

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

CR. NO. 2:10cr186-MHT

MILTON E. McGREGOR, )

Defendant. )

**PROPOSED JURY INSTRUCTIONS OF MILTON McGREGOR**

**Exhibit D**

INTRODUCTORY NOTE TO PROPOSED JURY INSTRUCTIONS #D-1 to D-6

This set of instructions concerns Count 1, the “conspiracy” charge. Mr. McGregor suggests that it would make most sense, in terms of giving the jury a logical flow of concepts, to instruct the jury on conspiracy *after* having given the substantive instructions on § 666 (including instructions on *quid pro quo*, agreement, explicit, campaign contributions, etc., as set forth in #A-1 *et seq.*). This would allow the jury to understand what must be proven as to the object of the conspiracy (i.e., the substantive offense conspired about).

PROPOSED JURY INSTRUCTION #D-1  
BASIC INSTRUCTION

The Defendants are accused of conspiring to commit a federal crime— specifically, the crime of 18 U.S.C. § 666 bribery, as I have explained that offense to you. It is against federal law to conspire with someone to commit this crime.

For you to find a defendant guilty of conspiracy, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that the agreement specified in the indictment, and not some other agreement or agreements, existed between at least two people to commit the crime of bribery under 18 U.S.C. § 666; and

Second, that the defendant willfully joined in that agreement; and

Third, that one of the conspirators committed an overt act during the period of the conspiracy in an effort to further the purpose of the conspiracy.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details.

But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed

common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors.

To act “willfully” means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed—that is to say, with bad purpose, either to disobey or disregard the law—not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before a defendant can be said to have willfully joined the conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances.

Proof that a defendant willfully joined in the agreement must be based upon evidence of his or her own words and/or actions. You need not find that a defendant agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that he or she participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that he or she knew the essential features and general aims of the venture. Even if a defendant was not part of the agreement at the very start, he or she can be found guilty of conspiracy if the government proves that he or she willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

An overt act is any act knowingly committed by one or more of the conspirators in an effort to accomplish some purpose of the conspiracy. Only one overt act has to be proven.

Authority and Explanation: This is based closely on First Circuit Pattern Instruction 4.18.371(1). The First Circuit Instruction is much more fair and complete than the Eleventh Circuit pattern instruction. The Eleventh Circuit instruction is taken up, to an excessive extent, with discussion about what the Government is not required to prove. Even to the extent such discussion may be legally correct, it is not nearly as helpful as a clear explanation of what the Government is required to prove, and (relatedly) what is not sufficient to constitute the crime. The First Circuit instruction is much more clear and balanced in this respect.

PROPOSED JURY INSTRUCTION #D-2  
CONSPIRACY = AGREEMENT TO COMMIT UNLAWFUL ACT

The Government must prove beyond a reasonable doubt that the defendants knowingly entered into an agreement to commit an unlawful act.

Authority and Explanation: This underscores and clarifies the crucial aspect of conspiracy law. It is not an agreement to work together to do something; it is an agreement to commit an unlawful act. “Under federal conspiracy law, the government must allege and prove that the defendants knowingly entered into an agreement to commit an unlawful act.” United States v. Chandler, 388 F.3d 796, 800 (11<sup>th</sup> Cir. 2004)

PROPOSED JURY INSTRUCTION #D-3  
REQUIREMENT OF PROOF OF KNOWLEDGE OF CONSPIRACY

In order to convict anyone of conspiracy, the Government must prove that the person knew of the overall scheme.

Authority and Explanation: “Since no one can be said to have agreed to a conspiracy that they do not know exists, proof of knowledge of the overall scheme is critical to a finding of conspiratorial intent.” *Chandler*, 388 F.3d at 806.

PROPOSED JURY INSTRUCTION #D-4  
SPECIFIC INTENT

The Government must prove beyond a reasonable doubt that each Defendant had a deliberate, knowing, specific intent to join the conspiracy.

Authority and Explanation: “The government must prove an agreement ... to pursue jointly an illegal objective.” *United States v. Adkinson*, 158 F.3d 1147, 1153 (11<sup>th</sup> Cir. 1998). “The government must also prove beyond a reasonable doubt that each defendant had a ‘deliberate, knowing, specific intent to join the conspiracy.’” *Id.*



PROPOSED JURY INSTRUCTION #D-5  
DEFENDANT'S OWN WORDS AND ACTIONS

Proof that a Defendant willfully joined in the agreement must be based upon evidence of his own words and/or actions.

Authority and Explanation: First Circuit Pattern Instruction 4.18.371(1).

PROPOSED JURY INSTRUCTION #D-6  
SINGLE CONSPIRACY v. MULTIPLE CONSPIRACIES

Proof of several separate conspiracies isn't proof of the single, overall conspiracy charged in the indictment unless one of the several conspiracies proved is the single overall conspiracy.

You must decide whether the single overall conspiracy charged existed between two or more conspirators. If not, then you find the Defendants not guilty of that charge.

But if you decide that a single overall conspiracy did exist, then you must decide who the conspirators were. And if you decide that a particular Defendant was a member of some other conspiracy – not the one charged – then you must find that Defendant not guilty.

So to find a Defendant guilty, you must all agree that the Defendant was a member of the conspiracy charged – not a member of some other separate conspiracy.

Authority: Eleventh Circuit Pattern Instruction #13.3