

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

BARRY BENNET RAMEY,

Defendant.

Case No. 22-CR-184 (DLF)

DEFENDANT'S POST-TRIAL BRIEFING

COMES NOW the Defendant, Barry Ramey, by and through counsel, and respectfully submits his post-trial briefing in lieu of closing arguments.

BACKGROUND

Defendant, Mr. Barry Ramey, is charged with the following offenses: Inflicting Bodily Injury on Certain Officers (18 U.S.C. § 111(a)(1) and (b)); Civil Disorder (18 U.S.C. § 231(a)(3)); Entering and Remaining in a Restricted Building or Grounds, Disorderly and Disruptive Conduct in a Restricted Building or Grounds, and Engaging in Physical Violence in a Restricted Building or Grounds (18 U.S.C. § 1752(a)(1) and (a)(2) and (a)(4), and (b) (1) (A)); and Disorderly Conduct on Capitol Grounds, Impeding Passage Through the Capitol Grounds or Buildings, and an Act of Physical Violence in the Capitol Grounds or Buildings (40 U.S.C. § 5104(e)(2)(F), (E), and (F)). (ECF No. 1.) The Court heard evidence in this matter on February 21, 2023. After considering the evidence, the Court requested briefings on several issues. Defendant's position along with closing arguments are outlined below.

I. A Conviction Cannot Stand on Counts II, III, IV, V, VI as the Government Was Required to Prove "Pepper Spray" As a Necessary Element of the Indictment.

The Fifth Amendment provides that “[n]o person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.” *U.S. Const. amend. V*. In the present case, the grand jury indictment Mr. Ramey on the following charges:

Count Two:

On or about January 6, 2021, within the District of Columbia, **BARRY BENNET RAMEY**, using a deadly and dangerous weapon, that is, pepper spray, did forcibly assault, resist, oppose, impede, intimidate, and interfere with, an officer and employee of the United States, and of any branch of the United States Government (including any member of the uniformed services), that is, D.R., an officer from the United States Capitol Police Department, while such officer or employee was engaged in or on account of the performance of official duties, and where the acts in violation of this section involve physical contact with the victim and the intent to commit another felony.

(Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon, in violation of Title 18, United States Code, Sections 111(a)(I) and (b))

Count Three:

On or about January 6, 2021, within the District of Columbia, **BARRY BENNET RAMEY**, using a deadly and dangerous weapon, that is, pepper spray, did forcibly assault, resist, oppose, impede, intimidate, and interfere with, an officer and employee of the United States, and of any branch of the United States Government (including any member of the uniformed services), that is, B.W., an officer from the United States Capitol Police Department, while such officer or employee was engaged in or on account of the performance of official duties, and where the act in violation of this section involve physical contact with the victim and the intent to commit another felony.

(Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon, in violation of Title 18, United States Code, Sections 111(a)(I) and (b))

Count Four:

On or about January 6, 2021, in the District of Columbia, **BARRY BENNET RAMEY** did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, without lawful authority to do so, and, during and in

relation to the offense, did use and carry a deadly and dangerous weapon, that is, pepper spray.

(Entering and Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of Title 18, United States Code, Section 1752(a)(1) and (b)(1)(A))

Count Five:

On or about January 6, 2021, in the District of Columbia, **BARRY BENNET RAMEY** did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions and, during and in relation to the offense, did use and carry a deadly and dangerous weapon, that is, pepper spray.

(Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of Title 18, United States Code, Section 1752(a)(2) and (b)(1)(A))

Count Six:

On or about January 6, 2021, in the District of Columbia, **BARRY BENNET RAMEY** did knowingly engage in any act of physical violence against any person and property in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, and, during and in relation to the offense, did use and carry a deadly and dangerous weapon, that is, pepper spray.

(Engaging in Physical Violence in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of Title 18, United States Code, Section 1752(a)(4) and (b)(1)(A)).

These five counts all expressly allege “deadly or dangerous weapon” as an essential element, which was further alleged as “pepper spray.” *See* Indictment. At trial, the Government failed to prove that the alleged spray possessed or used by Mr. Ramey (i) was pepper spray, and that it (ii) was deadly or dangerous.

At the close of the evidence, the Government, upon questioning by the Court, first

made it known that it did not intend to prove that the spray was “pepper spray,” nor did the Government believe it had to meet this burden. This was a constructive amendment to the indictment after the evidence had been heard in violation of Defendant’s Fifth and Sixth Amendment rights. And while Defendant does not have to show prejudice to warrant relief, the constructive amendment was nonetheless prejudicial to the Defendant and a conviction cannot stand as to these counts.

The Grand Jury Clause of the Fifth Amendment states that “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury.” This is an essential constitutional protection to ensure that the indictment allows the accused to know the charges against him so that he may adequately prepare his defense, and it provides necessary specificity to protect the accused from future prosecution for the same offense; it likewise “protect[s] against oppressive actions of the prosecutor or a court, which may alter the charge to fit the proof.” *See Russell v. United States*, 369 U.S. 749, 770 (1962). The Constitution guarantees the right to be tried only on charges made by the indictment, and thus ensures that the defendant will not be convicted on the basis of facts not found by, or presented to, the grand jury that indicted him. *Id.*

Generally, a constructive amendment occurs when the trial court allows the jury or trier of fact to consider, under the indictment, an element of the charge that is different from the specific words of the indictment. *See Stirone v. United States*, 361 U.S. 212, 217-218 (1960) (indictment limited to extortion by interference with interstate transportation of sand expanded by constructive amendment to include interference with sand and steel). If there was a constructive amendment, then the absence of prejudice to

[the defendant] is irrelevant, for “[d]eprivation of such a basic right [to be tried on the indictment returned by the grand jury] is far too serious to be...dismissed as harmless error.” *Id.* at 217. Additionally, after an indictment has been returned, its charge may not be broadened through amendment except by grand jury itself. *Id.* at 216.

If, on the other hand, there was no constructive amendment, but merely a variance (or something less than a variance), then reversal is appropriate only upon a showing of prejudice. *Berger v. United States*, 295 U.S. 78, 82 (1935). A variance occurs when the facts proven at trial are different from the facts contained in an indictment, but the essential elements of the offense are the same. *See United States v. Miller*, 471 U.S. 130 (1985) (variance was found where indictment charge defrauding insurer both by consenting to the burglary in advance and by lying to the insurer about the value of the loss, and proof at trial concerned only the latter charge). Comparing these two cases, the Supreme Court found that *Stirone*, 361 U.S. at 213, was a constructive amendment because the trial evidence broadened the possible bases for conviction from what was charged in the indictment, while in *Miller*, *supra*, 471 U.S. at 131, the Supreme Court found a variance where the conviction was based on a narrower set of facts than what was charged in the indictment but was nonetheless included in the indictment.

In *Stirone* the Defendant was charged with violating the Hobbs Act where he unlawfully interfered, by means of threats, with interstate commerce with respect to importation of sand and other materials from other states by manufacturer of ready-mix concrete. At trial, the court instructed the jury that they could find that Mr. Stirone had violated the Hobbs Act if they found that sand had been shipped in interstate commerce or that concrete would be incorporated into steel mill which would, when finished,

manufacture articles to be shipped in interstate commerce. *Id.* The Supreme Court found this to be an amendment to the indictment that only specified the importation of sand. They stated that when only one particular kind of commerce is charged to have been burdened, the conviction must rest only on that charge and not another.

The Supreme Court further found that due to how it was charged, there was no way to know whether a grand jury would have included in its indictment that steel mills had been interfered with. Thus, the trial court committed error when it allowed the jury to be instructed on both sand importation and steel mill interference. The sand itself was not the essential element. The elements for the Hobbs Act were threats and interfering with interstate commerce. The indictment charged the Defendant with a specific means of how he interfered with the commerce and the Court found that the trial court could not add on additional means during trial without effectively constructively amending the indictment.

Here, the Government brought a specific charge against Mr. Ramey: that he committed 5 Counts with a “deadly or dangerous weapon,” specifically “pepper spray.” The Government did not charge the indictment as any chemical irritant; rather it chose to specify a weapon as is necessary for the indictment. Mr. Ramey then relied on that indictment to prepare for his defense. The Government did not seek to amend the indictment through another grand jury or otherwise make Defendant aware that they were going to proceed under a broader theory. The Government first raised this issue at the close of evidence, after their witnesses had testified and presented facts that could not sustain the Indictment. This is an impermissible broadening of the Indictment and therefore cannot be the basis for a conviction.

Moreover, the failure to amend the Indictment or put Defendant on notice is not

merely a technical error. The determination of whether something is “deadly or dangerous” is entirely fact-dependent; the alleged weapon matters. To prove something is a deadly dangerous weapon, the Government would have to prove the item’s capabilities, its proscribed or authorized usage, and how Defendant used it in this case to sustain their allegation that it was deadly or dangerous. The composition of the chemical irritant, its size, the way it is used normally compared with Defendant’s use in this case, and its impact would all be essential for the trier of fact to determine whether it is a deadly or dangerous weapon.

The Government’s broadening of what this spray could be would expand the possibilities well beyond the four corners of the indictment and would force Defendant to argue against claims that were made, for the first time, upon the close of the Government’s case. A common household shampoo, for example, could cause eye burning and irritation. To prove that shampoo is dangerous or capable of causing significant bodily injuries, such as to make it “dangerous or deadly,” would require further specific proof about what its properties are, how it becomes a dangerous weapon, how it must be used correctly, and how the defendant deviated on that usage to make it dangerous under the specific facts of the case.

In *United States v. Hoover*, 467 F.3d 496 (5th Cir. 2006), the Fifth Circuit reached a similar conclusion. The defendant in *Hoover* was charged with making a false statement to a federal agent. The defendant appealed his conviction based on the instructions given by the district court and raised the issue of constructive amendment of the indictment. The *Hoover* court relied on its past rulings for clarity. In *United States v. Adams*, 778 F.2d 1117, 1123 (5th Cir. 1985), the court reversed a conviction for making a false

statement and providing false identification in connection with the purchase of a firearm, where the indictment charged Adams with using a false name, but the jury was allowed to convict based on his use of a false address.

The *Hoover* court also looked to *Stirone v. United States* where the government choose to specifically charge a manner in which the defendant's statement was false and concluded that if the Government chooses to do that, they should be required to prove it for that specific reason. *Hoover*, 467 F.3d at 502. The court went on to state that Hoover may have reasonably relied on the indictment and only prepared a defense based on the indictment alone. Based on the jury instructions, the Government was able to improperly broaden the scope of how he could be found guilty by adding another element rather than limiting it to the reasoning provided in the indictment. The court found that this was an impermissible amendment and overturned the conviction. The analysis and conclusion here should be the same.

II. Pepper Spray is not a Deadly or Dangerous weapon.

Assuming *arguendo* that the Court finds the object to be pepper spray as alleged in the Indictment, the Government failed to prove that it is a deadly or dangerous weapon. For the Government to prove that pepper spray is a deadly or dangerous weapon, it can do so by proving that it is either inherently deadly, such as a gun or knife, or that it is dangerous. The Government does not claim that pepper spray is inherently deadly. The Government therefore must prove that it is dangerous in this case.

To prove that an object is dangerous, it must be capable of causing serious bodily injury or death to another person and the defendant must use it in that manner. *U.S. v. Arrington*, 309 F.3d 40 (D.C. Cir. 2002). The assault charge in Counts Two and Three do

not define what serious bodily injury is. District Court Judge Amit P. Mehta recently analyzed this issue and used 18 U.S.C. § 1365(3) as a jury instruction for the same charge in *U.S. v. Schwartz, et al.*, Case No. 21-CR-178. 18 U.S.C. § 1365(3), in pertinent part, states that a “serious bodily injury” means bodily injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

In *Arrington* the defendant was pulled over for driving without a front license plate. The officers, upon finding evidence in plain sight of narcotics, asked the defendant to step outside the vehicle. When the defendant did not comply, the three officers reached inside the car with two of the officers holding onto Arrington’s body. Defendant shifted into drive and “floored it.” *Arrington*, 309 F.3d at 42-43. Two officers were able to extract themselves from the car, but a third officer was dragged by the vehicle for 50 feet before he was able to extract himself. The question before the Court was whether a car, which has a legitimate and lawful purpose, could be a dangerous weapon. The court clarified that for a car to be a deadly weapon, the defendant must use it as a deadly weapon and not simply as a mode of transportation. The car, if used purely to flee officers, would not satisfy the fourth element of § 111(b). *Id.* at 45. The court found it persuasive that the car was used in such a manner that it dragged at least one officer for at least 50 feet on the roadway and through an intersection for it to be deadly.

Arrington is inapposite. Here, the indictment alleges that Mr. Ramey used pepper spray as a deadly or dangerous weapon to assault law enforcement officers. Pepper spray, as testified to by all the Government witnesses, is a routine part of a police kit. It is also a

common object in normal life. Pepper spray is commonly found over-the-counter and is not an inherently deadly weapon such as a gun or knife.

The court must then consider whether pepper spray is dangerous in such a way that it is capable of causing serious bodily injury *and* that the defendant used it in that manner. The Government had four witnesses. All four witnesses testified to their law enforcement experience and their training in which they were exposed to pepper spray. They each described how a training officer would spray them in the face and across the eyes, as a way to expose them to the effects of pepper spray while simultaneously carrying out commands and activities for 90 seconds. They would then be allowed to decontaminate their eyes and faces by flushing out their eyes before continuing with training.

Common sense supports that officers are not exposed to an object that is deadly on its face as training. Common sense would also dictate that it is not capable of causing serious bodily injury if it is used as a training mechanism for each and every officer, regardless of eventual reaction. In support of that conclusion, Captain Mendoza testified that Capitol Police has a use of force continuum that dictates the actions of the officers in various situations with subjects. Captain Mendoza and the Metropolitan Police Department witnesses testified that pepper spray is less than lethal and is often used as a method to get a subject to comply—meaning, not to kill, disable, or harm, but to gain basic compliance with any subject who is slightly uncooperative. The witnesses who spoke to their experience in training with pepper spray, all said that they did not have adverse or lasting impact on their health as a result of the pepper spray.

Importantly, the witnesses discussed that they are trained and authorized to use

pepper spray on slight uncooperative subjects by spraying pepper spray into the subject's eyes and face from only a few feet away. This is permitted as a general matter on civilian subjects—as in law enforcement training—even when there is no mask, glasses, or other protective gear. In short, it is a tool, but it is not deadly or dangerous.

Captain Mendoza testified that pepper spray could be dangerous if used specifically in a way to cause “hydraulic needling.” Hydraulic needling can cause damage to the retina. She also testified that this is an issue with the larger cannisters of pepper spray, or if a subject is sprayed directly in the eye from a short distance. No other dangers of the peppers spray were elicited.

Both officers testified that they would estimate that Mr. Ramey was 6-10 feet away from at the time he allegedly sprayed pepper spray. Special Agent Nougaret testified that typically in training they are a sprayed from a couple of feet away, and one witness testified that it is about 6 feet. Given that Mr. Ramey was at least 6-10 feet away from the officers, he could not have been close enough for hydraulic needling to occur, and, in fact, no testimony was elicited indicated hydraulic needling. Further, given that Mr. Ramey was the same distance, if not farther, than officers would be from their sprayer during training, there is no fact or indication that Mr. Ramey used the spray in a manner that would make it dangerous or cause serious bodily injury.

Officer Rigglesman testified that he was able to flush out his eyes immediately after feeling a spray, he was able to clear his vision, and he returned to the line to continue helping his fellow officers. Officer Williams also was able to go back to the line after feeling something in his eyes, and they both continued to work the remainder of the day. Neither witness went to the hospital for medical care, suffered an allergic reaction,

suffered suffocation, or otherwise testified to deadly or dangerous conditions from this alleged spray.

Moreover, the Government cannot salvage its case by arguing that any spray must have been deadly or dangerous weapon because an injury was sustained. The Government attempts to add this as an element to bypass the actual elements laid out in *Arrington*. *Arrington*'s analysis includes no mention of the after-effects of the assault. Instead, the analysis is whether it is an object that is capable of causing serious bodily injury or death to another person and the defendant used the object in that manner. The Government cannot meet this prong of the analysis.

The Government does not allege that Mr. Ramey used a large cannister of pepper spray or a pepperball system as used by police that day, nor is he charged or alleged to have caused hydraulic needling or permanent injury to the retina. Mr. Ramey is alleged to have used, at best, a handheld spray from a distance of 6-10 feet. If the United States Capitol Police can use pepper spray as a method of compliance from a few away, and if in training officers are routinely sprayed in a similar manner from a shorter distance than where Mr. Ramey is alleged to have been, it cannot be a dangerous weapon absent some fact that does not exist here (such as hydraulic needling, arguably).

The Government did not elicited any specific evidence on how pepper spray can cause serious bodily injury and that Mr. Ramey used it in that manner—meaning, they failed to produce evidence on the two requirements to prove this element pursuant to *Arrington*. The only possible danger the Government was able to elicit was that potentially it could have led to a situation where the officer's weapons hypothetically could have been taken from them, or they could have fallen down and hit their head.

Neither scenario actually occurred.

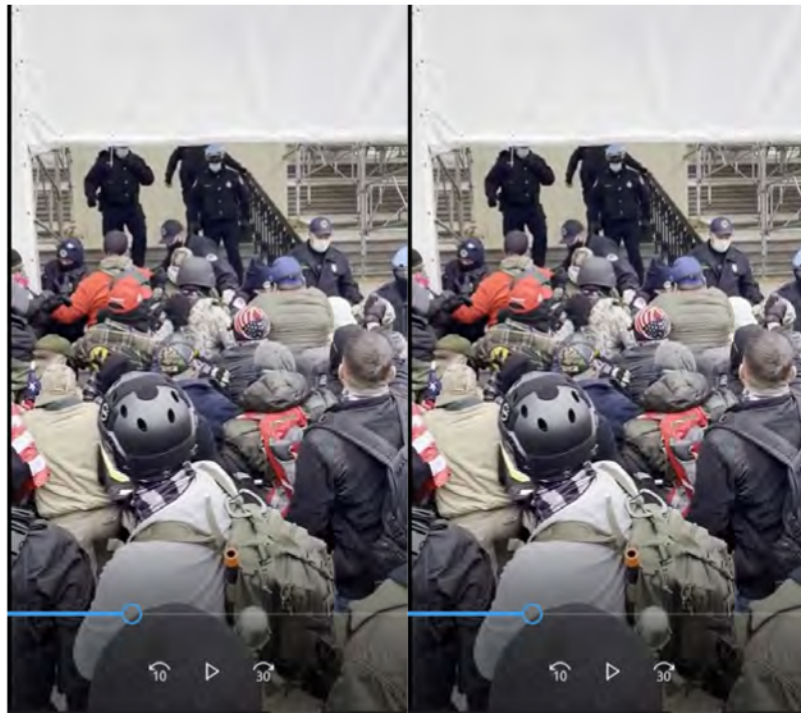
Both officers were safe and were able to maintain control of their service weapons, decontaminate, and continue their post for hours after, as they were trained to do. The surrounding area or what could possibly happen in terms of injuries is not the analysis laid out by the *Arrington* court. There is no mention of officers not having control of their service weapons as they were held and dragged by the vehicle. It did not say that because they were stuck on the car, they could have sustained injuries from hitting a pole or another object. As the court correctly pointed out at the close of evidence, the dangerousness has to be immediate to the actual alleged weapon.

Contrast that with an officer getting punched and thus losing balance, falling down or hitting their head. The surrounding circumstances of the punch would not dictate whether the fist was a dangerous weapon. It would be whether the fist was used in such a way as to make it a dangerous weapon capable of causing serious bodily injury and that the Defendant used it in that manner. *See, e.g., United States v. Hernandez*, Case No. 2022-CR-42 (District Court Judge Cooper found that a flagpole was not a dangerous or deadly weapon due to the nature of how it was used, and declined to apply the 4-level enhancement for sentencing). In short, the Government failed to meet its burden related to pepper spray and whether any alleged spray was “deadly or dangerous”; the Court should acquit Mr. Ramey accordingly.

III. The Government failed to prove that Mr. Ramey assaulted Officer Williams in any manner (regardless of the alleged substance).

Mr. Ramey did not assault Officer Williams, regardless of the alleged substance as discussed above; the Government failed to meet its burden and the Court should find Mr. Ramey non guilty on this Count. Government Exhibit 200 shows the chaos of

January 6, and it documents the Government's allegations against Mr. Ramey related to Officer Williams. It shows that the group of protestors who converged near the staircase became increasingly loud and chaotic. Some individuals at the front of the group pushed and assaulted law enforcement. At this point, Officer Williams was struggling with rioters of his own who were assaulting him. Due to this chaos, Officer Williams does not remember any specific rioter, nor does he recognize Mr. Ramey. Officer Williams, unlike Officer Rigglesman, who was hit by the spray, does not have orange on his helmet or clothes. The following screenshots are taken from Government's Exhibit 200.





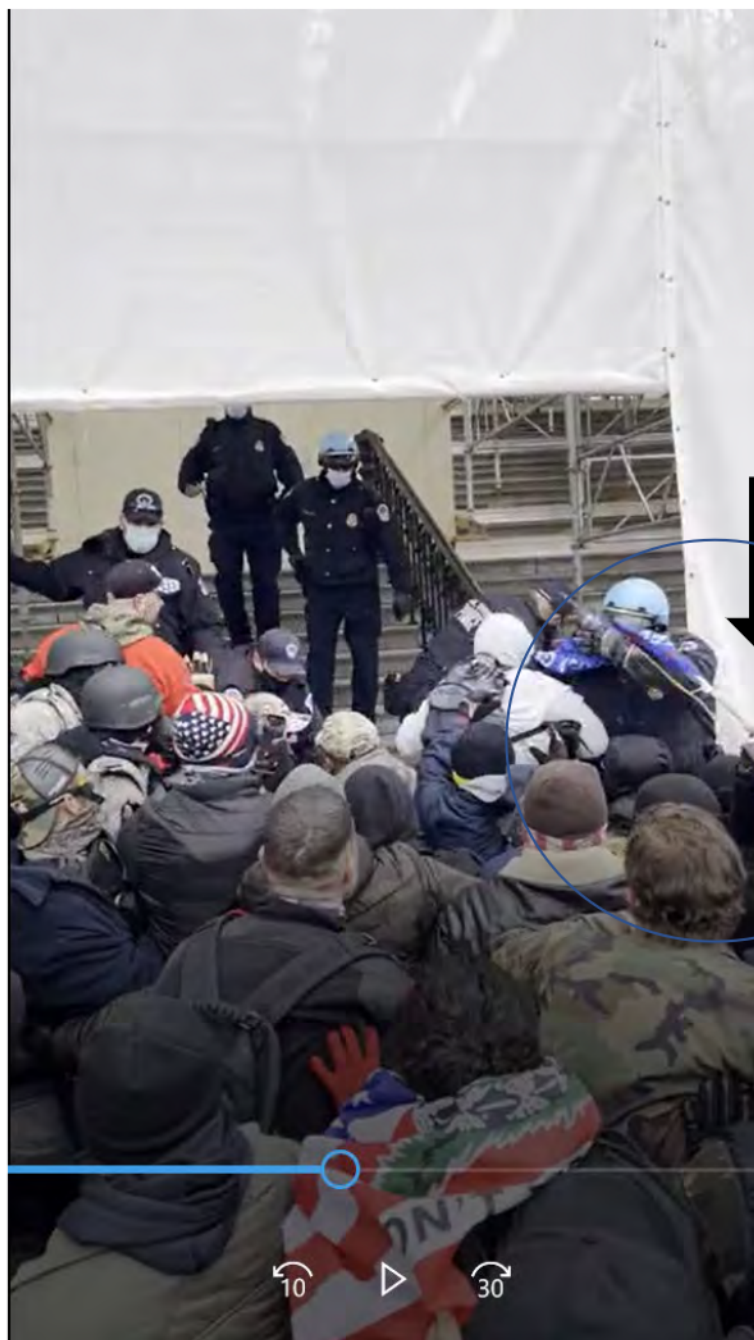
The first three screenshots depict Mr. Ramey in the frame and Officer Riggleman wearing a white mask and baseball hat. A spray is discharged from Mr. Ramey's hand and seems to spray Officer Riggleman. Officer Williams has not been sprayed and does not react to it. *See* Government's Exhibit 200 at :26.



The screenshots above show Officer Rigglesman turn away from the impact. Officer Williams does not do anything as he has not been impacted by any spray. He continues to tussle with the white hoodie, as he testified at trial. *See* Government's Exhibit 200 at :27.



The flag comes down in front of Officer Williams' head. Mr. Ramey's hand is not outstretched anymore. At this point someone sprays some substance near Officer Williams, but it is clearly not Mr. Ramey. *See* Government's Exhibit 200 at :28.



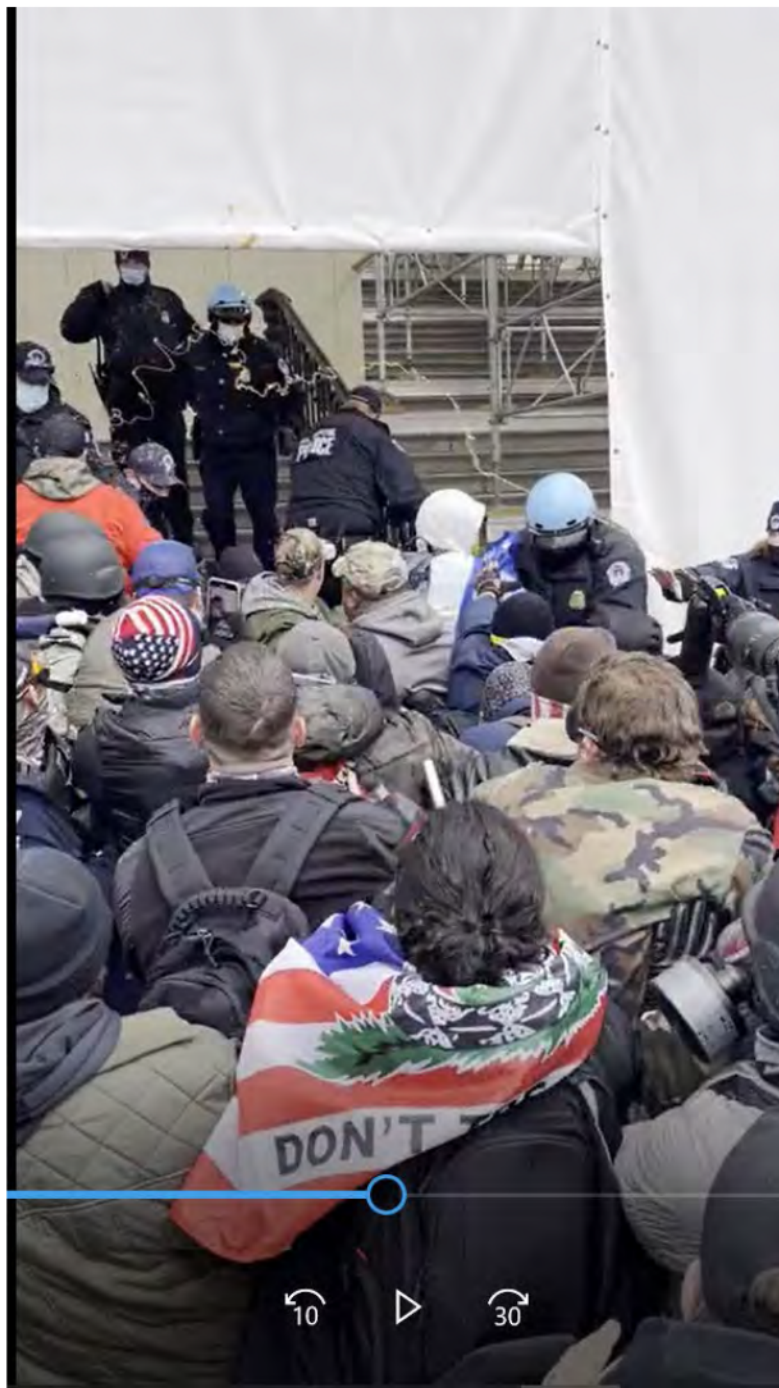
Officer Williams continued to be near the spray and at this point is impacted by both the flag and the spray. Mr. Ramey's hand is still not outstretched. *Id.*



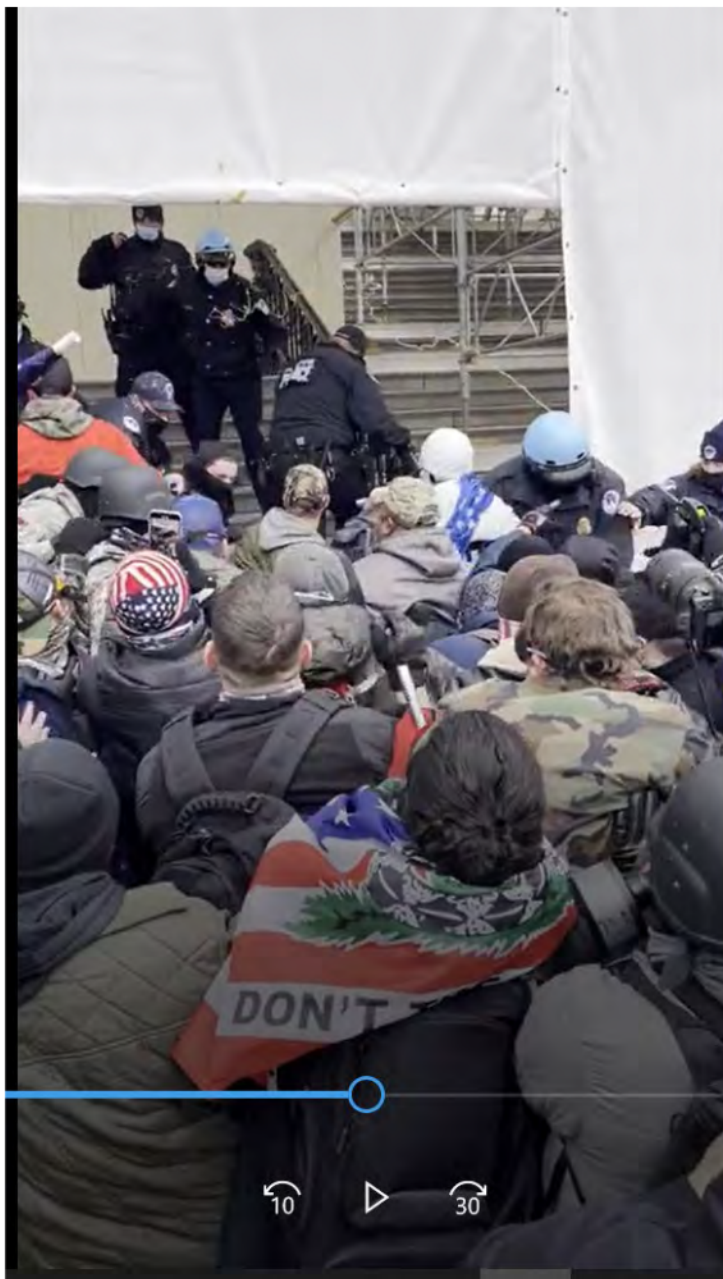




The spray from the right side of the screen continues and at this point Officer Williams is hiding his face as if he is impacted by the spray over his head. Mr. Ramey's hand is still not outstretched. *Id.* at :29.



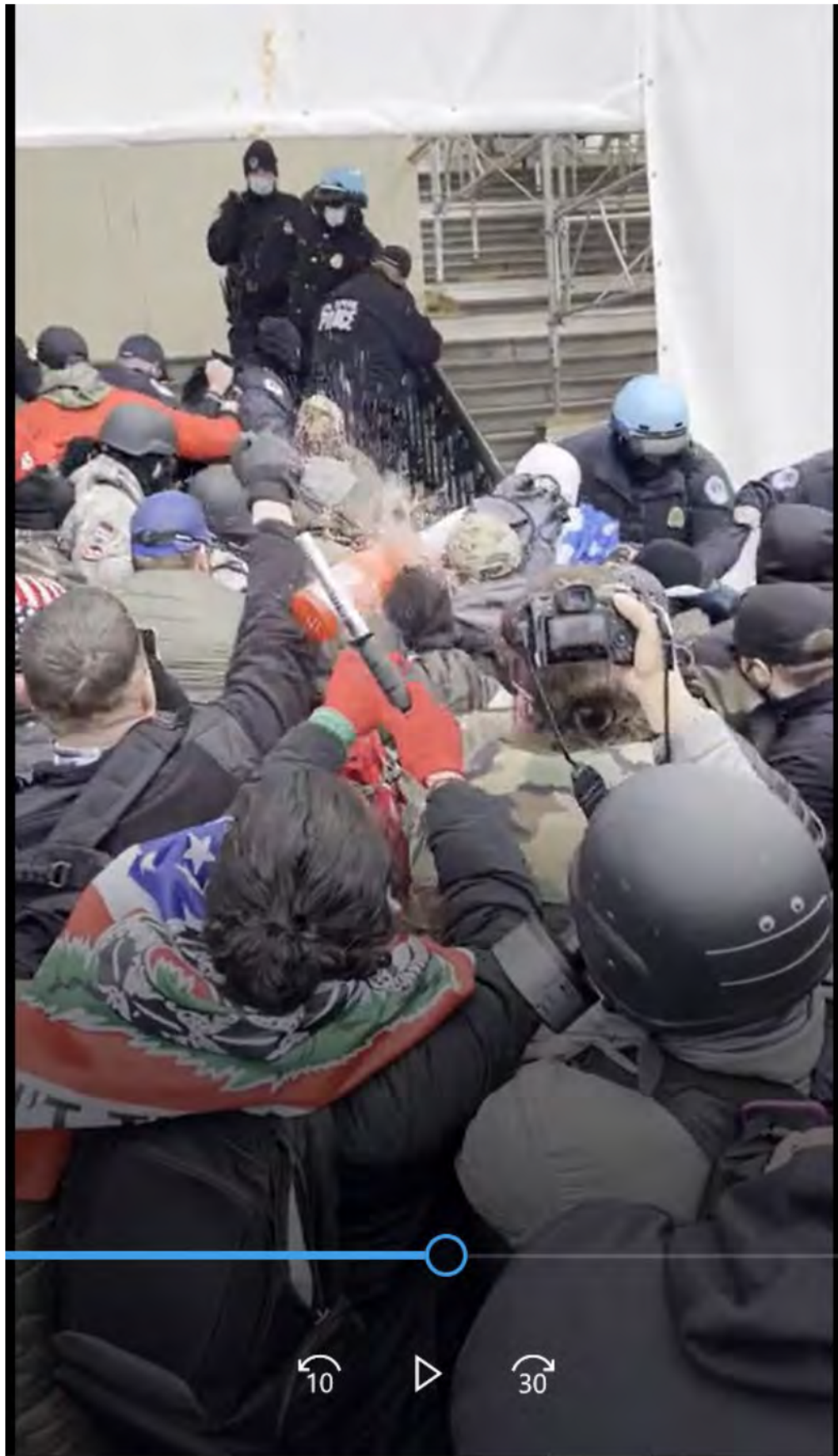
Officer Williams seems to be looking down and not directly at the crowd. It is a similar reaction to Officer Rigglesman when he was felt something in his eyes. The spray is now directly over his head and continuing past them to the officers behind. There is no spray on the back scaffolding yet. *Id.*



Officer William at this point turns away from the crowd. His head is still bowed as if he has something in his eyes. The spray continues above his head. The stream of spray is still not on the scaffolding above his head. It seems to be closer to his helmet than the top of the scaffolding. Mr. Ramey's hands are still not outstretched. *Id.*



Officer Williams continues to keep his head bowed the same as Officer Riggleman in the back after getting spray in his eyes. Now Mr. Ramey's hand is outstretched but nothing has been sprayed yet. *Id.*



Officer Williams continues to have his head bowed as if impacted by a spray earlier. A bottle of soda is thrown from the crowd and hits Mr. Ramey's hand and causes a huge splash. No spray can be seen being emitted from Mr. Ramey's hand. *Id.*



Officer Williams continues to cover his eyes from the impact of the earlier sprays.

Mr. Ramey's hands are now outstretched but the trajectory of the spray has not reached Officer Williams. Officer Williams has not seen Mr. Ramey, nor has he seen the spray. The bottle of soda continues to spray contents. *Id.*





Officer Williams continues to hold his helmet. At this point, the spray from Mr. Ramey's hand has entirely dissipated. It does not make it to the back scaffolding behind Officer William as there is no orange mark. On the other hand, there is now an orange mark that can be clearly seen at the top of the scaffolding above the officer's heads. No spray or color can be seen on Officer Williams uniform, his helmet, or anyone surrounding Officer Williams such as the man in the white hoodie who is essentially in the line of fire between Mr. Ramey and Officer Williams. *Id.*



Now Officer Williams is being pulled by his fellow officer. Officer Williams did not turn away from Mr. Ramey's direction as he had done during the prior sprays by other people. The officer pulls Officer Williams to the right of the screen and that is when he turns his body away. He keeps his hands on his helmet as he has done since the first spray by someone from the crowd other than Mr. Ramey. *Id.*



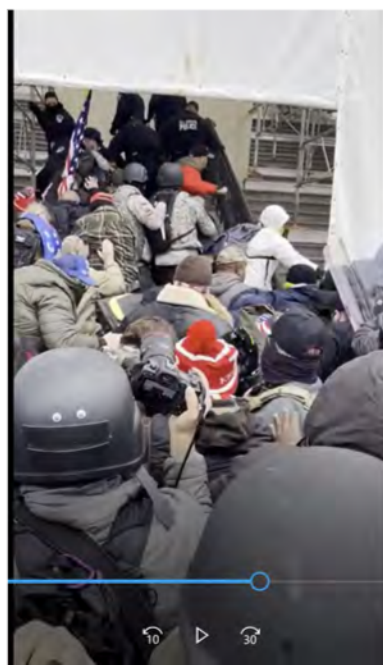
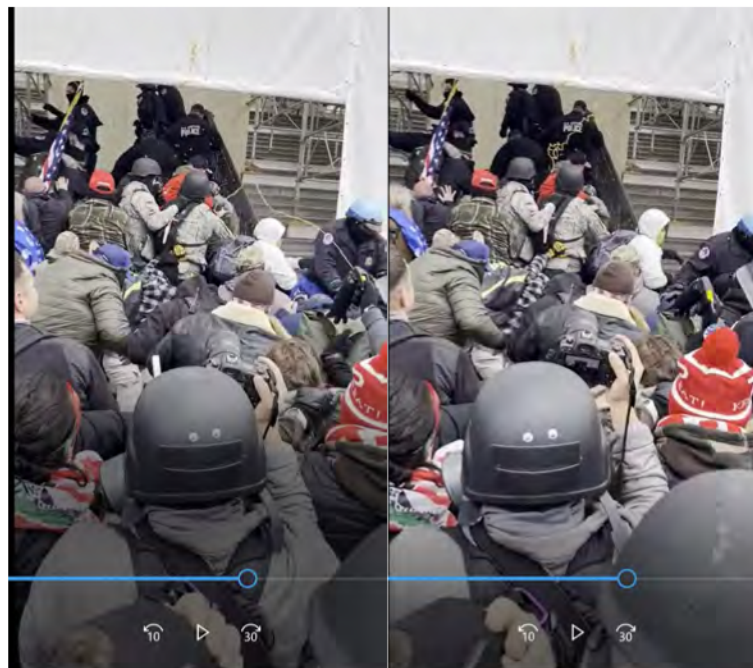
Officer Williams continues to be assaulted by spray in the screenshot above. It is again by someone from the right side of the crowd. Mr. Ramey is not bringing his hand back down and no spray is being emitted from his hand. *Id.* at :31.



Officer Williams is attacked yet again by another spray from the right side of the screen. Mr. Ramey is not emitting any spray at this point. Officer Williams steps back in response to this new spray displayed above. *Id.*



Officer Williams now turns his body away as he had done prior to the sprays from the right side of the screen. He is clearly impacted by it. Mr. Ramey's hands are no longer outstretched at all. *Id.*



The screenshots show the remainder of the spray from the right-hand side of the screen. Mr. Ramey's hands are no longer outstretched. Officer Williams is clearly impacted by the spray, and he walks off screen, as does Mr. Ramey. *Id.*

The scene happens in a matter of seconds. Watching it continuously can make it

seem like Mr. Ramey's spray is what Officer Williams was sprayed with. However, once slowed down, based on his reactions it is clear that Officer Williams suffered the results of at least 3 other sprays from which he clearly reacts. Further, count three fails as Officer William specifically stated during his testimony that he does not know what he was sprayed with. He also went on to testify that bear spray would be the same color, same impact.

CONCLUSION

Because the Government should not be permitted to constructively amend the Indictment, the Government failed to prove the use of pepper spray and a deadly or dangerous weapon, and the Government failed to prove that Mr. Ramey assaulted Officer Williams, Mr. Ramey respectfully requests that the Court find him not guilty accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's Post-Trial Briefing was filed and served upon counsel of record through ECF on the date of filing.

/s/ Farheena Siddiqui
Farheena Siddiqui