient & may be inferred from circumstantial evidence

United States v. Robinson, 813 F.3d 251, 256 (6th Cir. 2016) ("The existence of a criminal conspiracy, need not be proven by direct evidence, a common plan may be inferred from circumstantial evidence. . . . Furthermore, once a conspiracy has been established, only slight evidence is necessary to implicate a defendant.") (internal citations and quotations omitted).

United States v. Gresser, 935 F.2d 96, 101 (6th Cir. 1991) (same).

United States v. Lanham 617 F.3d 873 (6th Cir. 2010) ("a defendant's participation in the conspiracy's common purpose and plan may be inferred from the defendant's actions and reactions to the circumstances."), *see also id.*, at 886 (clarifying that "a conspirator 'need not have personally performed the deed for which he is being held liable. A conspirator can be held criminally liable for the actions of his co-conspirators committed during and in furtherance of the conspiracy.'") quoting *United States v. Gresser*, 935 F.2d 96, 101 (6th Cir.1991).

United States v. White, 788 F.2d 390, 393 (6th Cir.1986) (concluding evidence supported conviction of conspiracy in violation of § 241 where, although the defendant did not participate in the arson of a Black family's home, he had made statements such as, "if that black son of a bitch [re]built ... across the street from me ... I'd burn it down").

United States v. Whitney, 229 F.3d 1296, 1301 (10th Cir. 2000) ("[T]he defendant's participation in, or connection to, the conspiracy need only be slight, if there is sufficient evidence to establish that connection beyond a reasonable doubt. Moreover, an agreement may be inferred from a variety of circumstances, such as, sharing a common motive, presence in a situation where one could assume participants would not allow bystanders, repeated acts, mutual knowledge with joint action, and the giving out of misinformation to cover up the illegal activity.") (internal quotations and citations omitted).

United States v. Gatling, 96 F.3d 1511, 1518 (D.C. Cir. 1996) ("In order to prove that an agreement [sufficient to support a conspiracy against civil rights] existed, the government need only show that the conspirators agreed on the essential nature of the plan, not that they agreed on the details of their criminal scheme.").

Victim's Reactions

18 U.S.C. § 241 (requiring the government to prove intent to "injure, oppress, threaten, or intimidate any person" in the free exercise or enjoyment of a right secured by the constitution or federal law).

Watts v. United States, 394 U.S. 705, 708 (1969) (considering "the reaction of the listeners" as a factor in whether a threat existed).

United States v. Brown, 49 F.3d 1162, 1167 (6th Cir. 1995) (in a § 241 conspiracy to violate § 1982 property rights, tacitly approving admission of synagogue members' reactions: "Here, Jewish citizens were unquestionably

denied their right to use property free from racial discrimination. Jewish citizens who were members of the synagogue *testified that they were intimidated in their use of the synagogue*") (emphasis added); *see also id.*, at 1164 ("As Patton drove by the synagogue, Armstrong fired several shots into the synagogue with a [pistol]. Due to the early hour, no one was present in the synagogue or injured. However*, a member of the synagogue described the effect of the shooting as shocking, intimidating, and perceived as life-threatening*") (emphasis added).

United States v. Magleby, 241 F.3d 1306, 1311 (10th Cir. 2001) (in a § 241 cross burning case, holding "that victims' reactions to a cross-burning may be considered by a trier of fact as relevant evidence of a defendant's intent").

United States v. Hartbarger, 148 F.3d 777, 782 (7th Cir. 1998), overruled on other grounds by *United States v. Colvin*, 353 F.3d 569 (7th Cir. 2003) (in a § 241 cross burning case, upholding district court allowing "testimony from the victims and witnesses showing the impact of the cross-burning…specifically that they were frightened and upset" and an instruction that "While a victim's reaction to a cross burning is not conclusive evidence of the defendant's intent, it may be considered nonetheless as some evidence of his intent").

United States v. J.H.H., 22 F.3d 821, 827–28 (8th Cir.1994) (in a § 241 cross burning case, holding that "Evidence showing the reaction of the victim of a threat is admissible as proof that a threat was made").

United States v. Alaboud, 347 F.3d 1293, 1298 (11th Cir. 2003) (in a § 875(c) threatening communications case, holding that a recipient's reaction is admissible, noting that "every other circuit that has considered it has ruled that evidence of the recipient's reaction is relevant and admissible") (collecting cases).