Judge tells jury to consider entrapment defense in trial of alleged Michigan governor kidnap plotters

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The jury in the trial of four men accused of plotting to kidnap and possibly kill the governor of Michigan completed its first seven hours of deliberations in US District Court in Grand Rapids on Monday without a verdict.

Deliberations began following closing arguments and jury instructions on Friday. In a significant move, Judge Robert Jonker told the jury that it can consider an entrapment defense even though this legal position was not specifically raised by the lawyers for the defendants during the trial. Judge Jonker said the jury can consider whether the government, through its informants, persuaded the defendants to commit the crimes they are charged with.

In a 40-minute explanation covering all the charges, Jonker said that if a defendant was already willing to commit the crime, this would not be entrapment even if FBI agents provided an opportunity or made it easier for the defendant to commit the crime.

The 12-person jury paused their deliberations and returned to the courtroom in the afternoon on Monday to ask Judge Robert Jonker a question about the legal definition of a weapon. The judge explained to the jury that a weapon is “Something that can be used to injure, kill or destroy someone or something, as opposed to something you would use for fun.” Jonker also said that the definition of a weapon could be applied very broadly, from a fist to a chair, to a weapon of mass destruction.

The four men—Brandon Caserta, Barry Croft Jr., Adam Fox and Daniel Harris—have been charged with kidnap conspiracy for plotting to take Michigan Democratic Governor Gretchen Whitmer hostage, tie her up and take her by boat into the middle of Lake Michigan and abandon her there. Three of the four, Croft, Fox and Harris, have also been charged with conspiring to use a weapon of mass destruction.

Part of the alleged plot—and a critical element of the prosecution’s case against the men—included the construction of an explosive that was to be used to blow up a bridge to distract law enforcement while Governor Whitmer was being apprehended at her summer cottage near Elk Rapids, Michigan.

The men were arrested on October 7, 2020, in an FBI sting outside a warehouse in Ypsilanti, Michigan, where they were planning to place a down payment on explosives and pick up other gear needed for the planned raid.

The defense rested on Thursday after calling Harris to testify in his own defense, the only defendant in the trial to do so. Harris stated that he “absolutely” did not plot to kidnap the governor while he was a member of the paramilitary Wolverine Watchmen along with several of his codefendants.

Harris admitted that he was involved in building an explosive device but that it was not intended as part of the kidnapping plan. He said, “I was putting BBs and a little bit of gunpowder into this balloon, and we were going to blow up a stove. We put it in a stove. We lit the fuse and we ran.” In the end the bomb never went off.

Harris, a former Marine, described in detail how he joined the Wolverine Watchmen. Indicating a sympathy for fascistic politics, Harris said, “When [COVID-19] happened, I was scrolling around on Facebook and I was on a Motorcity Boogaloo page.” Harris said his friends had started the Facebook page and he was posting things on it with the account name of George

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Bunton. The Boogaloo movement is a far-right group started in 2012 that advocates a violent uprising (the boogaloo) against the US government that would lead to a second American civil war.

Harris said he wanted to engage in the military training exercises offered to the militia members because he wanted to keep his skills up. “It was really for me to kind of keep what I already had,” Harris testified.

He also said that the two government agents that had infiltrated the Wolverine Watchmen, known as “Big Dan” and “Red,” were the actual leaders of the conspiracy to kidnap the governor and not Harris and Croft as asserted by the prosecution. Harris also said that the testimony of the two codefendants, Ty Garbin and Kaleb Franks, against him and the three others were “lies.” During cross examination, the defiant Harris also called Big Dan a “bitch” for deciding to become an informant after joining the Wolverine Watchmen.

On Wednesday, five witnesses called by the defense refused to answer questions and pleaded their Fifth Amendment right against self-incrimination. Some of the witnesses had told Judge Jonker that they would testify right up to the day they were to take the stand. Three other witnesses did testify for the defense including two women who attended field training exercises organized by the militia in July and September 2020. Colleen Kuester and Megan Cooley testified that nothing violent was being discussed at the gatherings. Cooley said the men were drinking beer and only talking about “guy stuff, porn and politicky things.”

After Judge Jonker gave his definition of a weapon to the jury, all four defense attorneys objected. They said he added language that a weapon can also be used to destroy property. Joshua Blanchard, representing Croft, said that a weapon should only be defined as something that can cause harm to people.

Judge Jonker’s presentation to the jury that it can consider entrapment defense was a gift to the defendants whose attorneys had argued that it should be included in the instructions. This adds to the judge’s insistence in pretrial hearings that the subject matter of the trial should not be the right-wing extremism that lay behind the actions of the defendants and others. This proscription meant that there would be no examination of the connections between the Wolverine Watchmen and the Boogaloo movement and other political tendencies and individuals in the Republican Party such as Donald Trump who advocated the use of violence as an instrument to change government policy and manipulate the elections in the US.

Jury deliberations resume on Tuesday morning at 8:30 a.m.

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