

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

UNITED STATES OF AMERICA,

v.

Case No.: 21-cr-34 (CRC)

THOMAS ROBERTSON,

Defendant.

DEFENDANT’S PROPOSED RESPONSE TO JURY NOTE

The defense proposes the following response to the jury’s note: “In order to find that an object is a deadly or dangerous weapon, the jury must find that the object is capable of causing serious bodily injury. In order to find that the defendant carried a deadly or dangerous weapon, the jury must find that the defendant carried the object with the intent to use it in manner that would cause serious bodily injury.”

Under District of Columbia law, an object that is not inherently dangerous can become dangerous by its use as a weapon, for purposes of statute prohibiting carrying a dangerous weapon. D.C. Official Code, 2001 Ed. § 22–4504(a). *United States v. Broadie*, 452 F.3d 875, 882 (D.C. Cir. 2006); *see also Strong v. United States*, 581 A.2d 383, 386 (D.C.1990) (quoting *Scott*, 243 A.2d at 56) (an instrument may be dangerous “where the purpose of carrying the object, under the circumstances, is its use as a weapon”). A “deadly or dangerous weapon” is “any object which, as used or attempted to be used, may endanger the life of or inflict great bodily harm on a person.” *United States v. Sanchez*, 914 F.2d 1355, 1358 (9th Cir. 1990); *see also United States v. Chansley*, No. 21-cr-3 (RCL), 2021 WL 861079, at *7 (D.D.C. Mar. 8, 2021) (defining “dangerous weapon” as “an object that is either inherently dangerous or is used in a way that is likely to endanger life

or inflict great bodily harm”). “Whether something is a ‘dangerous’ weapon depends on how it is used.” *Gray v. United States*, 980 F.3d 264, 267 (2d Cir. 2020). Thus, “objects that have perfectly peaceful purposes may be turned into dangerous weapons’ when used in a manner likely to cause bodily harm.” *Chansley*, 2021 WL 861079, at *7 (quoting *United States v. Smith*, 561 F.3d 934, 939 (9th Cir. 2009) (en banc)).

The government’s proposed language would allow a jury to find the defendant guilty of carrying a dangerous weapon by the mere fact that he is carrying an object. Any object can be a dangerous weapon. Merely carrying an object cannot make an individual guilty of carrying a dangerous weapon. The person must intend to use it in a dangerous manner or quite literally anyone, anywhere, holding anything, can be guilty of carrying a dangerous weapon. The government’s proposed response to the jury note would create a strict liability instruction. As the Court itself noted, there must be an intent to use or carry the object in a manner that would cause serious bodily injury. The defense would argue that the purpose of carrying anything is to use it and therefore the government’s distinction between “use” and “carry” is meritless.

Accordingly, the defense proposes the language above.

Respectfully submitted,

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