

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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2)	
3	UNITED STATES OF AMERICA,)	Criminal Action
4)	No. 21-00040
5	Plaintiff,)	
6)	
7	vs.)	
8)	
9	PATRICK EDWARD McCAUGHEY, III,)	Washington, D.C.
10	TRISTAN CHANDLER STEVENS and)	September 13, 2022
11	DAVID MEHAFFIE,)	3:04 p.m.
12)	
13	Defendants.)	
14)	
15	* * * * *)	

ORAL RULING
BEFORE THE HONORABLE TREVOR N. McFADDEN,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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6 Official Court Reporter
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 District of Columbia
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1 THE COURTROOM DEPUTY: Your Honor, this is
2 Criminal Case 21-40, the United States of America versus
3 Patrick Edward McCaughey, III, Tristan Chandler Stevens and
4 David Mehaffie.

5 Counsel, please come forward to identify yourself
6 for the record, starting with the Government.

7 MS. PASCHALL: Good afternoon, your Honor.
8 Kimberly Paschall for the United States with my colleagues,
9 Jocelyn Bond, Ashley Akers and our paralegal, Kyle Metz.

10 THE COURT: Good afternoon, folks.

11 MR. URSO: Good afternoon, your Honor. Lindy Urso
12 for Mr. McCaughey.

13 THE COURT: Good afternoon, Mr. Urso.

14 Good afternoon, Mr. McCaughey.

15 MS. COBB: Lauren Cobb for Tristan Stevens.

16 THE COURT: Good afternoon, Ms. Cobb.

17 Good afternoon, Mr. Stevens.

18 MR. SHIPLEY: Good afternoon, your Honor. William
19 Shipley on behalf of Defendant David Mehaffie, who's present
20 in court.

21 THE COURT: Good afternoon, Mr. Shipley.

22 Good afternoon, Mr. Mehaffie.

23 Before I render my verdict, is there any
24 outstanding issue that we should be discussing?

25 Ms. Paschall?

1 MS. PASCHALL: Not from the Government, your
2 Honor.

3 THE COURT: Mr. Urso?

4 MR. URSO: No, your Honor.

5 THE COURT: Ms. Cobb?

6 MS. COBB: No, your Honor.

7 THE COURT: Mr. Shipley?

8 MR. SHIPLEY: Nothing, your Honor.

9 THE COURT: I make the following findings of fact
10 and conclusions of law in support of the Court's verdict in
11 United States versus Patrick McCaughey, Tristan Stevens and
12 David Mehaffie:

13 This verdict is taken in full recognition of the
14 standard jury instructions, including, but not limited to,
15 the Government's burden to prove its case beyond a
16 reasonable doubt. It is made having carefully considered
17 the testimony presented and the evidence and stipulations
18 admitted during the course of the trial.

19 I'm utilizing the elements that the parties have
20 agreed to during this trial, which boil down to the
21 Government's proposed elements for each offense, plus a
22 couple additions and tweaks that the parties have proposed.

23 Before I begin, I want to make a few general
24 remarks about the credibility of the witnesses who testified
25 before me.

1 Unlike most cases, this one overwhelmingly relied
2 upon videotaped evidence showing exactly what occurred
3 during the time in question. Indeed, there are few
4 questions here about what occurred when. The central
5 questions are ones of intent and the legal implications of
6 those actions. This somewhat diminishes the importance of
7 the eyewitness testimony here.

8 I also note several eyewitnesses, including some
9 of the officers, were at times testifying at least in part
10 based on their review and understanding of the videos and
11 photographs. While it's true that an eyewitness can provide
12 additional context that a mere outside reviewer of a video
13 could not, I think at times the witnesses were able to offer
14 little beyond the video evidence and indeed occasionally
15 misinterpreted the video evidence.

16 Thus, while I generally find the Government's
17 witnesses credible, there were times when the videos and
18 photographs provided more reliable evidence of what
19 occurred.

20 Also, having carefully considered the testimony of
21 Officer Hodges and Sergeant Gonell in this case, their
22 testimony was more that of victims than of typical law
23 enforcement officers who have nothing to gain or lose from
24 their truthful testimony.

25 I do not believe that either intentionally lied

1 under oath. But there were times when their testimony was
2 undermined by other credible evidence. I'm thinking in
3 particular of Sergeant Gonell's claim that Mr. Stevens
4 struck him with a stolen baton. The Government has not
5 credited this claim and neither do I.

6 As to the defense witnesses, I found Dr. Calvin
7 John to be completely credible, but his testimony was of
8 limited relevance.

9 The other witnesses, Ms. Mehaffie, Mr. Mehaffie
10 and Mr. McCaughey, each had a significant stake in the
11 outcome here. And while I do credit much of their
12 testimony, where their testimony conflicts with my findings
13 below, I think that is because they shaded their testimony
14 to be more favorable to their case than the facts allowed.

15 Before discussing the various charges against the
16 Defendants, I note that the Capitol's west lawn, lower west
17 terrace and west terrace tunnel were scenes of shocking
18 violence and hostilities towards police by midafternoon on
19 January 6th, 2021. The Government has introduced evidence
20 of lengthy standoffs, fights and numerous attacks on
21 officers throughout the area. Rioters sprayed officers with
22 OC and bear spray and fire extinguishers, threw things at
23 them, used their own shields against them and used poles and
24 other weapons to strike them. They also hurled insults and
25 epithets at the officers.

1 All three Defendants observed these things.
2 Indeed, at times they participated in some of these attacks.

3 No police officer should have had to endure these
4 attacks and provocations.

5 Incidentally, two longtime police sergeants, one
6 from the Metropolitan Police Department and one from the
7 U.S. Capitol Police, testified in this trial that they
8 believed the police reacted differently to these attacks
9 because of the Black Lives Matter riots in the previous
10 year. One said he was worried about getting fired for
11 overreacting to the rioters. Both supervisors voiced fears
12 about police brutality claims.

13 Their testimony and the lengthy video footage in
14 evidence here suggests that at least some police officers
15 were more timid and less willing to repel the rioters
16 because they were afraid their departments would not support
17 them, did not have their backs. While none of this excuses
18 the Defendants' actions or the conduct of other rioters,
19 their testimony is suggestive of the chaos and violence that
20 can occur when senior government leaders fail to support and
21 defend law enforcement officers.

22 With that context, I make the following specific
23 findings of fact and conclusions of law as to the charged
24 conduct:

25 I turn first to Counts 14, 16 and 33, which relate

1 to actions by Mr. McCaughey and Mr. Stevens. These counts
2 charge the two Defendants with at various times that day
3 aiding and abetting the other rioters in forcibly
4 assaulting, resisting, opposing, impeding or interfering
5 with certain officers in violation of 18 USC 111(a)(1).

6 Although I will go through the various aiding and
7 abetting elements in a moment, this theory of liability
8 requires that others violate the statute. So I will first
9 list the elements underlying 111(a)(1) and explain how the
10 other rioters in the tunnel met those elements.

11 The first element is that someone must assault,
12 resist, oppose, impede, intimidate or interfere with a law
13 enforcement officer. An "assault" means any intentional
14 attempt or threat to inflict injury upon someone else when
15 coupled with an apparent present ability to do so. An
16 assault also requires a finding by the Court that the
17 Defendant acted forcibly and intended to inflict or intended
18 to threaten injury.

19 The terms "resist," "oppose," "impede,"
20 "intimidate" and "interfere with" carry their everyday,
21 ordinary meanings.

22 Count 4 covers the timeframe from 2:49 p.m. to
23 2:51 p.m. on January 6th, 2021. Within that timeframe,
24 Sergeant Mastony's body-worn camera shows police locked with
25 a group of rioters in the tunnel, specifically from 2:48

1 p.m. and 15 seconds to 2:50 p.m. and 36 seconds. I'm
2 looking to Exhibit 232.

3 At the very least, I find those rioters were
4 resisting, opposing, impeding and interfering with officers
5 by forming a barrier to prevent them from clearing the
6 tunnel.

7 Count 16 covers the timeframe from 2:56 to 2:58
8 p.m. During that time period, Sergeant Bogner's body-worn
9 camera shows rioters again blocking the police line in the
10 tunnel and preventing the police from pushing the crowd out
11 of the tunnel. And I'm looking to Exhibit 206.4. Again,
12 this is resisting, opposing, impeding and interfering at the
13 very least.

14 Count 33 covers 4:15 to 4:19 p.m. During this
15 time, footage shows rioters packed tightly against the
16 police line. They begin to push as one group against the
17 line, forcing police to retreat into the tunnel. I'm
18 looking at Exhibit 101.6. These are all Government
19 exhibits. Again, this activity qualifies as resisting,
20 opposing, impeding and interfering at the very least.

21 The second element is that someone does so
22 forcibly. A person acts forcibly if he used force,
23 attempted to use force or threatened to use force against a
24 police officer.

25 As to Count 14, the rioters clearly used force.

1 Sergeant Mastony's body-worn camera again shows rioters
2 pressed up against the police line from 2:49 p.m. until 2:51
3 p.m.

4 Count 16: As shown on Sergeant Bogner's camera,
5 multiple rioters forcibly pushed against the police line.
6 This is most evident at 2:56 and 37 seconds and 2:57 and 34
7 seconds on Exhibit 206.4.

8 The same applies as to Count 33. Exhibit 101.6
9 shows prodigious efforts by rioters to push past the police.
10 This involved coordinating their pushes to exert the
11 greatest possible amount of force on the police line. It is
12 most clearly seen on Exhibit 106.1 from 4:16 and 14 seconds
13 to 4:16 and 36 seconds.

14 The third element is that someone did the acts
15 intentionally. Many people in the tunnel between 2:49 p.m.
16 and 2:51 p.m. acted intentionally. And I find that these
17 rioters were acting intentionally.

18 Exhibit 206.10 shows rioters continuing to press
19 against police and spraying the police line with a fire
20 extinguisher at 2:49 and 25 seconds. There's no doubt in my
21 mind that the rioters were intentionally acting against the
22 police here.

23 Count 16: The evidence clearly shows that the
24 rioters at this time acted intentionally. Not only had many
25 of them entered the tunnel voluntarily, but videos showed

1 them bringing shields and other objects to use against the
2 police. I'm looking to Exhibit 101.2 at 2:56 p.m. and 23
3 seconds and 2:56 and 47 seconds.

4 Rioters can also be heard on Sergeant Bogner's
5 body-worn camera at 2:57 saying, "This is our house."
6 That's Exhibit 206.4.

7 The same analysis applies to Count 33. Rioters
8 continued to move into the tunnel and pushed into the police
9 line at Exhibit 101.6.

10 The fourth element is that any of the prohibited
11 conduct occurred against an officer who was then engaged in
12 the performance of his official duties.

13 For all counts and at all times, the officers were
14 obviously engaging in their official duties protecting the
15 Capitol from unauthorized visitors. They were all wearing
16 official law enforcement gear and insignia. Their duty was
17 to clear the tunnel and protect the Capitol and those inside
18 it, and they could not do so properly because of the
19 rioters' presence and conduct.

20 The fifth element is a bit complicated. To be a
21 felony, someone must make physical contact with the officer
22 or act with the intent to commit another felony. This
23 element presents a legal dispute between two of the
24 Defendants and the Government. For these three counts, the
25 Government's theory is that rioters in the tunnel were

1 resisting, opposing, impeding, intimidating and interfering
2 with officers in the tunnel, all with the intent to commit
3 another felony.

4 According to the Government, they intended to
5 commit either obstruction of an official proceeding or civil
6 disorder, both felonies. And Defendants Stevens and
7 McCaughey aided and abetted those violations.

8 Defendants Stevens and McCaughey argue that 111
9 does not permit this theory. They say that even acting with
10 felonious intent cannot be a felony under Section 111 unless
11 the same person committed an assault.

12 I disagree. First, the words of the statute
13 appear clear enough to me. Section 111(a) explicitly refers
14 to the acts in violation of Subsection (a)(1). To be sure,
15 those acts encompass forcible assaults against officers.
16 But they also cover forcible opposition, interference with
17 and impeding officers.

18 And the statute says a felony accrues when such
19 acts involve the intent to commit another felony. The
20 natural implication of this language means that forceful
21 interference with officers, for example, with the intent to
22 commit another felony is a felony violation of the statute.
23 The phrase "such acts" refers to all six verbs in
24 Section 111(a)(1), and those verbs go beyond physical
25 assaults.

1 The Fourth and Seventh Circuits agree with this
2 interpretation of the statute. And I'm looking to *United*
3 *States versus Briley*, 770 F.3d 267, Pages 273 and 274, from
4 the Fourth Circuit in 2014; and *United States versus Stands*
5 *Alone*, 11 F.4th 532, Pages 535 and 537, from the Seventh
6 Circuit in 2021.

7 Both circuits convincingly reason from the text of
8 the statute that the verbs other than "assault" carry
9 through into the felony provision of Section 111(a).

10 I'm aware of contrary authority from the Tenth
11 Circuit, but that decision rests on binding precedent in
12 that circuit about a prior version of the statute. I'm
13 looking to *United States versus Wolfname*, 835 F.3d 1214,
14 from the Tenth Circuit in 2016.

15 None of these decisions are binding on this Court,
16 but I am persuaded by the text of the statute that the
17 fourth and center of the circuits are correct.

18 The upshot is that rioters in the tunnel could
19 have committed felony violations of Section 111(a) if they
20 acted with the intent to commit another felony. As I will
21 detail later when discussing the Defendants, I find the
22 evidence overwhelmingly shows that rioters inside the tunnel
23 on January 6th acted with the intent to commit civil
24 disorder.

25 At all times relevant to Counts 14, 16 and 33,

1 rioters in the tunnel knowingly obstructed officers as part
2 of a civil disorder as defined by the statute. That is
3 enough for them to commit a felony violation of Section
4 111(a).

5 Now for the elements of aiding and abetting, which
6 applies to Defendants Stevens and McCaughey: First, others
7 must commit each of the elements of a Section 111(a)(1)
8 violation that I have just listed and as I've explained.
9 This element has been met.

10 Second, the Defendants knew that assaulting,
11 resisting, opposing, impeding or interfering was going to be
12 or was being committed by others. Looking to Count 14,
13 Mr. Stevens entered the tunnel at approximately 2:50 p.m.
14 Mr. McCaughey entered about five seconds later, according to
15 Exhibit 101.2.

16 The video evidence shows that rioters had by then
17 been pressed against the police line for almost eight
18 minutes. Defendants McCaughey and Stevens both suggest that
19 they did not know rioters at the front of the mass in the
20 tunnel were interfering with officers.

21 I reject this argument as implausible. Not only
22 is Defendant McCaughey tall enough to see deeper into the
23 tunnel; police officers shouted continuously at the rioters
24 to get back. I believe he heard those shouts. And at
25 around 2:50 and 44 seconds, McCaughey clearly observed a

1 roiling group of rioters pushing in unison.

2 I do not believe that anyone seeing this scene
3 could have concluded that the rioters were pushing against a
4 door or some other object.

5 And the group was retreating, something only
6 police would cause. Needless to say, a door does not push
7 rioters back.

8 As for Defendant Stevens, he is several feet
9 further into the tunnel than Defendant McCaughey. At 2:50
10 p.m. and 38 seconds, video shows him observing the retreat
11 of those rioters in front of him, at which point he leaned
12 his body into the people in front of him.

13 Again, doors do not cause the kind of mass retreat
14 that Stevens observed at this moment. The only plausible
15 explanation is that he knew there were officers at the end
16 of the tunnel. This is confirmed by his next actions. Ten
17 seconds after bracing against someone in front of him, he
18 raised his hand and started counting up to three. Although
19 the group remained uncoordinated despite this, the group
20 finally pushed as one at 2:50 p.m. and 57 seconds after
21 Defendant Stevens had for the third time counted to three.
22 I'm looking to Exhibit 101.2.

23 One would be hard pressed to conclude that
24 Mr. Stevens went to this trouble if the rioters at the front
25 faced only a set of doors.

1 Having reviewed the videos and heard testimony
2 from a number of individuals who were there on that day, I
3 am fully convinced that both Defendants knew what was
4 happening and specifically knew that the people at the front
5 of the line were pushing against and into police officers
6 trying to prevent the crowd's entry into the Capitol
7 Building.

8 Going to Count 16: As described a moment ago in
9 relation to Count 14, Mr. Stevens by 2:56 p.m. had seen
10 police officers push rioters back. He also knew that other
11 rioters were obstructing police because at 2:56 p.m. and two
12 seconds he saw rioters passing riot shields forward. They
13 would not bring riot shields to fight with a door. The only
14 explanation is that rioters at the front needed shields to
15 keep their place in front of the police.

16 Any doubt as to Mr. Stevens's knowledge of police
17 presence is dispelled by a video taken by his own cell phone
18 while in the midst of the rioters. The video clearly
19 depicts police helmets at the end of the tunnel. I'm
20 looking to Exhibit 419.3.

21 As to Count 33: According to Exhibit 101.6,
22 Mr. Stevens positioned himself in the mass of rioters near
23 the tunnel entrance. Video captures him at 4:16 p.m. and 15
24 seconds just outside the entryway. Given his proximity, I
25 am fully convinced that he knew people were mere feet in

1 front of him and were interfering with officers.

2 More, by now he had already been into the tunnel,
3 pushed against officers and engaged in the altercation with
4 Sergeant Gonell. The crowd of rioters outside the tunnel
5 would indicate to him that officers remained inside and that
6 rioters were still trying to push through the officers.

7 Third, I find that the Defendants performed an act
8 in furtherance of the offense. Looking to Count 14, I have
9 already described Stevens's actions to coordinate pushes by
10 the rioters. He took upon himself a leadership role at that
11 moment. The Court counts five attempts by Mr. Stevens
12 between 2:50 p.m. and 2:51 p.m. to count rioters up to
13 another push.

14 At exactly 2:51 p.m., Mr. McCaughey joined a
15 coordinated push by rioters in the tunnel, according to
16 Exhibit 101.2. He continued to add his weight to the push
17 for about 12 seconds before falling back at the direction of
18 other rioters.

19 Looking to Count 16, here again, Mr. Stevens
20 joined a coordinated heave-ho along with other rioters.
21 According to the video, he began that push at 2:56 p.m. and
22 pushed until 2:57 p.m. and 21 seconds. That is about a
23 30-second period. That's on Exhibit 101.2. His cell phone
24 video footage of the moment also captures the crowd chanting
25 "Heave" in Exhibit 419.3.

1 On Count 33, as in the prior count, Mr. Stevens
2 joined a coordinated push against the police line. At 4:16
3 p.m. and 35 seconds, he is inside the tunnel and pushes his
4 body weight against the person in front of him, moving
5 rhythmically with others as they pushed en masse. He again
6 pushed forward at 4:17 p.m. and 40 seconds and he pushes for
7 about the next ten seconds in Exhibit 101.6. These are
8 actions in furtherance of the interference taking place by
9 rioters ahead of him.

10 Fourth, the Defendants knowingly performed their
11 acts for the purpose of aiding, assisting, soliciting,
12 facilitating or encouraging others in committing that
13 offense.

14 Looking to Count 14, Mr. McCaughey's push speaks
15 for itself because of my earlier finding that he saw
16 officers at the end of the tunnel and knew that rioters had
17 engaged them. He joined the coordinated push in an effort
18 to help them try to break through into the building. I find
19 he did so knowingly.

20 Exhibit 101.2 shows Defendant McCaughey joined the
21 heave-ho without the assistance of anybody behind him. No
22 one forced him or pushed him into the group. He joined
23 voluntarily. And at various points in his testimony,
24 Mr. McCaughey affirmed that he entered the tunnel and
25 remained there of his own accord.

1 So, too, for Mr. Stevens: He knew that rioters
2 had engaged with the police line and were interfering with
3 the police officers' attempt to clear the tunnel. Yet he
4 led the rioters in a series of coordinated pushes and he
5 stopped only when the police began to make inroads against
6 the rioters in the tunnel. The natural inference from that
7 behavior is that he led the pushes for the purpose of
8 helping those at the front of the group continue to
9 interfere and impede and oppose and resist the police
10 officers.

11 Looking back to Count 16, I have covered much of
12 the applicable conduct here already. Mr. Stevens saw the
13 riot shields go forward into the tunnel and still pushed
14 into the back of the group pressed against the police line.
15 Particularly in light of his countdowns mere minutes
16 earlier, I conclude that Mr. Stevens joined the heave-ho
17 with the purpose of aiding those who were interfering with
18 officers at the front of the group.

19 Looking to Count 33, based on my prior
20 conclusions, Mr. Stevens knew about police in the tunnel and
21 that others were pushing against them. He not only joined
22 that push, but maneuvered himself farther into the tunnel.
23 The video shows no effort by him to retreat or to arrest the
24 push from those behind him. The only possible conclusion,
25 particularly given that he had already interfered with

1 police himself and that he had come back to the tunnel, is
2 that Mr. Stevens did all of this to aid those rioters ahead
3 of him who were engaged with police. And I'm looking to
4 Exhibit 101.6 for that, among others.

5 Fifth, the Defendants acted with the intent that
6 others commit the offense of assaulting, resisting,
7 opposing, impeding or interfering with law enforcement
8 officers. On Count 14, for the same reasons as I mentioned
9 under the fourth element, I find that Defendant McCaughey
10 joined the coordinated push at 2:51 p.m. with the intent to
11 help other rioters ahead of him in the tunnel to continue
12 impeding police officers. I think they were also opposing,
13 resisting and interfering with police officers. His
14 decision to join the press of other rioters cannot be
15 explained any other way.

16 I also find that Mr. Stevens led pushes with the
17 intent to help rioters at the front of the group for the
18 reasons I've already discussed.

19 Turning to Counts 16 and 33: For the reasons I've
20 just mentioned under the previous elements for these two
21 counts, I find that Mr. Stevens pushed with the intent that
22 others in front of him would continue obstructing officers
23 in the tunnel.

24 The upshot of all of this is that based on these
25 conclusions, I find Mr. McCaughey guilty on Count 14 of

1 aiding and abetting felony violations of Section 111(a) and
2 I find Mr. Stevens guilty on Counts 14, 16 and 33 of the
3 same offense.

4 Turning now to Counts 21, 24 and 25: These allege
5 that Defendants McCaughey and Stevens assaulted a law
6 enforcement officer with a deadly or dangerous weapon in
7 violation of 18 USC 111. This offense shares the five
8 elements I just mentioned for a violation of 111(a)(1). In
9 addition, to show a violation of 111(b), the Government must
10 show that the Defendants used a deadly or dangerous weapon.

11 An object is a deadly or dangerous weapon if it is
12 capable of causing serious bodily injury or death to another
13 person and the Defendant used it in that manner.

14 As defined in 18 USC 1365(h)(3), "serious bodily
15 injury" means bodily injury involving a substantial risk of
16 death, extreme physical pain, protracted and obvious
17 disfigurement or protracted loss or impairment of the
18 function of a bodily member, organ or mental faculty.

19 In determining whether an object is a deadly or
20 dangerous weapon, I may consider both the physical
21 capabilities of the object used and the manner in which the
22 object was used.

23 I first consider Count 24, which was Defendant
24 McCaughey's assault on Officer Daniel Hodges. As to the
25 first element, I find that Mr. McCaughey did indeed assault,

1 resist, oppose, impede and interfere with Officer Hodges
2 when he pinned the officer against the door frame using a
3 stolen police shield.

4 Having carefully reviewed the videos and the
5 testimony of Mr. McCaughey, Officer Hodges and others, I
6 find that Mr. McCaughey used the force of his body and the
7 force of those other rioters behind him and working in
8 unison with them pushed against Officer Hodges. He also did
9 so intentionally.

10 I note he did this while saying to Officer Hodges,
11 "Go home" and "Don't use that stick on me, boy." His
12 actions to pin Officer Hodges against the door frame
13 rendered Officer Hodges defenseless from the attack of
14 another rioter who yanked off Officer Hodges's gas mask,
15 dislodged his helmet and struck him with his own police
16 baton.

17 While this was occurring, Mr. McCaughey told
18 Officer Hodges, "Let go of the stick;" in other words, the
19 baton Officer Hodges was trying to use to defend himself.

20 I specifically reject Mr. McCaughey's suggestion
21 that he was also saying this to the other rioter. Officer
22 Hodges was also clearly engaged in the performance of his
23 duties and the Defendant also made physical contact with
24 him, satisfying the fourth and fifth elements of 111(a)(1).

25 I also find that in committing this assault,

1 Mr. McCaughey used a deadly or dangerous weapon. Having
2 listened carefully to the testimony about police shields and
3 having reviewed one myself, I do not believe that a shield
4 is necessarily or inherently a dangerous weapon, but that it
5 is capable of causing bodily injury or death and the
6 Defendant used it in this manner.

7 To support this finding, I make the following
8 observations: First, Sergeant Mastony, who I find to be
9 very credible, explained that CDU, or civil disturbance
10 unit, officers are taught to use shield strikes to push
11 people out of the way.

12 He also testified that he at one point on January
13 6th struck a rioter with the edge of a shield to stop the
14 rioter from assaulting another officer. I think both of
15 these are examples of how a shield, which I'd normally
16 consider a piece of defensive equipment, can be used
17 offensively.

18 Second, I credit Officer Hodges's claim that
19 Mr. McCaughey's use of the shield caused him significant
20 pain, specifically in his lungs, his head and his face, that
21 it crushed him and its hard surface prevented him from
22 fighting against the assault and that he screamed out in
23 part in pain because of Mr. McCaughey's actions against him.

24 I also credit Officer Hodges's claim to have
25 suffered large bruises and pain all over his body, and I

1 believe those injuries were in part caused by
2 Mr. McCaughey's actions.

3 I recognize Officer Hodges previously stated that
4 he called out for help; and as I suggested at the outset, I
5 think Officer Hodges does harbor some understandable anger
6 and resentment at Mr. McCaughey and other rioters which
7 could theoretically influence his testimony.

8 Notwithstanding all this, I did believe him as to
9 these above points, having considered his demeanor on the
10 stand and all of the surrounding evidence. And I think the
11 video evidence broadly corroborates his claims.

12 Officer Hodges credibly testified to feeling
13 rather embarrassed by the whole episode, which probably
14 explains why he claimed he yelled out for help, rather than
15 admitting in his earlier interview that he was actually in
16 significant pain.

17 Third, I reject the arguments made on
18 Mr. McCaughey's behalf to the contrary. While it is true
19 that another rioter was pushing against Mr. McCaughey's
20 back, I don't think this meant he couldn't control what he
21 was doing or that he had no place to move. Rather, I think
22 he was working in unison with those behind him to push the
23 police officers, and Officer Hodges specifically.

24 Similarly, I don't think the fact that
25 Mr. McCaughey's arms were flush against his chest meant that

1 he wasn't pushing. Rather, I agree with the Government that
2 he was using his full body weight, along with the force and
3 the weight of the people behind him, to lean into the
4 shield, crushing Officer Hodges against the door frame.

5 I also completely reject the suggestion that
6 Exhibit 801, which is the shield, is somehow not
7 substantially similar to the shields used in the tunnel on
8 January 6th.

9 I credit the testimony of Captain Ortega on this
10 point, and I'll note that I was able to bend the edges of
11 this shield just as you can see the edges being bent in the
12 videos. I also think the weight of this shield is
13 substantially similar to the weight of the shield
14 Mr. McCaughey used.

15 McCaughey's most compelling argument is that his
16 actions to get assistance for Officer Hodges show that he
17 did not intend to harm him just beforehand. Having
18 carefully reviewed the video and considered the witnesses'
19 testimony, I ultimately agree with the Government that this
20 moment of humanity stands in contrast with Mr. McCaughey's
21 actions moments before rather than explaining them. I think
22 Officer Hodges's gut-wrenching cries of pain shocked
23 Mr. McCaughey into merciful action. But I also think
24 Mr. McCaughey's statements and conduct during the assault
25 speak for themselves and can't be undone by his subsequent

1 kindness.

2 Finally, I reject the argument that only the blade
3 end of the shield can cause serious bodily injury. I'm
4 reminded of the fate of Giles Corey, immortalized in Arthur
5 Miller's play *The Crucible*. Mr. Corey, accused of
6 witchcraft, was sentenced to death by *peine forte et dure*;
7 in other words, being pressed to death. He was bound on the
8 ground; a flat board not dissimilar to a shield was placed
9 on his chest; and weights were placed on the board until he
10 was crushed to death.

11 With sufficient weight, a flat surface like a
12 shield can certainly cause serious bodily injury or death,
13 especially when the victim is wedged between it and a hard
14 narrow surface like a door frame.

15 And, of course, in this case, this was not just
16 the weight of one individual on the shield, but the weight
17 of many, the various rioters working in unison with the
18 Defendant to crush Officer Hodges.

19 I now consider Count 25, charging Mr. McCaughey
20 with assaulting Officer Foulds. This incident occurred
21 shortly after Mr. McCaughey assaulted Officer Hodges when
22 Officer Foulds tried to close the double doors separating
23 the rioters from the officers.

24 The first element is whether the Defendant
25 assaulted, resisted, opposed, impeded, intimidated or

1 interfered with Officer Foulds. The evidence overwhelmingly
2 shows that Mr. McCaughey resisted, opposed, impeded and
3 interfered with Officer Foulds by repeatedly trying to
4 prevent him from closing the door, indeed by reopening it
5 once Officer Foulds had partially closed the door.

6 I also find that Mr. McCaughey indeed assaulted
7 Officer Foulds. The Government sees at least three separate
8 strikes by Mr. McCaughey. While this incident was captured
9 by multiple cameras, the footage is often blurry where the
10 actors are partially obscured. I clearly see at least one
11 strike at 3:13 p.m. and 44 seconds on Exhibit 961.

12 As Officer Foulds tries to close the door,
13 Mr. McCaughey uses his shield to reopen the door and hit
14 Officer Foulds's hand, which was on the crash bar. I also
15 credit Officer Foulds's testimony that Mr. McCaughey
16 repeatedly struck at him and also shoved him with the
17 shield. I found Officer Foulds to be very credible and to
18 have a clear memory of the events. Despite the rather
19 blurry video evidence, I fully credit Officer Foulds's
20 testimony on this point.

21 Having considered the evidence and the testimony
22 of Mr. McCaughey and Officer Foulds, I also find the
23 Defendant was acting forcibly and intentionally here.

24 I therefore discredit Mr. McCaughey's testimony
25 that he never struck anyone with his shield and that he

1 never swung it at anyone. I agree with him that at times he
2 was trying to block Officer Foulds's baton strikes, but
3 that's not all he was doing. I believe he was acting
4 offensively and actively resisted Officer Foulds's effort to
5 close the door by striking and shoving him with the shield.

6 The final two elements of 111(a)(1) are also
7 easily satisfied here. Officer Foulds was clearly engaged
8 in the performance of his official duties and Mr. McCaughey
9 did make physical contact with him. In any event, he was
10 acting with the intent to commit another felony, i.e. civil
11 disorder.

12 I do not believe, however, that the Government has
13 met its burden under 111(b) to show that Mr. McCaughey was
14 using a dangerous weapon at the time. To be sure, a shield
15 can be a dangerous weapon for the reasons I've already
16 stated. But here, his use of it was to shove and strike at
17 Officer Foulds in ways that could not have caused serious
18 injury or death.

19 Notably, Officer Foulds readily conceded that he
20 was not at all injured by the Defendant in this interaction.
21 And having reviewed the evidence, I believe the Defendant
22 was primarily trying to prevent Officer Foulds from closing
23 the door and to ward off Officer Foulds's baton strikes
24 rather than mounting a serious attack on Officer Foulds.

25 I now turn to Count 21, charging Mr. Stevens with

1 felony assault on Sergeant Gonell: The first element is
2 whether the Defendant assaulted, resisted, opposed, impeded,
3 intimidated or interfered with Sergeant Gonell. The
4 evidence overwhelmingly shows that by pressing against
5 Sergeant Gonell with the shield, Mr. Stevens did all of
6 these things. The defense has not argued otherwise.

7 Mr. Stevens also did so forcibly and
8 intentionally, satisfying the third and fourth elements of
9 the offense. I note he called Sergeant Gonell a pussy while
10 he did all of this, underlining that his actions were not
11 accidental.

12 The final two elements of 111(a)(1) are also
13 easily met here. Sergeant Gonell was engaged in the
14 performance of his duties and Mr. Stevens made physical
15 contact with him. Additionally and in the alternative,
16 Mr. Stevens was also acting with the intent to commit civil
17 disorder, a felony.

18 While the defense has not really contested any of
19 this, Ms. Cobb rejects the suggestion that her client used a
20 deadly or dangerous weapon as defined in Section 111(b).
21 She notes Sergeant Gonell didn't even really claim to have
22 been injured by Mr. Stevens's actions, only that he felt
23 uncomfortable, was frustrated and felt impeded.

24 I think this understates Sergeant Gonell's
25 testimony slightly. He also spoke about the burning

1 sensation he felt when his face shield was pushed up and
2 that his head was pushed back in an awkward manner.

3 Sergeant Gonell also initially testified that
4 Mr. Stevens had struck him with a stolen baton, but the
5 Government has not relied on that claim and I do not credit
6 Sergeant Gonell's assertion on that point.

7 Ultimately, I agree with Mr. Stevens that the
8 Government has not proven the deadly weapon element beyond a
9 reasonable doubt. Sergeant Gonell's injuries seem to have
10 come from other rioters, not Mr. Stevens. And having
11 carefully reviewed the video evidence, I think Mr. Stevens's
12 use of the shield was substantially similar to the actions
13 of most of the other rioters at the front of the line -- and
14 those of the frontline officers -- who were all using the
15 shields to push against one another.

16 I think the dislocation of Sergeant Gonell's face
17 shield and helmet are not of themselves the types of actions
18 likely to cause serious injury or death, even if they were
19 intentionally caused by Mr. Stevens.

20 More, Sergeant Gonell was not being crushed
21 between Mr. Stevens's shield and a fixed object, as Officer
22 Hodges was.

23 The video evidence shows an officer clearly
24 pushing into Sergeant Gonell's back to support him against
25 the opposing line. That officer could have relented and

1 given Sergeant Gonell escape space had he been in danger of
2 serious injury.

3 For all these reasons, I find Mr. McCaughey guilty
4 on Count 24 as charged, guilty on Count 25 of
5 Section 111(a)(1), but not guilty of the 111(b) enhancement.
6 And I find Mr. Stevens guilty on Count 21 of Section 111(a),
7 but not guilty of the Section 111(b) enhancement.

8 I turn now to Count 12, which charges Mr. Mehaffie
9 with aiding and abetting violations of 111(a)(1) from 2:40
10 to 3:18 p.m.

11 Much of my analysis, however, focuses on the time
12 from 2:52 to 3:18 p.m., during which Mr. Mehaffie perched on
13 a ledge out outside the tunnel. The elements are the same
14 as the aiding and abetting counts against Mr. McCaughey and
15 Mr. Stevens, which I stated at the outset.

16 So for Defendant Mr. Mehaffie to be guilty, others
17 must have committed Section 111(a)(1) violations during that
18 timeframe.

19 It is obvious that they did: During all of that
20 time, rioters packed the tunnel, attacking the police line
21 and pressing against it, all with the intent to commit civil
22 disorder as I previously described in the prior counts.

23 That finding takes care of the first aiding and
24 abetting element, which is that others commit
25 Section 111(a)(1) offenses.

1 The second element is that Mr. Mehaffie knew that
2 assaulting, resisting, opposing, impeding or interfering was
3 going to be committed by others or was being committed by
4 others. The video evidence shows clearly that he knew
5 others were engaged with police officers. Indeed, he was at
6 the front of the police line at 2:42 p.m. while others
7 around him were striking at police. I'm looking to Exhibit
8 921 for that.

9 So by the time he ascended to the elevated
10 position right outside the tunnel, Mr. Mehaffie already had
11 seen rioters engage with police. And then from his perch,
12 Mr. Mehaffie saw rioters near him hurling objects into the
13 tunnel, spraying various substances as well as pushing as a
14 group. This is all shown in Exhibit 101.2.

15 I believe he saw that activity, which was so close
16 to him. And to make more clear that he knew others were
17 interfering with police, Exhibit 950 is a cell phone video
18 taken from a similar vantage point as Mr. Mehaffie's and
19 mere feet away from him. It clearly shows police helmets
20 pressed against the rioters. Situated just behind that same
21 perspective, Defendant Mehaffie saw the rioters were
22 impeding police.

23 I specifically reject any notion that he couldn't
24 see into the tunnel because of the lighting or because
25 people's heads blocked his view. Of course he couldn't see

1 everything perfectly, but I find he clearly saw the fighting
2 at the front and was well aware of what was happening.

3 The third element is that Mr. Mehaffie performed
4 an act in furtherance of the offense. This is very
5 straightforward. Once Mr. Mehaffie took his position, he
6 began to direct rioters into the tunnel. Upon review of the
7 entire video, I count at least 12 times where he gestured
8 rioters into the tunnel. And I'm looking again to
9 Exhibit 101.2.

10 True, as he noted during his testimony, he also
11 guided other rioters out of the tunnel as part of a
12 makeshift system in which he told rioters how to enter and
13 how to exit. But the element merely requires an act in
14 furtherance of the resistance against officers.

15 Mr. Mehaffie's repeated efforts to get new people into the
16 melee obviously furthered their interference, impeding and
17 opposing police officers.

18 And at 2:56 p.m., Mr. Mehaffie even helped pass a
19 shield to the rioters at the other end of the tunnel,
20 thereby actively assisting their continued interference.
21 And again I'm looking to Exhibit 101.2.

22 I find that Mr. Mehaffie's gestures coincided with
23 attacks on the officers. He directed rioters into the
24 tunnel at 2:56 p.m. According to Sergeant Bogner's
25 body-worn camera, rioters further into the tunnel were at

1 the same time pressed against police. This happened at 3:12
2 p.m., when Mr. Mehaffie waved in rioters while those in the
3 tunnel engaged in a coordinated push against the police
4 line. And I'm looking again to Exhibit 101.2. The
5 simultaneous addition of more rioters at Mr. Mehaffie's
6 direction helped that interference with police officers.

7 The final two elements are the most disputed of
8 this charge. The fourth element is that Mr. Mehaffie
9 knowingly performed his acts for the purpose of aiding,
10 assisting, soliciting, facilitating or encouraging others in
11 committing the offense.

12 The fifth element requires him to act with the
13 intent that others commit the offense. Mr. Mehaffie argues
14 that he intended to keep people safe. During his testimony,
15 he recounted how a friend of his had been injured at a The
16 Who concert in the 1970s because a number of concertgoers
17 got stuck between locked doors and the crush of the crowd
18 behind them.

19 Mr. Mehaffie said that on January 6th, he grew
20 panicked and fearful that another crush might happen unless
21 he directed traffic into and out of the tunnel; thus, he
22 told rioters on which side of the tunnel to enter and on
23 which side to exit. He did not intend for anyone to get
24 hurt, according to him.

25 I credit that Mr. Mehaffie grew panicked during

1 the initial moments, given his knowledge of the concert and
2 his own experience in the tunnel. However, I think he
3 overstates the extent to which this initial experience and
4 recollection directed his subsequent activities. The risk
5 of a crush increases with more people, yet Mr. Mehaffie
6 continued to direct more people into the tunnel. And his
7 own words at the time prove that he did so to continue the
8 interference with the police officers. Just after taking
9 his position above the fray, Mr. Mehaffie yelled to those
10 below, "We don't hurt them; we push" at Exhibit 301 at one
11 minute and 23 seconds.

12 Seconds later, he tells the same group to "Push"
13 again, at two minutes and nine seconds. He more than most
14 would know from The Who concert that pushing in a confined
15 space is actually quite dangerous to all involved. He also
16 helped pass a shield forward in the crowd, an action that is
17 inconsistent with his purported motives and one that he
18 rightly admitted he now regrets.

19 From all of these actions, I conclude that even if
20 he wanted to minimize injuries to protesters, he still
21 wanted those entering the tunnel to continue their
22 disruptive efforts against the police. These two intentions
23 not mutually exclusive.

24 For these reasons, I conclude beyond a reasonable
25 doubt that Mr. Mehaffie directed rioters into the tunnel

1 with the intent and purpose that they would interfere with
2 police officers.

3 I note that the Government has not argued he
4 wanted the crowd to assault the officers. Indeed, there was
5 evidence of him repeatedly telling people not to hurt the
6 officers and of him taking poles and other potential weapons
7 away from the rioters. And I'm looking to his Exhibit BBB.

8 While these were important exculpatory steps, they
9 do not help him to escape liability for the nonassaultive
10 conduct, including resisting, opposing and interfering with
11 officers.

12 I also specifically find that he and those he was
13 aiding and abetting were acting with the intent to commit
14 civil disorder. I therefore find Mr. Mehaffie guilty on
15 Count 24 of aiding and abetting a felony violation of
16 Section 111(a).

17 Next, the Government charges all Defendants in
18 Count 34 with obstruction of an official proceeding in
19 violation of 18 USC Section 1512(c)(2). The elements for
20 this crime are as follows: First, the Defendants attempted
21 to or did obstruct or impede an official proceeding; second,
22 the Defendants intended to obstruct or impede an official
23 proceeding; third, the Defendants acted knowingly with
24 awareness that the natural and probable effect of their
25 conduct would be to obstruct or impede the official

1 proceeding; and, fourth, the Defendants acted corruptly. To
2 act corruptly, a defendant must use unlawful means or act
3 with an unlawful purpose. The Defendant must also act with
4 consciousness of wrongdoing, which means with an
5 understanding or awareness that what the person is doing is
6 wrong.

7 I note that all parties have now agreed to this
8 definition. I think the Government has proven the first
9 element as to all three Defendants. I find that their
10 actions, battling police officers on the doorstep of the
11 Capitol Building, had the natural and probable effect of
12 obstructing and impeding the certification. It was
13 impossible for this official proceeding to continue,
14 especially given the presence of so many other rioters with
15 whom they were working in concert.

16 Inspector Hawa's testimony makes clear that
17 Capitol Police stopped the certification because of the
18 rioters outside and inside the building. I'm looking to
19 Exhibit 1000, Pages 16 and 17.

20 To show the Defendants' intent, the Government
21 notes that each Defendant traveled from out of state for the
22 Stop the Steal Rally. Each then marched from the rally to
23 the Capitol and each was involved in a protracted and
24 violent struggle to get into the Capitol.

25 As to the first two points, I think those are only

1 weak evidence of an intent to obstruct the certification.
2 Thousands of people attended the Stop the Steal Rally, and I
3 think many, if not most, did not come to obstruct the
4 certification. As I've heard in other January 6th cases,
5 many came just to see the president before he left office or
6 to lend him moral support or to voice their disappointment
7 with the election result.

8 Similarly, much of the crowd at the Ellipse ended
9 up walking to the Capitol grounds. They went for various
10 reasons, including, but not limited to, because they
11 expected the president was going to be there as he said he
12 was going to go there and because that's where the crowd
13 headed.

14 The third point, that the Defendants involved
15 themselves in a violent struggle to enter the building, is
16 more convincing. That's where the certification was
17 supposed to be occurring, and it is natural to assume that
18 someone who is willing to battle police to get inside a
19 building must have a great interest in what is going on
20 inside.

21 Those actions, combined with the fact that the
22 Defendant had just participated in a rally entitled Stop the
23 Steal, certainly suggest that they intended to "stop the
24 steal" by breaking into the Capitol Building and preventing
25 the certification.

1 I note Officer Abdi testified on direct
2 examination that he thought rioters were trying to hurt
3 members of Congress or to destroy property inside the
4 Capitol Building.

5 Both of these hypotheses are certainly plausible,
6 and neither of them would necessarily meet the requisite
7 intent here. So I think these general allegations help the
8 Government, but are not alone sufficient. The Government
9 does not suggest otherwise, and it provides additional
10 details as to each Defendant that I consider separately.

11 As to Mr. McCaughey, I find the Government has
12 proven the second element. I believe he intended to
13 obstruct and impede the certification. In addition to the
14 general evidence I just mentioned, the Government notes that
15 he's admitted to being concerned about the election
16 integrity, that he spoke repeatedly with Mr. Paranjape about
17 his concerns with election fraud, that he heard President
18 Trump speak about the certification being in progress, that
19 he told the officers to "Go home" and that "Our issue is not
20 with you" and that "People in there make more in a month
21 than you do in a year. Why are you risking your life for
22 them?"

23 Having considered all this evidence, I find that
24 these statements show Mr. McCaughey was knowledgeable about
25 the certification and was intent on stopping it. His

1 repeated allusions to congressional representatives suggest
2 his focus was on them and stopping their work of certifying
3 the election. And his prior discussions about election
4 fraud and testimony about the certification process
5 confirmed his knowledge of the electoral count.

6 I've considered his claim that he thought the
7 certification was complete and that he just wanted to
8 protest inside, and I find that incredible. There is no
9 reason to think protesting inside the Capitol Building would
10 be any more impactful or efficacious unless he hoped that it
11 would obstruct the certification.

12 More, having carefully observed his demeanor and
13 testimony on the witness stand, this was one of several
14 claims by him I found to be unbelievable and inconsistent
15 with the facts and common sense.

16 Similarly, his claim that he was acting with not a
17 lot of awareness of what was going on is also incredible.
18 For the same reasons, I find the Government has proven the
19 third element that Mr. McCaughey acted knowingly.

20 Finally, I find that he acted corruptly, that is,
21 he used unlawful means -- assaulting police officers -- and
22 with consciousness of wrongdoing. No one could think
23 battling police officers in these circumstances was
24 acceptable. In particular, I note that even after he saw
25 Officer Hodges injured, he carried on to battle against

1 Officer Foulds. I have no doubt that he understood what he
2 was doing was wrong.

3 For all these reasons, I find Mr. McCaughey guilty
4 on Count 34.

5 Turning now to Mr. Stevens: The Government notes
6 that he filmed a portion of the rally in which Professor
7 Eastman said, "We are demanding that Vice President Pence
8 this afternoon at 1:00 p.m. -- that he let the legislature
9 take a look at this."

10 In addition, Mr. Stevens said to an officer, "Do
11 you know what happens when you commit treason?" And he gave
12 a thumbs up when the police line broke.

13 I find that the Government has not met its burden
14 on this element. The Government's evidence against
15 Mr. Stevens on this count is thinner than its evidence
16 against either Co-Defendant. Even assuming the Defendant
17 was carefully listening to Professor Eastman and not just
18 videoing the size of the crowd, which seems more likely to
19 me, Professor Eastman specifically mentioned 1:00 p.m.,
20 while the Defendant didn't try to enter the Capitol Building
21 until well after 2:00 p.m.

22 Mr. Stevens's actions and statements, however
23 odious, are consistent with various intentions, including
24 that he was just angry at the congressmen and officers and
25 wanted to hurt them and damage the Capitol for their *fait*

1 *accompli*. I therefore find him not guilty on Count 34.

2 As to Mr. Mehaffie, the Government points to the
3 fact that he knew about the certification process from 2017;
4 he strenuously urged family members to attended the rally;
5 he's admitted to hearing President Trump say the vice
6 president could do something about the certification; his
7 decision to leave his family on the Capitol lawn to climb to
8 the tunnel entrance; his statements that "If we can't fight
9 over this wall, we can't win this battle" and "We don't want
10 to hurt you, but it's our Capitol"; and his efforts to
11 negotiate with officers and placate the crowd outside the
12 tunnel.

13 In response, Mr. Shipley points out that
14 Mr. Mehaffie had testified that he knew the certification
15 goes quickly and that he believed it was already over by the
16 time he got to the Capitol and the fact that his family was
17 near the end of the crowd going to the Capitol.

18 I cannot discredit Mr. Mehaffie on this point. He
19 testified in some detail about his prior knowledge of the
20 certification process and he also testified that his family
21 had discussed on the way to the Capitol that Vice President
22 Pence had made clear that he believed he had no option but
23 to certify the election and that the certification had
24 likely already occurred.

25 This was broadly consistent with the uncontested

1 testimony that they were near the end of the crowd heading
2 to the Capitol and with Mrs. Mehaffie's testimony that they
3 wanted to show Congress that people are concerned about
4 voter fraud, not that they thought they could stop the
5 certification.

6 It is certainly plausible that Mr. Mehaffie had
7 some change of heart after he was separated from his family
8 or that he learned that the certification had not yet
9 occurred at some point while on the Capitol grounds. But
10 the Government has introduced no evidence on these points.

11 Ultimately, the burden is on the Government to
12 prove each element of the crime. As the Government argues,
13 it rarely has direct evidence of someone's intent, and
14 circumstantial evidence such as it has admitted here can be
15 persuasive.

16 But that effort is complicated where the Defendant
17 takes the stand and credibly disavows the Government's
18 theory. I think his testimony is enough to raise a
19 reasonable doubt as to his intent in attempting to enter the
20 Capitol, and therefore find Mr. Mehaffie not guilty on
21 Count 34.

22 I move next to Count 25, which charges all
23 Defendants with civil disorder in violation of 18 USC
24 Section 231(a)(3). I've already previewed my verdict on
25 this. The first element of this offense is that the

1 Defendants knowingly committed an act or attempted to commit
2 an act with the intended purpose of obstructing, impeding or
3 interfering with one or more law enforcement officers.

4 Much of what I've already said applies to this
5 element. Each Defendant knowingly engaged in multiple
6 actions to impede the work of law enforcement officers.
7 Although I think this point is self-evident from the video
8 evidence, I mainly look to Mr. McCaughey's joining a mass
9 push against the police line at 2:51 p.m., Mr. Stevens's
10 coordination of a heave-ho against officers at exactly the
11 same time and Mr. Mehaffie's directing rioters into the
12 tunnel as actions that Defendants knowingly took with the
13 intended purpose of impeding and interfering with law
14 enforcement officers.

15 I've already rejected Mr. Mehaffie's argument that
16 when he directed rioters at the mouth of the tunnel he did
17 not intend to impede the officers at the other end.

18 The second element is that at the time of the
19 Defendants' acts, law enforcement officers were engaged in
20 the lawful performance of their official duties incident to
21 and during a civil disorder. As I've already said, these
22 officers were obviously engaged in the lawful performance of
23 their official duties.

24 The statute defines "civil disorder" as any public
25 disturbance involving acts of violence by assemblages of

1 three or more persons which causes an immediate danger of or
2 results in damage or injury to the property or person of any
3 other individual. I find that the events of January 6th,
4 2021, qualify.

5 Again, this is largely self-evident from the
6 totality of the video evidence and testimony in this case.
7 Thousands of rioters gathered on the Capitol that day and
8 committed numerous acts of violence against officers.

9 For example, this trial featured video of a rioter
10 forcibly grabbing the mask off of the face of Officer Hodges
11 in the tunnel. In other videos, rioters were shown poking
12 at the police line with various objects. I'm looking at
13 Exhibit 301, timestamp seven minutes and 22 seconds and
14 eight minutes and 31 seconds and Exhibit 411 at 29 seconds
15 and 34 seconds. Even before then, Officer Chapman's
16 body-worn camera shows him in an altercation with a rioter
17 on the west front of the Capitol at 2:23 p.m. and the viewer
18 can see other rioters similarly engaged with officers in
19 that area on Exhibit 210.

20 Sergeant Mastony's and Lieutenant Donigian's
21 cameras capture rioters advancing into the police line and
22 engaging in hand-to-hand combat with officers just before
23 2:30 p.m. at Exhibits 215.1 and 232.10. The video evidence
24 shows beyond any reasonable doubt that numerous acts of
25 violence occurred at the Capitol that day. Sergeant Mastony

1 testified that 14 of his officers were injured by rioters on
2 January 6th.

3 The evidence also shows windows being shattered,
4 government fencing and other materials being damaged and
5 that a civilian died in the tunnel during the commotion.

6 The third element is that the civil disorder in
7 any way or degree obstructed, delayed or adversely affected
8 either interstate commerce or the movement of any article or
9 commodity in interstate commerce or the conduct or
10 performance of any federally protected function.

11 I've already reviewed the evidence submitted by
12 the Government as to the performance of Safeway on January
13 6th. According to Exhibit 701, Safeway closed its D.C.
14 locations at 4:00 p.m. on January 6th. When Safeway
15 communicated that decision to employees, Mayor Bowser had
16 already announced a citywide curfew to begin at 6:00 p.m.
17 that night, according to Exhibit 710.

18 Safeway's decision to close clearly hurt its
19 business and obstructed interstate commerce. Exhibit 702
20 shows that almost every Safeway location in the District
21 suffered large decreases in sales and revenue compared to
22 the same date one year earlier. Some stores lost as much as
23 50 percent of their typical revenue. And the stipulated
24 testimony of Safeway manager Mr. Tippet found at
25 Exhibit 1002 discusses how Safeway stores could not receive

1 shipments of inventory on the night of January 6th.

2 So I find interstate commerce was indeed
3 obstructed at Safeway on January 6th.

4 The Defendants argue that, even so, it was the
5 mayor's curfew that obstructed commerce, not the ongoing
6 civil disorder at the Capitol.

7 I disagree. The mayor's order was made necessary
8 only by the civil disorder, so I cannot view it as some
9 superseding event for purposes of causation.

10 Without the events at the Capitol, there would be
11 no curfew and therefore no effect on interstate commerce.
12 In any event, Safeway did not need to shut down a full two
13 hours ahead of the curfew.

14 Mr. Tippet testified that Safeway made the
15 shutdown decision, quote, "for the safety of the employees
16 due to the incident down at the Capitol," closed quote, at
17 Exhibit 1002, Page 4.

18 I conclude that even if the events at the Capitol
19 could be viewed as separate from the curfew order, Safeway
20 closed its doors and stopped the flow of interstate commerce
21 because of the events at the Capitol.

22 For these reasons, I find all three Defendants
23 guilty on Count 35.

24 Before I proceed to the next counts, I want to
25 make a few observations that are generally relevant to them

1 and all Defendants: Under the statute, a "restricted
2 building or grounds" means any posted, cordoned-off or
3 otherwise restricted area of a building or grounds where a
4 person protected by the Secret Service is or will be
5 temporarily visiting.

6 Captain Ortega testify that the vice president was
7 in the Capitol for the Electoral College certification. In
8 stipulated testimony, Inspector Hawa of the Secret Service
9 also explained the boundaries and process for creating the
10 restricted area on January 6th.

11 I credit this testimony that the restricted area
12 on that day extended from the west front of the Capitol down
13 the west lawn to the Garfield and Peace Memorials, as
14 indicated by the red line in Exhibit 508.

15 Mr. Stevens has argued at various points that the
16 vice president cannot temporarily visit a building where he
17 has an office.

18 No judge in this district has agreed with this
19 argument. I do not either, for the reasons stated by Judge
20 Contreras in *United States versus Andries*, 2020 Westlaw
21 768684 at *16 from this district on March 14th, 2022. No
22 testimony elicited in this trial has raised any doubts in my
23 mind on this point.

24 I also find that on the morning of January 6th,
25 the restricted area was clearly marked with snow fencing and

1 "Area Closed" signs. I recognize that by the time the
2 Defendants entered the area some of that fencing may have
3 been damaged or removed. Nonetheless, at least by the time
4 they entered the tunnel, I have no doubt each one of them
5 knew they could not be there; in other words, that they had
6 entered a restricted area.

7 They have climbed walls and scaffolding, passed by
8 battles with law enforcement officers, heard the LRAD system
9 blaring and other various alarms sounding in the tunnel and
10 observed OC spray in the air. And, of course, it was
11 perfectly obvious to them the police were trying to get them
12 out of the tunnel. So I find that each of them knowingly
13 entered a restricted area on January 6th, 2021.

14 Now to the specific counts: Counts 36 and 37
15 charge Mr. McCaughey and Mr. Stevens with disorderly and
16 disruptive conduct in a restricted building or grounds with
17 a deadly or dangerous weapon in violation of 18 USC
18 1752(a) (2) and (b) (1) (A) .

19 The first element is that the Defendants engaged
20 in disorderly or disruptive conduct in or in proximity to
21 any restricted building or grounds. Disorderly conduct
22 occurs when a person is unreasonably loud and disruptive
23 under the circumstances or interferes with another person by
24 jostling against or unnecessarily crowding that person.
25 Disruptive conduct is a disturbance that interrupts an

1 event, activity or the normal course of a process.

2 For many of the reasons discussed, Defendants
3 McCaughey and Stevens engaged in disorderly conduct. They
4 jostled against police officers in the tunnel and pressed up
5 against police at various times. I've already explained the
6 "restricted building or grounds" definition and explained
7 why the Government has met this portion of the element.

8 The second element is that the Defendants engaged
9 in their conduct knowingly and with the intent to impede and
10 interrupt the orderly conduct of government business or
11 official functions.

12 As discussed in other counts, and for those
13 reasons, I find that Mr. McCaughey and Mr. Stevens knowingly
14 engaged in disruptive conduct and they had an intent to
15 disrupt the orderly conduct of business.

16 As to Mr. McCaughey, I've already explained that
17 he intended to obstruct the certification inside the
18 Capitol. And like the other rioters on that day,
19 Mr. Stevens went to significant lengths to bypass the police
20 and enter the building.

21 Regardless of whether Mr. Stevens intended to
22 obstruct the certification, I find beyond a reasonable doubt
23 that, based on his efforts to enter the building, he
24 intended at least to disrupt the normal flow of
25 congressional business.

1 The third element is that the Defendants' conduct
2 occurred when, or so that, their conduct in fact impeded or
3 disrupted the orderly conduct of government business or
4 official functions.

5 This element is also easily met, as Inspector Hawa
6 testified the Capitol went into lockdown at 2:00 p.m.
7 because rioters had breached the security perimeter. I'm
8 looking to Exhibit 1000 on Pages 16 and 17. The Capitol
9 remained in lockdown until later that evening because of the
10 continued presence of the rioters.

11 The fourth and final element, that the Defendant
12 used or carried a dangerous weapon: "Deadly or dangerous
13 weapon" has the same definition as above in Counts 21, 24
14 and 25. My analysis on this element is the same as it is in
15 those counts. Accordingly, I find the Defendant
16 Mr. McCaughey guilty on Count 37 of disruptive conduct with
17 a dangerous weapon.

18 For Mr. Stevens, I find him guilty on Count 36 of
19 disruptive conduct under 18 USC 1752(a)(2), but not guilty
20 of the dangerous weapon enhancement in 1752(b)(1)(A).

21 Turning next to Counts 44 and 45, which charge
22 Mr. McCaughey and Mr. Stevens with physical violence in a
23 restricted building or grounds with a deadly or dangerous
24 weapon in violation of 18 USC 1752(a)(4) and (b)(1)(A): The
25 first element is that the Defendants engaged in any act of

1 physical violence against any person or property in any
2 restricted building or grounds.

3 The term "restricted building or grounds" is the
4 same definition I've already mentioned, and I find it is met
5 for the reasons I previously stated.

6 Mr. McCaughey and Mr. Stevens engaged in physical
7 acts of violence. They both pushed against officers in the
8 tunnel. They also used shields to shove police officers.
9 Mr. McCaughey had an altercation with Officer Foulds where
10 he struck him with a stolen shield; and Mr. Stevens used a
11 shield to press into the body, face and helmet of Sergeant
12 Gonell.

13 Regardless of whether those shields are dangerous
14 weapons, those acts constitute acts of physical violence.

15 The second element is the Defendants acted
16 knowingly. Again, much of what I have said before is
17 relevant here as well. When in front of Officer Hodges,
18 Mr. McCaughey did not try to retreat; instead, he pressed
19 forward and told the officer to go home. He also stayed to
20 engage Officer Foulds even though he had room to retreat.

21 Mr. Stevens likewise pressed forward into the
22 police line. Video also shows him adjusting the placement
23 of his shield to further attack Sergeant Gonell. And at one
24 point, he tried to grasp another officer's baton, all while
25 refusing to back up.

1 In light of that evidence, I find that both men
2 knowingly undertook their acts of physical violence.

3 The third element is that in doing such acts, the
4 Defendants used or carried a deadly or dangerous weapon.
5 "Deadly or dangerous weapon" has the same definition as in
6 the other charges already considered.

7 My conclusion on this element is the same as it is
8 in those counts. Accordingly, I find Mr. McCaughey guilty
9 on Count 45 of physical violence with a dangerous weapon and
10 I find Mr. Stevens guilty on Count 44 under 18 USC
11 1752(a)(4), but not guilty of the dangerous weapon
12 enhancement found in 1752(b)(1)(A).

13 Turning now to Count 52, which charges all
14 Defendants with disorderly or disruptive conduct in a
15 Capitol building or grounds in violation of 40 USC
16 5104(e)(2)(D): The first element of this offense is that
17 the Defendants engaged in disruptive conduct in any of the
18 U.S. Capitol buildings and, of course, the Capitol Building
19 is covered in that definition. And "disorderly and
20 disruptive conduct" has the same definition I've already
21 discussed for Counts 36 and 37.

22 I've already discussed how Mr. McCaughey and
23 Mr. Stevens engaged in disorderly or disruptive conduct.
24 So, too, for Mr. Mehaffie. He jostled officers at one end
25 of the tunnel and, although without any visible weapon, he

1 crowded them. And his loud directions to passing rioters
2 continued a disturbance that impeded the business of
3 Congress on that day.

4 I reject Mr. McCaughey's argument that he was not
5 yet in the Capitol Building. The tunnel is an enclosed
6 portal leading directly to the inner parts of the building
7 and is accessed from outside the Capitol. He was far enough
8 in to be considered in the building. Indeed, at one point
9 he entered a set of doors, the first set of doors.

10 In any event, the statute prohibits disruptive
11 conduct at any place in the grounds. Given his close
12 proximity to the Capitol, indeed I think it is inside the
13 Capitol. The tunnel was undoubtedly part of the Capitol
14 grounds.

15 The second element is that the Defendants did so
16 with the intent to impede, disrupt or disturb the orderly
17 conduct of a session of Congress or either house of
18 Congress. Again, I've already explained how Mr. McCaughey
19 and Mr. Stevens acted with this intent.

20 I also find that Mr. Mehaffie did so as well. He
21 testified that he knew other rioters were trying to enter
22 the building or to in some way disrupt congressional
23 business. He directed those rioters to continue doing so.
24 As explained in Count 12, Mr. Mehaffie's stated intent was
25 to keep everybody safe. Nonetheless, that still entailed an

1 intent to let others into the tunnel for purposes of getting
2 into the building.

3 The third and final element is that the Defendants
4 acted willfully and knowingly. A defendant acts willfully
5 if he acts with the intent to do something the law forbids;
6 that is, to disobey or disregard the law. I've already
7 described that all Defendants acted knowingly. I've also
8 decided that they acted willfully. All undertook their
9 actions with the intent to at least enter a restricted area.

10 And I find it unbelievable that they did not know
11 the law prohibited them and others from engaging in fights
12 with the police officers.

13 Accordingly, I find all three Defendants guilty
14 on Count 52.

15 Finally, Count 53 charges all Defendants with acts
16 of physical violence in the Capitol grounds or building in
17 violation of 40 USC 5104(e) (2) (F). The first element is
18 that the Defendant engaged in an act of physical violence in
19 the Capitol grounds or in any of the Capitol buildings.

20 "Act of physical violence" is defined as any act
21 involving an assault or infliction or threat of infliction
22 of death or bodily harm on an individual; or, two, damage to
23 or destruction of real or personal property.

24 For Mr. McCaughey and Mr. Stevens, their
25 altercation with Officer Hodges and Sergeant Gonell

1 respectively qualify as acts of violence. Those officers
2 testified that they felt bodily harm from those incidents.

3 No such evidence attends Mr. Mehaffie. Although
4 he came into contact with the police line, he kept his hands
5 above his head and was pushed by someone behind him into the
6 police. This is all shown in detail on Mehaffie Exhibit
7 BBB.

8 The Court therefore finds that Mr. Mehaffie
9 engaged in no act of physical violence himself. That said,
10 the indictment includes the aiding and abetting statute, 18
11 USC Section 2. Mr. Mehaffie's counsel argued at closing
12 that merely citing Section 2 is not enough to charge aiding
13 and abetting. According to him, the written description of
14 the charge must include some discussion of aiding and
15 abetting.

16 I heard no argument from the Government on this
17 point. But under binding precedent in this circuit, quote,
18 "The federal statute creating liability for aiding and
19 abetting is considered embodied in every federal
20 indictment," closed quote, from *United States versus Kelly*,
21 552 F.3d 824, Page 832, from the D.C. Circuit in 2009.

22 Indeed, a jury may receive an aiding and abetting
23 instruction even, quote, "where the indictment does not
24 allege a violation of the aiding and abetting statute," from
25 *United States versus Kegler*, 724 F.2d 190, Page 200 to 201,

1 from the D.C. Circuit in 1983.

2 The indictment here does include such an
3 allegation, so I may consider whether Mr. Mehaffie aided and
4 abetted acts of physical violence.

5 For many of the same reasons I've stated in the
6 other charges, I find that he did. Mr. Mehaffie directed
7 rioters into a tunnel, where many of them berated police and
8 pushed against them. These are acts of physical violence.

9 The second element is that the Defendants did so
10 knowingly and willfully. As discussed before, I conclude
11 that Mr. McCaughey and Mr. Stevens acted knowingly and with
12 the knowledge that the law prohibited their actions.

13 I also find that Mr. Mehaffie acted knowingly and
14 willfully when he aided and abetted similarly knowing and
15 willful violations of 40 USC 5104(e)(2)(F). What I said in
16 my analysis of Count 12 governs here.

17 Accordingly, I find Mr. McCaughey and Mr. Stevens
18 guilty on Count 53 as principals and Mr. Mehaffie guilty as
19 an aider and abettor.

20 Ms. Paschall, do you have any questions about my
21 verdict?

22 MS. PASCHALL: No, your Honor.

23 THE COURT: Mr. Urso?

24 MR. URSO: No, your Honor.

25 THE COURT: Ms. Cobb?

1 MS. COBB: No, your Honor.

2 THE COURT: Mr. Shipley?

3 MR. SHIPLEY: No, your Honor.

4 THE COURT: Is the Government seeking a change in
5 the release conditions as to Defendant Mehaffie?

6 MS. PASCHALL: For Mehaffie and Stevens, no.

7 For McCaughey, yes. Now that he's been convicted
8 of a crime of violence, we would ask for a step-back.

9 THE COURT: Ms. Chaclan, can we look for a
10 sentencing date for Mr. Mehaffie?

11 How about January 13th at 10:00 a.m.?

12 Ms. Paschall, does that work for the Government?

13 MS. PASCHALL: 10:00 a.m., your Honor?

14 THE COURT: Yes.

15 MS. PASCHALL: Yes. That's fine.

16 THE COURT: Mr. Shipley, does that work for you?

17 MR. SHIPLEY: Your Honor, I'm afraid that date
18 does not work for me. I have a civil trial in Hawaii.

19 THE COURT: That's fine.

20 Ms. Cobb, does that work for you?

21 MS. COBB: The 13th of January? Is that what you
22 said?

23 THE COURT: Yes. At 10:00 a.m.

24 MS. COBB: Yes.

25 THE COURT: I'll instruct you, Mr. Stevens,

1 Mr. Mehaffie and Mr. McCaughey, for each of you I'll be
2 asking the probation office to prepare a presentence report
3 to assist me in sentencing. You may be present for that
4 interview. And if you wish, you may also ask for your
5 attorney to be present. You'll have an opportunity to
6 object to the presentence report before it's completed and
7 again before I see it.

8 Mr. Stevens, I'll direct you to return for
9 sentencing on Friday, January 13th, at 10:00 a.m. in this
10 courtroom and to continue to abide by the release conditions
11 that you're currently on. I'll also ask for any memoranda
12 in aid of sentencing to be filed by January 6th.

13 Mr. Shipley, when are you free, sir?

14 MR. SHIPLEY: Your Honor, if it would be
15 permissible, could I communicate to your clerk? I'm having
16 trouble getting my calendar. Could I communicate to your
17 clerk dates that I'm available in that timeframe?

18 THE COURT: Well, no. I'm going to set a date.
19 If you need to ask for a continuance, that's fine.

20 MR. SHIPLEY: Okay. We'll do that. I think the
21 week following the week the Court suggested is okay. It's
22 going to be a short trial. It's been reset three times and
23 I'm confident it's going this time.

24 THE COURT: I'll actually in trial all that week.
25 Now about Friday the 27th at 10:00 a.m.?

1 MR. SHIPLEY: I'll either make it work or
2 communicate with the Court.

3 THE COURT: Ms. Paschall, does that work for you?

4 MS. PASCHALL: The 27th at 10:00 a.m. is fine,
5 your Honor.

6 THE COURT: So, Mr. Mehaffie, I'll direct you to
7 report for your sentencing at 10:00 a.m. on Friday, January
8 27th, in this courtroom. And I'll direct any memoranda in
9 aid of sentencing to be filed by January 20th.

10 Ms. Cobb, anything further for your client?

11 MS. COBB: No, your Honor.

12 THE COURT: And, Mr. Shipley, anything further for
13 your client?

14 MR. SHIPLEY: Nothing, your Honor.

15 THE COURT: You all are dismissed. Thank you.

16 Mr. Urso, I'll hear from you on release
17 conditions.

18 MR. URSO: Thank you, your Honor.

19 The first point I'd just point out, your Honor, is
20 I know about ten days ago in this courthouse another
21 defendant in a different case before Judge Mehta -- he was
22 actually convicted of 111(b) and sentenced to ten years.
23 And he was allowed out. And so sort of in terms of a
24 general equitable argument, I'd ask the Court to consider
25 that as one of the sort of circumstances, extenuating

1 circumstances.

2 Mr. McCaughey obviously has been out on a
3 substantial bond package with a perfect record, full
4 compliance, not a single problem since May of 2021.

5 And in addition, he's currently in the midst of
6 renovating his mother's house, the house that he lives in,
7 sort of an ongoing project. He was hoping to get it
8 finished before he went in. His mother's here. It's just
9 him and his mom living in the house and he's going to sort
10 of leave her in the lurch as well.

11 For those reasons, your Honor, I'd ask that the
12 Court extend Mr. Mehaffie's [sic] conditions of release with
13 the other Co-Defendants. I understand it's a higher
14 burden -- a high burden. But we think especially in light
15 of what happened with Mr. Webster it wouldn't be
16 inappropriate.

17 THE COURT: Mr. Urso, are you free on January 26
18 at 10:00 a.m.?

19 MR. URSO: Yes, your Honor.

20 And the one other point I'd make is the
21 sentencings are a little longer than we normally have. And
22 the pretrial confinement, as your Honor knows from the
23 pretrial proceedings, is a little bit different than prison
24 sentence confinement. So with a little delay in the
25 sentencing, that's another extenuating circumstance I think

1 the Court should consider. Mr. McCaughey, if he's
2 incarcerated now, is going to have to serve extra time --
3 extra more difficult time, I think, safe to say.

4 THE COURT: Ms. Paschall, are you free on January
5 26 at 10:00?

6 MS. PASCHALL: Yes, your Honor.

7 THE COURT: I'm going to set sentencing for
8 January 26 at 10:00 a.m. in this courtroom. I am also
9 directing counsel to file any memoranda in aid of sentencing
10 by January 19th.

11 The statutory test for bond post-conviction is the
12 Defendant must show and the Court must find by clear and
13 convincing evidence that the person is not likely to flee or
14 pose a danger to the safety of any other person or the
15 community to continue release pending sentencing.

16 Absent Government consent to release in
17 crimes-of-violence cases, no release is allowed unless the
18 Court makes the finding and there's substantial likelihood
19 for a motion for acquittal that a motion for acquittal or
20 new trial will be released.

21 I find the Defendant's release conditions should
22 be revoked. I think there is evidence here that he's now
23 been found guilty of multiple assaults on law enforcement
24 officers; and as I've said, I did not believe his testimony
25 at several points and frankly don't trust that he would

1 return for sentencing.

2 Marshals, I'll ask you to take the Defendant into
3 custody and return him for sentencing on January 26.

4 Ms. Paschall, anything further for the Government?

5 MS. PASCHALL: No, your Honor. Thank you.

6 THE COURT: Mr. Urso?

7 MR. URSO: No, your Honor. Just -- is there any
8 chance we could squeeze him in on the 13th? Any reason we
9 couldn't?

10 THE COURT: Yes. I don't feel comfortable doing
11 two sentencings in one day. I don't think that would be
12 fair to either Defendant.

13 Mr. McCaughey, step back with the marshals.

14 Thanks, folks.

15 (Proceedings concluded.)
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CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 15th day of October, 2022.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
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