

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 VS.) CR. NO. 05-20202 M1
)
 ROSCOE DIXON,)
)
 Defendant.)

JURY INSTRUCTIONS

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your discussions -- what we call your deliberations.

It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the government.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against the defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require the defendant to prove his innocence or produce any evidence at all. The government has the burden of proving the defendant guilty beyond a reasonable doubt as to each charge in the indictment, and if it fails to do so you must find the defendant not guilty as to the charge you are considering.

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As stated earlier you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses, the exhibits admitted in the record and any facts of which the court has taken judicial notice or as to which the parties have stipulated. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between direct or circumstantial evidence.

Also you should not assume from anything I may have said or done that I have any opinion concerning any of the issues before you in this case. Except for my instructions to you, you should disregard anything I may have said in arriving at your own decision concerning the facts.

The defendant has been charged five (5) crimes. The number of charges is not evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

Judicial Notice

You are instructed that the Court has taken judicial notice of the fact that the locations of Island Place on Mud Island, Pembroke Square Apartments in Memphis, Tennessee, the Pillow Street address of Senator Dixon, the Hamilton office of Senator Dixon, and the Whitehaven campaign office, in Whitehaven, Tennessee are located in the Western District of Tennessee.

Since you are the fact-finders in this case, you may, but are not required to, accept even this fact as conclusively established.

Stipulations

While we were hearing evidence, you were told that the government and the defendant agreed, or stipulated to certain facts. This means simply that the government and the defendant both accept these facts. There is no disagreement over these facts, so there was no need for evidence by either side on these points. You may accept these facts, even though nothing more was said about them one way or the other. This, of course, is all for you the jury to decide.

The parties in this case have stipulated as follows:

1. The United States and the Defendant, ROSCOE DIXON, hereby agree and stipulate that before the trial they determined and agreed that the transcripts of video and audio conversations submitted in this case are accurate.

2. Further, the parties are in agreement that the above facts have been proven beyond a reasonable doubt by this stipulation.

3. The parties stipulate that the State of Tennessee, as a state government, received federal assistance in excess of

\$10,000.00 during the one year period of January 1, 2004 up to and including December 31, 2004.

4. That during the fiscal year 2004, more than \$461,290.00 was received in federal funds for the purchase of computer and other data processing equipment.

5. The the subscriber for T-Mobile, Inc., mobile telephone number (901)335-7226 was assigned to the defendant Roscoe Dixon, and that this number was subscribed to by him and active on May 14, 2004. This information is memorialized by Trial Exhibit No. 54 which was produced by the authorized custodian of records of T-Mobile, Inc.

You have heard some recordings that were received in evidence, and you were given some written transcripts of the tapes.

While the transcripts have been stipulated to be accurate and have, therefore, been received into evidence, you should be mindful that the recordings themselves are also in evidence. If you noticed any differences between what you heard on the recordings and what you read in the transcripts, you should rely on what you heard, not what you read since the recordings are the source of the transcripts.

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony he or she gave before you during the trial.

The fact that a witness has been previously convicted of a felony offense is another factor you may consider in deciding whether you believe that witness's testimony.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

(1) You have heard the defendant testify. Earlier, I talked to you about the "credibility" or the "believability" of the witnesses. And I suggested some things for you to consider in evaluating each witness's testimony.

(2) You should consider those same things in evaluating the defendant's testimony.

Law Enforcement
Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the city, county, state, or federal government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of each law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

(1) You have heard the testimony of Barry Myers. You have also heard that he was involved in the same crime that the defendant is charged with committing. You should consider Barry Myers' testimony with more caution than the testimony of other witnesses.

(2) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

(3) The fact that Barry Myers has plead guilty to a crime is not evidence that the defendant is guilty, and you cannot consider this against the defendant in any way.

Testimony of a Paid Informant

You have heard the testimony of Tim Willis. You have also heard that he received money from the government in exchange for providing information.

The use of paid informants is common and permissible. But you should consider Tim Willis' testimony with more caution than the testimony of other witnesses. Consider whether his testimony may have been influenced by what the government gave him.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

You have heard testimony that the defendant Roscoe Dixon committed crimes, other than the ones charged in the Indictment. As an example, you have heard that Roscoe Dixon took cash that he thought was payment for his assistance as a state senator to the Children's Dental Clinic. If you find that the defendant committed this crime, you can consider the evidence only as it relates to the defendant's intent, plan, and predisposition to commit the crimes charged in the indictment. You must not consider this proof for any other purpose.

Remember that the defendant is on trial here only for acts relating to cash received on behalf of E-Cycle Management, and not for other acts. Do not return a guilty verdict unless the government proves the crimes charged beyond a reasonable doubt.

Indictment
Not Guilty Plea

I told you at the outset that this case was initiated through an indictment. An indictment is but a formal method of accusing the defendant of a crime. It includes the government's theory of the case, and we will be going over in a few minutes the substance of the indictment. The indictment is not evidence of any kind against an accused.

The defendant has pleaded not guilty to the charges contained in the indictment. This plea puts in issue each of the essential elements of the offenses as described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

I will read the indictment to you once again so that you are well aware of the charges made in the indictment.

The indictment reads:

There are three theories of the government set out in each of Counts 2, 3, and 4, and two theories in Count 5. First, as to Counts 2, 3, and 4, the indictment asserts that the defendant attempted to commit each of the crimes charged; second, as to Counts 2, 3, 4 and 5, the indictment asserts that the defendant actually committed each of the crimes charged; and third, that the defendant aided and abetted the commission of each of the four crimes charged. As to any of these four charges (Counts 2, 3, 4, or 5), if you are convinced beyond a reasonable doubt that the government has satisfied all of the elements of the offense under the theory you are considering, then as to the charge you are considering, you must return a verdict of guilty. If, as to any of the four charges (Counts 2, 3, 4, and 5), you are convinced that the government has failed to prove beyond a reasonable doubt each of the elements required under each of the theories asserted by the government, then as to the count you are considering, you must return a verdict of not guilty as to that count.

These instructions will first discuss the elements of commission of each alleged crime, then the court will discuss the theory of attempt, and then the theory of aiding and abetting.

50-03 Extortion Under Color of Official
Right - The Hobbs Act (18 U.S.C. § 1951)

Counts 2, 3, and 4 of the indictment charge the defendant with violating § 1951 of Title 18 of the United States Code. That section, in pertinent part, provides:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of an article or commodity in commerce, by . . . extortion or attempts or conspires so to do . . . in furtherance of a plan or purpose to do anything in violation of this section [shall be guilty of a crime].

Extortion and Commerce

The term "extortion" means the obtaining of property (including money) from another, with his consent under color of official right.

The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; and all commerce between points within the same State through any place outside such State.

In order to meet its burden of proof, the government must establish beyond a reasonable doubt each of the following elements under its theory of extortion under color of official right:

First, that the defendant was a public official, or held public office;

Second, that the defendant obtained property or services not due him or his office;

Third, that this property or service was given, with the consent of the giver, to the defendant, who knew that the property was given because of the power of the defendant's official position; and

Fourth, that interstate commerce, or an item moving in interstate commerce, was delayed, obstructed, or affected in any way or degree.

The court instructs you that it is not relevant that the defendant's action or inaction was already required by his official duty or would have been performed in any event.

First Element--Defendant Was Public Official

The first element that the government must prove beyond a reasonable doubt is that at the time of the events charged in the indictment, the defendant was a public official, or held public office.

Second Element--Property Not Due That Office

The second element which the government must prove beyond a reasonable doubt is that defendant obtained money, goods, or services, which were not legitimately owed to the office the defendant represents.

The government does not have to prove that the money or items given were of personal benefit to the defendant. The money or items given may be obtained by the defendant for the personal benefit of others. The amount of money and the value of the goods or services may be considered in helping you determine the facts of the situation.

The government does have to prove, beyond a reasonable doubt, that the money, goods, or services obtained were not due or owing the office which the defendant represents.

Third Element--Misuse of Official Position

The third element which the government must prove beyond a reasonable doubt is that the defendant used the authority of his office or position to obtain the money, goods or services. That is, you must decide whether the defendant represented himself as capable of doing something, or of refusing to do something because of his official position.

To satisfy this element, the government must prove beyond a reasonable doubt the defendant obtained a payment either directly or indirectly to which he was not entitled, knowing that the payment was made in return for official acts rather than being given voluntarily or unrelated to the defendant's office. The defendant need not have affirmatively induced the payments by his actions, but he must have known that the payment was offered in exchange for a specific exercise of his official powers. You do not have to determine whether the defendant could or did actually perform the service, or whether he actually had a duty to do so.

Fourth Element--Affecting Interstate Commerce

If you decide that the defendant obtained another's money, goods, or services by extortion under color of official right (that is, that defendant has been shown by proof beyond a reasonable doubt to have committed the first three elements set out above), you must then decide whether this action would affect interstate commerce in any way or degree. You must determine whether there is an actual or potential effect on commerce between any two or more states (or between one state and the District of Columbia or between a state and a U.S. Territory or possession or on commerce within one state that goes through any place outside that state or a state or a foreign country).

If you decide that there was any effect at all on interstate commerce, then that is enough to satisfy this element. The effect can be minimal. For example, if a successful robbery of money would prevent the use of those funds to purchase articles which travel through interstate commerce, that would be a sufficient effect on interstate commerce.

If you decide that interstate commerce would potentially or probably be affected if the defendant had successfully and fully completed his actions, then the element of affecting interstate

commerce is satisfied. You do not have to find that interstate commerce was actually affected. However, if the defendant has finished his actions, and done all he intended to do, and you determine there has been no effect on interstate commerce, then you cannot find the defendant guilty under this theory.

You do not have to decide whether the effect on interstate commerce was harmful or beneficial to a particular business, or to commerce in general. The government satisfies its burden of proving an effect on interstate commerce if it proves beyond a reasonable doubt any effect, whether it was harmful or not.

The defendant need not have intended or anticipated an effect on interstate commerce. You may find the effect is a natural consequence of his actions. If you find that the defendant intended to take certain actions--that is, he did the acts charged in the indictment in order to obtain money or property--and you find those actions have either caused, or would probably cause, an effect on interstate commerce, then you may find the requirements of this element have been satisfied.

Count 5 of the indictment charges the defendant with violating section 666 of Title 18 of the United States Code. That section provides in relevant part:

Whoever ... being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof ... corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$ 5,000 or more shall be guilty of a crime.

In order to prove the defendant guilty of bribery relating to an organization or government which receives federal funds, the government must prove each of the following elements beyond a reasonable doubt:

First, that at the time alleged in the indictment, defendant was an agent of the State of Tennessee;

Second, that in a one-year period the State of Tennessee received federal benefits in excess of \$10,000;

Third, that defendant accepted (or agreed to accept or solicited or demanded) something of value from another person;

Fourth, that the defendant acted corruptly with the intent to be influenced or rewarded with respect to a transaction of the State of Tennessee; and

Fifth, that the value of the transaction to which the payment related was at least \$5,000.

The first element the government must prove beyond a reasonable doubt is that at the time alleged in the indictment, defendant was an agent of the State of Tennessee.

An "agent" is a person authorized to act on behalf of another person, organization or government. Employees, partners, directors, officers, managers, and representatives are all agents of the organization or government with which they are associated.

Elected officials are agents of the government to which they were elected to serve.

27A-11
Second Element Organization or
Government Received Federal Funds

The second element the government must prove beyond a reasonable doubt is that in a one-year period, the State of Tennessee received federal benefits in excess of \$10,000.

To prove this element, the government must establish that the State of Tennessee received, during a one-year period (beginning on January 1, 2004), benefits in excess of \$10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance or some other form of federal assistance. This does not include legitimate valid bona fide salary, wages, fees, or other compensation paid or expenses paid or reimbursed in the ordinary course of business.

The government does not have to prove that defendant had the authority to administer these federal benefits.

The third element the government must prove beyond a reasonable doubt is that defendant accepted (or agreed to accept or solicited or demanded) something of value as alleged in the indictment.

The statute makes no distinction between accepting, agreeing to accept, soliciting or demanding a bribe. The mere soliciting or demanding of a bribe is just as much a violation of the statute as actually receiving one.

It is not necessary that the payment be made directly to defendant. If the payment was made to a third party for the purpose of influencing the defendant, as I will explain that term in a moment, that is sufficient to satisfy this element.

27A-13
Fourth Element Defendant Acted
Corruptly in Connection with Transaction

The fourth element the government must prove beyond a reasonable doubt is that the defendant accepted (or agreed to accept or solicited or demanded) something of value corruptly and with the intent to be influenced or rewarded in connection with some business or transaction of the State of Tennessee.

To act corruptly means simply to act voluntarily and intentionally with an improper motive or purpose to be influenced or rewarded. This involves conscious wrongdoing, or as it sometimes been expressed, a bad or evil state of mind.

In considering this element, remember that it is the defendant's intent at least in part to be influenced or rewarded which is important, not the subsequent actions of defendant or the State of Tennessee including actions within the state legislature. Thus, the government does not have to prove that the defendant received the bribe or that the bribe actually influenced the State of Tennessee or actions with the state legislature. It is not even necessary that the defendant had the authority to perform the act sought.

Fifth Element Value of Transaction

The fifth element the government must prove beyond a reasonable doubt is that the value of the transaction to which the payment related was at least \$5,000.

To establish this element, the government must prove that defendant intended to be influenced or rewarded in connection with any business or transaction or series of transactions of the State of Tennessee involving anything of value of \$5,000 or more. If you find that the business or transaction in question had a value of at least \$5,000, this element is satisfied.

The government is not required to prove that the defendant received at least \$ 5,000. It is the value of the business or transaction that the bribe was intended to influence or reward that is important for the purposes of this element.

Second Theory under Counts 2, 3, and 4/Attempt

Each of Counts 2, 3, and 4 of the indictment, in addition to alleging violations under 18 U.S.C. §1951 (Counts 2, 3, and 4) also alleges an attempt to violate the respective criminal statute.

(1) Thus, Counts 2, 3, and 4, of the indictment accuse the defendant of attempting to commit the crimes charged in violation of federal law. For you to find the defendant guilty of each of these crimes under the theory of attempt, you must be convinced that the government has proved both of the following elements beyond a reasonable doubt as to the count you are considering:

(A) First, that the defendant intended to commit the crime as charged.

(B) And second, that the defendant did some overt act that was a substantial step towards committing the crime as charged.

(C) Merely preparing to commit a crime is not a substantial step. The defendant's conduct must go beyond mere

preparation, and must strongly confirm that he intended to commit the crime as charged. But the government does not have to prove that the defendant did everything except the last act necessary to complete the crime. A substantial step beyond mere preparation is enough.

(2) If you are convinced that the government has proved both of these elements, say so by returning a guilty verdict on the count you are considering. If you have a reasonable doubt about either one of these elements, then you must find the defendant not guilty under the theory of attempt.

Third Theory under Counts 2, 3, 4, and 5

Each of Counts 2, 3, 4, and 5 of the indictment, in addition to alleging violations of 18 U.S.C. §1951 or 18 U.S.C. §666 and, as to Counts 2, 3, and 4, attempted violations of 18 U.S.C. §1951, also alleges a violation of 18 U.S.C. §2. 18 U.S.C. §2 provides as follows:

(a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

(1) For you to find Roscoe Dixon guilty of Counts 2, 3, 4, and 5, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is called an aider and abettor.

(2) But for you to find Mr. Dixon guilty of Count 2, 3, 4, or 5 as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt as to the count you are considering:

(A) First, that the crime in the count you are considering was committed.

(B) Second, that the defendant helped to commit the crime or encouraged someone else to commit the crime.

(C) And third, that the defendant intended to help commit or encourage the crime.

(3) Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

(4) What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

(5) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict as to the count you are considering. If you have a reasonable doubt about any one of these elements, then you cannot find the defendant guilty of the count you are considering as an aider and abettor.

COUNT 1: CONSPIRACY TO AFFECT
COMMERCE BY MEANS OF EXTORTION
UNDER COLOR OF OFFICIAL RIGHT

COUNT ONE of the indictment charges that from in or about July 1, 2003, until in or about May 20, 2005, in the Western District of Tennessee and elsewhere, defendant Roscoe Dixon and Barry Myers did knowingly conspire to affect commerce by means of extortion by obtaining the property of another, with his consent, under color of official right, in violation of Title 18, United States Code, Section 1951.

COUNT ONE charges the defendant with conspiracy. The defendant is not charged in COUNT ONE with the actual commission of the underlying crime of extortion under color of official right.

It is a crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal.

A conspiracy is a kind of criminal partnership. For you to find defendant Roscoe Dixon guilty of the conspiracy charge under COUNT ONE, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the crime of affecting commerce by means of extortion under color of official right in violation of 18 U.S.C. § 1951;

Second, that the defendant knowingly and voluntarily joined the conspiracy; and

Third, that a member of the conspiracy did one of the overt acts described in COUNT ONE for the purpose of advancing or helping the conspiracy.

You must be convinced the government has proved all of these elements beyond a reasonable doubt to find the defendant guilty of the conspiracy charge.

With regard to the first element – a criminal agreement – the government must prove two or more persons conspired, or agreed, to cooperate with each other to commit the crime of extortion under color of official right described in COUNT ONE.

The government is not required to prove the existence of a formal agreement, written or spoken. Nor is the government required to prove everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things you may consider in deciding whether the government has proven a criminal agreement. But without more they are not enough.

What the government must prove is there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit the crime of extortion under color of official right described in COUNT ONE. This is essential.

At least two persons who are parties to the agreement must not be government agents, law enforcement officers, or informers.

An agreement solely between a defendant and a person who at the time of the agreement is acting as a government agent, law enforcement officer, or informer is not a criminal agreement.

An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

Defendant's Connection to Conspiracy

If you are convinced there was a criminal agreement, then you must decide whether the government has proved that defendant Roscoe Dixon knowingly and voluntarily joined and participated in that agreement. To convict the defendant, the government must prove the defendant knew the conspiracy's main purpose, and the defendant voluntarily joined it intending to help advance or achieve its goals.

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

But proof the defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough to prove the defendant joined the conspiracy, even if the defendant approved of what was happening or did not object to it. Similarly, just because the defendant may have done something that happened to help a conspiracy does not necessarily make the defendant a conspirator. These are all things you may

consider in deciding whether the government has proved the defendant joined a conspiracy. But without more they are not enough.

What the government must prove is that the defendant knew the conspiracy's main purpose and the defendant voluntarily joined the conspiracy intending to help advance or achieve its goals. This is essential.

The defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion the defendant knew the conspiracy's main purpose. But it is up to the government to convince you beyond a reasonable doubt such facts and circumstances existed in this case.

The third element the government must prove is that a member of the conspiracy did one of the overt acts described in COUNT ONE of the indictment for the purpose of advancing or helping the conspiracy.

COUNT ONE lists several overt acts. The government does not have to prove that all these acts were committed, or that any of these acts were themselves illegal.

But the government must prove that at least one of these overt acts was committed by a member of the conspiracy, and that it was committed for the purpose of advancing or helping the conspiracy. This is essential.

3.06
Unindicted, Unnamed, or
Separately Tried Co-Conspirators

Now, one or more people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted or tried together in a proceeding.

The law permits the government to use undercover agents to enforce the law. The law allows officers or employees of the government to afford a defendant the opportunity and the facilities for the commission of a criminal offense. The government may use artifice and stratagem to catch those engaged in criminal enterprises or conduct.

The defendant asserts as a defense to the crimes alleged that he was the victim of entrapment by an agent of the government. While the law permits government agents to trap an unwary criminally-minded person, the law does not permit the government agents to entrap an unwary innocent. Thus, a defendant may not be convicted of a crime if it was the government who gave the defendant the idea to commit the crime, if it was the government who also persuaded him to commit the crime, and if he was not ready and willing to commit the crime before the government officials or agents first spoke with him.

On the other hand, if the defendant was ready and willing to violate the law, and the government merely presented him with an opportunity to do so, that would not constitute entrapment.

Your inquiry on this issue should first be to determine if there is any evidence that a government agent took the first step that led to a criminal act. If you find there was no such evidence, there can be no entrapment and your inquiry on this defense should end there.

If, on the other hand, you find some evidence that a government agent initiated the criminal acts charged in the indictment, then you must decide if the government has satisfied its burden to prove beyond a reasonable doubt that prior to first being approached by government agents, the defendant was ready and willing to commit the crime. If you find beyond a reasonable doubt that the defendant was predisposed that is, ready and willing to commit the offenses charged, and merely was awaiting a favorable opportunity to commit them, then you should find that the defendant was not the victim of entrapment. On the other hand, if you have a reasonable doubt that the defendant would have committed the offenses charged without the government's inducements, you must acquit the defendant.

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But, a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

(1) Next, I want to say a word about the dates mentioned in the indictment.

(2) The individual counts in the indictment each alleged that a crime happened on or about the date in the individual count you are considering. The government does not have to prove that the crime happened on that exact date. But the government must prove that the crime happened reasonably close to that date.

The word "knowingly," as that term is used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

Summary

If you find as to the count that you are considering, that the government has proved beyond a reasonable doubt each of the elements of the offense as set out under these instructions under the theory you are considering, then, as to the count you are considering, you must return a verdict of guilty as to that count, under that theory. You must all agree on the theory and must be unanimous as to each element under that theory before you can return a verdict of guilty. If you find as to the count you are considering that the government has failed to prove beyond a reasonable doubt each of the elements of the offense as set out in these instructions under any of the theories under the indictment, then, as to the count you are considering, you must return a verdict of not guilty.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty of the Counts set out in the indictment. The defendant is on trial only for the specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the court to determine.

You are here to determine the guilt or innocence of the accused defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused without regard to any belief you may have about guilt or innocence of any other person or persons.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges -- judges of the facts.

When you go to the jury room you should first select one of your members to act as your presiding juror. The presiding juror will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience. The verdict form will be placed in a folder and handed to you by the Court Security Officer. At any time that you are not deliberating (i.e., when at lunch or during a break in deliberations), the folder and verdict form should be delivered to the Court Security Officer who will deliver it to the courtroom Deputy Clerk for safekeeping.

[EXPLAIN VERDICT]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your presiding juror fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the Court Security Officer who will bring it to my attention. I will then respond as promptly as possible after conferring with

counsel, either in writing or by having you returned to the courtroom so that I can address you orally. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

If you feel a need to see the exhibits which are not being sent to you for further examination, advise the Court Security Officer and I will take up your request at that time.

[ANY JURY ALTERNATES NOT ALREADY EXCUSED,
SHOULD BE EXCUSED AT THIS TIME].

You may now retire to begin your deliberations.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
VS.) CR. NO. 05-20202
)
ROSCOE DIXON,)
)
 Defendant.)

V E R D I C T

We, the jury, on the charges in the indictment for our
verdict say:

1. We find the defendant, ROSCOE DIXON, as to Count 1

_____.
(Guilty) or (Not Guilty)

2. We find the defendant, ROSCOE DIXON, as to Count 2

_____.
(Guilty) or (Not Guilty)

3. We find the defendant, ROSCOE DIXON, as to Count 3

_____.

(Guilty) or (Not Guilty)

4. We find the defendant, ROSCOE DIXON, as to Count 4

_____.

(Guilty) or (Not Guilty)

5. We find the defendant, ROSCOE DIXON, as to Count 5

_____.

(Guilty) or (Not Guilty)

DATE

PRESIDING JUROR

CONTROL SHEET

USA v. Dixon
Case No. 05-20202

CRIMINAL CHARGE BOOK
[Jury Instructions]

2. General Instruction
3. Reasonable Doubt
4. Evidence (Direct and Circumstantial)
5. Multiple Crimes 2.01A
6. Judicial Notice
7. Stipulations of Parties
8. Transcriptions of Recordings (7.17)
9. Evidence/Number of Witnesses/Credibility
10. Defendant's Testimony (7.02B)
11. Testimony of Law Enforcement Officials
12. Testimony of Accomplice (7.08)
13. Testimony of a Paid Informant (7.06A)
14. Intent, Plan, Predisposition (404(b))
15. Indictment Not Evidence/Not Guilty Plea
16. Reading of Indictment
17. Introduction/Counts 2, 3, 4, and 5
18. The Hobbs Act (18 U.S.C. §1951)/Counts 2, 3, and 4
 - (a) Extortion Under Color of Official Right (50-03)
 - (b) Definitions - "Extortion" and "Commerce"
 - (c) Elements of the Offense (50-19)
 - (d) First Element - Defendant Was Public Official (50-20)
 - (e) Second Element - Property Not Due That Office (50-21)
 - (f) Third Element - Misuse of Official Position (50-22)
 - (g) Fourth Element - Affecting Interstate Commerce (50-24)
19. Section 666 (18 U.S.C. §1951)/Count 5
 - (a) The Indictment and the Statute (27A-8)
 - (b) Elements of the Offense (27A-9)
 - (c) First Element Defendant was Agent of Organization or Government (27A-10)
 - (d) Second Element Organization or Government Received Federal Funds (27A-11)
 - (e) Third Element Defendant Accepted Something of Value (27A-12)
 - (f) Fourth Element Defendant Acted Corruptly in Connection with Transaction (27A-13)
 - (g) Fifth Element Value of Transaction (27A-14)
20. Second Theory under Counts 2, 3, and 4/Attempt

21. Third Theory under Counts 2, 3, 4, and 5/Aiding and Abetting
 - (a) Aiding and Abetting (4.01)
22. Count 1: Conspiracy to Affect Commerce by Means of Extortion under Color of Official Right
 - (a) Conspiracy to Commit an Offense--Basic Elements (3.01A)
 - (b) Agreement (3.02)
 - (c) Defendant's Connection to the Conspiracy (3.03)
 - (d) Overt Acts (3.04)
 - (e) Unindicted, Unnamed or Separately Tried Co-conspirators (3.06)
23. Entrapment (8-7)
24. Inferring Required Mental State (2.08)
25. On or About 2.04
26. Knowingly 2.06
27. Summary
28. Consider Only Specific Offense Charged
29. Disregard Belief as to Guilt or Innocence of Other Persons
30. Verdict Must Be Unanimous/Duty to Discuss With Each Other
31. Instructions/Selection of Foreperson/Verdict Form/Communication of the Court/Submission of Copy of Instructions and Indictment
32. Verdict Form