

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	:	Criminal No. 1:21 c r40 (TNM)
	:	
v.	:	
	:	
PATRICK MCCAUGHEY III,	:	
	:	
Defendant.	:	August 24, 2022
----- X		

DEFENDANT MCCAUGHEY’S TRIAL BRIEF RE: ELEMENTS

The defendant Patrick McCaughey III concurs with the elements as set forth by the Government (ECF# 422) with one crucial exception: For the counts involving alleged use of a “deadly or dangerous weapon,” to wit, Counts 24 & 25 (18 U.S.C. §111(b)), and Counts 37 and 45 (18 U.S.C. §1753(b)(1)(A)), there should be one element in addition to those set forth by the Government as to those offenses, as follows:

“The object must be capable of causing serious bodily injury or death to another person and the defendant must use it in that manner.”

This language is taken directly from *U.S. v. Arrington*, 309 F.3d 40, 45 (DC Cir. 2002), a case involving the alleged use of an automobile which, as in the riot shield at issue herein, is not designed to be a dangerous or deadly weapon.

“But what if the weapon is one that is deadly only if used in a certain manner, like Arrington's car? To this query, the government responds that a distinction between the two kinds of weapons is indeed appropriate. For an object that is not inherently deadly, the government concedes that the following additional element is required: (4) the object must be capable of causing serious bodily injury or death to another person and the defendant must use it in that manner. *Id.* (citing, *United States v. Murphy*, 35 F.3d 143, 147 (4th Cir.1994); 1 Leonard B. Sand et al., *Modern Federal Jury Instructions* (Criminal) ¶ 14.01, at 14–25 (2002);

2 Kevin F. O'Malley et al., *Federal Jury Practice & Instructions* (Criminal) § 24.06, at 68, 71 (5th ed.2000). That is, for a car to qualify as a deadly weapon, the defendant must use it as a deadly weapon and not simply as a mode of transportation.”

In this case, if the defendant was using the defensive riot shield defensively and not in a manner likely to cause serious physical injury or death, then he ought not be convicted of the subject counts.

Dated: Stamford, Connecticut
August 24, 2022

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed and served electronically on all parties of record, on this 24th day of August in the year of our Lord 2022.

Lindy R. Urso
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