

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

DAVID JUDD,

Defendant.

Crim. Action No. 1:21CR40 (TNM)

SUPPLEMENT TO MEMORANDUM IN AID OF SENTENCING

David Judd, through counsel, respectfully submits this Supplement to his Memorandum in Aid of Sentencing (ECF. No. 529) and Reply to the Government's Sentencing Memorandum (ECF. No. 534). In its Sentencing Memo, the government discusses an explosion that occurred in the tunnel *that was not caused by Mr. Judd*. ECF. No. 527, 13-15. This explosion was caused when *another protestor* tossed a firecracker into the tunnel. Without support, the government argues that the device that Mr. Judd tossed and the device that caused the explosion were both "firecrackers." The government is incorrect on this point. The government makes assumptions and advances unsupported hyperbole.

Counsel have shared the video and photos of the explosion caused by someone other than Mr. Judd with retired ATF Agent and explosives expert, Jerry Taylor.¹ Mr. Taylor compared the video footage and photos of the explosion caused by someone

¹ Mr. Taylor's First Affidavit is filed as Exhibit 2 to Mr. Judd's Memorandum in Aid of Sentencing. The First Affidavit and Mr. Taylor's CV is attached here again as Exhibit 1 to Mr. Judd Supplement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA v. Crim. Action No. 1:21CR40 (TNM) DAVID JUDD, Defendant. SUPPLEMENT TO MEMORANDUM IN AID OF SENTENCING David Judd, through counsel, respectfully submits this Supplement to his Memorandum in Aid of Sentencing (ECF No. 529) and Reply to the Government's Sentencing Memorandum (ECF No. 534) sets forth the bases for his opinion. In my opinion, the Judd device and the other device are not the same type of device. As I stated in my First Affidavit, the Judd device did not appear to be a device that could cause (and did cause) harm due to the violent explosion. Mr. Taylor's Second Affidavit, attached, sets forth the bases for his opinion.

_____ /s/ _____ ELIZABETH MULLIN Assistant Federal Public Defender 625 Indiana Avenue, N.W., Suite 550 Washington, D.C. 20004 (202) 208-7500 _____ /s/ _____ EDWARD J. UNGVARSKY Ungvarsky Law, PLLC 421 King Street, Suite 505 Alexandria, VA 22314 (571) 207-9710 2 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA v. Crim. Action No. 21CR40(TNM) DAVID LEE JUDD, Defendant. SECOND AFFIDAVIT 1. I, Jerry Taylor, previously submitted an Affidavit setting forth my expertise in Improvised Explosive or Incendiary Devices, manufacturing explosives and incendiaries with precursor chemicals, and explosion/ fire effects. (First Affidavit). 2. In my First Affidavit, I stated my opinion that that the object Mr. Judd tossed on January 6, 2021, ("Judd device"), is indicative of a safe sparkler/fountain device, not a firecracker. Firecrackers contain chemicals that react violently when they receive a spit of flame from a burning fuse. This did not occur with the Judd device. A police officer is seen stomping on it and hitting it with a pole with zero adverse effects. The Judd device appears neither to have been designed to be, or to be, harmful. I set forth the bases for my conclusions regarding the Judd device. 1 As a point of clarification, sparkler/ fountain devices are classified as "fireworks" or a "consumer firework" by the ATF. But they are in a different classification than firecrackers and are not designed to explode. 1 3. After submitting my First Affidavit, Ms. Mullin contacted me and requested a review of the government's sentencing memorandum, video, and photos of another device ("other device"). This other device exploded on January 6, 2021. 4 These enhanced images of the Judd device and a picture of a legal safe and safe sparkler/fountain below illustrate my conclusion that the Judd device is a sparkler/ fountain type device. Notice the similarities: the entire device is glowing/yellow to white hot and emitting a large volume of sparks. This is consistent with a sparkler/fountain device that produces just a visual smoke display and is not designed to violently explode. Judd Device 2

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v.

DAVID LEE JUDD,

Defendant.

Crim. Action No. 21CR40(TNM)

SECOND AFFIDAVIT

1. I, Jerry Taylor, previously submitted an Affidavit setting forth my expertise in Improvised Explosive or Incendiary Devices, manufacturing explosives and incendiaries with precursor chemicals, and explosion/ fire effects. (First Affidavit).
2. In my First Affidavit, I stated my opinion that that the object Mr. Judd tossed on January 6, 2021, (“Judd device”), is indicative of a safe sparkler/ fountain device, not a firecracker.¹ Firecrackers contain chemicals that react violently when they receive a spit of flame from a burning fuse. This did not occur with the Judd device. A police officer is seen stomping on it and hitting it with a pole with zero adverse effects. The Judd device appears neither to have been designed to be, or to be, harmful. I refer the Court to my First Affidavit for the bases for my conclusions regarding the Judd device.

¹ As a point of clarification, sparkler/ fountain devices are classified as “fireworks” or a “consumer firework” by the ATF. But they are in a different classification than firecrackers and are not designed to explode.

3. After submitting my First Affidavit, Ms. Mullin contacted me and requested I review the government's sentencing memorandum, video, and photos of another device ("other device"). This other device exploded on January 6, 2021.
4. These enhanced images of the Judd device and a picture of a legal Safe and Sane sparkler/fountain below illustrate my conclusion that the Judd device is a sparkler/ fountain type device. Notice the similarities: the entire device is glowing/yellow to white hot and emitting a large volume of sparks. This is consistent with a sparkler/fountain device that produces just a visual smoke display and is not designed to violently explode.

Judd Device



Photo of a Safe and Sane Sparkler/ Fountain:



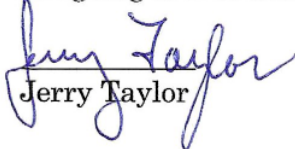
5. Meanwhile, the other device did produce a blast and thermal and possible secondary fragmentation (violent high-speed dispersal of nearby materials).

Other device:



6. Based on my review of the video and photographs of the other device, I conclude that the other device is an illegal firecracker or a commercial salute firework containing more than 2 grains of chemicals that violently exploded when exposed to a flame. According to the Government's Sentencing Memorandum, which I reviewed, this explosive device was sufficiently powerful to propel nearby/ adjacent material and to cause injury, including by proximity to the fireball (brilliant flash of light). In contrast to the Judd device, firecrackers are incapable of slowly burning and just producing volumes of smoke.
7. In my opinion, the Judd device and the other device are not the same type of device. As stated in my First Affidavit, the Judd device did not look and act like a threatening or innately harmful device. The other device did appear to be a device that could cause (and did cause) harm due to the violent explosion.
8. I am confident in my opinions given in the First Affidavit and in this second Affidavit, which I express to a reasonable degree of scientific certainty.

Pursuant to 28 U.S.C. 1746, I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Jerry Taylor

2/24/23
Date