

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	No. 1:21-cr-00447-CJN-03
	:	
JOSHUA C. DOOLIN,	:	
Defendant.	:	

**MOTION FOR JUDGMENT OF ACQUITTAL ON COUNTS SIXTEEN AND
SEVENTEEN WITH INCORPORATED MEMORANDUM OF LAW**

Defendant Joshua C. Doolin respectfully requests this Court enter a judgment of acquittal on Counts Sixteen and Seventeen of the Superseding Indictment. [116]

Count Sixteen alleges that, on or about January 6, 2021, Mr. Doolin “between at least at or around 2:46 p.m. and at least or around 4:23 p.m., within the special maritime and territorial jurisdiction of the United States . . . did take and carry away, with the intent to steal or purloin, the personal property of another, that is, a crowd-control spray gun.” (Theft in a Federal Enclave, in violation of Title 18, United States Code, § 661) In its case-in-chief, the government failed to introduce evidence of an intent to steal the crowd control spray gun.

Count Seventeen alleges that on or about January 6, 2021, Mr. Doolin “between at least 3:46 p.m. and at least at or around 4:23 p.m., within the District of Columbia . . . did embezzle, steal, purloin, knowingly convert to his use and the use of another, and without authority, sold, conveyed and disposed of any record,

voucher, money and thing of value of the United States and any department and agency thereof, that is, a United States Capitol Police riot shield, which has a value of less than \$1,000.00. (Theft of Government Property, in violation of Title 18, United States Code, Section 641) In its case-in-chief, the government failed to introduce evidence of an intent to embezzle, steal, purloin, steal, knowingly convert to his use and the use of another, and without authority, sold, conveyed and disposed of the U.S. Capitol Police riot shield.

FACTUAL BACKGROUND

The government during its case-in-chief presented evidence of Mr. Doolin walking around (on the U.S. Capitol Grounds) with a crowd control spray gun. (The government suggests it is an MPD MK-46 device, but Mr. Doolin does not concede this point.) No witness offered evidence of Mr. Doolin's intent to steal or purloin, the personal property of another. In fact, a video showing Mr. Doolin finding a discarded cannister on the inaugural platform was shown to government witness, USCP Captain Sean Patton. (Def. Exhibit 414, marked for identification only).

Also, during its case-in-chief the government presented evidence of Mr. Doolin walking around the U.S. Capitol grounds with a U.S. Capitol Police riot shield. No witness offered evidence of Mr. Doolin's intent to embezzle, steal, purloin, steal, knowingly convert to his use and the use of another, and without authority, sold, conveyed and disposed of the U.S. Capitol Police riot shield. The evidence introduced by the government did not show Mr. Doolin stealing the riot shield from a USCP Officer.

DISCUSSION

The Government Failed to Present Sufficient Evidence of an Intent to Steal the Crowd Control Spray Gun And/Or the U.S. Capitol Police Riot Shield

Under Rule 29 of the Federal Rules of Criminal Procedure, the Court must enter a judgment of acquittal on any offense charged for which the evidence is insufficient to sustain a conviction. In ruling on a motion for judgment of acquittal, the Court must “consider[] the evidence in the light most favorable to the government and determin[e] whether, so read, it is sufficient to permit a rational trier of fact to find all of the essential elements of the crime beyond a reasonable doubt.” *United States v. Kayode*, 254 F.3d 204, 212–13 (D.C.Cir.2001) (quoting *United States v. Harrington*, 108 F.3d 1460, 1464 (D.C.Cir.1997)). The Court must “accord[] the government the benefit of all legitimate inferences,” *United States v. Weisz*, 718 F.2d 413, 437 (D.C.Cir.1983) (citations omitted), and accept the jury's verdict of guilt if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Arrington*, 309 F.3d 40, 48 (D.C.Cir.2002) (emphasis in original) (citations omitted). Put another way, the Court may grant a motion for judgment of acquittal only where “a reasonable juror must necessarily have had a reasonable doubt as to the defendant[’s] guilt.” *United States v. Weisz*, 718 F.2d at 437 (emphasis in original) (citations omitted).

By way of illustration, *Morrisette v. United States*, 342 U.S. 246 (1953) is analogous. In *Morrisette*, a defendant trespassed onto a government-owned

bombing range to hunt deer. *Id.* at 247. Having bad luck, the defendant decided instead to remove expended bomb casings and sell them for scrap. *Id.* At trial, the defendant argued that he believed the casings were abandoned, and that he had no intent to steal. *Id.* at 248. (The defendant testified at his own trial) However, the trial court ruled that the defendant was not entitled to a defense of abandonment, and that he had no intent to steal. *Id.* at 255. The Supreme Court reversed. “Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury.” *Id.* at 255. “[T]he question of intent can never be ruled as a question of law, but must always be submitted to the jury.” *Id.* The Court even considered defenses that the defendant could have presented to the jury, such as the expended shells giving the “appearance of unwanted and abandoned junk.” *Id.* at 256. The Court considered this defense despite the defendant realizing \$84. *Id.* at 247.

Here, the government offered no evidence of Mr. Doolin’s intent to steal the crowd control spray gun and/or the U.S. Capitol Police Riot Shield. With regard to either Count 16 or Count 17, no witness testified that Mr. Doolin acted with an intent to steal. In fact, a video showing Mr. Doolin finding a discarded cannister on the inaugural platform was shown to government witness, USCP Captain Sean Patton. And, the evidence introduced by the government did not show Mr. Doolin stealing the riot shield from a USCP Officer.

Considering this Court’s Rule 29 duty to consider the facts in the light most favorable to the government and providing it the benefit of legitimate inferences,

there is no evidence here that Mr. Doolin acted with an intent to steal, as to either item. See *Kayode*, 254 F.3d at 212–13 (quoting *Harrington*, 108 F.3d at 1464); see also *Weisz*, 718 F.2d at 437.

The facts of this case are analogous to *Morrisette*. In both cases, the defendants were on government property, *i.e.* a bombing range in *Morrisette* and Capitol grounds here. *Id.* at 247. In both cases, the defendants picked-up the expended government-objects from the ground, *i.e.* expended bomb casing in *Morrisette* and an expended gas canister here. *Id.* This Court may even consider that expended gas canister gave the “appearance of unwanted and abandoned junk.” *Id.* at 256. Converting \$84 from 1952 to 2023 USD, that would be approximately \$954.¹ That value is similar to the value of the gas canister.

In conclusion, the government failed to present sufficient evidence of an intent to steal either the crowd control spray gun (Count 16) or the U.S. Capitol Police riot shield. (Count 17) Therefore, this Court must enter a judgment of acquittal as to both Count 16 and Count 17 because “a reasonable juror must necessarily have had a reasonable doubt as to the defendant[’s] guilt.” *United States v. Weisz*, 718 F.2d at 437 (emphasis in original) (citations omitted).

¹ Defense counsel calculated this value using the CPI Inflation Calculator published by the U.S. Bureau of Labor Statistics, found online via Google search or hyperlink here: https://www.bls.gov/data/inflation_calculator.htm

CONCLUSION

WHEREFORE, for all the reasons set forth above, and for the reasons presented during oral argument on this motion on March 13, 2023, and for such other reasons which may appear just and proper, Mr. Doolin respectfully submits that the Court enter judgment of acquittal on Counts Sixteen and Count Seventeen of the Indictment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Allen H. Orenberg, hereby certify that on 13th day of March, 2023, I caused a copy of the foregoing Motion for Judgment of Acquittal on Count 16 and Count 17 to be served by Electronic Case Filing (“ECF”) upon all case registered parties.

Allen H. Orenberg