

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

UNITED STATES OF AMERICA)	
)	
)	
v.)	Case No. 21-cr-00040-TNM
)	
DAVID MEHAFFIE,)	
)	
)	
Defendant)	
)	

**DEFENDANT DAVID MEHAFFIE’S MEMORANDUM
REGARDING ELEMENTS OF THE CHARGED OFFENSES**

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Defendant David Mehaffie is charged only in Counts 12, 34, 35, 52 and 53 of the Fifth Superseding Indictment.

The following are the elements of each charged offense:

Count 12

18 U.S.C. §§ 111 and 2 – Assault, and Aiding and Abetting

There are no allegations or evidence that Mr. Mehaffie personally assaulted any law enforcement officer. Count 12 of the Fifth Superseding Indictment charging him with a violation of § 111 does not identify any victim, nor is there any evidence in discovery of Mr. Mehaffie himself committing any assault. The theory of liability as it pertains to Mr. Mehaffie is based on “aiding and abetting.”

“Aiding and abetting” liability under 18 U.S.C. § 2 is premised on the finding of the following elements:

- (1) The specific intent to facilitate the commission of a specific crime by another;
- (2) Guilty knowledge on the part of the accused;
- (3) That the offense was being committed by someone; and
- (4) That the defendant assisted or participated in the commission of the offense by another.”

United States v. Harris, 959 F.2d 246 (D.C.Cir.1992).

The critical inquiry for this Court is whether there is evidence to find that Mehaffie “in some sort associate[d] himself with the venture, that he participate[d] in it as in something that he wishe[d] to bring about, that he [sought] by his action to make it succeed.” United States v. Poston, 902 F.2d

90, 93 (D.C. Cir. 1990)(quoting Nye & Nissen v. United States, 336 U.S. 613, 619, 69 S. Ct. 766, 770, 93 L. Ed. 919 (1949), quoting United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938) (L. Hand, J.)).

To be guilty of violating § 111 based on an “aiding and abetting” theory, the elements of the offense are as follows:

(1) Some other person forcibly assaulted a law enforcement officer in violation of 18 U.S.C. § 111(a) or (b);

(2) Did Mr. Mehaffie know of the intention or plan of that person to assault the law enforcement officer prior to the assault taking place?

(3) Did Mr. Mehaffie take some action while possessing that knowledge in order to assist in the commission of that assault by that other person?

(4) By taking that action, did Mr. Mehaffie intend to cause the assault to take place?

It is not enough that Mr. Mehaffie was in the location where the assault took place or that Mr. Mehaffie was aware that the assault would take place before it happened. United States v. Salamanca, 990 F.2d 629, 638 (D.C. Cir. 1993)(“It is well settled that mere presence at the scene of a crime and awareness that a crime is being committed is insufficient to support a conviction for aiding and abetting.”).

Count 34

18 U.S.C. § 1512(c) and 2 – Obstruction of an Official Proceeding

The elements of a violation of 18 U.S.C. § 1512(c) are as follows:

(1) Did Mr. Mehaffie attempt to or did he obstruct or impede an official proceeding?

(2) Did Mr. Mehaffie intend to obstruct or impede the official proceeding?

(3) Did Mr. Mehaffie act knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding?

(4) Did Mr. Mehaffie acted corruptly?

The elements of obstructing an official proceeding based on aiding and abetting others in committing the offense are:

(1) Others committed obstruction of an official proceeding by committing each of the elements of the offense charged.

(2) Did Mr. Mehaffie know that obstruction of an official proceeding was going to be committed or was being committed by others?

(3) Did Mr. Mehaffie perform an act or acts in furtherance of that offense?

(4) Did Mr. Mehaffie knowingly perform that act or acts for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense of obstruction of an official proceeding?

(5) Did Mr. Mehaffie commit that act or acts with the intent that others commit the offense of corruptly obstructing an official proceeding?

Count 35

18 U.S.C. § 231(a)(3) – Civil Disorder

The elements of a violation of 18 U.S.C. § 231(a)(3) are as follows:

(1) Did Mr. Mehaffie knowingly commit an act or attempt to commit an act?

(2) In committing or attempting to commit that act, did Mr. Mehaffie intend to obstruct, impede, or interfere with one or more law enforcement officers?

(3) At the time of Mr. Mehaffie's actual or attempted act, were the law enforcement officer or officers engaged in the lawful performance of their official duties incident to and during a civil disorder?

(4) Did the civil disorder in any way or degree obstruct, delay, or adversely affected either commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function?

Count 52

40 U.S.C. § 5104(e)(2)(D) – Disorderly or Disruptive Conduct

The elements of a violation of 40 U.S.C. § 5104(e)(2)(D) are as follows:

(1) Did Mr. Mehaffie engage in disorderly or disruptive conduct in any of the United States Capitol Buildings?

(2) Did Mr. Mehaffie do so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress?

(3) Did Mr. Mehaffie act willfully and knowingly?

Count 53

40 U.S.C. § 5104(e)(2)(F) – Act of Physical Violence

The elements of a violation of 18 U.S.C. § 5104(e)(2)(F) are as follows:

- (1) Did Mr. Mehaffie engage in an act of physical violence;
- (2) Did Mr. Mehaffie do so in the Grounds or any of the Capitol Buildings?
- (2) Did Mr. Mehaffie act willfully and knowingly?

Dated: August 24, 2022

Respectfully submitted,
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