

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 1:05-cr-122
	)	<i>Edgar</i>
WILLIAM COTTON	)	

**CHARGE TO THE JURY**

*February 16, 2006*

**MEMBERS OF THE JURY:**

Now it is time for me to instruct you about the law that you must follow in deciding this case.

I will start by explaining your duties and the general rules that apply in every criminal case.

Then I will explain the elements, or parts, of the crimes that the defendant is accused of committing.

Then I will explain some rules that you must use in evaluating particular testimony and evidence.

And last, I will explain the rules that you must follow during your deliberations in the jury room and the possible verdicts that you may return.

Please listen very carefully to everything I say.<sup>1</sup>

---

<sup>1</sup> Sixth Circuit Pattern Criminal Jury Instructions § 1.01—Introduction (2005).

## **JURORS' DUTIES**

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers have talked about the law during their arguments, and it is proper for them to do so. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.<sup>2</sup>

---

<sup>2</sup> Sixth Circuit Pattern Criminal Jury Instructions § 1.02—Jurors' Duties (2005).

**PRESUMPTION OF INNOCENCE,  
BURDEN OF PROOF, REASONABLE DOUBT**

As you know, the defendant has pleaded not guilty to the crimes charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the government tells a defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

Instead, the defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with the defendant unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that the defendant is guilty.

This means that the defendant has no obligation to prove to you in any way that he is innocent. It is up to the government to prove that the defendant is guilty, and this burden stays on the government from start to finish. You must find the defendant not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

The government must prove every element of the crimes charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are

convinced that the government has proven the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.<sup>3</sup>

---

<sup>3</sup> Sixth Circuit Pattern Criminal Jury Instructions § 1.03—Presumption of Innocence, Burden of Proof, Reasonable Doubt (2005).

## **EVIDENCE DEFINED**

You must make your decision based only on the evidence that you saw or heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers agreed to.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial I did not let you hear the answers to some of the questions that the lawyers asked. Do not speculate about what a witness might have said. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.<sup>4</sup>

---

<sup>4</sup> Sixth Circuit Pattern Criminal Jury Instructions § 1.04—Evidence Defined (2005).

## **CONSIDERATION OF EVIDENCE**

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.<sup>5</sup>

---

<sup>5</sup> Sixth Circuit Pattern Criminal Jury Instructions § 1.05—Consideration of Evidence (2005).

## **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Now, some of you may have heard the terms “direct evidence” and “circumstantial evidence.”

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, nor does it say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.<sup>6</sup>

---

<sup>6</sup> Sixth Circuit Pattern Criminal Jury Instructions § 1.06—Direct and Circumstantial Evidence (2005).



## **CREDIBILITY OF WITNESSES**

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

Let me suggest some things for you to consider in evaluating each witness's testimony. Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

Ask yourself if the witness had any relationship to the government or a defendant, or anything to gain or lose from the case, that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.<sup>7</sup>

---

<sup>7</sup> Sixth Circuit Pattern Criminal Jury Instructions § 1.07—Credibility of Witnesses (2005).

## **LAWYERS' OBJECTIONS**

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.<sup>8</sup>

---

<sup>8</sup> Sixth Circuit Pattern Criminal Jury Instructions § 1.09—Lawyers' Objections (2005).

## **INTRODUCTION TO THE CRIME CHARGED**

That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the elements of the crimes that the defendant is accused of committing.

But before I do that, I want to emphasize that the defendant is only on trial for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved the crimes charged.

Also keep in mind that whether anyone else should be prosecuted and convicted for these crimes is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved the defendant guilty. Do not let the possible guilt of others influence your decision in any way.<sup>9</sup>

---

<sup>9</sup> Sixth Circuit Pattern Criminal Jury Instructions § 2.01—Defining the Crime and Related Matters, Introduction (2005).

**DEFENDANT CHARGED WITH MULTIPLE CRIMES**

The defendant has been charged with three crimes. The number of charges is no 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.<sup>10</sup>

---

<sup>10</sup> Sixth Circuit Pattern Criminal Jury Instructions § 2.01A - Separate Consideration - Single Defendant Charged With Multiple Crimes (2005)

**IN OR ABOUT / ON OR ABOUT**

Next, I want to say a word about the dates mentioned in the indictment. The indictment charges the crimes happened “in or about” and “on or about” certain dates. The government does not have to prove the crimes happened on these exact dates. But the government must prove that the crimes happened reasonably close to the dates alleged in the indictment.<sup>11</sup>

---

<sup>11</sup> Sixth Circuit Pattern Criminal Jury Instructions § 2.04—Defining the Crime and Related Matters, On or About (2005).

**TITLE 18 U.S.C. § 1951: EXTORTION  
UNDER COLOR OF OFFICIAL RIGHT**

The indictment charges that defendant WILLIAM COTTON conspired and attempted to commit extortion under color of official right in violation of Title 18, United States Code, Section 1951, sometimes called the Hobbs Act. Before I instruct you on the elements of conspiracy under COUNT ONE and the elements of attempt under COUNTS TWO and THREE, it is important for you to understand the crime of extortion under color of official right.

Title 18, United States Code, Section 1951(a) provides in part: “Whoever in any way or degree . . . affects commerce . . . by . . . extortion or attempts or conspires so to do . . .” is guilty of an offense against the United States.

Section 1951(b)(2) of Title 18 of the United States Code provides in part: “The term ‘extortion’ means the obtaining of property from another, with his consent, . . . under color of official right.”

Extortion under color of official right includes the bribery of public officials. The phrase “extortion under color of official right” means that a public official knowingly uses the power and authority of the public office he holds to obtain money, property, or something of value from another person to which the public official or that government office have no official right. A public official who obtains or receives a payment of money to which he is not entitled, knowing that the payment is being made in return for a promise or agreement by the public official to perform an official act, violates Section 1951(a). There is no requirement that the public official use any threats, fear, or force to commit

such extortion. Extortion under color of official right may occur even though the public official did not take the initiative to request, demand, or solicit the payment of money or property to him.<sup>12</sup>

During the dates alleged in the indictment, defendant WILLIAM COTTON was a County Commissioner of Hamilton County, Tennessee.

Extortion under color of official right occurs when a public official receives money in return for a promise or undertaking by the public official to perform an official act. The public official need not expressly articulate and state the promise. A promise by a public official may be implied from his actions and conduct. A knowing wink and nod of the head may be sufficient to prove that a public official intends to promise and agree to perform an official act in return for money. For there to be a promise, the public official must knowingly agree that his official actions will be controlled by the terms of the promise or undertaking in return for the payment of money. The crime of extortion under color of official right does not require that the public official actually carry out and fulfill his promise to perform the official act.<sup>13</sup>

A promise or agreement by a Commissioner to support or vote in favor of legislation in return for the payment of money involves an official act. If a Commissioner promises to intervene with or seek to persuade other fellow Commissioners to obtain their support for legislation, the promise

---

<sup>12</sup> 2A O'Malley, Grenig & Lee, Federal Jury Practice and Instructions § 53.09 ("O'Malley"); *Evans v. United States*, 504 U.S. 255 (1992); *United States v. Carmichael*, 232 F.3d 510, 522 (6th Cir. 2000); *United States v. Upshaw*, 114 Fed. Appx. 692, 709 n.9, 2004 WL 2625070, \*13 (6th Cir. Nov. 16, 2004); *United States v. Blandford*, 33 F.3d 685, 697 (6th Cir. 1994); *United States v. Burkhardt*, 682 F.2d 589, 592 (6th Cir. 1982); *United States v. Butler*, 618 F.2d 411, 418 (6th Cir. 1980); *United States v. Brock*, 2005 WL 1334948, \*3 (E.D. Tenn. June 6, 2005).

<sup>13</sup> *Evans v. United States*, 504 U.S. 255 (1992); *McCormick v. United States*, 500 U.S. 257 (1991); *United States v. Hamilton*, 263 F.3d 645, 653 (6th Cir. 2001); *United States v. Collins*, 78 F.3d 1021 (6th Cir. 1996); *United States v. Carmichael*, 232 F.3d 510, 519-20 (6th Cir. 2000); *United States v. Blandford*, 33 F.3d 685 (6th Cir. 1994); *United States v. Farley*, 2 F.3d 645, 651 (6th Cir. 1993).



involves an official act.<sup>14</sup> It is also an official act for a public official to use his position as a public official to cause another public official to take governmental action.

It is not a defense that the defendant might have performed the same official act anyway without the extortion and without the payment of money. It is not a defense to extortion under color of official right that, had there been no extortion and no payment of money, the public official, based on the information available to him at the time of the conspiracy and the attempt to commit extortion, might have lawfully taken or performed the same official act that is the subject of the extortion scheme.<sup>15</sup>

It is not necessary that the government prove that the defendant himself benefited from the extortion. Extortion may be proved if the payments of money are made to another person at the direction of the defendant.<sup>16</sup>

An act is done “knowingly” if it is done voluntarily and intentionally, and not because of mistake or accident.

The phrase “affects commerce” means any action which, in any manner or to any degree, interferes with, changes or alters the movement or transportation or flow of goods, merchandise, money, or other property in interstate commerce. The term “commerce” includes commerce between any point within a State and any point outside the State, and also any commerce between points within the same State through any place outside the State.<sup>17</sup> Under Section 1951, the Hobbs Act, it is not necessary for the government to prove that the defendant knew his conduct would affect commerce. The government is not required to prove the defendant intended that his actions would affect commerce, or that

---

<sup>14</sup> *United States v. Carpenter*, 961 F.2d 824, 827 (9th Cir. 1992).

<sup>15</sup> *United States v. Paschall*, 772 F.2d 68, 74 (4th Cir. 1985).

<sup>16</sup> *United States v. Green*, 350 U.S. 415, 420 (1956); *United States v. Clemente*, 640 F.2d 1069, 1079-80 (2d Cir. 1981); *United States v. Cerilli*, 603 F.2d 415, 420 (3d Cir. 1979); *United States v. Trotta*, 525 F.2d 1096, 1098 n.2 (2d Cir. 1975); *United States v. Santoni*, 585 F.2d 667, 673 (4th Cir. 1978).

<sup>17</sup> 18 U.S.C. § 1951(b)(3).

commerce was actually affected. What the government must prove beyond a reasonable doubt is that the defendant knowingly performed an act, and that the natural and probable consequence of the act would be to affect commerce.<sup>18</sup>

Because defendant WILLIAM COTTON is charged with conspiracy and attempt to commit extortion under color of official right, the government is not required to prove that commerce was actually affected. The indictment charges that E-Cycle Management is the source of the money paid to the defendant. E-Cycle Management is a fictitious company created and maintained by the Federal Bureau of Investigation as part of an undercover investigation or “sting operation.” When the government supplies money to pay a public official in an undercover investigation, there is not an actual effect on commerce. What the government must prove beyond a reasonable doubt is that the defendant believed E-Cycle Management was a business engaged in commercial activity in interstate commerce, and the payment of the money by E-Cycle Management would have depleted its assets. In other words, the government must prove that, if successful, the conspiracy and the attempts probably would have affected commerce by depleting the assets of a business enterprise engaged in interstate commerce. It is not material that, because of facts unknown to the defendant, an actual effect upon commerce was impossible.<sup>19</sup>

---

<sup>18</sup> 2A O’Malley § 53.04; Fifth Circuit Pattern Instructions: Criminal (2001) § 2.74

<sup>19</sup> *United States v. DiCarlantonio*, 870 F.2d 1058, 1061-62 (6th Cir. 1989); *United States v. Rushdan*, 870 F.2d 1509, 1511-12 (9th Cir. 1989); *United States v. Brooklier*, 685 F.2d 1208, 1217 (9th Cir. 1982); *United States v. Bagnariol*, 665 F.2d 877, 894 (9th Cir. 1981); *United States v. Rodriguez*, 360 F.3d 949, 957 (9th Cir. 2004); *United States v. Brantley*, 777 F.2d 159, 163-64 (4th Cir. 1985); *United States v. Bailey*, 227 F.3d 792, 797-99 (7th Cir. 2000); *United States v. Stillo*, 57 F.3d 553, 558-59 (7th Cir. 1995); *United States v. Shields*, 999 F.2d 1090, 1097-98 (7th Cir. 1993); *United States v. Peete*, 919 F.2d 1168, 1175-76 (6th Cir. 1990); *United States v. Edwards*, 324 F.Supp.2d 10 (D.D.C. 2004); *United States v. Jannotti*, 673 F.2d 578 (3d Cir. 1978); *United States v. Rindone*, 631 F.2d 491, 492-94 (7th Cir. 1980); *United States v. Hooks*, 2005 WL 3370549, \*\*7-9 (W.D. Tenn. Dec. 12, 2005).

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

COUNT ONE of the indictment charges that from in or about January 2005, until in or about March 2005, in the Eastern District of Tennessee and elsewhere, defendant WILLIAM COTTON and Charles Love 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(a).

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.

**Basic Elements of Conspiracy**

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 WILLIAM COTTON 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.<sup>20</sup>

**Agreement**

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.

The government must prove 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.<sup>21</sup> 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.<sup>22</sup>

---

<sup>20</sup> Sixth Circuit Pattern Criminal Jury Instructions § 3.01A—Conspiracy to Commit an Offense—Basic Elements (2005) (modified).

<sup>21</sup> *United States v. Medina*, 992 F.2d 573, 582 (6th Cir. 1993).

<sup>22</sup> *United States v. Hayden*, 68 Fed. Appx. 530, 532 (6th Cir. June 3, 2003); *United States v. Howard*, 996 F.2d 1217 (Table, text in 1993 WL 241812, \*13 (6th Cir. July 2, 1993)); *United States v. Barger*, 931 F.2d 359, 369 (6th Cir. 1991); *United States v. Nunez*, 889 F.2d 1564, 1569 (6th Cir. 1989); *United States*

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 such facts and circumstances existed in this particular case.<sup>23</sup>

**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 WILLIAM COTTON 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.

---

*v. Carroll*, 893 F.2d 1502, 1509 (6th Cir. 1990); *United States v. Pennell*, 737 F.2d 521, 536 (6th Cir. 1984).

<sup>23</sup> Sixth Circuit Pattern Criminal Jury Instructions § 3.02—Agreement (2005) (modified).

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.<sup>24</sup>

---

***Overt Acts***

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.<sup>25</sup>

***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.

---

<sup>24</sup> Sixth Circuit Pattern Criminal Jury Instructions § 3.03—Defendant's Connection to the Conspiracy (2005) (modified).

<sup>25</sup> Sixth Circuit Pattern Criminal Jury Instructions § 3.04 - Conspiracy, Overt Acts (2005).

**COUNTS TWO AND THREE:  
ATTEMPT TO AFFECT COMMERCE  
BY MEANS OF EXTORTION  
UNDER COLOR OF OFFICIAL RIGHT**

COUNT TWO of the indictment charges that on or about January 20, 2005, in the Eastern District of Tennessee, defendant WILLIAM COTTON knowingly did attempt to affect interstate commerce by means of extortion, that is, the obtaining of property of another with his consent, under color of official right, in violation of Title 18, United States Code, Section 1951.

COUNT THREE charges that on or about February 21, 2005, in the Eastern District of Tennessee, defendant WILLIAM COTTON knowingly did attempt to affect interstate commerce by means of extortion, that is, the obtaining of property from another person with his consent, under color of official right, in violation of Title 18, United States Code, Section 1951.

Earlier I gave you instructions explaining extortion under color of official right. You should follow and apply those same instructions here. Remember, however, that the defendant is not charged in COUNTS TWO and THREE with the actual commission of the crime of extortion under color of official right. Instead, he is charged with attempting to commit the crime.

**Elements of Attempt**

For you to find defendant WILLIAM COTTON guilty of attempt on a particular count, the government must prove both of the following elements beyond a reasonable doubt:

**First**, that the defendant intended to commit the crime of extortion under color of official right; and

**Second**, that the defendant did some overt act that was a substantial step towards committing the crime of extortion under color of official right.

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 extortion under color of official right. 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.

If you are convinced that the government has proved both of these elements as to a particular count, say so by returning a guilty verdict on that count. If you have a reasonable doubt about either one of these elements on a particular count, then you must find the defendant not guilty on that count.<sup>26</sup>

---

<sup>26</sup> Sixth Circuit Pattern Criminal Instructions § 5.01 - Attempt - Basic Elements (modified).



**TRANSCRIPTIONS OF DIGITAL RECORDINGS**

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

Keep in mind that the transcripts are not evidence. They were shown to you only as a guide to help you follow what was being said. The digital recordings themselves are the evidence. If you noticed any differences between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.<sup>27</sup>

---

<sup>27</sup> Sixth Circuit Pattern Criminal Jury Instructions § 7.17 - Transcriptions of Tape Recordings

**DEFENDANT'S FAILURE TO TESTIFY**

A defendant has an absolute right not to testify. The fact that the defendant did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations. Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.<sup>28</sup>

---

<sup>28</sup> Sixth Circuit Pattern Criminal Jury Instructions § 7.02A—Defendant's Failure to Testify (2005).

## **DELIBERATIONS AND VERDICT**

That concludes the part of my instructions explaining the rules for considering some of the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

The first thing that you should do in the jury room is choose someone to be your foreperson. This person will help to guide your discussions, and will speak for you here in court.

Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.<sup>29</sup>

---

<sup>29</sup> Sixth Circuit Pattern Criminal Jury Instructions § 8.01—Deliberations and Verdict, Introduction (2005).

## **JUROR NOTES**

Remember that if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence. You should rely upon your own independent recollection of the evidence or lack of 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 impression of each juror.

Whether you took notes or not, each of you must form and express your own opinion as to the facts of the case.<sup>30</sup>

---

<sup>30</sup> Sixth Circuit Pattern Criminal Jury Instructions § 8.10—Juror Notes (2005).

**UNANIMOUS VERDICT**

Your verdict, whether it is guilty or not guilty, must be unanimous.

To find the defendant guilty, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.

To find the defendant not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Either way, guilty or not guilty, your verdict must be unanimous.<sup>31</sup>

---

<sup>31</sup> Sixth Circuit Pattern Criminal Jury Instructions § 8.03—Unanimous Verdict (2005).

## **DUTY TO DELIBERATE**

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that — your own vote. It is important for you to reach a unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the defendant guilty beyond a reasonable doubt.<sup>32</sup>

---

<sup>32</sup> Sixth Circuit Pattern Criminal Jury Instructions § 8.04—Duty to Deliberate (2005).

**SENTENCE**

If you decide that the government has proved the defendant guilty, then it will be my job to decide what the appropriate sentence should be.

Deciding what the sentence should be is my job, not yours. It would violate your oaths as jurors to even consider the possible sentence in deciding your verdict.

Your job is to look at the evidence and decide if the government has proved the defendant guilty beyond a reasonable doubt.<sup>33</sup>

---

<sup>33</sup> Sixth Circuit Pattern Criminal Jury Instructions § 8.05—Punishment (2005) (modified).

**VERDICT FORM**

I have prepared a verdict form that you should use to record your verdict. The form reads  
as follows: \_\_\_\_\_.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

UNITED STATES OF AMERICA

v.

WILLIAM COTTON

)  
)  
)  
)  
)

No. 1:05-cr-122  
*Edgar*

**VERDICT FORM**

1. We, the jury, unanimously find the defendant, WILLIAM COTTON,

\_\_\_\_\_ guilty of the offense charged in COUNT ONE of the indictment.  
*is not / is*

2. We, the jury, unanimously find the defendant, WILLIAM COTTON,

\_\_\_\_\_ guilty of the offense charged in COUNT TWO of the indictment.  
*is not / is*

3. We, the jury, unanimously find the defendant, WILLIAM COTTON,

\_\_\_\_\_ guilty of the offense charged in COUNT THREE of the indictment.  
*is not / is*

\_\_\_\_\_  
*Foreperson*

\_\_\_\_\_  
*Date*