

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

<b>UNITED STATES OF AMERICA</b>	:	<b>Case No.: 21-CR-151 (CKK)</b>
	:	
v.	:	<b>18 U.S.C. § 111(a)</b>
	:	
<b>BARTON SHIVELY,</b>	:	
	:	
<b>Defendant.</b>	:	
	:	

**GOVERNMENT’S RESPONSE TO THE COURT’S MINUTE ORDER**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia respectfully submits this Response to the Court’s Minute Order regarding the above-captioned matter currently scheduled for a sentencing hearing on February 3, 2023. In support of this motion, the government relies on the following points and authorities and any other such points and authorities as may be raised at any hearing on this matter.

On January 31, 2023, the Court issued a Minute Order directing the parties to respond by 4 pm on February 1, 2023, to said Minute Order, stating that the “Court has reviewed the Government’s [61-2] Victim Impact Statement, presently under seal. Therein, the victim appears to allege that Defendant deployed bear spray at the victim. Because the use of bear spray would carry additional enhancement(s) under the Advisory Sentencing Guidelines, the parties and Probation shall address this issue through notices on the public docket on or before February 1, 2023 at 4:00 PM ET. The Court notes that two such enhancements, sections 2A2.2(b)(2) and 2A2.2(b)(3)(A), have been used in another case involving a chemical irritant like bear spray.”

Consistent with the Court’s Minute Order above, undersigned counsel for the government respectfully avers the following: after a very careful and thorough review of all relevant evidence, including video and photographic evidence, undersigned counsel for the government has found no

evidence that the defendant possessed or used any “chemical irritant like bear spray” in this case. Consequently, undersigned counsel for the government is not advancing additional enhancement(s) under the Advisory Sentencing Guidelines in this matter.

Wherefore, the government submit this Response to the Court’s Minute Order regarding the above-captioned matter.

Respectfully submitted,

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