

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

UNITED STATES OF AMERICA )

v. )

SAMUEL L. BRADBURY )

No.: 2:14-CR-71 PS

**JURY INSTRUCTIONS**

Dated: July 2, 2015

s/ Philip P. Simon  
PHILIP P. SIMON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

PROPOSED JURY INSTRUCTION 1

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. You must follow all of my instructions about the law, even if you disagree with them. This includes the instructions I gave you before the trial, any instructions I gave you during the trial, and the instructions I am giving you now.

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you saw and heard here in court. This is your job, not my job or anyone else's job.

Your second duty is to take the law as I give it to you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt.

You must perform these duties fairly and impartially. Do not let sympathy, prejudice, fear, or public opinion influence you.

You must not take anything I said or did during the trial as indicating that I have an opinion about the evidence or about what I think your verdict should be.

PROPOSED JURY INSTRUCTION 2

The charge against the defendant is in a document called an indictment. You will have a copy of the indictment during your deliberations.

The indictment charges the defendant with using an instrument of interstate commerce to willfully communicate a threat to kill or injure law enforcement officers, including two law enforcement officers listed by name and two judges listed by name, or to unlawfully damage or destroy the Tippecanoe County courthouse and other county offices and equipment, including police vehicles, by means of fire or an explosive.

The indictment also charges the defendant with using an instrument of interstate commerce to maliciously convey false information, knowing the same to be false, concerning an alleged attempt being made to kill or injure law enforcement officers, including two law enforcement officers listed by name and two judges listed by name, or to unlawfully damage or destroy the Tippecanoe County courthouse and other county offices and equipment, including police vehicles, by means of fire or an explosive.

The defendant has pled not guilty to the charge. The indictment is simply the formal way of telling the defendant what crime he is accused of committing. It is not evidence that the defendant is guilty. It does not even raise a suspicion of guilt.

PROPOSED JURY INSTRUCTION 3

The defendant is presumed innocent of the charge. This presumption continues throughout the case, including during your deliberations. It is not overcome unless, from all the evidence in the case, you are convinced beyond a reasonable doubt that the defendant is guilty as charged.

The government has the burden of proving the defendant's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case.

The defendant is never required to prove his innocence. He is not required to produce any evidence at all.

PROPOSED JURY INSTRUCTION 4

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the Internet, or any other source.

The evidence includes only what the witnesses said when they were testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers agreed to. A stipulation is an agreement that certain facts are true or that a witness would have given certain testimony.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

A lawyer has a duty to object if he thinks a question is improper. If I sustained objections to questions the lawyers asked, you must not speculate on what the answers might have been.

If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

PROPOSED JURY INSTRUCTION 5

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

PROPOSED JURY INSTRUCTION 6

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

PROPOSED JURY INSTRUCTION 7

Do not make any decisions simply by counting the number of witnesses who testified about a certain point.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

What is important is how truthful and accurate the witnesses were and how much weight you think their testimony deserves.



PROPOSED JURY INSTRUCTION 8

Part of your job as jurors is to decide how believable each witness was, and how much weight to give each witness' testimony. You may accept all of what a witness says, or part of it, or none of it.

Some factors you may consider include:

- the intelligence of the witness;
- the witness' ability and opportunity to see, hear, or know the things the witness testified about;
- the witness' memory;
- the witness' demeanor;
- whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness and accuracy of the witness' testimony in light of the other evidence presented; and
- inconsistent statements or conduct by the witness.

PROPOSED JURY INSTRUCTION 9

It is proper for an attorney to interview any witness in preparation for trial.

PROPOSED JURY INSTRUCTION 10

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. You may consider an inconsistent statement made before the trial only to help you decide how believable a witness' testimony was here in court.

PROPOSED JURY INSTRUCTION 11

You may consider evidence that a witness was convicted of a crime only in deciding the believability of his or her testimony. You may not consider it for any other purpose.

PROPOSED JURY INSTRUCTION 12

You have heard testimony about the defendant's character for being non-violent. You should consider this testimony together with and in the same way you consider the other evidence.

PROPOSED JURY INSTRUCTION 13

You have heard testimony and received evidence that the defendant made a statement to Jonathan Eager of the West Lafayette Police Department. You must decide whether the defendant actually made the statement and, if so, how much weight to give to the statement. In making these decisions, you should consider all of the evidence, including the defendant's personal characteristics and circumstances under which the statement may have been made.

PROPOSED JURY INSTRUCTION 14

You have heard testimony that the defendant committed acts other than the ones charged in the indictment. In particular, you have heard evidence that the defendant possessed the ingredients to make thermite and that he authored other writings of a violent nature. Also, you heard evidence that the defendant was previously arrested. Before using this evidence, you must decide whether it is more likely than not that the defendant did these other acts that are not charged in the indictment.

If you decide that the defendant was previously arrested, then you may consider this evidence only to help you decide if the defendant had a motive to commit the charged offense. You may not consider it for any other purpose.

If you decide that the defendant possessed the ingredients to make thermite or that he authored other writings of a violent nature, then you may consider this evidence only for the purpose of deciding whether the defendant made the statements in the Facebook post which is the subject of this case with an intent that the statement be understood as a serious expression of his intention to do the acts described. You may not consider it for any other purpose.

Keep in mind that the defendant is only on trial here for what he said in the Facebook post of June 19, 2014, not for the other acts.

PROPOSED JURY INSTRUCTION 15

You have heard from the following expert witnesses:

- FBI Chemist/Forensic Examiner Raleigh Parrott who testified by stipulation about the chemical makeup of the evidence recovered from the defendant's bedroom;
- FBI Computer Forensic Examiner James Buckley who testified by stipulation regarding a document found on the defendant's phone;
- FBI Special Agent Eric Morefield, who testified about improvised incendiary devices;
- Investigator Sean Leshney of the Tippecanoe County Prosecutor's Office, who testified about the forensic search of the defendant's computer;
- Dr. Erik Nielson, who testified about the use of violent rhetoric in music, speech, and film;
- Dr. Kyra Gaunt, who testified about behavior and the use of social media; and
- Jerry Taylor who also testified about improvised incendiary devices.

You do not have to accept these witnesses' opinions or testimony. You should judge each witness' opinions and testimony the same way you judge the testimony of any other witness. In deciding how much weight to give to these opinions and testimony, you should



consider the witness' qualifications, how he reached his opinions and the factors I have described for determining the believability of testimony.

PROPOSED JURY INSTRUCTION 16

Certain demonstrative exhibits were shown to you to help explain other evidence that was admitted, specifically the video demonstration of thermite and the Power-Point presentation of the defendant's Facebook chats. These are not themselves evidence or proof of any facts, so you will not have these particular exhibits during your deliberations. If they do not correctly reflect the facts shown by the evidence, you should disregard the exhibits and determine the facts from the underlying evidence.

PROPOSED JURY INSTRUCTION 17

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

PROPOSED JURY INSTRUCTION 18

The indictment in this case charges the defendant with violating one law in two different ways. First, by willfully making a threat to do harm to a person or property using fire or explosives; and second by maliciously conveying false information concerning an alleged attempt being made to do harm to a person or property using fire or explosives. In a minute I will explain the law as it applies to each of these different ways the government can prove a violation.

Before I do, however, I want to be clear that the government is not required to prove the defendant violated the statute in both ways. Instead, the government is required to prove that the defendant violated the statute in at least one of those ways. To find the defendant guilty, you must unanimously agree on which way(s) the defendant violated the statute as well as all of the other elements of the crime charged.

For example, if some of you were to find that the government has proved beyond a reasonable doubt that the defendant willfully made a threat to do harm to a person or property using fire or explosives, and the rest of you were to find that the government has proved beyond a reasonable doubt that the defendant maliciously conveyed false information concerning an alleged attempt being made to do harm to a person or property using fire or explosives, then there would be no unanimous agreement on which method of violating the law the government has proved. On the other hand, if all of you were to find that the government has proved beyond a reasonable doubt that the

defendant maliciously conveyed false information concerning an alleged attempt being made to do harm to a person or property using fire or explosives, then there would be a unanimous agreement.

You may also find that the defendant violated the statute in both ways, so long as you unanimously agree to each.

PROPOSED JURY INSTRUCTION 19

To find the defendant guilty of willfully making a threat to do harm to a person or property using fire or explosives you must find that the government has proven each of the following propositions beyond a reasonable doubt:

1. The defendant made a threat to kill or injure law enforcement officers or to damage or destroy the Tippecanoe County Courthouse or other public property;
2. By use of fire or explosives;
3. The threat was communicated via an instrument of interstate commerce; and
4. The threat was made willfully.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty. If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

The government is not required to prove that the defendant communicated a threat to kill and injure law enforcement officers and destroy and damage property by use of fire or explosives. However, the government is required to prove that the defendant communicated a threat to do one of those things. To find the defendant

guilty, you must agree unanimously on which threat the defendant made, as well as all of the other elements of the crime charged.

For example, if some of you were to find that the government has proved beyond a reasonable doubt that the defendant made a threat to kill law enforcement officers, and the rest of you were to find that the government has proved beyond a reasonable doubt that the defendant made a threat to destroy the Tippecanoe County courthouse, then there would be no unanimous agreement on which threat the government has proved. On the other hand, if all of you were to find that the government has proved beyond a reasonable doubt that the defendant made a threat to kill law enforcement officers, then there would be a unanimous agreement on which threats the government proved.

PROPOSED JURY INSTRUCTION 20

The term “threat” as used in these instructions means a serious expression of an apparent intention to carry out the activity described in the communication. In order for the government to prove that the statement is a threat, it must prove the following two things:

First, that the statement, when viewed in the context and under the circumstances in which it was made, would cause apprehension in a reasonable person, as distinguished from idle or careless talk, exaggeration, or something said in a careless manner; and

Second, that the defendant made the statement “willfully.” That is, he intended that the statement be understood as a serious expression of his intention to do the acts described.

The government is not required to prove that the defendant actually intended to carry out the acts threatened or that the defendant communicated the threat to the individuals referenced in the statement.

While the First Amendment of the United States Constitution protects vehement, scathing, and even offensive criticism of public officials, including law enforcement officers and judges, you are hereby instructed that it does not protect the making of a threat as defined herein.



PROPOSED JURY INSTRUCTION 21

To find the defendant guilty of maliciously conveying false information concerning an alleged attempt being made to do harm to a person or property using fire or explosives, you must find that the government has proved each of the following propositions beyond a reasonable doubt:

1. The defendant conveyed false information knowing the information to be false;
2. The false information concerned an alleged attempt to kill or injure law enforcement officers or to damage or destroy the Tippecanoe County Courthouse or other public property by use of fire or explosives;
3. The false information was conveyed via an instrument of interstate commerce; and
4. The false information was conveyed maliciously.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

The government is not required to prove that the defendant conveyed false information regarding an attempt to destroy or kill every person or thing alleged in Count 1. However, the government is required to prove that the defendant conveyed false information regarding an attempt to destroy, damage, injure or kill at least one of the persons or things alleged in Count 1. To find that the government has proven this, you must agree unanimously on what particular false information the defendant conveyed as well as all of the other elements of the crime charged.

For example, if some of you were to find that the government has proved beyond a reasonable doubt that the defendant conveyed false information regarding an attempt to kill law enforcement officers, and the rest of you were to find that the government has proved beyond a reasonable doubt that the defendant conveyed false information regarding an attempt to destroy the Tippecanoe County courthouse, then there would be no unanimous agreement on what particular false information the defendant conveyed. On the other hand, if all of you were to find that the government has proved beyond a reasonable doubt that the defendant made a threat to kill law enforcement officers, then there would be a unanimous agreement on what particular false information the defendant conveyed.

Also, the government is not required to prove that the defendant conveyed the false information to the individuals referenced therein or to anyone connected with the buildings or other property referenced in the communication.

PROPOSED JURY INSTRUCTION 22

To act “maliciously” means to act intentionally or with deliberate disregard of the likelihood that damage or injury will result.

As before, while the First Amendment of the United States’ Constitution protects vehement, scathing, and even offensive criticism of public officials, including law enforcement officers and judges, you are hereby instructed that it does not protect the malicious conveyance of false information concerning an attempt to kill or injure any individual, or to unlawfully damage or destroy any building, vehicle or other property by means of fire or an explosive.

PROPOSED JURY INSTRUCTION 23

In deciding your verdict, you should not consider the possible punishment for the defendant who is on trial. If you decide that the government has proved the defendant guilty beyond a reasonable doubt, then it will be my job to decide on the appropriate punishment.

PROPOSED JURY INSTRUCTION 24

Once you are all in the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as cell phone, smart phone, iPhone, computer, text messaging, instant messaging, the Internet, or services like Facebook, Twitter, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the court security officer. The note should be signed by the Foreperson, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 6-6, or 8-4, or whatever your vote happens to be.

PROPOSED JURY INSTRUCTION 25

A verdict form has been prepared for you. You will take this form with you to the jury room.

[Read the verdict form.]

When you have reached unanimous agreement, your foreperson will fill in, date, and sign the verdict form. Each of you will sign it.

Advise the court security officer once you have reached a verdict. When you come back to the courtroom, I will read the verdict aloud.

PROPOSED JURY INSTRUCTION 26

The verdict must represent the considered judgment of each juror. Your verdict, whether it is guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with each other, express your own views, and listen to your fellow jurors' opinions. Discuss your differences with an open mind. Do not hesitate to re-examine your own view and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence just because of the opinions of your fellow jurors or just so that there can be a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.