

Oct 03 05 04:57p

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STATE OF WISCONSIN CIRCUIT COURT

STATE OF WISCONSIN,

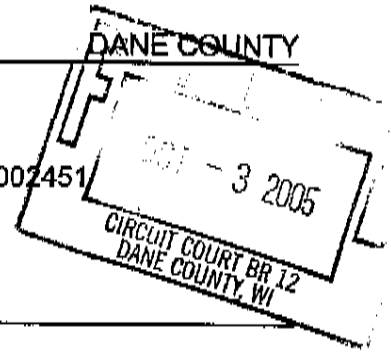
Plaintiff,

v.

Case # 02CF002451

Charles Chvala

Defendant.



STATE'S AMENDED REQUESTED JURY INSTRUCTIONS

IT IS HEREBY REQUESTED that the below listed jury instructions be given:

- 55 Notetaking Permitted
- 100 Opening Instruction
- 103 Evidence Defined
- 116 One Defendant: Nineteen Counts: Conviction for All Proper
- 140 Burden of Proof
- 145 Information Not Evidence
- 147 Improper Questions
- 155 Exhibits
- 157 Remarks of Counsel
- 160 Arguments of Counsel
- 162 Agreed Facts
- 165 Judicially Noticed Facts
- 170 Circumstantial Evidence
- 190 Weight of Evidence
- 195 Juror's Knowledge
- 200 Expert Testimony: General
- 245 Testimony of Accomplice
- 247 Verdict as to Defendant Only
- 300 Credibility of Witnesses
- 325 Impeachment of Witness: Prior Conviction
- 327 Impeachment of Defendant as a Witness: Prior Conviction
- 460 Closing Instruction
- 484 Verdict Submitted for One Defendant: Nineteen Counts: Conviction for All Proper
- 515 Unanimous Verdict and Selection of Foreman
- 1473B Extortion: Injure or Threaten to Injure
- 1731 Misconduct in Public Office (By Performance of Unauthorized Or Forbidden Act)
- 1732 Misconduct in Public Office (By Exercise of Discretionary Power For A Dishonest Advantage)

Special Jury Instructions:

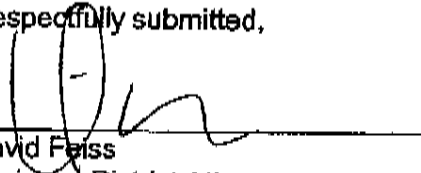
- Filing a False Report With the State Elections Board PTAC
- Campaign Contributions Exceeding Lawful Limits PTAC
- Reports of Independent Disbursements
- In Kind Contributions
- Disbursements Made In Cooperation, Consultation or Concert With a Candidate
- Conspiracy to Make A campaign Contribution Exceeding Lawful Limits

Dated at Milwaukee, Wisconsin, this 30 day of October, 2005.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Feiss', is written over a horizontal line. The signature is stylized with a large initial 'D' and a long, sweeping tail.

David Feiss
Assistant District Attorney
State Bar Number # 01008600

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CONSPIRACY TO MAKE A CAMPAIGN CONTRIBUTION EXCEEDING LAWFUL LIMITS

Statutory Definition of the Crime

The crime of conspiracy, as defined in section 939.31 of the Criminal Code of Wisconsin, is committed by one who, with intent that a felony be committed, agrees or combines with another for the purpose of committing that crime, if one or more of the parties to the conspiracy does an act to effect its object.

The defendant in this case is charged with having conspired to commit the crime of Making a Campaign Contribution Exceeding Lawful Limits.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intended that the crime of Making a Campaign Contribution Exceeding Lawful Limits be committed. The crime of Making a Campaign Contribution Exceeding Lawful Limits is committed by one who intentionally makes any contribution or contributions to a candidate for the Wisconsin Senate to the extent of more than \$1,000 during a single election campaign.

2. The defendant was a member of a conspiracy to commit the crime of Making a Campaign Contribution Exceeding Lawful Limits. A person is a member of a conspiracy if, with intent that a crime be committed, the person agrees with or joins with another for the purpose of committing that crime. A conspiracy is a mutual understanding to accomplish some common criminal objective or to work together for a common criminal purpose. It is not necessary that the conspirators had any express or formal agreement, or that they had a meeting, or even that they all knew each other. As

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long as the parties agreed or combined by their words or actions, and the defendant intended that the agreement be carried out, it is not necessary that the other person intended to carry out the agreement.

3. One or more of the conspirators performed an act toward the commission of the intended crime that went beyond mere planning and agreement. However, the act need not, by itself, be an unlawful act or an attempt to commit the crime. If there was an act which was a step toward accomplishing the criminal objective, that is sufficient.

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

Authority: WI JI-CRIMINAL 570
Section 939.31, Wis. Stats.
Section 11.27(1), Wis. Stats.

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STATE OF WISCONSIN CIRCUIT COURT

STATE OF WISCONSIN,

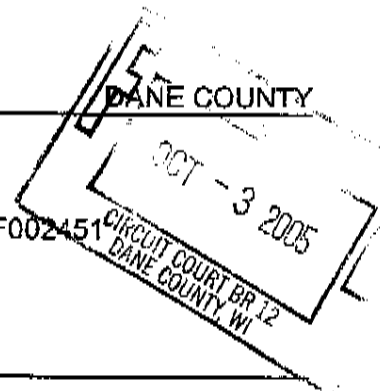
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- 1473B Extortion: Injure or Threaten to Injure
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- 1732 Misconduct in Public Office (By Exercise of Discretionary Power For A Dishonest Advantage)

Special Jury Instructions:

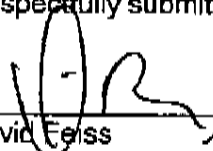
- Filing a False Report With the State Elections Board PTAC
- Campaign Contributions Exceeding Lawful Limits PTAC
- Reports of Independent Disbursements
- In Kind Contributions
- Disbursements Made In Cooperation, Consultation or Concert With a Candidate

Dated at Milwaukee, Wisconsin, this 3rd day of October, 2005.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Feiss', written over a horizontal line.

David Feiss
Assistant District Attorney
State Bar Number # 01008600

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WIS JI-CRIMINAL 1731 MISCONDUCT IN PUBLIC OFFICE

WIS JI-CRIMINAL 1731 MISCONDUCT IN PUBLIC OFFICE (BY PERFORMANCE OF UNAUTHORIZED OR FORBIDDEN ACT) - § 946.12(2)

Misconduct in public office, as defined in § 946.12(2) of the Criminal Code of Wisconsin, is committed by a public officer who, in his capacity as such officer, does an act which he knows is in excess of his lawful authority or which he knows he is forbidden by law to do in his official capacity.

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

The first element requires that at the time of the alleged offense, the defendant was a public officer. A State Senator is a public officer.

The second element requires that the defendant, in his capacity as a public officer extorted money from The Wisconsin Wholesale Beer Distributors.

The third element requires that extorting money from The Wisconsin Wholesale Beer Distributors was conduct in which the defendant was forbidden by law to engage in his official capacity.

The fourth element requires that the defendant knew that he was forbidden by law to engage in such conduct in his official capacity.

If you are satisfied beyond a reasonable doubt that the defendant was a public officer, that in his capacity as such officer, the defendant did extort money from The Wisconsin Wholesale Beer Distributors, and that the defendant knew that he was forbidden by law to do such acts in his official capacity, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

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WIS JI-CRIMINAL 1731 MISCONDUCT IN PUBLIC OFFICE

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Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

The first element requires that at the time of the alleged offense, the defendant was a public officer. A State Senator is a public officer.

The second element requires that the defendant, in his capacity as a public officer extorted money from William Peterson.

The third element requires that extorting money from William Peterson was conduct in which the defendant was forbidden by law to engage in his official capacity.

The fourth element requires that the defendant knew that he was forbidden by law to engage in such conduct in his official capacity.

If you are satisfied beyond a reasonable doubt that the defendant was a public officer, that in his capacity as such officer, the defendant did extort money from William Peterson, and that the defendant knew that he was forbidden by law to do such acts in his official capacity, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

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WIS JI-CRIMINAL 1731 MISCONDUCT IN PUBLIC OFFICE

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Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

The first element requires that at the time of the alleged offense, the defendant was a public officer. A State Senator is a public officer.

The second element requires that the defendant, in his capacity as a public officer extorted money from The Wisconsin Realtors Association.

The third element requires that extorting money from The Wisconsin Realtors Association was conduct in which the defendant was forbidden by law to engage in his official capacity.

The fourth element requires that the defendant knew that he was forbidden by law to engage in such conduct in his official capacity.

If you are satisfied beyond a reasonable doubt that the defendant was a public officer, that in his capacity as such officer, the defendant did extort money from The Wisconsin Realtors Association, and that the defendant knew that he was forbidden by law to do such acts in his official capacity, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

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WIS JI-CRIMINAL 1732 MISCONDUCT IN PUBLIC OFFICE

Page 1

WIS JI-CRIMINAL 1732 MISCONDUCT IN PUBLIC OFFICE BY EXERCISE OF DISCRETIONARY POWER FOR A DISHONEST ADVANTAGE - § 946.12(3)

Misconduct in public office, as defined in § 946.12(3) of the Criminal Code of Wisconsin, is committed by one who is a public officer and who, in his capacity as such officer, exercises a discretionary power in a manner inconsistent with the duties of his office and with intent to obtain a dishonest advantage for himself or another.

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

The first element requires that at the time of the alleged offense, the defendant was a public officer. A State Senator is a public officer.

The second element requires that the defendant, in his capacity as such officer, exercised a discretionary power of his office. The defendant may exercise discretionary power either by doing something or by failing to do something. A public officer who directs State employees to manage or participate in private political campaigns State of Wisconsin time or using State of Wisconsin resources exercises a discretionary power in his capacity as a public officer.

The third element requires that the defendant exercised a discretionary power in a manner inconsistent with the duties of his office. As a State Senator it was the defendant's duty to prevent the use of State resources for private political campaigns.

The fourth element requires that the defendant exercised such discretionary power with intent to obtain a dishonest advantage for another. The phrase "with intent to" means that the defendant must have had the purpose to obtain a dishonest advantage or have been aware that his conduct was practically certain to cause that result. You cannot look into a person's mind to find intent. While this intent to obtain a dishonest advantage must be found as a fact before you can find the defendant guilty, it must be found, if found at all, from his acts and words and statements, if any, bearing upon his intent.

If you are satisfied beyond a reasonable doubt that the defendant was a State Senator and in his capacity as such officer, the defendant exercised a discretionary power in a manner inconsistent with the duties of his office and with the intent to obtain a dishonest advantage for himself, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

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WIS JI-CRIMINAL 1732 MISCONDUCT IN PUBLIC OFFICE

Page 1

WIS JI-CRIMINAL 1732 MISCONDUCT IN PUBLIC OFFICE BY EXERCISE OF DISCRETIONARY POWER FOR A DISHONEST ADVANTAGE - § 946.12(3)

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Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

The first element requires that at the time of the alleged offense, the defendant was a public officer. A State Senator is a public officer.

The second element requires that the defendant, in his capacity as such officer, exercised a discretionary power of his office. The defendant may exercise discretionary power either by doing something or by failing to do something. A public officer who directs State employees to manage or participate in private political campaigns State of Wisconsin time or using State of Wisconsin resources exercises a discretionary power in his capacity as a public officer.

The third element requires that the defendant exercised a discretionary power in a manner inconsistent with the duties of his office. As a State Senator it was the defendant's duty to prevent the use of State resources for private political campaigns.

The fourth element requires that the defendant exercised such discretionary power with intent to obtain a dishonest advantage for another. The phrase "with intent to" means that the defendant must have had the purpose to obtain a dishonest advantage or have been aware that his conduct was practically certain to cause that result. You cannot look into a person's mind to find intent. While this intent to obtain a dishonest advantage must be found as a fact before you can find the defendant guilty, it must be found, if found at all, from his acts and words and statements, if any, bearing upon his intent.

If you are satisfied beyond a reasonable doubt that the defendant was a State Senator and in his capacity as such officer, the defendant exercised a discretionary power in a manner inconsistent with the duties of his office and with the intent to obtain a dishonest advantage for himself, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

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WIS JI-CRIMINAL 1732 MISCONDUCT IN PUBLIC OFFICE

Page 1

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Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

The first element requires that at the time of the alleged offense, the defendant was a public officer. A State Senator is a public officer.

The second element requires that the defendant, in his capacity as such officer, exercised a discretionary power of his office. The defendant may exercise discretionary power either by doing something or by failing to do something. A public officer who makes an offer of State employment exercises a discretionary power in his capacity as a public officer.

The third element requires that the defendant exercised a discretionary power in a manner inconsistent with the duties of his office. As a State Senator it was the defendant's duty to prevent the use of State resources for private political campaigns.

The fourth element requires that the defendant exercised such discretionary power with intent to obtain a dishonest advantage for another. The phrase "with intent to" means that the defendant must have had the purpose to obtain a dishonest advantage or have been aware that his conduct was practically certain to cause that result. You cannot look into a person's mind to find intent. While this intent to obtain a dishonest advantage must be found as a fact before you can find the defendant guilty, it must be found, if found at all, from his acts and words and statements, if any, bearing upon his intent.

If you are satisfied beyond a reasonable doubt that the defendant was a State Senator and in his capacity as such officer, the defendant exercised a discretionary power in a manner inconsistent with the duties of his office and with the intent to obtain a dishonest advantage for himself, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

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FILING A FALSE REPORT WITH STATE ELECTIONS BOARD AS A PARTY TO A CRIME - 11.27(1) AND 11.61(1)(b)

Party To A Crime

The State contends that defendant committed the crime of Filing A False Report With The State Elections Board As A Party to A Crime. A person may be charged and convicted of a crime, even though the person does not directly commit the crime himself, if the person acts as a party to a crime. Where a defendant directs or solicits another person to engage in conduct which the defendant knows violates the law, the defendant is responsible for the other person's conduct, and is guilty as a party to a crime of that violation of the law.

In the present case, the State contends that the defendant used Scott McCormick or other persons as his instrumentalities or tools to file false reports with the State Elections Board in violation of sections 11.27(1) and 11.61(1)(b) of the Wisconsin Criminal Code. It does not matter whether Scott McCormick, or other the persons which the State contends defendant used as his instrumentalities, knew their conduct violated the law. You must determine whether the defendant intended to violate the law.

Statutory Definition of the Crime

Section 11.27(1) of the Wisconsin Statutes is violated by a person who intentionally submits a false report, concerning a figure exceeding \$100.00, to a filing officer under Chapter 11 of Wisconsin Statutes.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant directed or solicited another person to submit a report to a filing officer under Wisconsin Statutes.

A "Report of Independent Disbursements" is a report within the meaning of this instruction.

2. The report was false.

3. The report concerned a figure exceeding \$100.00.

4. The defendant intended another person submit the false report.

"Intended" means that the defendant must have had the purpose that another person submit a false report, concerning a figure exceeding \$100.00, to a filing officer under Chapter 11 of Wisconsin Statutes. "Intended" also requires that the defendant had knowledge of those facts which are necessary to make his conduct criminal.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

Authority: Section 11.27(1), Wis. Stats.
Section 939.05, Wis. Stats.
Coalition for Voter Participation v. Elections Bd., 231 Wis.2d 670 (Ct. App. 1999)
J. Dressler, Understanding Criminal Law, (1987) Section 30.03(2)(b)(i)

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CAMPAIGN CONTRIBUTION EXCEEDING LAWFUL LIMITS AS A PARTY TO A CRIME— SECTIONS 11.26(2)(b) AND 11.61(1)(b)**Party To A Crime**

The State contends that defendant committed the crime of Making a Campaign Contribution Exceeding Lawful Limits As A Party to A Crime. A person may be charged and convicted of a crime, even though the person does not directly commit the crime himself, if the person acts as a party to a crime. Where a defendant directs or solicits another person to engage in conduct which the defendant knows violates the law, the defendant is responsible for the other person's conduct, and is guilty as a party to a crime of that violation of the law.

In the present case, the State contends that the defendant used Thomas Boeder or other persons as his instrumentalities or tools to make contributions exceeding lawful limits in violation of sections 11.26(2)(b) and 11.61(1)(b) of the Wisconsin Criminal Code. It does not matter whether Thomas Boeder, or other the persons which the State contends defendant used as his instrumentalities, knew their conduct violated the law. You must determine whether the defendant intended to violate the law.

Statutory Definition of the Crime

Section 11.26(2)(b) of the Wisconsin Statutes is violated by a person who intentionally makes any contribution or contributions to a candidate for the Wisconsin Senate to the extent of more than \$1,000 during a single election campaign.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. Defendant directed or solicited another person to make a contribution or contributions to a candidate for Wisconsin State Senate.

2. Defendant's conduct caused another person to make a contribution or contributions to a candidate for Wisconsin State Senate.

3. The contribution or contributions exceeded \$1,000 during a single election campaign.

"Contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. "Contribution" also includes "in-kind" contributions. "In-kind" contributions are provision of any goods or services having a merchantable value.

4. The defendant intended that another person make a contribution or contributions exceeding \$1,000 to a candidate for Wisconsin State Senate during a single election campaign. "Intended" means that the defendant must have had the purpose that another person make a contribution or contribution exceeding \$1,000 to a candidate for Wisconsin State Senate during a single election campaign. "Intended" also requires that the defendant had knowledge of those fact which are necessary to make his conduct criminal.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

Authority: Section 11.26(2)(b), Wis. Stats.
Section 939.05, Wis. Stats.
Coalition for Voter Participation v. Elections Bd., 231 Wis.2d 670 (Ct.
App. 1999)
J. Dressler, Understanding Criminal Law, (1987) Section 30.03(2)(b)(i)

REPORTS OF INDEPENDENT DISBURSEMENTS

The law requires that individuals or organizations, other than a candidate's personal campaign committee, must file Reports of Independent Disbursements with the State of Wisconsin when the individual or organization makes disbursements for political purposes which exceed \$25.00.

The term "independent disbursement," as used on a Report of Independent Disbursements, means that the individual or organization making the disbursement did not act in cooperation or consultation with the candidate, the candidate's campaign committee, or any agent of the candidate, who benefits from the disbursement. The term "independent disbursement" further means that the individual or organization making the disbursement did not act in concert with, or at the request or suggestion of, the candidate, the candidate's campaign committee, or any agent of the candidate, who benefits from the disbursement.

Authority: Section 11.06(7), Wis. Stats.
Section 11.05(1), Wis. Stats.
Sections 11.01(6) and (7), Wis. Stats.
Buckley v. Valeo, 424 U.S. 1 (1976)

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“IN-KIND” CONTRIBUTIONS

If an individual or organization acts in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's campaign, or an agent of a candidate, the individual or organization's disbursements made on behalf of the candidate become "in-kind" contributions to the candidate. The law limits an individual or organization to making total contributions, including "in-kind" contributions, of not more than \$1,000 per candidate for Wisconsin Senate per single election campaign.

Authority: Section 11.01(6), Wis. Stats.
EIBd 1.20

DISBURSEMENTS MADE IN COOPERATION, CONSULTATION, OR CONCERT WITH A CANDIDATE

In determining whether a disbursement was made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's campaign committee, or agent of a candidate, who benefits from the disbursement, you may consider whether the following facts have been shown:

1. The disbursement was made as a result of a decision in which any of the following persons took part:
 - a. A person who was authorized to raise funds for, to spend the campaign funds of, or to incur obligations for, the candidate's personal campaign committee;
 - b. An officer of the candidate's personal campaign committee;
 - c. A campaign worker who was reimbursed for expenses or compensated for work by the candidate's personal campaign committee;
 - d. A volunteer who was operating in a position within a campaign organization that would make the person aware of campaign needs and useful expenditures; or
2. The disbursement was made to finance the distribution of any campaign materials prepared by the candidate's personal campaign committee or agents.

Authority: Section 11.06(7), Wis. Stats.
ElBd 1.42
Coalition for Voter Participation v. Elections Bd., 231 Wis. 2d 670
(Ct. App. 1999)
WIS JI-CRIMINAL 225