

PATTERN CRIMINAL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT

(2012 Ed.)

(plus 2015-2019 changes)

Prepared by the Committee on Federal Criminal Jury
Instructions of the Seventh Circuit

5.08(B) CONSPIRACY – NO OVERT ACT REQUIRED

[The indictment charges defendant[s] with; Count[s] __ of the indictment charge[s] the defendant with] conspiracy. In order for you to find the defendant guilty of this charge, the government must prove both of the following elements beyond a reasonable doubt:

1. The conspiracy as charged in [Count __] existed; and
2. The defendant knowingly became a member of the conspiracy with an intent to advance the conspiracy.

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 one of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Comment

(a)

Usage of 5.08(B) vs. 5.08(A). Instruction 5.08(B) should be used if the particular conspiracy charge does not require proof of an overt act. Instruction 5.08(B) will most often be used in drug conspiracy cases under 21 U.S.C. § 846, see *United States v. Corson*, 579 F.3d 804, 810 (7th Cir. 2009); *United States v. Shabani*, 513 U.S. 10, 11 (1994), although there are other statutes that do not require proof of an overt act, see, e.g., *Whitfield v. United States*, 543 U.S. 209 (2005) (money laundering conspiracy); *United States v. Salinas*, 522 U.S. 52 (1997) (RICO); *Singer v. United States*, 323 U.S. 338, 340 (1945) (Selective Service Act); *Nash v. United States*, 229 U.S. 373 (1913) (antitrust conspiracy). See also *United States v. Resendiz-Ponce*, 549 U.S. 102 (2007) (government conceded that the overt act requirement applied to an attempt to reenter the United States illegally, but successfully defended the indictment's failure to allege a specific overt act on grounds that the attempt described in the indictment implicitly described an overt act).

Incorporation of comments to Instruction 5.08(A). When Instruction 5.08(B) is used, counsel and the court should consult the Committee Comment to Instruction 5.08(A), which includes a number of points that also apply to conspiracy charges in which no overt act is required.