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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA.

CRIMINAL DIVISION

- - - - - x

UNITED STATES OF AMERICA,

Plaintiff

vs.

Criminal Action Nos.

MICHELLE MACCHIO,	2017 CF2 1183
JENNIFER ARMENTO,	2017 CF2 1193
CHRISTINA SIMMONS,	2017 CF2 1210
ALEXEI WOOD,	2017 CF2 1221
OLIVER HARRIS and	2017 CF2 1254
BRITTNE LAWSON,	2017 CF2 1256

Defendants.

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Washington, D.C.
December 4, 2017

The above-entitled matter came on for jury trial before the HONORABLE LYNN LEIBOVITZ, Associate Judge, in Courtroom 203, commencing at approximately 9:46 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

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Rizwan Qureshi, Esquire
Assistant United States Attorneys

On behalf of Defendant Lawson:

Sara Kropf, Esquire
Daniel Portnov, Esquire
Washington, D.C.

2

1 APPEARANCES, CONT'D:

2 On behalf of Defendant Armento:

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4 Washington, DC

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12 Steven McCool, Esquire
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1 THE DEPUTY CLERK: From your Honor's trial calendar,
2 United States versus Brittne Lawson, et al., 2017 CF2 1256.

3 MS. KERKHOFF: Would you like me to go get counsel?
4 THE COURT: Yes, please.

5 (Thereupon, remaining counsel and
6 the parties entered the
7 courtroom and the following
8 proceedings were had:)

9 THE COURT: Good morning, everybody.

10 MR. LAZEROW: Good morning, your Honor.

11 MS. KROPF: Good morning, your Honor.

12 THE COURT: I received an email from Ms. Heine that
13 said you all had discussed PPMS issues and agreed on most
14 things. To the extent there's disagreement and you plan to
15 cross on those, you're going to let me know.

16 And I also received an exhibit list from Mr. McCool.
17 I didn't receive any of the pleadings, I don't think.

18 For the record, Ms. Kerkhoff is here, and I'm not
19 seeing Mr. Qureshi.

20 Starting with Ms. Macchio, all four counsel are
21 here.

22 For Ms. Armento, Mr. Healy not here, but Ms. Weletz
23 is.

24 For Ms. Simmons, Ms. Jacques is here with her.
25 Mr. Wood and Mr. Cohen are here.

1 For Mr. Harris, both counsel are here.
 2 For Ms. Lawson, Mr. Portnov and Ms. Kropf are here.
 3 And I think that's everybody.
 4 Is there anything before we pick up and, hopefully,
 5 complete Mr. McCool's cross-examination?
 6 MR. McCOOL: Tomorrow or today, your Honor?
 7 15 minutes. 20 minutes, tops.
 8 THE COURT: All right. Will everybody else be
 9 crossing as well?
 10 MR. COHEN: I will.
 11 MR. LAZEROW: Yes.
 12 MS. HEINE: I will.
 13 MS. JACQUES: I will not.
 14 THE COURT: I'll just go through the list and you
 15 can state your intentions.
 16 Can we bring Commander DeVille back into the
 17 courtroom?
 18 MS. KERKHOFF: Yes, your Honor.
 19 THE COURT: And we'll get the jury. Thank you.
 20 (Thereupon, the witness entered
 21 the courtroom and the following
 22 proceedings were had:)
 23 THE COURT: What time did I tell the jury to be
 24 back?
 25 THE DEPUTY CLERK: 10:00.

1 THE COURT: 10:00. I need to apologize to them.
 2 Is this easel something we need to have here?
 3 MS. WELETZ: I'm using it for my exhibit, your
 4 Honor. But it can be moved somewhere else.
 5 THE COURT: It's okay. There's no ideal place. I
 6 was just wondering if it got left here for some other reason.
 7 I never know.
 8 Good morning, sir.
 9 THE WITNESS: Good morning, ma'am.
 10 (Whereupon, the jury entered the courtroom at
 11 10:29 a.m. and the following proceedings were had:)
 12 THE COURT: Good morning, ladies and gentlemen.
 13 Sir, you can have a seat.
 14 I hope you had a good weekend.
 15 I apologize for the delay. It was a completely
 16 unrelated case that took a little bit longer than I expected.
 17 So I do apologize.
 18 We're going to pick back up with Keith DeVille's
 19 cross-examination.
 20 Sir, I remind you you're still under owed.
 21 Mr. McCool, you may go ahead.
 22 MR. McCOOL: Thank you, your Honor.
 23 (KEITH DEVILLE, GOVERNMENT WITNESS, PREVIOUSLY SWORN)
 24
 25

1 CONTINUED CROSS-EXAMINATION
 2 BY MR. McCOOL:
 3 Q. Good morning, Commander.
 4 A. Good morning, sir.
 5 MR. McCOOL: Good morning.
 6 THE JURY: Good morning.
 7 BY MR. McCOOL:
 8 Q. Commander, on Thursday, we left off talking about
 9 bias. Before we get to a couple areas in that subject, I
 10 have a few questions first.
 11 If you recall last week, you and I used the phrase
 12 Internal Affairs and IAD. Do you recall that?
 13 A. Yes.
 14 Q. And let's see if we're all on the same page here.
 15 Is it true that the Metropolitan Police Department
 16 has a section that investigates use of force and other
 17 complaints called the Internal Affairs Division or something
 18 like that?
 19 A. Yes.
 20 Q. And the Internal Affairs Division is also known as
 21 IAD?
 22 A. Correct.
 23 Q. All right. And after Mr. Trump's inauguration, you
 24 were interviewed by IAD. Is that fair to say?
 25 A. Yes.

1 Q. Okay. And that interview lasted about 21 minutes.
 2 Is that right?
 3 A. I'm not sure of the exact length of time. It wasn't
 4 a very long, drawn out interview. No.
 5 Q. All right. And following this IAD investigation,
 6 there was a report issued. Right?
 7 A. From Internal Affairs?
 8 Q. Yes.
 9 A. You'll have to be a little more clear. They were
 10 looking at different uses of force in different locations.
 11 Q. Okay. Well, that's fair enough. Let me just move
 12 on to the next question, then.
 13 No officer was disciplined for abusing OC spray. Is
 14 that correct?
 15 A. Not to my knowledge. No.
 16 Q. And no officer was disciplined for misusing a riot
 17 baton. Is that correct?
 18 A. Not to my knowledge.
 19 Q. I want to be clear about this.
 20 I'm not saying that an officer was disciplined
 21 because they held it incorrectly. I'm saying -- I'm asking
 22 you if any officer was disciplined for misusing it.
 23 A. My answer -- not to my knowledge. But I wasn't
 24 involved in the actual Internal Affairs investigations.
 25 Q. And then, finally, the officer that threw those two

1 sting grenades into the kettle, he wasn't disciplined either,
 2 to your knowledge.
 3 Is that a fair assessment?
 4 A. Not to my knowledge.
 5 Q. Are you familiar with the police complaints board?
 6 A. Yes, sir. I am.
 7 Q. And is it true that the police complaints board, or
 8 OPC, as it's also known, issued a preliminary report and
 9 recommendations following the inauguration of Donald Trump on
 10 January 20, 2017?
 11 A. OPC did issue a report. Yes.
 12 Q. Have you seen the report?
 13 A. I have.
 14 Q. I'm showing you Harris 27.
 15 Is that the report that was issued after
 16 January 20th, 2017?
 17 A. Yes, sir.
 18 Q. And is it true that the preliminary finding of the
 19 police complaints board are not consistent with your opinion
 20 that your officers acted with enormous restraint on
 21 January 20th, 2017?
 22 A. To be fair, I read this report last February. I do
 23 believe that I would have to reread their preliminary
 24 findings. But I do believe during the preliminary findings
 25 that they weren't in complete agreement with me. That's

1 correct.
 2 Q. Is it true that the police complaints board found
 3 the following potential violations: failure to give warnings
 4 before arrest using amplification --
 5 MS. KERKHOFF: Objection, your Honor.
 6 THE COURT: Counsel, please approach.
 7 (Whereupon, the following proceedings were had at
 8 side-bar outside the presence of the jury:)
 9 THE COURT: If I could see the report, sir.
 10 THE WITNESS: Yes.
 11 THE COURT: What's the objection?
 12 MS. KERKHOFF: The objection is that this is for all
 13 conduct occurring after the arrests. Mr. McCool has set it
 14 up to suggest that this is a finding that relates to these
 15 Defendants. OPC --
 16 THE COURT: What is for all conduct following the
 17 arrest?
 18 MS. KERKHOFF: OPC stated that they did not observe
 19 any portion of the -- 10:19 to 10:52. Their findings and the
 20 factual basis for that all postdates the arrest.
 21 THE COURT: No. But they do make statements, for
 22 whatever they're worth, about observations during the events.
 23 And so I don't know specifically if there's something in here
 24 about giving dispersal orders.
 25 MS. KERKHOFF: Your Honor, not for -- this is all

1 post 11:00 a.m. It's post 11:00 a.m. This is what I've been
 2 trying to advise the Court and Mr. McCool.
 3 THE COURT: And so --
 4 MS. KERKHOFF: I believe it would open the door to
 5 that they were observing conduct after 11:00 a.m. that's
 6 unrelated to this group.
 7 THE COURT: And so what specifically, Mr. McCool --
 8 can you find me the page you're referring to.
 9 MR. McCOOL: It's in the preliminary findings. I'm
 10 sorry, your Honor. I should have flagged it.
 11 MS. KERKHOFF: What --
 12 MR. McCOOL: It's -- the second paragraph, I think,
 13 that covers it. It's throughout the report. But I think
 14 that's --
 15 MS. KERKHOFF: But the factual --
 16 THE COURT: Hold on.
 17 So in this paragraph, it just talks about what's
 18 required.
 19 MS. KERKHOFF: The factual --
 20 THE COURT: And so, Mr. McCool, can you find the
 21 place where it says they failed to give dispersal orders.
 22 MS. KERKHOFF: While Mr. McCool does that, they list
 23 the factual bases for their preliminary findings, all of
 24 which do not involve this event that's charged.
 25 MR. McCOOL: Here's the bias, Your Honor --

1 THE COURT: To the extent that you're not pointing
 2 out anything that is pre-11:00, are you agreeing that that's
 3 what the report actually covers, events following 11:00?
 4 MR. McCOOL: Yes.
 5 THE COURT: So could you frame your questions that
 6 way?
 7 MR. McCOOL: Okay.
 8 THE COURT: I'm going to allow the questions to go
 9 into bias. But I just want you not to mislead the jury.
 10 MR. McCOOL: Okay. That's fine. I'm sorry.
 11 MS. KERKHOFF: Thank you.
 12 (Whereupon, the following proceedings were had in
 13 open court:)
 14 THE COURT: I'm going to ask Mr. McCool to rephrase
 15 the question.
 16 MR. McCOOL: Thank you, your Honor.
 17 BY MR. McCOOL:
 18 Q. Commander, let me back up a moment. Let me make
 19 sure I'm phrasing my question correctly.
 20 With the OPC preliminary findings of potential
 21 violations, these findings concern conduct after these folks
 22 were arrested. Is that fair to say?
 23 A. Some did. Yes.
 24 (Thereupon, Mr. Qureshi entered
 25 the courtroom and the following

1 proceedings were had:)

2 BY MR. McCOOL:

3 Q. Some.

4 And those include the failure to give warnings

5 before arrests using amplification devices. Is that correct?

6 Do you recall?

7 A. Again, I haven't read it in quite a while. Is there

8 a page reference for that?

9 Q. We'll -- I'll just take your answer. If you don't

10 recall, that's fine. I'll move this along. I think we can

11 go on to the next question.

12 Do you recall that the OPC, or the police complaints

13 board, found a potential violation for failure to effect

14 arrest based on probable cause of those participating in

15 violations of law?

16 THE COURT: And is this the same --

17 MR. McCOOL: Yes. Everything is framed post 11:00

18 a.m. Thank you.

19 THE COURT: In other words, for persons not

20 associated with this protest at all?

21 MR. McCOOL: Yes.

22 THE COURT: Other people?

23 MR. McCOOL: Yes, your Honor. This report. This

24 particular report. Yes.

25 THE WITNESS: Actually, I just found the paragraph

1 that references that. Yes.

2 BY MR. McCOOL:

3 Q. Okay. Thank you. I appreciate that.

4 Do you see or could you find or do you remember that

5 the police complaints board found a potential violation for

6 failure to issue a warning that OC spray is going to be used?

7 A. Yes, they did.

8 Q. And they also found a potential violation for using

9 OC spray to disperse a crowd. Is that correct?

10 A. That's correct.

11 Q. All right. They also found a potential violation

12 for using OC spray on an individual whom the officers do not

13 have legal cause to take into custody. Is that correct?

14 A. That sounds correct. Yes.

15 Q. So is it fair to say -- and, again, this is -- this

16 deals with MPD conduct after 11:00, as you said, for the most

17 part.

18 But, still, is it fair to say that, if you maintain

19 your claim that your officers exercise with enormous

20 restraint, that you believe that the Defendants in this case

21 are more likely to be convicted and MPD officers are less

22 likely to be disciplined?

23 MS. KERKHOFF: Objection, your Honor.

24 THE COURT: Can you just say that again or rephrase

25 it in a way that I can understand it.

1 BY MR. McCOOL:

2 Q. What I'm asking about is your bias here. Okay?

3 Is it your -- if you maintain -- you've testified

4 that your officers exercised enormous restraint on

5 January 20th. Correct?

6 A. I did.

7 Q. And is it fair to say that, if you maintain that

8 position, that it's more likely these Defendants would be

9 convicted and less likely that your officers would be

10 disciplined?

11 MS. KERKHOFF: Objection, your Honor.

12 THE COURT: I'm going to overrule the objection.

13 You can answer the question.

14 THE WITNESS: My answer that the officers used

15 enormous restraint was in the totality of the circumstances,

16 based upon what we were facing -- what they were facing that

17 day. It was based upon the fact that there was only one

18 injury recorded for all the arrestees.

19 I wasn't aware, obviously -- certainly not aware of

20 every push, shove or use of pepper spray. But in the

21 totality, they did use enormous restraint.

22 With regard to whether or not that -- my opinion of

23 that has anything to do with whether or not these individuals

24 are convicted is -- really wasn't the intent of my statement.

25 It was that, in the totality, they used enormous restraint.

1 BY MR. McCOOL:

2 Q. And then, finally, Commander, on this subject before

3 I move on, is it true that the District of Columbia has hired

4 a consultant to review the preliminary findings of the police

5 complaints board?

6 A. I know that this report specifically requests that

7 they -- the OPC did not have the funding to do a very

8 thorough investigation.

9 They were requesting additional funds to do a deeper

10 dive, as it were, to do a more thorough look at the

11 inaugural.

12 Q. And my question is -- and I'll take your answer --

13 do you know whether or not the council has authorized funds

14 for that?

15 A. I do not know. I know that it was going to be in

16 the fiscal 2018 request, my last word -- understanding of it.

17 Q. Okay. Commander, is it true that three persons who

18 were arrested have sued the District of Columbia, 150 unknown

19 police officers and 20 unknown police supervisors for

20 violating their civil rights on January 20th, 2017?

21 A. I am aware that lawsuits have -- civil lawsuits have

22 been filed. As to who and what they entail, I do not know.

23 Q. I'm going to hand you Harris 28. It's been marked

24 for identification. I'll ask you to take a look at that.

25 You don't have to read it. Just page through it, please.

1 A. Okay.

2 Q. Are you generally familiar with that complaint?

3 A. No. This is the first time I've seen this

4 complaint.

5 Q. Okay. Well, let me ask you this, then, based on

6 just your general knowledge.

7 Is it true that the complainants have alleged that

8 police officers improperly used pepper spray on January 20 --

9 MS. KERKHOFF: Objection, your Honor. Objection.

10 The witness stated he just saw this.

11 THE COURT: I'm going to allow it.

12 You can do redirect.

13 BY MR. McCOOL:

14 Q. If you can look to Page 32, Paragraphs 175 through

15 177, that may help.

16 A. And your question was does it allege that improper

17 use of pepper spray was used?

18 Q. Yes, sir. That's my question.

19 A. Yes. It does.

20 Q. Is it true that there are allegations that officers

21 applied handcuffs in an improper fashion? I'll refer you to

22 Page 34, Paragraphs 184 through 185.

23 THE COURT: Can you be specific as to whom.

24 MR. McCOOL: I'm sorry?

25 THE COURT: The alleged persons as to whom that was

1 done. In other words, that's to certain people. Right?

2 MR. McCOOL: Yes. There's four complainants listed

3 in the complaint, your Honor, and three of those were

4 arrested that day.

5 THE COURT: So can you be specific as to the

6 allegation being particularized as to those persons.

7 MR. McCOOL: Sure. I'm going to need to grab that

8 complaint. It refers to -- well, I don't want to speak from

9 the podium, your Honor. May we approach?

10 THE COURT: Do you need the document?

11 MS. KERKHOFF: Do you need the document?

12 MR. McCOOL: Yeah. Sure. Thank you so much.

13 THE COURT: What page are we on?

14 MR. McCOOL: We're on Page 34, Paragraphs 184

15 through 185.

16 THE COURT: And was that your objection,

17 Ms. Kerkhoff, that it be particularized?

18 MS. KERKHOFF: That is one of them. Yes.

19 THE COURT: I'm sustaining that objection.

20 Would you just rephrase, please.

21 MR. McCOOL: Okay.

22 BY MR. McCOOL:

23 Q. Well, did you -- do you know whether or not

24 Plaintiffs -- let me get their full names for you -- Shay

25 Horse and Elizabeth Lagesse allege that the officers applied

1 handcuffs too tightly?

2 A. Yes. It stipulates that. Yes.

3 Q. Let's go to Paragraph 48 that's on Page 11. If

4 you'd read through that. This is more of an allegation by

5 all four of the Plaintiffs here.

6 Is it alleged that the police officers unknown to

7 the Plaintiffs improperly used sting grenades on

8 January 20th, 2017?

9 A. In Paragraph 48?

10 Q. Yes, sir. Page 11, if you'd look at Paragraph 48.

11 A. They do mention flash bang grenades, concussion

12 grenades and stingers.

13 Q. And the ones that were used in the -- at least at

14 12th and L were the sting grenades. Is that right?

15 A. Those are the only ones that we used.

16 Q. Is it true -- if you could turn to Page 28,

17 Paragraph 74. Hold on a second. I'm sorry. Page 15, 74.

18 The exhibit number is 28. My apologies.

19 Now, this is an allegation directed at John Doe

20 Officers 91 through 140.

21 And is it true that there's an allegation that those

22 police officers slow-walked three of the Plaintiffs?

23 THE COURT: Can you specify what paragraph.

24 MR. McCOOL: Sure, your Honor. It's Paragraph 74 on

25 Page 15.

1 BY MR. McCOOL:

2 Q. Is that allegation contained in the complaint, sir?

3 A. Yes, it is.

4 Q. Are you familiar with the phrase "slow walk"? I'm

5 just -- sir, if you could look up.

6 A. No. I'm not familiar -- I know what they're

7 alluding to. But, no, I'm not familiar with it being used as

8 far as delaying the arrest time.

9 Q. Well, have you heard that word used in connection

10 with police officers delaying the processing of arrestees?

11 A. I can't -- slow-walking the arrest? No. I haven't

12 heard that.

13 Q. Well, is it true -- I'm going to refer you to

14 Page 18, Paragraphs 100 through 110 -- let me just give you a

15 moment, slow down here and let you take a look at those

16 paragraphs. If you can look up when you're done, I'm going

17 to proceed, sir.

18 THE COURT: So you're not asking him to answer the

19 last question? Are you moving on now?

20 MR. McCOOL: I'm sorry?

21 THE COURT: Are you moving on to a new subject

22 matter now?

23 MR. McCOOL: Yes.

24 THE COURT: What paragraphs?

25 MR. McCOOL: We're at Page 18, Paragraphs 100 to

1 110.
 2 THE WITNESS: Yes, sir.
 3 BY MR. McCOOL:
 4 Q. Have you read those paragraphs, sir?
 5 A. 100 through 110?
 6 Q. Yes.
 7 THE COURT: Can you just ask him, please, if you
 8 have a question for him.
 9 BY MR. McCOOL:
 10 Q. Commander, is it true that Plaintiffs Horse, Lagesse
 11 and González allege that police officers slow-walked or
 12 delayed the processing of them for up to seven or eight hours
 13 on January 20th, 2017?
 14 A. That is the allegation. Yes.
 15 Q. Did --
 16 A. The lawsuit.
 17 Q. Did you order any officers to delay the processing
 18 of any arrestee on January 20th, 2017?
 19 A. No, I did not.
 20 Q. Let me ask you a question more generally.
 21 Is it fair to say that, if the Defendants in this
 22 case are convicted, it's less likely that MPD or its officers
 23 would face civil liability based on actions taken by officers
 24 on orders issued by you on January 20th, 2017?
 25 A. My opinion?

1 Q. Yes, sir. I'll take your answer.
 2 A. I believe criminal convictions in this case would
 3 perhaps limit our civil liability in the matter.
 4 Q. Okay. Thank you.
 5 One final topic and I'll be done.
 6 Commander, is it your belief that one of the
 7 functions of a legal observer at a protest is to intimidate
 8 the police by their presence?
 9 MS. KERKHOFF: Objection, your Honor. Calls for an
 10 opinion.
 11 THE COURT: I'm going to sustain as to relevance.
 12 MR. McCOOL: May we approach on that?
 13 THE COURT: No.
 14 MR. McCOOL: Can I play -- publish Harris 11?
 15 (Whereupon, segments of Defendant Harris's Exhibit
 16 No. 11 were published in open court.)
 17 BY MR. McCOOL:
 18 Q. Did you see the woman in the green hat getting
 19 launched to the ground in Harris 11, sir?
 20 A. I see the woman in the green hat. I'm not sure
 21 that -- does she fall? Does the --
 22 Q. We can play it a couple more seconds.
 23 (Whereupon, segments of Defendant Harris's Exhibit
 24 No. 11 were published in open court.)
 25

1 BY MR. McCOOL:
 2 Q. Do you have any reason to believe that the woman in
 3 the green hat did anything to intimidate any police officer
 4 on January 20th, 2017?
 5 A. I wasn't -- I was not present right there. That
 6 McDonald's had just had a lot of windows broken and we were
 7 trying to -- I think, at that point, we had decided we needed
 8 to stop the crowd. So I can't answer to what she
 9 individually did to the officers. I wasn't there.
 10 Q. All right. Thank you.
 11 MR. McCOOL: I have nothing further.
 12 THE COURT: Should I just go in order from here?
 13 Ms. Heine.
 14 MS. HEINE: Yes. Thank you.
 15 CROSS-EXAMINATION
 16 BY MS. HEINE:
 17 Q. Good morning, Commander.
 18 A. Good morning, ma'am.
 19 Q. My name is Jamie Heine, and I represent Michelle
 20 Macchio.
 21 I want to ask some clarifying questions on a topic
 22 that you've sort of testified around.
 23 On January 20th, at what point did you believe this
 24 event became a riot?
 25 A. I believe the point when I -- as I said over the

1 air, this is no longer a protest. This is riotous behavior.
 2 That was probably as close to the exact time when I felt that
 3 it had become a riot and out of control.
 4 Q. And, if you recall, you know, what intersection or
 5 what event did that coincide with, roughly?
 6 A. I don't recall exactly. To my best recollection, it
 7 might have been the limo. I'm sorry. I don't recall exactly
 8 when I made that determination. But it was based upon the
 9 property damage I was seeing.
 10 Q. In your opinion, was this event continuously a riot
 11 from the limo or whatever point you made that announcement on
 12 the radio until people were detained at 12th and L?
 13 A. This event escalated as it proceeded, and it
 14 continued, in my opinion, from the time I stipulated that it
 15 was riotous behavior. That continued to the point that they
 16 were stopped at 12th and L. The property destruction and the
 17 violence actually escalated.
 18 Q. Okay. And, in your opinion, was everyone who was
 19 with this group rioting from the point of the limo until the
 20 point of 12th and L?
 21 A. Yes.
 22 MS. KERKHOFF: Objection, your Honor.
 23 THE COURT: Is that an objection?
 24 MS. KERKHOFF: It was. Yes.
 25 THE COURT: Please approach.

1 (Whereupon, the following proceedings were had at
2 side-bar outside the presence of the jury:)

3 THE COURT: Yes.

4 MS. KERKHOFF: Counsel's asking for an opinion on
5 the ultimate issue for the jury, which I don't think is
6 proper under either a fact or an expert witness. I'm not
7 sure what the bias is.

8 THE COURT: I think we had this discussion earlier,
9 whether or not everybody wants to debate with him his thought
10 process on that day.

11 I have already instructed the jury none of that's
12 coming in for the purposes of controlling their ultimate
13 determination, but going to his state of mind, why he issued
14 orders as he did, when he allowed pepper spray, et cetera.

15 And so I don't -- is this any different from that?

16 MS. KERKHOFF: Your Honor, she's very specifically
17 asking his opinion as to whether everyone, meaning the
18 Defendants, did. I'm not sure that we're going down
19 anything.

20 What the Government would also request at this point
21 is that, prior to the conclusion of cross, I think an
22 instruction to the jury is appropriate regarding all the
23 stuff that Mr. McCool and, presumably, other counsel are
24 presenting as it goes to bias, because they're suggesting
25 that the finding makes it true and it's not being permitted

1 as substantive evidence --

2 THE COURT: The finding by OPC?

3 MS. KERKHOFF: OPC or the civil complaint goes
4 solely to their consideration of whether the officer has a
5 motivation with this testimony.

6 Because I think it is now bleeding into that, in
7 fact, is a truth. It is substantive evidence. And it's not.

8 THE COURT: Well, I mean, you can -- I'll wait until
9 after redirect because you can certainly establish on
10 redirect that a complaint is simply a set of allegations and
11 that the OPC report or whatever entity it is -- and I keep
12 saying it wrong -- is a set of preliminary findings not
13 binding on the police department, et cetera.

14 And so, to the extent that all those things go to
15 his bias --

16 MS. KERKHOFF: But the Court --

17 THE COURT: -- I can say that. But why don't we
18 just wait until we're there.

19 MS. KERKHOFF: That's fine. I just wanted to put it
20 on the record because the Court has not yet instructed how
21 they are to consider the last two and a half hours of his
22 cross in terms of the questioning.

23 And I do think it is appropriate that they have --
24 they be advised of the purpose and consideration they use as
25 opposed to that it is evidence that the OC spray, in fact,

1 was a violation of SOPs or whatever it was.

2 THE COURT: Let's talk about that at a different
3 point because I just think, to the extent that all of the
4 debates about propriety, SOPs, whether you should have
5 marched left instead of marched right, it's coming in for any
6 number of purposes.

7 I would be surprised if the jury thinks that it goes
8 to guilt or innocence of any one of these Defendants. It can
9 only go to whether or not -- I suppose the thing that they
10 could think is: We're putting the police department on trial
11 and they screwed up; therefore, we find them not guilty.

12 That is an argument probably that you can address.
13 If jurors are going to go that way, that's how they're going
14 to go. But I don't think we should spend the time on it
15 right now.

16 Is there some specific action you're asking me to
17 take at this minute based on the question that just got
18 asked?

19 MS. KERKHOFF: Your Honor, the questions are asking
20 his opinion that go to the final issue.

21 If the Court is allowing it, that's fine. But these
22 are his opinions as it goes to the final issue.

23 THE COURT: I get that. Are you objecting to it?

24 MS. KERKHOFF: What I think is appropriate for an
25 instruction that -- the Government's just -- I don't know

1 where we're going. But I'm confused as to why we're asking
2 opinions that I don't think are appropriate.

3 THE COURT: They want to say: He was unreasonable
4 and that, therefore, shows the police acted unreasonably that
5 day and you should find my client not guilty.

6 MS. KERKHOFF: Which is a nullification defense.

7 THE COURT: It is --

8 MS. KERKHOFF: And that's why --

9 THE COURT: -- in a way.

10 MS. KERKHOFF: -- I've been asking for the
11 instruction.

12 THE COURT: So the instruction would be?

13 MS. KERKHOFF: That any conduct of the police is not
14 a defense in this case.

15 THE COURT: That is something I would reserve for
16 final instructions.

17 But in terms of his opinion, I think I need to ask
18 the Defendants: Are you all asking me for a limiting
19 instruction such that his opinion regarding whether or not a
20 riot occurred or not, though elicited by your own colleagues
21 here, does not bind them and is not controlling in terms of
22 their ultimate determination of whether there was a riot
23 going on, so to speak?

24 MS. HEINE: I thought the Court gave --

25 THE COURT: I did give it. So you're comfortable

1 and I don't need to say it again?

2 Everybody is saying, "yes," I should not give it
3 again.

4 So, Ms. Kerkhoff, assuming they're not asking for it
5 again and assuming the police -- you know, inconsistency with
6 procedures, whatever they may have been, is not a defense, is
7 not an instruction that I want to give right now, if there's
8 nothing right now that you're asking me to do.

9 MS. KERKHOFF: No, your Honor. But I don't think
10 waiting until the end of the case in a week or two is
11 appropriate to advise the jury how they should take the last
12 two days of testimony. I think it's prejudicial to the
13 Government.

14 THE COURT: Well, okay.

15 (Whereupon, the following proceedings were had in
16 open court:)

17 THE COURT: Please come back, sir.

18 I think we're just going to go ahead. And I don't
19 know if there was an answer to the last question.

20 MS. HEINE: May I proceed, your Honor?

21 THE COURT: Yes.

22 BY MS. HEINE:

23 Q. Commander, I want to show you a clip from
24 Government's Exhibit 116.

25 And that shows the aerial video over Logan Circle

1 shortly before 10:19 a.m. when the group started marching
2 down 13th Street. I'm going to show you that clip from zero
3 to 38 seconds, and then I'll have a few questions for you.

4 (Whereupon, segments of Government's Exhibit No. 116
5 were published in open court.)

6 THE COURT: For the record, this is a videotape
7 taken from the air.

8 MS. HEINE: Yes.

9 (Whereupon, segments of Government's Exhibit No. 116
10 were published in open court.)

11 BY MS. HEINE:

12 Q. So this is from Logan Circle before the group
13 departs.

14 Do you agree?

15 A. Yes, ma'am.

16 Q. And I take it from your earlier answer that you
17 didn't believe the group was rioting at this point.

18 A. No, I did not.

19 Q. Okay.

20 MS. HEINE: Can we freeze 116 on the 5-second mark.

21 (Whereupon, segments of Government's Exhibit No. 116
22 were published in open court.)

23 BY MS. HEINE:

24 Q. On the very far left side of this screen, in the
25 upper left quadrant, do you see a person standing with a

1 light blue jacket and a bright green hat?

2 A. Yes.

3 Q. Based on your prior testimony, you didn't believe
4 that woman was rioting?

5 A. I didn't believe that anybody was rioting at this
6 time.

7 Q. Okay. Even the people who are standing to the
8 right, dressed in black, you didn't believe they were rioting
9 at this time?

10 A. No.

11 Q. Okay. Let's go to Government's Exhibit 100, which
12 is from the Starbucks surveillance camera. We're going to
13 play from minute 3:37 to minute 3:48, which is 10:37 a.m.
14 from January 20th.

15 (Whereupon, segments of Government's Exhibit No. 100
16 were published in open court.)

17 THE COURT: And your question is whether he had
18 concluded on that day at that time, not what his conclusion
19 is today. Right?

20 MS. HEINE: Yes, your Honor.

21 BY MS. HEINE:

22 Q. Sir, in the clip we watched at this point in time,
23 the Starbucks windows had already been broken. Do you agree?

24 A. Yes.

25

1 BY MS. HEINE:

2 Q. And the police had already started moving past
3 Starbucks at that time?

4 A. I didn't see any officers in this video moving
5 past -- I have no -- I didn't see any officers going by.

6 Q. But at 10:37 a.m. on January 20th, had police
7 already started moving past Starbucks?

8 A. Based on this video, I'm not sure of the time frame.
9 It would have been close. Yeah.

10 Q. Okay.

11 A. But exactly when we were moving exactly right past
12 Starbucks, I don't know the exact time.

13 Q. I mean, we could back it up and watch.

14 But do you have any reason to dispute that the
15 police had started moving by at that point? I'm happy to
16 back it up and watch, if you'd like. If we don't need to do
17 that, you know, we don't need to do that.

18 THE COURT: He's not the one asking you to back it
19 up. You're the one deciding to do it.

20 So maybe you could help him out by asking him a
21 question that he can answer.

22 MS. HEINE: Okay.

23 THE COURT: Thank you.

24 MS. HEINE: Why don't we just back it up 30 seconds.

25 (Whereupon, segments of Government's Exhibit No. 100

1 were published in open court.)
 2 MS. HEINE: We may do it further back than that.
 3 (Whereupon, segments of Government's Exhibit No. 100
 4 were published in open court.)
 5 MS. HEINE: We can pause it.
 6 BY MS. HEINE:
 7 Q. Did you see police start to move by?
 8 A. I saw the first group of motorcycles. Yes.
 9 Q. Okay. And do you see police dressed in black
 10 uniforms sort of at the top of the shot there?
 11 A. Yes.
 12 Q. Okay.
 13 MS. HEINE: So why don't we go back to minute 3:37
 14 and we'll play until 3:48.
 15 (Whereupon, segments of Government's Exhibit No. 100
 16 were published in open court.)
 17 MS. HEINE: Let's pause it right there.
 18 BY MS. HEINE:
 19 Q. Sir, do you see -- she's being hidden.
 20 But do you see at the top of the screen, kind of in
 21 the middle, a woman wearing a light blue jacket and a green
 22 hat?
 23 A. Yes.
 24 Q. Yes?
 25 A. Light blue -- yes. I see her.

1 Q. Okay. And she's walking in that clip?
 2 A. Yes. It appears so.
 3 Q. Is she rioting in this clip?
 4 THE COURT: So I think that the relevant question is
 5 what he thought at the time. There is no relevance to his
 6 opinion as to whether she's rioting in that clip as he sits
 7 here today. I'm not going to allow you to ask that.
 8 MS. HEINE: That's how I intended to phrase it.
 9 BY MS. HEINE:
 10 Q. So on January 20th, did you believe that this woman
 11 was rioting?
 12 THE COURT: And can you lay a foundation for his
 13 observation of her at all at that time.
 14 BY MS. HEINE:
 15 Q. Sir, did you drive your brown SUV down I Street
 16 after the Starbucks was damaged?
 17 A. I did.
 18 Q. And did you see people walking on I Street?
 19 A. I did.
 20 Q. Did you believe that those people were rioting?
 21 A. I believed there was a large group of individuals
 22 rioting on I Street. Yes.
 23 Q. But not everyone?
 24 A. I couldn't testify that -- every single person. Are
 25 you -- there were many people with cameras running around,

1 photographing the event, that people were coming into the
 2 group.
 3 There was a core group that was together and they
 4 were committing the damage and/or cheering the damage on
 5 and/or celebrating and then reabsorbing those that were doing
 6 the violent acts.
 7 And there was a lot of people that were caught up in
 8 watching it. They were running around with cameras and -- I
 9 looked at the video and it appears I had already passed. I
 10 think I saw my SUV pass in your video clip at this location.
 11 Q. Okay. Let's move to Government's Exhibit 106.
 12 This is a clip from when the Starbucks is being
 13 damaged. We're going to play from minute 1:13 to 1:17.
 14 (Whereupon, segments of Government's Exhibit No. 106
 15 were published in open court.)
 16 BY MS. HEINE:
 17 Q. Sir, do you see there -- I'm going to try to point
 18 out three people. I'm happy to do it on the screen behind
 19 you, if that's easier. Maybe I'll just do that.
 20 The people I'm going to ask you about are this man
 21 in the Trump mask, this person here with goggles and this
 22 person here with goggles.
 23 A. Okay.
 24 Q. You've got those people?
 25 THE COURT: Ladies and gentlemen of the jury, can

1 you see past that easel right there? No.
 2 Let's move it.
 3 MS. HEINE: (Complies.)
 4 THE COURT: Thank you.
 5 MS. HEINE: I'll point it out one more time.
 6 BY MS. HEINE:
 7 Q. The person here wearing a Donald Trump mask, the
 8 person here wearing goggles on their head, the person here
 9 with goggles on their head: Do you see those, commander?
 10 A. I do.
 11 Q. In that video, did you see those people cheering?
 12 THE COURT: So you're asking whether he saw those
 13 three particular persons cheering at the time or whether he
 14 just saw them in the video?
 15 MS. HEINE: I'm just asking about the video.
 16 MS. KERKHOFF: Objection, your Honor.
 17 THE COURT: Counsel, please approach.
 18 (Whereupon, the following proceedings were had at
 19 side-bar outside the presence of the jury:)
 20 THE COURT: So what's the objection?
 21 MS. KERKHOFF: The objection is that the video
 22 speaks for itself. This is argumentative. I don't think he
 23 has a foundation to say. He can watch the video. The jury
 24 can watch the video.
 25 It sounds like we're starting our closing arguments

1 here by saying: Look that this video. What do you think
 2 about that?
 3 THE COURT: First of all, like it or not, this whole
 4 case is about people looking at videos and seeing what they
 5 see on them. And I'm going to be allowing the Government to
 6 do that.
 7 So to the extent that that's the objection, I kind
 8 of have to let them use witnesses to highlight things in the
 9 video.
 10 However, that doesn't mean that you can elicit
 11 opinions about whether that particular conduct would
 12 constitute a riot. That is usurping the jury's function.
 13 That is not the point of this cross-examination to
 14 the extent that the point was if you're aware of certain
 15 conduct and you concluded there was a riot, you can challenge
 16 his thinking at the time.
 17 It goes to his basis for making decisions on that
 18 day.
 19 But his opinion on the witness stand whether a
 20 particular person is rioting or not is not something I'm
 21 going to allow you to elicit.
 22 It's the jury's decision.
 23 Obviously, what a person is doing in four seconds of
 24 videotape is not the same as a decision whether he or she
 25 rioted.

1 So you, of course, aren't asking about that. I
 2 don't know what you're about to ask about these people.
 3 What are you about to ask about them?
 4 MS. HEINE: Well, I meant to go --
 5 THE COURT: If boring the jury to death in this
 6 cross-examination is the goal of the defense table, we're
 7 well on our way, because, you know, you have great material.
 8 I'm just waiting to hear get used.
 9 So are you going to simply ask him to opine as to
 10 whether these people are looking at the Starbucks window when
 11 the Starbucks windows get broken?
 12 MS. HEINE: I think first I'll go back and ask him
 13 if he saw these people on January 20th.
 14 THE COURT: Individually?
 15 MS. HEINE: Individually.
 16 THE COURT: You know he's not going to say "yes" to
 17 that.
 18 MS. HEINE: Okay.
 19 MR. LAZEROW: We're good, your Honor. We're not
 20 going to ask this witness if he considers that rioting.
 21 We'll stick to the facts, what's being shown on the video.
 22 THE COURT: And I think it's fair. I'm going to
 23 overrule the objection to asking witnesses to highlight what
 24 they see in a particular stretch of video.
 25 You're going to get to do it, Ms. Kerkhoff, at

1 length. The defense gets to do it. There's really no other
 2 way to point out these things in trial. And if I would
 3 prohibit it entirely, you would be unable to identify any of
 4 your Defendants.
 5 So I think I have to allow that. Just no opinions.
 6 MS. HEINE: Okay.
 7 THE COURT: Okay?
 8 (Whereupon, the following proceedings were had in
 9 open court:)
 10 THE COURT: Please come back to the witness stand.
 11 THE WITNESS: (Complies.)
 12 BY MS. HEINE:
 13 Q. Commander, do you need me to play this clip again so
 14 you can see what happened?
 15 THE COURT: I don't think he does. Do you have a
 16 question for him?
 17 MS. HEINE: Yes, I do.
 18 BY MS. HEINE:
 19 Q. Commander, in the clip that we watched, did you see
 20 the three people I pointed out to you cheer?
 21 A. No.
 22 Q. Did you see them gesture in any way?
 23 A. In the video clip you showed me, no.
 24 Q. Okay. Thank you.
 25 Let's go to Government's Exhibit 106 at -- I'm going

1 to play from 2:15 to 2:19. This time, you'll see the
 2 McDonald's.
 3 (Whereupon, segments of Government's Exhibit No. 106
 4 were published in open court.)
 5 BY MS. HEINE:
 6 Q. Did you see a woman in a light blue jacket, a green
 7 hat and a purple backpack running by the McDonald's?
 8 A. Yes, ma'am.
 9 Q. And you see her -- a little bit of her right there?
 10 A. I do.
 11 Q. She ran pretty close to some of this damage in the
 12 video. Do you agree?
 13 A. She was on the sidewalk. Yeah.
 14 Q. Okay. Did you see her cheer?
 15 A. Just now, as she ran by, no.
 16 Q. And in the video clip, did you see her gesture in
 17 any way?
 18 A. No, I did not.
 19 Q. Let's go to Government's Exhibit 123-X. We're going
 20 to play from 14:44 to 15:21. This will be a clip from near
 21 13th and L around 10:49 a.m.
 22 (Segments of Government's Exhibit No. 123-X were
 23 published in open court.)
 24 BY MS. HEINE:
 25 Q. Commander, in this clip, did you see a woman wearing

1 a light blue jacket and a bright green hat with a purple
 2 backpack?
 3 A. Yes.
 4 Q. Did you see her walking?
 5 A. I do.
 6 Q. And did you see the small group of people she was
 7 with getting sprayed with the OC super soakers?
 8 A. I did.
 9 Q. Okay. And did you notice your SUV on that video
 10 when she was crossing the street?
 11 A. I was -- I think I was in the intersection. Yeah.
 12 I did see it.
 13 Q. So you observed this -- that woman and that little
 14 group of people she was walking near cross the intersection?
 15 A. No. I can't testify to that. I observed hundreds
 16 of people. So I can't -- I observed on your video. I can't
 17 testify that I saw her on January 20th cross the street. No.
 18 Q. Okay. Fair enough.
 19 How about the other people that were near this
 20 woman? They were also walking.
 21 A. You're asking me if I saw them on January 20th?
 22 Q. Let me clarify.
 23 In the video clip we just watched, did you see
 24 people dressed in black who were walking near the woman in
 25 the light blue jacket with the bright green hat?

1 A. I did.
 2 Q. And they were walking?
 3 A. Correct.
 4 Q. And some of them were also being sprayed with the
 5 super soaker?
 6 A. Yes.
 7 Q. Okay. Let's go to Government's Exhibit 107. We'll
 8 play from 5:30 to 5:46. And this clip will be from 12th and
 9 L before the police line was charged.
 10 (Whereupon, segments of Government's Exhibit No. 107
 11 were published in open court.)
 12 BY MS. HEINE:
 13 Q. Did you see a woman in this clip at the beginning
 14 who was wearing a light blue jacket and a bright green hat?
 15 We can back it up to the beginning, if you'd like.
 16 (Whereupon, segments of Government's Exhibit No. 107
 17 were published in open court.)
 18 MS. HEINE: Pause it there. One more second.
 19 (Whereupon, segments of Government's Exhibit No. 107
 20 were published in open court.)
 21 THE WITNESS: Yes.
 22 BY MS. HEINE:
 23 Q. Was she walking in that clip?
 24 A. She was.
 25 Q. Let's play the clip through to 6:35.

1 (Whereupon, segments of Government's Exhibit No. 107
 2 were published in open court.)
 3 MS. HEINE: That's fair enough.
 4 BY MS. HEINE:
 5 Q. Sir, did you in this video observe the woman in the
 6 light blue jacket and the bright green hat participate in the
 7 police line charge?
 8 A. No, I did not.
 9 Q. Let's go to Government's Exhibit 123-Y. We're going
 10 to play from minute 8:08 through 8:17.
 11 (Whereupon, segments of Government's Exhibit
 12 No. 123-Y were published in open court.)
 13 BY MS. HEINE:
 14 Q. Commander, in this clip, did you observe a man
 15 wearing a blue jacket, a blue helmet, tan pants, riding a
 16 pink bike?
 17 A. You're going to have to play it again, please.
 18 Q. Sure.
 19 (Whereupon, segments of Government's Exhibit
 20 No. 123-Y were published in open court.)
 21 THE WITNESS: That gentleman there?
 22 BY MS. HEINE:
 23 Q. Correct.
 24 A. Yes. I see him.
 25 Q. Okay. And in this clip, he's riding his bike?

1 A. Yes.
 2 Q. Okay. Can we jump ahead to 8:35 in this same
 3 exhibit. We'll play it until 8:41.
 4 (Whereupon, segments of Government's Exhibit
 5 No. 123-Y were published in open court.)
 6 BY MS. HEINE:
 7 Q. Do you see in this clip a man wearing tan pants and
 8 a blue jacket riding a pink bike?
 9 A. I do.
 10 Q. And he's -- is he riding his bike in this clip?
 11 A. Yes, ma'am.
 12 Q. Okay. And do you see near him a few people dressed
 13 in black?
 14 A. I do.
 15 Q. Are they walking in this clip?
 16 A. They are.
 17 Q. Did you hear them cheering in this clip?
 18 A. There's a loud -- a lot of noise. I don't know that
 19 it was coming from them. But if you replay it, it's sirens.
 20 There's a lot of chaos and noise.
 21 Q. That's true. There is a lot of noise.
 22 MS. HEINE: Nothing further.
 23 Thank you, Commander.
 24 THE COURT: Thank you.
 25 Ms. Weletz.

- 1 MS. WELETZ: Yes. The Court's indulgence. If I
2 might set up my high-tech easel.
3 THE COURT: Do you need help?
4 MS. WELETZ: I don't think so.
5 CROSS-EXAMINATION
6 BY MS. WELETZ:
7 Q. Good morning, Commander. How are you?
8 A. Good morning.
9 Q. Now, Commander, you indicated that you were at Logan
10 Circle a little before 10:00 on January 20th, 2017. Correct?
11 A. Yes, ma'am.
12 Q. And that is because you had intel that a
13 demonstration was going to happen. Correct?
14 A. Correct.
15 Q. And that intel you had well in advance of
16 January 20th. Correct?
17 A. Up to -- up to and including the morning of. Yes.
18 Q. Right.
19 But you got that information that there would be a
20 demonstration several weeks before January 20th. Correct?
21 A. They were developing it. Yes. But it's fair to say
22 it was coming in weeks before.
23 Q. Okay. So when you arrived at Logan Circle, you
24 indicated that there were additionally -- by the time this
25 demonstration -- or this march started happening, that there

- 1 were three CDU units there at that time. Correct?
2 A. 40 -- there were -- I recall three CDU platoons.
3 Correct.
4 Q. Okay. And three CDU platoons.
5 Now, you told us that a CDU platoon is 30 individual
6 officers. Correct?
7 A. 28 officers.
8 Q. Okay. And then there are some supervisors of that
9 platoon. Correct?
10 A. Four sergeants and one lieutenant.
11 Q. Okay. So that's -- let's do the math --
12 A. 33.
13 Q. 33 people.
14 So there were 99 police officers plus yourself. So
15 there were 100 police officers at Logan Circle that morning
16 before this demonstration even proceeded down 13th Street?
17 A. That would have been right.
18 Q. Okay. So you estimated the group -- you're unsure
19 of exactly how many people were within this demonstration.
20 Correct?
21 A. Correct.
22 Q. But you estimated it at about 400 to 500 people, was
23 what you said during your direct examination?
24 A. I did.
25 Q. So that's about a one to four ratio of police.

- 1 Correct?
2 A. Correct.
3 Q. Okay. And you made it clear in your direct and I
4 think in your cross by Mr. McCool that you regularly deal
5 with unpermitted demonstrations in the District of Columbia.
6 Correct?
7 A. Correct.
8 Q. As our nation's capital, there's a lot of people
9 protesting. Correct?
10 A. Correct.
11 Q. And you have been responsible for many of those
12 because of your relationship with the CDU units and, in fact,
13 your supervisory role. Correct?
14 A. Correct.
15 Q. And you indicated that, typically in these
16 situations, you facilitate rolling roadblocks. Correct?
17 A. Yes, ma'am.
18 Q. And that is for the safety of the protesters.
19 Right?
20 A. Safety of the protesters, right, traffic congestion,
21 rerouting traffic, other pedestrians, that are not involved
22 in the event. Yes.
23 Q. So it's the safety of everybody involved, the
24 protesters and the public. Correct?
25 A. Correct.

- 1 Q. Because you've got people walking on a street and
2 you have traffic moving. Correct?
3 A. Correct.
4 Q. Now, how you facilitate those rolling road closures
5 is using bicycle units, motorcycles and scooters. Correct?
6 A. Ideally, yes. But, at times, we do use cars.
7 Q. So you can use any form at different times of police
8 transportation to do these rolling road closures. Correct?
9 A. Yes.
10 Q. But you had no bikes, motorcycles or scooters at
11 Logan Circle. Correct?
12 A. No. Not at the time. No.
13 Q. Okay. And the only thing that you had at Logan
14 Circle, as we saw in some of these photographs or those --
15 are police cruisers, correct, marked squad cars?
16 A. Marked -- yes. I had cars.
17 Q. And you also had those big white rented vans.
18 Correct?
19 A. Correct.
20 Q. And so showing you what has been marked as Armento
21 No. 1 -- hopefully, you can see this. So this is, I believe,
22 Government's Exhibit 301, shrunk down a little bit so it's
23 less unwieldy. Okay?
24 In those videos that we saw --
25 MS. WELETZ: Can everybody in the jury see it?

- 1 BY MS. WELETZ:
 2 Q. In those videos we see at Logan Circle, when the
 3 protest march begins -- and I think Mr. McCool pointed it
 4 out -- your CDU vans are right at the mouth of 13th Street.
 5 Correct?
 6 A. There were some there, but then they were also to
 7 the right of the purple line. They were -- they were on
 8 the -- around the circle. Yeah.
 9 Q. Commander, if you don't mind, can you come down.
 10 A. (Witness complies.)
 11 Q. And can you mark on this, when the march began,
 12 where your vans and squad cars were.
 13 THE COURT: Can I ask, is this a defense exhibit?
 14 MS. WELETZ: This is Armento No. 1.
 15 THE COURT: Thank you.
 16 THE WITNESS: They were here. They were along here.
 17 There were a few up there, as I recall. That's where they
 18 were.
 19 BY MS. WELETZ:
 20 Q. And can you please write some identifying fact like
 21 "CDU."
 22 A. (Witness complies.)
 23 Q. Perfect. Thank you. You may take your seat.
 24 A. (Witness complies.)
 25 Q. So, in fact, in the exhibit, we see protesters going

- 1 between the big white vans in order to access 13th Street.
 2 Correct? They kind of shimmy in between?
 3 A. They do.
 4 Q. Now, as the commanding officer that day, you were
 5 pretty knowledgeable about the different road closures
 6 throughout the District because of inauguration. Correct?
 7 A. Yes.
 8 Q. Okay.
 9 A. I would say so.
 10 Q. And so -- and, for the record, I'll make it clear.
 11 Thank you.
 12 For the record, you marked at the top of Logan
 13 Circle at the mouth of 13th Street in red marker -- written
 14 "CDU" around the mouth of 13th Street where your CDU units
 15 were placed.
 16 Now, to your knowledge, were any of the streets off
 17 of 13th Street -- I'm specifying N Street, which runs
 18 perpendicular to 13th Street, M Street or Massachusetts
 19 Avenue -- were they opened to traffic that morning?
 20 A. In that area, yes.
 21 Q. So because these streets and Massachusetts were open
 22 to traffic, this was the situation that you would have
 23 provided rolling road closures in order to protect the
 24 public, in order to protect the protesters. Correct?
 25 A. Is your question that I would have put people on N,

- 1 M and Mass. in advance of this march?
 2 Q. Well, no.
 3 Typically, as you're doing rolling road closures,
 4 you usually roll with the group and you close the bigger
 5 streets. Correct?
 6 A. As we can. Yes.
 7 Q. Okay. But you never closed N Street, M Street or
 8 Massachusetts Avenue to traffic. Correct?
 9 A. I -- correct.
 10 Q. So you never provided any rolling road closures for
 11 this group during their march down 13th Street. Correct?
 12 A. That's correct.
 13 Q. And you knew weeks ahead of time that this group was
 14 going to form at Logan Circle. Correct?
 15 A. I did.
 16 Q. And while you didn't know their route, you knew that
 17 they were going to be there to demonstrate and protest.
 18 Correct?
 19 A. Yes.
 20 Q. And, typically, demonstrators and marchers march.
 21 Correct?
 22 A. Correct.
 23 Q. They move through the streets, which is why you
 24 provide rolling road closures?
 25 A. Yes.

- 1 Q. But you weren't prepared at Logan Circle with any
 2 motorcycles, scooters or bicycles. Correct?
 3 A. At the time they stepped off, no.
 4 Q. Okay. Now, you never attempted to take any of your
 5 white vans or CDU units at any point on 13th Street to try to
 6 get in front of the group, did you?
 7 A. On 13th Street?
 8 Q. Uh-huh. Yes.
 9 A. No. I don't believe I did.
 10 Q. But it would have been possible. If you wanted to
 11 get in front of the group, as you testified, these streets
 12 were open off of 13th Street. Correct? N was open, M was
 13 open and Massachusetts. Correct?
 14 A. I believe at the time they were on 13th Street that
 15 I was trying to get in front of the group, I was on the radio
 16 asking for motorcycles and scooters.
 17 But as they moved down 13th Street, I wasn't trying
 18 to get in front of them at that point. Traffic was stopping
 19 on its own, and we were literally stacked up behind them.
 20 The vans were stacked up behind the group. Yeah.
 21 Q. Okay. But those vans that you had could have easily
 22 turned down -- if you wanted to, they could have turned down
 23 Vermont and come up Massachusetts to get in front of the
 24 group. Correct?
 25 A. If I had wanted to get -- yes. I could have given

- 1 them directions around --
- 2 Q. Right.
- 3 A. -- to come up on the front of 13th Street.
- 4 Q. Okay. And you indicated that the Secret Service and
- 5 other law enforcement was effectuating different road
- 6 closures that day because of inauguration. Correct?
- 7 A. There were very hard road closures in place that
- 8 day. Yes.
- 9 Q. Okay. And you talked in Government's Exhibit 174
- 10 about a separate group of protesters at 13th and K while this
- 11 original group was in Logan Circle.
- 12 Do you recall that from Government's Exhibit 174?
- 13 A. I do.
- 14 Q. And do you recall you talking about or using the
- 15 words or asking, "Is this an anarchist-type or just protest?"
- 16 A. Correct.
- 17 Q. Now, back to your rolling road closures, when you
- 18 give your CDU units, civil disturbance units, to flank the
- 19 sides of the groups, not only are you stopping traffic, but
- 20 you're keeping the group marching forward. Correct?
- 21 A. That's -- if their intent is to continue to march
- 22 forward, we're facilitating cross traffic. Not only do we do
- 23 it with CDU. We often do it with a -- just on a -- day to
- 24 day with regular folks that are not in this capacity,
- 25 operating in a CDU capacity. Yes.

- 1 Q. Okay. And by closing those streets, it effectuates
- 2 them moving forward. Correct?
- 3 A. That's what our intent is. Yes.
- 4 Q. Okay. And in the radio run in Government's
- 5 Exhibit 174, you mentioned that you have -- and I think used
- 6 the word armada of vans. Correct?
- 7 A. I did say that.
- 8 Q. And those vans, they're not just vans. They're full
- 9 of CDU officers. Correct?
- 10 A. They carry seven officers in each van with
- 11 equipment. Yes.
- 12 Q. Okay. And if you wanted to create rolling road
- 13 closures, those officers could have gotten out of the van,
- 14 correct, to block intersections?
- 15 A. Yes.
- 16 Q. Okay. But they never got out of their vans to
- 17 facilitate a rolling road closure?
- 18 A. I never directed them to.
- 19 Q. And you testified that you were following behind
- 20 this group on 13th Street and you could see basically the
- 21 back of the group -- only the back of the group. Correct?
- 22 A. The back and off to the left and right, the
- 23 sidewalks.
- 24 Q. Okay. And you said that you saw some people break
- 25 away from the group and throw things or break things.

- 1 Correct?
- 2 A. People were breaking from the street onto the
- 3 sidewalks. Yes. Breaking things, throwing newspaper stands
- 4 and garbage cans out into the middle of the street.
- 5 13th Street and M, they lit a garbage can on fire. I saw
- 6 that.
- 7 Q. But at 13th and M, which is before 13th and
- 8 Massachusetts, according to our handy-dandy map over there,
- 9 you didn't ever try to divert your vans to get in front of
- 10 that group. Correct?
- 11 A. I wasn't trying to get in front. To get in front
- 12 for what purpose?
- 13 Q. To effectuate a rolling road closure.
- 14 A. I wasn't trying to effectuate a road closure at that
- 15 point to facilitate the group that was -- no. I wasn't
- 16 trying to do that. At that point, I wasn't trying to stop
- 17 the group by getting in front of them either.
- 18 Q. Okay. Now, as the individuals marched down
- 19 13th Street, they stretched at least a half to a full city
- 20 block. Correct?
- 21 A. Yeah. At least.
- 22 Q. And as you were looking at the back of the group,
- 23 the group was pretty spread out across 13th Street. Correct?
- 24 A. Yes.
- 25 Q. And so, basically, they were the whole width of

- 1 13th Street?
- 2 A. They had stragglers on the sidewalks. But they
- 3 occupied the majority of the roadway. Yes. In fact, it was
- 4 not passable roadway. They had the roadway, all lanes.
- 5 Q. And you couldn't tell specifically who was leaving
- 6 the group or who was joining the group.
- 7 You couldn't see that, could you?
- 8 A. I saw individuals break away from the group do
- 9 things, light a fire, grab a garbage can. Some did it right
- 10 in front of us. They'd grab garbage cans and throw them in
- 11 front of us and then they would go back into the middle of
- 12 the group. Yes. I saw that.
- 13 Q. But you testified on direct examination that you
- 14 weren't stopping anybody from leaving. Correct?
- 15 A. No. We weren't.
- 16 Q. But that assumes that then you saw people leave the
- 17 group. Correct?
- 18 A. I saw them break away from the group and join the
- 19 group. I don't know if anybody walked in a different
- 20 direction while I was tracking the group. No.
- 21 Q. Okay. So, by the same token, you don't know if or
- 22 when individuals joined the group. Correct? Maybe one of
- 23 those individuals from the sidewalk joined that group
- 24 marching down the street?
- 25 A. Oh, perhaps. Yes.

1 Q. Now, during your direct examination, I believe it
 2 is, you referred to the group moving together. Correct?
 3 A. Correct.
 4 Q. And I think you used the analogy school of fish, if
 5 I remember that. Correct?
 6 A. I did.
 7 Q. Don't demonstrators typically march together?
 8 A. They do.
 9 Q. So at about 10:35 on Government's Exhibit 174, I
 10 believe you call the use of Mark-46, which are those big
 11 OC sprays. Correct?
 12 A. Correct.
 13 Q. Do you remember at that point where the group was?
 14 A. No.
 15 MS. WELETZ: If we could get Government's
 16 Exhibit 174, 10:35.
 17 (Whereupon, segments of Government's Exhibit No. 174
 18 were published in open court.)
 19 MS. WELETZ: If we could pause.
 20 BY MS. WELETZ:
 21 Q. Now, using Government's Exhibit 174, do you have any
 22 reason to doubt that the use of Mark-46 began at
 23 approximately 13th and L Street?
 24 A. No. I'm sorry. Rephrase your question.
 25 MS. WELETZ: Can we have the volume, please. Let's

1 play that again. 10:35.
 2 This is why I stick with my board.
 3 (Whereupon, segments of Government's Exhibit No. 174
 4 were published in open court.)
 5 MS. WELETZ: Again, playing at 10:35 on Government's
 6 Exhibit 174.
 7 (Whereupon, segments of Government's Exhibit No. 174
 8 were published in open court.)
 9 MS. WELETZ: If that doesn't work, we'll just keep
 10 rolling.
 11 (Whereupon, segments of Government's Exhibit No. 174
 12 were published in open court.)
 13 MS. WELETZ: Don't worry about it. We'll move on.
 14 BY MS. WELETZ:
 15 Q. Now, Commander DeVilLe, to your knowledge -- to your
 16 knowledge, what streets in the area of L Street all the way
 17 down to New York and from 14th to 11th -- to your knowledge,
 18 which of those intersections were blocked?
 19 A. By traffic closures?
 20 Q. Correct.
 21 A. For the inaugural?
 22 Q. Correct.
 23 A. The -- H Street would have started what we call the
 24 green zone all the way down here.
 25 Q. Okay.

1 A. H Street. The way the road closures went, not to
 2 get into specifics, is that they -- the best way to describe
 3 it is they came up. They went east to west. They bumped up
 4 a block here and there, I believe, to I Street.
 5 So from what you just described, none of those were
 6 actually within the secure perimeter or the green zone that
 7 we had classified or the red zone.
 8 Q. So you indicated that this area, then, in Armento
 9 Exhibit 1 and, also, Government's Exhibit 301 where the
 10 arrows are signifying a route -- none of those were blocked
 11 for the inaugural. Correct?
 12 A. Down on the low end, there was some large blocking
 13 trucks in place around New York Avenue and down in that area.
 14 Q. So this area here on New York and H -- we've seen
 15 some video of MACK trucks parked.
 16 Is that where they were?
 17 A. They were down in that area. Yes. The other area
 18 was not a designated secure area for the inaugural.
 19 Q. So at New York and H, I'm going to put MACK trucks.
 20 I'm going to write that there.
 21 Now, you also indicate on direct examination that
 22 you yourself and your CDU squads blocked 11th and New York.
 23 Correct?
 24 A. We had a partial line that was able to get out at
 25 11th on New York Avenue.

1 Q. And I think you indicated that you didn't want these
 2 individuals going further down New York Avenue; so, that's
 3 why you created this partial line at New York and 11th.
 4 Correct?
 5 A. I think we had said at this point we needed to stop
 6 this march and we were trying to get in front of them --
 7 actively trying to get in front of this group and stop their
 8 forward movement. Yes.
 9 Q. And this line at 11th and New York, what was that
 10 made of? Was that made up of officers on motorcycles?
 11 A. As I recall, it was motorcycles and then some
 12 officers on foot as well.
 13 Q. So I'm going to use my red marker and mark some Xs
 14 by 11th and New York.
 15 So this is a partial -- this is an MPD line,
 16 correct, of police officers?
 17 A. Yes.
 18 Q. Okay. And, to your knowledge, was the south side of
 19 K and 13th Street blocked by National Guardsmen?
 20 A. No. The National Guard wasn't out there for any
 21 type of enforcement or blocking. They were out there for
 22 vehicular checks, traffic control.
 23 So I want to get to the point where you said
 24 blocked. There was road blockage.
 25 Q. Correct.

1 To your knowledge --
 2 A. Yes. But the -- the National Guard was staffing.
 3 Correct.
 4 Q. And, to your knowledge, was that roadblock for
 5 vehicles on the south side of K and 13th Street?
 6 A. Yeah. I think they did have that blocked moving
 7 down that direction.
 8 Q. So in red pen I'm going to put National Guard on
 9 13th Street.
 10 Now -- almost done, Commander. I'm sorry.
 11 Now, you testified -- and I just want to clarify
 12 this -- that you had squad cars with PA systems that day on
 13 January 20th. Correct?
 14 A. Correct.
 15 Q. And during Mr. McCool's cross-examination, at no
 16 point in time are those PA systems ever used to issue an
 17 order to disperse?
 18 A. Correct.
 19 Q. And did any of the officers -- let me back up.
 20 Is it typical for a CDU unit to have any type of
 21 megaphones or microphones with them?
 22 A. We normally issue a bullhorn to the CDU commanders,
 23 the platoon lieutenants. Yes.
 24 Q. And, to your knowledge, did anyone during that day
 25 use a bullhorn?

1 MS. KERKHOFF: Objection.
 2 THE COURT: The whole day?
 3 BY MS. WELETZ:
 4 Q. At any point during this protest, when you were
 5 following in your vehicle, did someone use a bullhorn?
 6 THE COURT: Meaning police?
 7 MS. WELETZ: Police.
 8 BY MS. WELETZ:
 9 Q. Did any of the CDU police units use the bullhorn
 10 that they are given?
 11 A. During this event?
 12 Q. Yes.
 13 A. No.
 14 Q. During all of the video that you've watched,
 15 including Government's Exhibit 174, did you ever witness or
 16 see a bullhorn on any police officer?
 17 A. Being used?
 18 Q. Yes.
 19 A. No, ma'am.
 20 Q. And your testimony -- and I believe it was shown in
 21 the video that Ms. Heine just showed -- you began to corral
 22 people at approximately L and 13th Street. Correct?
 23 A. I didn't see that in that video. Oh. At the end?
 24 Q. Correct.
 25 A. Yes. I believe we had information that they had

1 gotten a line formed at 12th --
 2 Q. Correct.
 3 A. -- and L. And we had that group on L Street. Yes.
 4 We were trying to put them all together. Yes.
 5 Q. And those individuals with the Mark-46 that were
 6 spraying towards the crowd and in front of them were -- you
 7 could hear them screaming, "Move, move, move" --
 8 A. Yes.
 9 Q. -- as they were being shot from behind?
 10 MS. KERKHOFF: Objection to the form of the
 11 question.
 12 BY MS. WELETZ:
 13 Q. Did you witness in the --
 14 THE COURT: Shot being the word?
 15 MS. KERKHOFF: Yes.
 16 THE COURT: Can you just rephrase that, please.
 17 BY MS. WELETZ:
 18 Q. As they were being sprayed with OC spray by the
 19 Mark-46 from behind, they were being told to move forward.
 20 Correct?
 21 A. Correct.
 22 Q. And your testimony was that you believed that about
 23 50 people, give or take, got away from the group at --
 24 between L and 13th and L and 12th. Correct?
 25 A. Based on the video. I can only base it on the video

1 that I saw --
 2 Q. Right.
 3 A. -- of the actual charge. I would guesstimate 50 --
 4 40 to 50.
 5 Q. And that was -- and, ultimately, about
 6 200 individuals were arrested. Correct?
 7 A. Correct.
 8 Q. So that would have -- that would mean that about
 9 250 people were at or around the intersection of 12th or
 10 13th and L. Correct?
 11 A. 230 were arrested. So that would be 280, if we --
 12 if we say my number is correct, the 50. Yeah. 280.
 13 Q. So that was approximately more than half of the
 14 people that you estimate were at Logan Circle. Correct?
 15 A. By my estimation, again, these numbers aren't hard
 16 numbers -- yes.
 17 Q. Thank you.
 18 MS. WELETZ: No further questions.
 19 THE COURT: Ms. Jacques.
 20 MS. JACQUES: Your Honor, our questions were covered
 21 through prior counsel. We have no additional questions.
 22 THE COURT: Thank you.
 23 Mr. Cohen.
 24 MR. COHEN: Thank you.
 25

CROSS-EXAMINATION

- 1
2 BY MR. COHEN:
3 Q. Good morning, Commander.
4 A. Good morning.
5 Q. I recall on direct you testified that you trained
6 other officers on the use of OC spray.
7 A. Yes.
8 Q. And you indicated that -- during that training that,
9 on several occasions, that you had been exposed to the spray?
10 A. Yes.
11 Q. And you had that spray exposed to you on all parts
12 of your body -- well, not all parts, but more than just your
13 face?
14 A. Yes.
15 Q. You were also exposed to different types of OC or
16 pepper spray. Right?
17 A. Yes, sir.
18 Q. And you had testified that you were trying to
19 determine the effect of these sprays on you?
20 A. During the testing and evaluation phase, yes, sir.
21 Q. And you also know that sprays have different
22 effects -- like the same kind of spray can have a different
23 effect on different people?
24 A. Yes.
25 Q. Now, is it fair to say that, during these training

- 1 sessions, that you were in a controlled setting?
2 A. There were some training sessions where we would
3 simulate a demonstration or aggressive demonstration and we
4 would throw objects at officers and then have those
5 grenadiers, as they've been described, deploy, one, for their
6 training, two, for the accuracy and -- as much as we could
7 mimic something that was actually taking place. But the
8 majority of them were in a controlled environment. Yes.
9 Q. But even when you're simulating, that's still a
10 controlled environment?
11 A. Yes.
12 Q. And you wouldn't be purposely deploying pepper spray
13 on officers during an event. Correct?
14 A. Not on -- no. Not on other officers. No.
15 Q. And that's because to point pepper spray on a
16 officer would probably make it difficult for them to do their
17 job. Right?
18 A. It can incapacitate. Yes.
19 Q. Okay. And that's part of the reason why riot gear
20 includes, like, face masks or helmets, so that that can defer
21 or deter the effect of pepper spray on officers in the field?
22 A. It's one of the reasons you have face shields and
23 things of that nature. Yes.
24 Q. And so it would effectively prevent officers in the
25 field from doing their job, if they were exposed?

- 1 A. Depending on the amount of exposure. As you said,
2 different people react differently. There's a small, small
3 portion of human beings that aren't affected by pepper spray
4 at all. But depending on the amount of exposure, yes, it
5 could disable you and you wouldn't be able to perform.
6 Q. Now, you had indicated --
7 MR. COHEN: The Court's indulgence. Sorry about
8 that. I thought I brought up a pen with me.
9 BY MR. COHEN:
10 Q. You had indicated that, after the large group of
11 individuals was kettled at 12th and L -- I don't know how I
12 can say encircled -- but they were enkettled at 12th and L.
13 Right?
14 A. Stopped, circled, kettled. Yes.
15 Q. And after they were stopped and circled or whatever,
16 you let reporters and -- or you had reporters and journalists
17 leave the kettle. Correct?
18 A. There were a few that were identified through
19 credentials that, yes, we had them leave. We allowed them to
20 leave.
21 Q. So they weren't arrested?
22 A. No.
23 Q. And they weren't searched. Correct?
24 A. Not to my knowledge. No.
25 Q. And the belongings weren't searched?

- 1 A. No. In fact, I think we show there's a few
2 immediately that were released. One large camera crew was
3 there.
4 And then I was approached later by Lieutenant
5 Anthony Washington, and he had identified at least several
6 members of the press had approached him or at least shouted
7 at him from the group that they were members. He approached
8 me, conferred with me.
9 I conferred with my immediate boss, "We have some
10 folks in here that are press. We're going to go ahead and
11 cut them out of here."
12 I then told Lieutenant Washington to release them.
13 Q. So nobody from these people who were released -- you
14 don't know if any of them had gas masks or goggles or
15 anything like that that could deflect the effect of pepper
16 spray?
17 A. I don't know.
18 Q. Even if someone has goggles or a mask, pepper spray
19 can still have some effect on your skin. Correct?
20 A. It can burn a little bit. Yes.
21 Q. As a liquid, it can go through clothing?
22 A. If you get enough on you, yes, it can soak through.
23 Yes.
24 Q. And it could remain on clothing or other materials
25 for several minutes or even an hour?

1 A. Oh, it can remain for longer than that. Yes. It
 2 can.
 3 Q. And when it remains, it can still have some negative
 4 effect on someone who touches it. Correct?
 5 A. If you get it on your sleeve and then wipe your eye,
 6 it's going to contaminate. Yes. It will burn.
 7 Q. You were the person primarily responsible during
 8 this demonstration for deploying units?
 9 A. Yes. I was the commander of this incident. Yes.
 10 Q. Right.
 11 And you also commanded other things such as the use
 12 of pepper sprays and sting-balls. Right?
 13 A. I was the overall commander. Yes.
 14 Q. At some point, you wanted to stop everybody in this
 15 group. Is that correct?
 16 A. Yes.
 17 Q. And there were several different people in the
 18 group. Right? There were demonstrators?
 19 THE COURT: So what's the question?
 20 BY MR. COHEN:
 21 Q. There were demonstrates in this group? There were
 22 several types of people in the group.
 23 The question is: Were there demonstrators in the
 24 group?
 25 A. When I decided to stop this group, the decision to

1 stop was based on riotous behavior. I wasn't differentiating
 2 who was demonstrating and who was rioting. The group was
 3 involved in riotous behavior, and I wanted to stop it.
 4 Q. Well, one thing you observed -- and I think you
 5 testified to it -- was that there were a number of people
 6 documenting. Correct?
 7 A. There were a lot of -- yeah. They were
 8 photographing, running around. Cell phones. But a lot of
 9 individuals with cameras, yes, on the periphery.
 10 I should say this: On the periphery, behind the
 11 periphery of the group, my core focus was the core group. So
 12 I know that it's hard. It was very chaotic out there.
 13 But you could differentiate those that were taking
 14 photographs from the sidewalk or running in the street and
 15 those that were with the group.
 16 Q. All right. And some of these people wore all black
 17 as well. Right? Some of these people who had cameras and
 18 journalists were --
 19 A. There were a lot of people -- I'm sorry. I'll let
 20 you finish.
 21 Q. There were a lot of people wearing black who was
 22 also documenting. Correct?
 23 A. A lot of people wearing all black had cameras and
 24 cell phones and things like that. Yes.
 25 Q. And is it your testimony that you couldn't see any

1 people documenting beyond the rear of the group?
 2 A. No. That's not my testimony.
 3 Q. So you saw people documenting further into the
 4 group, then. Is that what you're saying?
 5 A. Well, the core group. Again, I was behind. And, at
 6 times, as I described this school of fish, when they turned
 7 back on them, they would come right back past me. At a
 8 couple of intersections they literally went right around my
 9 vehicle.
 10 So the majority of the folks I saw, as you
 11 described, documenting, photographing, were on the periphery
 12 of the group.
 13 Q. And, in fact, in order to capture whatever was going
 14 on with the group, these people documenting had to be with
 15 the group. Right?
 16 A. If you're trying to capture what's going on in the
 17 group, yeah. You would want to be in the group.
 18 Q. Okay. And so, when you stopped the group, you let
 19 some of the journalists and -- well, some of the officers let
 20 a few journalists or reporters go initially. Right?
 21 A. Yes.
 22 Q. And then more were let go after you spoke to
 23 Lieutenant Washington. Correct?
 24 A. Those identified with media credentials. Yes.
 25 Q. So, then, you knew that not everybody in this group

1 was part of what you considered a riot. Correct?
 2 A. We knew we had some media folks in there. They
 3 were -- the cameraman was very visible from where I was
 4 standing. They were immediately released. I mean, he had a
 5 large television camera.
 6 Q. But they were in the group?
 7 A. But they were on the corner when we stopped
 8 everybody. It was easily discernible that they weren't a
 9 part of the riot. They were media.
 10 Q. So you know that -- when the people approached
 11 Lieutenant Washington, you knew that all of those people,
 12 you're testifying, was on the periphery at -- the whole time?
 13 A. No. That's not what I said.
 14 I said they were identified as not having been a
 15 part of the riotous group. They were media. And they were
 16 there on the -- I don't know whether they were on the
 17 periphery, but not in the core group. I don't know. But we
 18 identified the media, those that we could, and we let them
 19 go.
 20 Q. So after the group is now surrounded or kettled, you
 21 had indicated that people approached specifically Lieutenant
 22 Washington -- journalists and reporters -- seeking to be
 23 removed from the group. Is that right?
 24 A. I just know that Lieutenant Washington came to me
 25 and said that there were a couple reporters that had shouted

1 to him from where he was at, his location -- and, again, he
 2 was a supervisor; so, he was along the line with his folks --
 3 and said they were reporters.
 4 And they had media credentials. He came to me with
 5 it, and we determined that, with those credentials, go ahead
 6 and let them go.
 7 Q. Do you know where in the group Lieutenant Washington
 8 was at that time?
 9 A. From where I was standing and where he pointed, if
 10 you're looking directly at the group -- it's hard to
 11 describe -- they're on the corner. So you know they're on
 12 the northwest corner. Right?
 13 Q. Why don't you use Armento 1, please, and describe
 14 that. That would probably be easier.
 15 A. Sure. I can do that.
 16 Ultimately, it was stopped here. The majority of
 17 the group was on this sidewalk right here.
 18 Q. That would be the northwest corner?
 19 A. The northwest corner.
 20 Lieutenant Washington was then back on this side
 21 towards the wall -- towards the building wall.
 22 Q. On the north sidewalk?
 23 A. Yes.
 24 Q. You were not aware if the officers in that area,
 25 besides Lieutenant Washington, warned anybody that, if they

1 were not -- let me ask it differently.
 2 Did anybody warn the people in the kettle before
 3 being arrested that they would be arrested?
 4 A. As soon as we got them in, as soon as we -- before
 5 we stopped all of them?
 6 Q. No. As soon as -- after the charge and the kettle
 7 was formed -- right? -- there was a solid police line after
 8 the charge. Right?
 9 A. Correct.
 10 Q. After that time, did anybody announce to the group
 11 that they were under arrest?
 12 A. I did.
 13 Q. You went on a bullhorn --
 14 A. I walked from one circle around the group to the
 15 other, told every officer nobody's to leave, and I looked at
 16 the group and I said three times, "You are all under arrest."
 17 I shouted three times, "You are all under arrest."
 18 Q. And did you also shout that people who are
 19 journalists should show credentials and be permitted to leave
 20 at that time?
 21 A. I did not say that.
 22 Q. Now, you indicated that, in order to leave the
 23 kettle, that you required or Lieutenant Washington required a
 24 showing of press credentials?
 25 A. What my -- my statement to the lieutenant was,

1 "Verify and, if -- once verified, go ahead and release them."
 2 Q. So it didn't necessarily include having press
 3 credentials?
 4 A. It was his -- his discretion -- I trusted Lieutenant
 5 Washington -- his discretion that they would have press
 6 credentials or that he could verify. My directive was
 7 verify.
 8 And any of those -- I relayed that information to
 9 Chief Greene. "If we verify media, we will cut them loose."
 10 And he was -- and that's the way we proceeded.
 11 Q. So there were other ways to verify other than having
 12 a press badge?
 13 A. Not normally. No. Well, if you know them. I mean,
 14 we know several members of the media. We know them from the
 15 city and have seen them in certain aspects of our day-to-day
 16 professional lives. But the norm, if we do not, is press
 17 credentials.
 18 Q. And are you aware that press credentials can pretty
 19 much come from a variety of sources?
 20 A. Yes.
 21 Q. There's no central database for press credentials.
 22 Right?
 23 A. Unfortunately, no. There's not. You have
 24 independent press, mainstream media press, Internet. So
 25 there's a variety.

1 Q. Does MPD issue media passes?
 2 A. Not that I'm aware of. No.
 3 Q. You're aware that there's actually a statement by
 4 MPD saying that they don't issue media passes?
 5 A. Yeah. Correct. From PIO.
 6 Q. So it's your testimony that either someone from the
 7 police force needed to know the reporter or journalist before
 8 letting them go or they needed some sort of press
 9 credentials?
 10 A. That we could verify. Yes. Yes.
 11 Q. So let's talk about press credentials just for a
 12 brief moment.
 13 I had said that there's several ways or several
 14 different organizations that issue press credentials. Right?
 15 A. Correct.
 16 Q. So they could be issued by press organizations such
 17 as the National Press Club?
 18 A. AP, ABC, *Washington Post*. Those are very
 19 recognizable credentials because there is no -- we don't
 20 issue them, the police department. They have people that
 21 make their own.
 22 Just simply put, you know, a name. There's a lot of
 23 press out there now with the Internet. There's a lot of
 24 different info sites and things of that nature.
 25 Q. And those groups also issue press credentials?

- 1 A. Yes, they do.
- 2 Q. So even like small organizations do so?
- 3 A. Yes.
- 4 Q. And the Government gives out press credentials such
- 5 as Congress or the White House or the Supreme Court, is that
- 6 correct, or even the Department of Justice?
- 7 A. I -- I imagine. Yes. You have to have certain
- 8 credentials to get into certain places. Yes.
- 9 Q. Right.
- 10 And for those kind of credentials you need to get
- 11 kind of a background check. Right?
- 12 THE COURT: So, Mr. Cohen, can we zero in on matters
- 13 relevant to this case that would be within the actual
- 14 knowledge of this particular witness?
- 15 MR. COHEN: Yes, your Honor. I'll change a little
- 16 bit.
- 17 BY MR. COHEN:
- 18 Q. You're not aware of the standards that you need to
- 19 obtain a press badge?
- 20 A. No, sir. I'm not.
- 21 Q. And you're aware of, like, a trend, even in your
- 22 experience as a commander, that there are more independent
- 23 journalists out there documenting these types of things.
- 24 Right?
- 25 A. That's correct.

- 1 MR. COHEN: The Court's indulgence.
- 2 Just a couple more questions.
- 3 BY MR. COHEN:
- 4 Q. Were you aware that there were credentialed
- 5 reporters that were ultimately arrested in this kettle?
- 6 MS. KERKHOFF: Objection, your Honor.
- 7 THE COURT: Basis?
- 8 MS. KERKHOFF: Relevance.
- 9 THE COURT: I'll sustain the objection.
- 10 MR. COHEN: May we approach? You said sustain?
- 11 THE COURT: In other words, you're asking
- 12 post-arrest questions and what he became aware of. I'm
- 13 sustaining the objection.
- 14 MR. COHEN: I have no further questions.
- 15 THE COURT: Ms. Kropf.
- 16 For counsel's information, I have to break at about
- 17 12:29 and a half for lunch.
- 18 CROSS-EXAMINATION
- 19 BY MS. KROPF:
- 20 Q. Good afternoon, Commander DeVile.
- 21 A. Good afternoon.
- 22 Q. My name is Sara Kropf, and I represent Brittné
- 23 Lawson.
- 24 Now, did I hear you testify correctly this morning
- 25 that there was only one injury reported by all the protesters

- 1 on January 20th during this march?
- 2 A. I testified that I was only aware of one injury for
- 3 all of the arrestees.
- 4 Q. Okay. And you were the commander that day, though.
- 5 Right?
- 6 A. Yes.
- 7 Q. Wouldn't your officers make you aware if someone who
- 8 was arrested was injured?
- 9 A. Well, to define, I was the commander of the
- 10 operational assets for this incident. When we brought in our
- 11 high-volume arrest teams, that falls to another unit in
- 12 another division.
- 13 Once they're brought in and I brief them, it is --
- 14 the actual arrests are then transferred. I identify those
- 15 that will handle the arrest from my operational assets.
- 16 They actually do the processing -- the handcuffing,
- 17 the processing. So they would have made their officials
- 18 aware and possibly not me directly. Correct.
- 19 Q. Okay. So am I correct that you were in charge of
- 20 this group of protesters before they were processed for
- 21 arrest? Is that fair to say?
- 22 A. That's fair to say.
- 23 Q. Okay. So if someone was -- had an injury before
- 24 they were processed for arrest, I assume your officers would
- 25 make you aware of it. Correct?

- 1 A. If somebody reported that injury, yes.
- 2 Q. Okay. And by "somebody" I mean the -- we're talking
- 3 about the protesters. Right?
- 4 A. We're talking about an arrestee.
- 5 Q. An arrestee. Fair enough.
- 6 And you arrested the protesters who were kettled
- 7 that day at 12th and L. Right?
- 8 A. I arrested a group that were stopped that day, yes,
- 9 kettled that day at 12th and L. Yes.
- 10 Q. Now, there is an MPD policy that covers giving
- 11 medical care for people who are arrested. Right?
- 12 A. Yes.
- 13 Q. Because it's fair to say that MPD isn't going to
- 14 just arrest someone who's seriously injured and not get them
- 15 medical care. Correct?
- 16 A. Correct.
- 17 Q. And MPD officers have to fill out a form if someone
- 18 who they're arresting is injured or needs hospitalization.
- 19 Correct?
- 20 A. Correct.
- 21 Q. And is that -- I hope I have this right -- a PD 313?
- 22 A. PD Form 313. Yes.
- 23 Q. Did you review any PD Form 313s from the time you
- 24 were under command of this group?
- 25 A. No.

1 Q. Did you ask to review any?

2 A. I had no -- the review of the 313s would have been
3 done by the processing unit, depending on what point they
4 determined that the individual was injured.

5 My understanding was we had one for a sprained
6 ankle. That individual was transported to Howard Hospital,
7 the arrestee, and then refused to give any additional
8 information on the injury.

9 Q. How did you learn about the sprained ankle? Is it
10 because that happened during the kettle and before the person
11 was processed for arrest?

12 A. No. I inquired as to how many individuals were
13 hurt -- how many individuals during the arrest were injured
14 or were reporting injury.

15 I was told it was one. There was a 313 for one
16 reported sprained ankle and she refused -- it was a female --
17 and refused at Howard University.

18 She refused to provide further information on how
19 the ankle was sprained. That was the totality of what was
20 reported to me with regards to injuries.

21 Q. Okay. It sounds like you inquired to find out how
22 many injuries had happened at that time.

23 A. I did. I did.

24 Q. So were you aware that a protester named Raghav
25 Sharma -- or an arrestee named Raghav Sharma who had his

1 Q. And are you aware that a protester made Kaitlyn Ann
2 Rorke was hospitalized for shrapnel injuries after being hit
3 with a sting-ball? Were you made aware of that?

4 A. No, I was not.

5 Q. In fact, were you ever made aware there were several
6 people who were hospitalized for shrapnel injuries that day?

7 A. Shrapnel? No, I wasn't.

8 Q. By "shrapnel," I mean the -- maybe I wasn't --

9 A. The rubber pellets?

10 Q. Yeah. The rubber pellets that explode out of the
11 sting grenade. That's what I mean.

12 A. No. I wasn't made aware. But, as I testified, I
13 was made aware of the one injury that I testified to. These
14 other injuries I was not made aware of.

15 Q. You weren't made aware of them at all?

16 A. I wasn't told about them. No.

17 Q. Okay. Thank you.

18 MS. KROPF: No further questions.

19 THE COURT: Redirect.

20 MS. KERKHOFF: Thank you.

21 REDIRECT EXAMINATION

22 BY MS. KERKHOFF:

23 Q. Commander, are you aware that Kaitlyn Rorke was the
24 individual who complained of a sprained ankle and was taken
25 to Howard Hospital?

1 contact lens forced into the back of his eyeball from pepper
2 spray -- that he asked to get medical help that day?

3 A. I was not aware.

4 Q. Are you aware that there was a medic that day trying
5 to help Mr. Sharma get medical care for that contact lens and
6 that several officers refused to get medical care for him?

7 A. A medic as in a fire department medic?

8 Q. No. A medic with the group of marchers.

9 A. I wasn't aware of that. No.

10 Q. You weren't aware that there were medics with the
11 marchers or you weren't aware of this incident?

12 A. I'm aware that there are those that identify
13 themselves with a red cross that they're medics. I'm not
14 sure -- I can't testify as to whether they are actual trained
15 medics or they're willing to provide water for pepper spray.
16 I'm not clear on that yet.

17 Q. Fair enough. We'll make that clear.

18 But I also want to find out, were you aware that
19 Mr. Sharma with a medic asked police at the kettle for
20 medical care for his eyeball and several of the officers
21 refused to get him medical care? Are you aware of that?

22 A. No, I'm not.

23 Q. So none of your officers told you about that
24 incident, I take it.

25 A. I was not made aware of that.

1 A. I was not aware of the name. No.

2 Q. But you're aware of one individual who was taken to
3 Howard Hospital. Correct?

4 A. I am aware of that.

5 Q. So if Ms. Kropf asked you the name of the
6 individual, do you know whether or not that was the same
7 person you were made aware of that went to the hospital and
8 who refused to provide further information?

9 A. I was not aware of the name. I was aware that an
10 individual had claimed injury to an ankle and was taken to
11 the hospital. Yes.

12 Q. Mr. Cohen asked you a number of questions about
13 credentials, and I'll just ask you one about that.

14 If someone who was arrested as part of the group
15 presented fake credentials and a false name, would they have
16 been released?

17 A. No.

18 Q. Now, Commander, Ms. Heine during her cross showed
19 you a total of about 83 seconds of the riot, her clips on the
20 on video.

21 Would you agree with that?

22 A. That sounds about right.

23 Q. What was the total duration from start to finish of
24 what you deemed a riot?

25 A. From the start of the march to the -- it wasn't a

1 riot until I -- until the damage. 20-plus minutes, I guess.
 2 33 minutes from the start to the end. 20 -- I guess
 3 20 minutes.
 4 Q. 20 minutes from -- about 20 minutes when you deemed
 5 it a riot?
 6 A. I -- not -- I'm not exact, ma'am. But that's
 7 probably about right.
 8 Q. Okay. Now, Ms. Heine also showed you some pictures
 9 of certain individuals.
 10 Do you recall the one that she showed you of the man
 11 on the pink bike?
 12 A. I do.
 13 Q. During the course of your investigation, were you
 14 aware that that man attended the planning meeting on
 15 January 8th, 2017, where the need for bike scouts was
 16 discussed?
 17 A. I was not.
 18 Q. Now, you've been asked a lot of questions about the
 19 SOP, the standard operating procedures, last week and a bunch
 20 more today.
 21 Do you recall that?
 22 A. Yes, ma'am.
 23 Q. And Mr. McCool even presented you with the standard
 24 operating procedures and had you read portions of it.
 25 Do you recall that?

1 A. Yes.
 2 Q. I'm going to show you the same copy that was
 3 presented as Harris No. 3.
 4 Now, on Page 2, Mr. McCool put up a number of
 5 paragraphs, the first paragraph, the second paragraph, the
 6 fourth paragraph.
 7 Do you recall that?
 8 A. Yes.
 9 Q. Mr. McCool did not display the third paragraph
 10 contained therein.
 11 Do you see the third paragraph that I have
 12 highlighted for you?
 13 A. Yes, ma'am.
 14 Q. And just so we have a complete understanding, can
 15 you read that paragraph from the standard operating
 16 procedures.
 17 A. "It is impossible to devise specific standard
 18 operating procedures for handling all possible situations for
 19 each has its own characteristics and challenges.
 20 "The overall police philosophy must be one of
 21 moderation, flexibility and controlled response. Since each
 22 situation is unique, both commanding and supervisory
 23 officials must plan to respond according to the nature and
 24 size of the crowd.
 25 "Tactical procedures established within this manual

1 are a guide and not a substitute for the exercise of sound
 2 judgment and proper command and supervision within the
 3 context of general department policy."
 4 Q. Thank you, Commander.
 5 Now, on January 20th, 2017, were you exercising your
 6 judgment that day?
 7 A. Yes, ma'am.
 8 Q. Now, a couple additional questions that have been
 9 asked.
 10 Mr. McCool placed up a portion of that standard
 11 operating procedure and said that you may not arrest someone
 12 for parading without a permit.
 13 Do you recall that?
 14 A. I do.
 15 Q. But those were not your words. Correct? You said
 16 you do not enforce that?
 17 A. Correct.
 18 Q. What's the difference?
 19 A. The difference is that the law does exist. The
 20 Metropolitan Police Department has issued a policy saying
 21 that we shall not enforce that law and we do not enforce the
 22 parading-without-a-permit statute.
 23 Q. Now, on January 20th, 2017, approximately how many
 24 events, permitted or unpermitted, were you responsible for
 25 dealing with that day?

1 A. I was responsible for dealing with all events
 2 related to civil disturbance, First Amendment assemblies, be
 3 they permitted or unpermitted.
 4 There were many permitted. And when I mean
 5 permitted, I mean an application process was received and
 6 processed and we knew what they would do.
 7 And many more that -- were unpermitted along the
 8 checkpoints, the civil -- some passive-resistance civil
 9 disobedience taking place at checkpoints throughout.
 10 But, overall, I was responsible for the majority of
 11 the First Amendment assemblies and events that were taking
 12 place in the city.
 13 Q. And about how many do you recall occurred that day?
 14 A. Hundreds -- dozens. Hundreds.
 15 Q. And on the morning of January 20th, before this
 16 group stepped off at Logan Circle, were you exercising your
 17 judgment within the standard operating procedures for how you
 18 dealt with those?
 19 A. Yes. I'd been doing it all morning.
 20 Q. Did you ever have to deal with any llamas?
 21 A. I did.
 22 Q. Can you explain.
 23 A. Individuals showed up at 14th and E Street with
 24 llamas. We had three llamas. We notified the -- they
 25 were -- we notified the Department of Health, who was very

1 concerned.

2 And they came down and they were used as a part of

3 a -- it was a First Amendment. It was a part of a protest.

4 His individual protest was to bring llamas to the checkpoint.

5 Q. Now, in the standard operating procedures we spent

6 so much time on for two days, where is there a provision

7 about llamas or animals being brought to demonstrations?

8 A. It's outside the box. That was -- there is no

9 provision for that.

10 Q. Well, let me just ask you, Commander: Prior to the

11 stopping of the group at 10:52 a.m., how many individuals did

12 you authorize the arrest for that day?

13 A. Prior to that?

14 Q. Yes.

15 A. None.

16 Q. Now, you had a lot of questions about facilitating

17 road closures and whether or not you did that. I want to

18 pull up Government's Exhibit No. 140-C, which is the DDOT

19 video previously provided. I'm going to show you timestamp

20 1:15 to 2:10. I direct your attention to the screen.

21 MS. KERKHOFF: For the record, Government's

22 Exhibit 140-C is a DDOT camera located at 13th Street and

23 K Street Northwest.

24 (Whereupon, segments of Government's Exhibit

25 No. 140-C were published in open court.)

1 BY MS. KERKHOFF:

2 Q. Do you see that marker?

3 A. Yes.

4 MS. KERKHOFF: If we could go ahead and play.

5 (Whereupon, segments of Government's Exhibit

6 No. 140-C were published in open court.)

7 BY MS. KERKHOFF:

8 Q. As this plays for about the next 55 seconds, what is

9 it we're looking at, Commander?

10 A. We're looking at a protest at 13th and K Street

11 Northwest. It appears to be moving eastbound on K Street, I

12 guess.

13 Q. Was this permitted or unpermitted, to your

14 knowledge?

15 A. To my knowledge, this was unpermitted.

16 Q. And it's moving in the street. Is that right?

17 A. It's moving in the street?

18 Q. Yes.

19 A. Yes.

20 Q. And impeding traffic?

21 A. It's moving past -- yes. Traffic had to stop for

22 the march.

23 Q. And coming up now we see a single vehicle following

24 behind.

25 Do you know what that vehicle is?

1 A. That's a police officer monitoring this group. We

2 were stretched, I know, relatively thin. So we had a lot of

3 these marches. Those that were of this nature, we monitored

4 them.

5 We couldn't provide the rolling road closures with

6 all the officers that were down at the checkpoints that were

7 being blocked up and the need to pull other CDU resources.

8 So we monitored. Fortunately, a lot of folks in the

9 city kept traffic light on Inauguration Day.

10 Q. To your knowledge, was any violence or disruption

11 caused by this group at 13th Street and K?

12 A. No.

13 MR. COHEN: Objection. Relevance.

14 THE COURT: Overruled. I think it's within the

15 scope of cross.

16 BY MS. KERKHOFF:

17 Q. Commander, your answer?

18 A. No. No reports of any violence or destruction from

19 this group.

20 Q. Now, I just want to move forward just a couple

21 minutes at this same intersection from 5:25 7 minutes in.

22 Do you recognize what we're looking at here?

23 A. Yes.

24 Q. What is this?

25 A. This is the front of the Disrupt J20 march that had

1 stopped out of Logan Circle.

2 Q. And directing your attention to the top part of the

3 screen, do you see where newspaper stands and trash cans are

4 located where the group that we just observed passed along

5 K Street?

6 A. Yes.

7 Q. Are those still in place?

8 A. No. They're being thrown into the street.

9 (Whereupon, segments of Government's Exhibit

10 No. 140-C were published in open court.)

11 BY MS. KERKHOFF:

12 Q. Commander, you also see someone in a light blue

13 jacket and a green hat just walk by those broken-down and

14 into-the-street newsstands. Correct?

15 A. Yes.

16 Q. Did you just see that?

17 MS. KERKHOFF: If we could continue playing,

18 Mr. Qureshi. Just advance it to 7:15, please.

19 (Whereupon, segments of Government's Exhibit

20 No. 140-C were published in open court.)

21 BY MS. KERKHOFF:

22 Q. What do we see at 7:15?

23 A. The officers are -- now we're coming in. We're

24 trying to remove a specific individual. We're trying to

25 move -- remove -- clear our path so we can drive. Things

1 were thrown all out in the middle of the street in front of
2 us. These are the vans coming through.

3 Q. And could the vans get in front of this group?

4 A. At that time, we really -- maneuvering around was
5 very difficult. But, no, we couldn't get in front of them at
6 this point.

7 MS. KERKHOFF: Thank you, Mr. Qureshi.

8 BY MS. KERKHOFF:

9 Q. Now, I want to direct your attention to a couple of
10 questions that were asked about your observations at Logan
11 Circle.

12 When you arrived at Logan Circle, I believe we heard
13 on the radio you were asked about you saying, "Is this an
14 anarchist-type or just a protest?"

15 Why were you asking those questions about other
16 demonstrations going on in the area?

17 A. I wanted to gauge what type of crowd I was dealing
18 with. There's different -- the intelligence information I
19 had for the Logan Circle was that this was going to be a
20 volatile group. The intention was volatile. The signage was
21 volatile. No peaceful transition.

22 But the intelligence I had was this group -- there
23 was going to be civil disobedience within this group.

24 Q. And you said that -- did anyone from the group
25 approach you, identify their route, identify any assistance

1 in terms of road -- rolling road closures when you were at
2 Logan Circle?

3 A. No.

4 Q. Now, what was your information about when the group
5 would -- actually was scheduled to step off and move off of
6 Logan Circle?

7 A. We didn't have hard information. I had heard 10:00
8 to 10:30, which is why I got up there by 10:00 to assess what
9 was going on.

10 But, again, the information we had wasn't clear as
11 to where they were going, what they might be doing. My
12 information up to that morning was that this would be a
13 problematic group.

14 THE COURT: Ms. Kerkhoff, I do need to stop now,
15 unfortunately.

16 Ladies and gentlemen, I have a meeting outside the
17 building that I have to go to. And so I just have to stop
18 now.

19 We'll have to break until 2:05.

20 So, sir, I'm -- well, I'm going to excuse the ladies
21 and gentlemen at this time until 2:05. Thank you. Have a
22 good lunch.

23 Can we get some help, Ms. Weletz, with the easel.

24 MS. WELETZ: Oh, yes.

25 THE COURT: Thank you so much.

1 MS. WELETZ: Thank you.

2 (Whereupon, the jury exited the courtroom at
3 12:28 p.m. and the following proceedings were had:)

4 THE COURT: Sir, I'll excuse you until five after
5 2:00. Please don't discuss your testimony with anyone.

6 THE WITNESS: Yes, your Honor.

7 (Witness excused.)

8 THE COURT: I will see you all at five after 2:00.

9 Thank you.

10 MR. McCOOL: Thank you, your Honor.

11 (Thereupon, a luncheon recess was taken, after which
12 the following proceedings were had:)

13 THE COURT: Good afternoon.

14 MS. KERKHOFF: Good afternoon, your Honor.

15 MR. QURESHI: Good afternoon.

16 THE COURT: I apologize for the delay.

17 THE DEPUTY CLERK: Re-calling from your Honor's
18 trial calendar United States versus Brittne Lawson, et al.,
19 2017 CF2 1256.

20 THE COURT: Both Government counsel are here.

21 It looks like everybody from the morning is here,

22 except Mr. Portnov.

23 MS. KROPF: Mr. Portnov will be right back.

24 THE COURT: Can we have the commander back on the
25 stand, please.

1 MS. KERKHOFF: Yes.

2 THE COURT: And we'll get the jury.

3 (Thereupon, the witness entered
4 the courtroom and the following
5 proceedings were had:)

6 THE COURT: Good afternoon.

7 THE WITNESS: Good afternoon, your Honor.

8 (Thereupon, Mr. Portnov entered

9 the courtroom and the following
10 proceedings were had:)

11 (Whereupon, the jury entered the courtroom at
12 2:24 p.m. and the following proceedings were had:)

13 THE COURT: Sir, you can have a seat.

14 THE WITNESS: Thank you.

15 THE COURT: Commander DeVille is back on the stand
16 on redirect.

17 I'll remind you you're still under oath.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Let's pick back up.

20 MS. KERKHOFF: Thank you.

21 BY MS. KERKHOFF:

22 Q. Commander DeVille, I have just a couple more areas
23 to follow up on.

24 The first is, when we left off on Thursday

25 afternoon, Mr. McCool was cross-examining you.

1 Do you recall that?

2 A. I do.

3 Q. And Mr. McCool made several allegations about what

4 he said was your biases or -- against certain individuals.

5 Do you recall that line of questioning?

6 A. I do.

7 Q. And you testified that you were disciplined as part

8 of an EEO investigation.

9 Do you recall that testimony?

10 A. Yes.

11 MS. KERKHOFF: And just to be clear, counsel,

12 referring to the report previously provided.

13 BY MS. KERKHOFF:

14 Q. The investigation found no evidence that you

15 subjected anyone to a hostile work environment. There was no

16 evidence that anything you said about the three statements

17 you made was meant to be derogatory or discriminatory and

18 that your conduct did not violate Title VII of the Civil

19 Rights Act or the District of Columbia human rights statue.

20 Was that the finding?

21 A. Yes, ma'am.

22 Q. The finding was, however, that you violated a

23 general order because you used language that might be

24 interpreted as derogatory, disrespectful or offensive to the

25 dignity of any person. Correct?

1 A. Correct.

2 Q. For that, you were disciplined. Correct?

3 A. I was.

4 Q. Do you hold any animosity or bias against anyone in

5 this case?

6 A. No, ma'am.

7 Q. Or anyone at all?

8 A. No.

9 Q. Now, let me ask you this: You were also asked a lot

10 of questions about lawsuits and the OPC, Office of Police

11 Complaints, investigation, or PCP is what's it's called.

12 Do you recall that?

13 A. It's OPC. Yes.

14 Q. And just to be clear, the preliminary recommendation

15 by OPC said there may be potential violations. Correct?

16 A. Correct.

17 Q. They didn't make a finding. Is that right?

18 A. That's -- no final finding. Correct.

19 Q. And that's because in the report they acknowledged

20 they hadn't reviewed body-worn camera or videos; they hadn't

21 conducted interviews. Correct?

22 A. I believe the report was filed in February after the

23 January 20th event. So, correct, they hadn't done all those

24 things.

25 Q. So what they were requesting was funding so they

1 could perform that investigation. Is that correct?

2 A. Correct.

3 Q. Now, Mr. McCool listed off for you the potential

4 violations they cited, having not done an investigation yet,

5 and he said that those occurred after or at a later time from

6 the arrests.

7 Do you recall that?

8 A. I do.

9 Q. What happened after 11:00 a.m.?

10 A. While the arrests were taking place, a lengthy

11 process, a group of individuals -- well, on three sides

12 approached the lines -- the police lines.

13 We had individuals that were -- the 230 that were

14 being placed under arrest by the processing unit and we had

15 perimeter lines in place, security personnel.

16 And, at that point, the crowd that then came back

17 began throwing bricks and rocks at the police officers,

18 repeatedly throwing bricks and rocks, in fact, threw a smoke

19 grenade into the police lines -- or over the police lines.

20 And it started all over again. Only this time it

21 was directly targeted at the police.

22 Q. And how many officers were injured as a result of

23 the events after 11:00 a.m.?

24 A. Six, that I know of.

25 Q. What kinds of injuries?

1 A. Sergeant Sean Hill was knocked unconscious with a

2 brick to the head and taken to a hospital.

3 We had an officer, I believe, that went -- one

4 officer had a broken wrist from earlier. We had multiple

5 officers with severe contusions. I think we had a fractured

6 hand. Those with the notable ones.

7 Q. Now, Mr. --

8 THE COURT: Can I just ask you to approach on that.

9 MS. KERKHOFF: Yes, ma'am.

10 (Whereupon, the following proceedings were had at

11 side-bar outside the presence of the jury:)

12 THE COURT: So this stuff after 11:00 a.m., he says

13 people approach on all three sides, I guess.

14 Is that arrestees or people not arrestees?

15 MS. KERKHOFF: Not arrestees.

16 THE COURT: By definition, that's not the people

17 being arrested?

18 MS. KERKHOFF: Correct. I can clarify that.

19 THE COURT: Could you clarify that, please.

20 MS. KERKHOFF: Yes. Sure.

21 (Whereupon, the following proceedings were had in

22 open court:)

23 BY MS. KERKHOFF:

24 Q. Commander DeVille, when you said that people

25 approached on three sides, these are not the individuals

1 being arrested. Correct?

2 A. No. The individuals being arrested were -- at that
3 point, we had literally sat down -- or we had no further
4 action from that group with regards to violence. There was
5 no pushback.

6 From the corner -- there's a park at 11th and L.
7 They gathered in the park. They gathered on --

8 THE COURT: Just let Ms. Kerkhoff clarify this one
9 thing.

10 THE WITNESS: Okay.

11 BY MS. KERKHOFF:

12 Q. So it was other individuals who came to the line
13 where police had detained the individuals being arrested at
14 12th and L. Is that correct?

15 A. That's correct.

16 Q. Have you ever heard the term "jail solidarity"?

17 A. I have.

18 Q. Are you aware of whether or not through the course
19 of this investigation individuals called coming back to that
20 jail solidarity?

21 A. I do believe they did. Yes.

22 Q. And throwing the bricks: Do you know what they call
23 that?

24 THE COURT: I'm just going to ask you to move on,
25 since it wasn't the persons charged in this case who have any

1 years in correctional and jail facilities against

2 noncompliant riotous inmates."

3 Q. Now, Commander DeVille, you were asked a number of
4 questions about when you determined that the group that
5 stepped off from Logan Circle was engaging in a riot.

6 Do you recall that line of questioning?

7 A. Yes.

8 Q. And you testified on cross that you believed it was
9 around the time of the limo and it was when you called out
10 over the radio, "This is a riot."

11 Do you recall that?

12 A. I do.

13 Q. Now, for purposes of orienting you, I'm going to
14 pull up Government's Exhibit 174, starting at 14:51.

15 Before we begin, the radio run or the radio audio
16 that's captured on here is actually coming in realtime from
17 the body-worn camera that's displayed in the video on the
18 bottom of the screen. Is that correct?

19 MR. McCool: Objection. Leading.

20 THE COURT: Overruled.

21 BY MS. KERKHOFF:

22 Q. When you listened to this, it was coming from
23 actually the body-worn camera. Correct?

24 A. I believe. Yes.

25 MS. KERKHOFF: If we could play at 14:51.

1 association with that.

2 BY MS. KERKHOFF:

3 Q. Now, you were shown Harris Exhibit No. 19, the
4 manufacturer's material for what they call the stinger
5 grenade.

6 Do you recall being shown this by Mr. McCool?

7 A. Yes, ma'am.

8 Q. Okay. On Harris 19, Mr. McCool read portions of
9 this such as, "Improper use of stinger grenades can result in
10 death or serious bodily injury."

11 Do you recall that line of examination?

12 A. I do.

13 Q. Now, Mr. McCool did not read other portions. I'd
14 like to direct your attention to this line here.

15 Can you read the specifications, discussion,
16 starting on the fourth paragraph, left side.

17 A. "As a pain-complaint distraction and disorientation
18 device for crowd management, it may be hand-thrown or
19 launched in the general direction of the crowd. It may be
20 deployed for ground burst or aerial burst at the discretion
21 of the operator.

22 "This is generally reserved as a last selection when
23 chemical agents and less lethal impact munitions have not
24 resolved disorder or routed the crowd.

25 "It has been used quit successfully for several

1 (Whereupon, segments of Government's Exhibit No. 174
2 were published in open court.)

3 MS. KERKHOFF: Pause.

4 BY MS. KERKHOFF:

5 Q. I'm pausing at 15:15 into this.

6 Does that refresh your recollection for how long
7 this had gone on before you deemed it a riot?

8 A. Yes, ma'am.

9 Q. And that was about 14 minutes in. Is that correct?

10 A. 14 minutes in.

11 Q. Now, you were asked a lot of questions about why you
12 didn't just ask people to go home and give a dispersal order.

13 Do you recall those questions?

14 A. I do.

15 Q. Well, during the course of both the video as well as
16 your memory on scene, how loud were the sirens that MPD was
17 using?

18 A. The video is very indicative. It was loud. It was
19 chaotic. The combination of the sirens with the crowd noise,
20 the yelling, the chanting, it was a very chaotic, noisy
21 scene. The entire event was chaotic and noisy.

22 Q. And could those sirens be heard --

23 A. Yes.

24 Q. -- that day?

25 A. I believe they could. Yes.

1 Q. And based on what you were seeing on the ground that
2 day on January 20th, 2017, with the sirens and the police
3 presence and the use of spray, is there any doubt in your
4 mind that you were not informing people that they were going
5 to be detained and stopped by the police?

6 A. No.

7 MR. McCOOL: Objection, your Honor.
8 Go ahead. I'm sorry. Go ahead.

9 THE COURT: So you're not objecting?

10 MR. McCOOL: Withdrawn.

11 THE COURT: Withdrawn. Okay.

12 THE WITNESS: I'm sorry. Could you say that one
13 more time, ma'am.

14 BY MS. KERKHOFF:

15 Q. With the police presence, with the sirens, with the
16 lights, with the use of spray, is there any doubt in your
17 mind that people were on notice of your intent to stop them
18 and detain them?

19 A. I believe they should have been. Yes.

20 Q. Now, you testified -- or you were asked a number of
21 questions earlier when you were shown a number of clips of
22 other officers, not you, using both riot batons and spray.

23 Do you recall that line of questioning?

24 A. Yes.

25 Q. And you were being asked what you thought about

1 that.

2 Do you recall that?

3 A. Yes.

4 Q. You stated that the individuals were using the riot
5 batons or spray as they were trained, meaning the technical
6 training.

7 Do you recall that?

8 A. Yes.

9 Q. But I think at one point you said you weren't
10 present and the officer had some discretion or judgment.
11 Correct?

12 A. Correct.

13 Q. Now, you also testified that you tested OC spray and
14 sting-balls on yourself to be sure that the members of the
15 police department had confidence in the tools they were
16 using.

17 Given the judgment for each officer and your belief
18 that members needed to have confidence, can you explain what
19 you mean.

20 A. That the officers understood that there is a great
21 deal of responsibility in the deployment of RCA -- riot
22 control agents -- or less lethal munitions, like any tool
23 that we give them, but, yet, that they understand how it's
24 used, they understand what the effects are, and they
25 understand that it is effective when we use it exactly the

1 way we train them to use it, it is effective and they have
2 confidence in the equipment that we've given them, that it'll
3 do what we've asked -- we've asked them to do. And when I
4 gave the order sting-balls, that it -- they understood that
5 that was going to disrupt and disorient. Distract was our
6 intention on this.

7 Q. And why is it important that they have confidence in
8 those specific tools?

9 A. Because it -- the confidence in the tools that you
10 give them also deescalate the situation. You don't want the
11 officers escalating into another level of violence, charging
12 into a crowd with a riot baton held over their head, striking
13 people, that we were confident that our technology would be
14 able to do what it is we needed them to do before we resorted
15 to hands-on physical fighting. That was not what we wanted
16 to do.

17 Q. Thank you.

18 MS. KERKHOFF: No further questions.

19 THE COURT: Sir, you may be excused. Do not discuss
20 your testimony with any other witness.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you.

23 (Witness excused.)

24 THE COURT: Please call your next witness.

25 MR. QURESHI: Thank you, your Honor.

1 The Government calls Laurel who is Berger to the
2 stand.

3 (Thereupon, the witness entered
4 the courtroom and the following
5 proceedings were had:)

6 THE COURT: Please come up here.

7 LAUREL HASSBERGER, GOVERNMENT WITNESS, SWORN

8 THE COURT: Good afternoon.

9 THE WITNESS: Hi.

10 DIRECT EXAMINATION

11 BY MR. QURESHI:

12 Q. Good afternoon, ma'am.

13 A. Hi.

14 Q. Could you please introduce yourself to the ladies
15 and gentlemen of the jury by stating and spelling your first
16 and last name, please.

17 A. Laurel Hassberger. L-a-u-r-e-l,

18 H-a-s-s-b-e-r-g-e-r.

19 Q. Ms. Hassberger, how old are you?

20 A. 33.

21 Q. And without telling us the exact address, what city
22 and state do you live in?

23 A. I live in Sterling, Virginia.

24 Q. What is your current occupation?

25 A. I'm a forensic scientist in the crime scene sciences

- 1 unit of the Department of Forensic Sciences here in DC.
- 2 Q. How long have you -- can I call it DFS?
- 3 A. Yes.
- 4 Q. How long have you been with DFS?
- 5 A. Since August of 2014.
- 6 Q. And prior to this current role at DFS, what were you
- 7 doing?
- 8 A. I was a forensic photographer for American Systems
- 9 in Virginia.
- 10 Q. In your current role with the Department of Forensic
- 11 Sciences, or DFS, what are your duties and responsibilities?
- 12 A. Our primary duties are to identify, document,
- 13 collect and preserve evidence related to a variety of crime
- 14 scenes or types of crimes.
- 15 Q. Generally speaking, just to orient the ladies and
- 16 gentlemen of the jury, what kinds of crime scenes do you
- 17 respond to generally?
- 18 A. The majority of our crimes are crimes against
- 19 people, robberies, assaults, that sort of thing. We also
- 20 respond to robberies of businesses, serious accidents,
- 21 carjackings, that sort of thing. But we will respond to any
- 22 type of crime if we're requested.
- 23 Q. Were you working on January 20, 2017?
- 24 A. Yes.
- 25 Q. Was it a normal schedule for you that day or was it

- 1 altered, given what was going on in DC?
- 2 A. It was slightly altered.
- 3 Q. And what -- how was it altered? What --
- 4 A. I was scheduled to work from 1:30 till midnight that
- 5 night -- or that day. But several of my coworkers and I, due
- 6 to the road closures, had made a decision to stay in the
- 7 office. So we actually got our shift started a little
- 8 earlier, around 11:00, 11:30 in the morning.
- 9 Q. On that particular day, did you receive any calls to
- 10 respond to?
- 11 A. Yes.
- 12 Q. And approximately what time do you recall getting --
- 13 A. It was about 11:30 in the morning.
- 14 Q. And where were you told to respond to?
- 15 A. The area of 11th and L Northwest, I believe.
- 16 Q. And approximately what time did you arrive at that
- 17 location?
- 18 A. It was right around 12:15 in the afternoon.
- 19 Q. And when you -- let's just briefly go through.
- 20 When you arrived on the scene at or near 11th and
- 21 L Northwest, what did you do?
- 22 A. I mean, initially, we tried to figure out, you know,
- 23 where we were at, what we needed to do.
- 24 One of the first things that I started doing was I
- 25 got my camera ready. I got gloves, you know, that kind of

- 1 stuff. My teammate and I decided that -- amongst ourselves
- 2 that I would take the photos.
- 3 And then we got started on talking to officers,
- 4 officials, various people, trying to figure out what exactly
- 5 they needed from us.
- 6 Q. And who was your partner who was with you?
- 7 A. At that time, Danielle Van was with me.
- 8 Q. Are you aware of any other employees of DFS that
- 9 were also deployed to that area?
- 10 A. Yes. Our unit manager, Grant Greenwalt, and another
- 11 scientist, Brittany Gerrald.
- 12 Q. So when you responded to that location, when meeting
- 13 with officers, what did you learn? What specifically were
- 14 you directed to do?
- 15 A. We were directed to -- well, we were directed to
- 16 take pictures of various damage to property in the area, and
- 17 they also requested that we collect several items that they
- 18 had collected in a couple different areas.
- 19 Q. Now, responding to that area, can you just generally
- 20 describe what the scene was like around 12:15 that day.
- 21 A. It was pretty fluid. There were a lot of people,
- 22 both officers and civilians, all the over the place.
- 23 Q. What do you mean by "pretty fluid"?
- 24 A. Usually, when we go to a scene, officers have tape
- 25 up or vehicles blocking streets, that kind of thing. They'll

- 1 have civilians off to the side where they're being
- 2 interviewed.
- 3 This wasn't the case there. We were just right up
- 4 with the officers and civilians, very close.
- 5 Q. And the evidence that you recovered, were you
- 6 directed to specific locations to recover the evidence?
- 7 A. Yes.
- 8 Q. And where was that, generally?
- 9 A. There was some -- some items were in the back of an
- 10 SUV-style police car, and some were on the ground near a
- 11 street corner.
- 12 Q. And did you learn when you were on scene how those
- 13 items got where they were?
- 14 A. Not specifically. I don't know who placed what
- 15 where. But we were told that the officers generally had
- 16 moved the items there.
- 17 Q. And you indicated a moment ago you did take
- 18 pictures. Correct?
- 19 A. Yes, I did.
- 20 Q. And approximately how many pictures did you take?
- 21 A. Around 300.
- 22 Q. So you described that you took pictures of damage to
- 23 property. Correct?
- 24 A. Yes.
- 25 Q. Anything else worth noting?

1 A. Just general pictures of the area to show the area
 2 we were at so that, you know, later I could say, yes, I was
 3 at this building or that building or this intersection.
 4 Q. Okay. Now, I want to go over -- I don't want to go
 5 into your pictures because it's a lot of pictures. We're
 6 trying to be efficient.
 7 But I want to talk a little bit about the evidence
 8 you collected. Okay?
 9 A. Okay.
 10 Q. Now, just for the sake of efficiency,
 11 Ms. Hassberger, I'm going to approach you with one item which
 12 we'll mark as Government's Exhibit 32 for identification.
 13 And I'm handing it to you. I'm going to ask you
 14 some foundational questions. Those foundational questions
 15 I'll apply to the number of other items we'll discuss as
 16 well. Okay?
 17 A. Okay.
 18 Q. Government's Exhibit 32: Do you recognize that?
 19 A. I do.
 20 Q. What do you recognize it to be?
 21 A. It is a paper bag of one of the items that I
 22 collected on the 20th.
 23 Q. Now, how do you know that that paper bag that you're
 24 holding in your left hand happens to be something you
 25 collected on January 20, 2017?

1 A. On the front of the bag, there is the case number,
 2 the date and my partner Danielle's initials as well as two
 3 stickers.
 4 One has a barcode that identifies the date it was
 5 entered into our evidence system. And both of those barcodes
 6 have my initials crossing them.
 7 And then on the back is my red evidence tape, which
 8 in my handwriting has the case number and the date that I
 9 sealed the item.
 10 Q. And what is Government's Exhibit 32?
 11 A. The --
 12 Q. I'm sorry.
 13 That's not 32, is it?
 14 A. Yes. It's 32.
 15 Q. Go ahead.
 16 A. It is labeled as my identification as CS1-31. And
 17 it is seven 0.9 percent sodium chloride injection syringes.
 18 It also notes they were empty. And they were recovered from
 19 the sidewalk across from 1017 12th Street Northwest.
 20 Q. Do you mind taking them out? You said there are
 21 seven. Correct?
 22 A. Yes.
 23 Q. If you can just take out one.
 24 A. Okay.
 25 Q. If you don't mind holding it up for the ladies and

1 gentlemen of the jury.
 2 A. (Witness complies.)
 3 Q. So that's something you recovered there on the
 4 scene. Correct?
 5 A. Yes.
 6 Q. Thank you.
 7 MR. QURESHI: Your Honor, at this point the
 8 Government moves 32 into evidence.
 9 THE COURT: Any objection?
 10 MS. COLEMAN: No objection, your Honor.
 11 THE COURT: It's admitted.
 12 (Whereupon, Government's Exhibit No. 32 was entered
 13 into evidence.)
 14 MR. QURESHI: Thank you.
 15 BY MR. QURESHI:
 16 Q. I'm going to try to go faster with the rest of them.
 17 Okay?
 18 I'm showing you what is marked as Government's
 19 Exhibit No. 8.
 20 A moment ago, regarding 32, I asked you a number of
 21 foundational questions.
 22 Do you remember that?
 23 A. Yes.
 24 Q. Would your responses to Government's Exhibit 8 be
 25 the exact same or different?

1 A. The same.
 2 Q. Where was this item recovered?
 3 A. The corner in front of 1201 L, as in Lincoln, Street
 4 Northwest.
 5 Q. And what is the item?
 6 A. One pink and gray 3M mask.
 7 Q. Do you mind pulling it out.
 8 A. Do you have a pair of scissors?
 9 Q. Sure.
 10 MR. QURESHI: Madam Clerk, may I borrow a pair of
 11 scissors?
 12 THE DEPUTY CLERK: (Tenders item to counsel.)
 13 MR. QURESHI: Thank you.
 14 THE WITNESS: Thank you.
 15 BY MR. QURESHI:
 16 Q. Do you mind holding it up.
 17 A. (Witness complies.)
 18 Q. Thank you.
 19 MR. QURESHI: Your Honor, the Government moves
 20 Exhibit 8 into evidence.
 21 THE COURT: Any objection?
 22 MS. COLEMAN: No objection, your Honor.
 23 THE COURT: It's admitted.
 24 (Whereupon, Government's Exhibit No. 8 was entered
 25 into evidence.)

1 BY MR. QURESHI:
 2 Q. I'm approaching with Government's Exhibits 11 and
 3 12.
 4 I'd ask you to look at both of them collectively.
 5 My question is going to be the foundational questions I asked
 6 you earlier.
 7 Is your response the same as it pertains to 11 and
 8 12?
 9 A. Yes.
 10 THE COURT: Are you just asking her whether those
 11 are things she collected around the same time and the same
 12 place?
 13 MR. QURESHI: Yes, your Honor.
 14 THE COURT: Okay.
 15 MR. QURESHI: Just trying to be efficient or I can
 16 just move them collectively.
 17 THE COURT: No. I wasn't sure which foundational
 18 questions you meant.
 19 So are you moving 11 and 12?
 20 MR. QURESHI: Yes, your Honor.
 21 THE COURT: Any objection?
 22 MS. COLEMAN: No objection.
 23 THE COURT: They're admitted.
 24 (Whereupon, Government's Exhibit Nos. 11 and 12 were
 25 entered into evidence.)

1 BY MR. QURESHI:
 2 Q. Do you mind taking them out as well.
 3 A. (Witness complies.)
 4 Q. What is 11 as you cut it open?
 5 A. 11 is one pair of 3M plastic safety goggles with a
 6 black strap, from the corner in front of 1201 L, as in
 7 Lincoln, Street Northwest.
 8 Q. Thank you.
 9 Moving to 12, please. While you're opening that,
 10 could you describe what it is and where it was recovered.
 11 A. A white and gray AO safety mask, from the corner in
 12 front of 1201 L, as in Lincoln, Street Northwest.
 13 Q. Thank you.
 14 Now I'm handing you Government's Exhibits 16 and 17
 15 for identification. Can you identify what 16 is and where it
 16 was recovered.
 17 A. 16 is one pair of Nike goggles with white strap,
 18 from the corner in front of 1201 L Street Northwest.
 19 MR. QURESHI: Your Honor, while she's doing that,
 20 the Government moves 16 and 17 into evidence.
 21 MS. COLEMAN: No objection, your Honor.
 22 THE COURT: They'll be admitted.
 23 (Whereupon, Government's Exhibit Nos. 16 and 17 were
 24 entered into evidence.)
 25 MR. QURESHI: Thank you.

1 BY MR. QURESHI:
 2 Q. I'll move 16 to counsel's table.
 3 If you could open up 17, please, and tell us where
 4 it was recovered.
 5 A. It is one pair of Dolfino gray goggles, from the
 6 corner in front of 1201 L Street Northwest.
 7 Q. Thank you.
 8 Now, Ms. Hassberger, I'm going to hand you two
 9 items, which are Government's Exhibits 21 and 23 --
 10 MR. QURESHI: Which, your Honor, the Government
 11 preliminarily moves into evidence.
 12 THE COURT: Any objection to 21 and 23?
 13 MS. COLEMAN: No objection, your Honor.
 14 THE COURT: They are admitted.
 15 (Whereupon, Government's Exhibit Nos. 21 and 23 were
 16 entered into evidence.)
 17 BY MR. QURESHI:
 18 Q. Starting with 21, Ms. Hassberger, can you tell us
 19 where it was recovered and what the object is.
 20 A. It's one red hammer with a black handle. I was not
 21 able to read a brand. It was from Cruiser S, as in Sam,
 22 -602.
 23 Q. And what is Cruiser 602?
 24 A. That would have been the marked police SUV.
 25 Q. That's one of the locations where you said you

1 recovered items?
 2 A. Yes.
 3 Q. If you can open that up, please, 21.
 4 A. Yes.
 5 Q. Thank you.
 6 I'll move on to 23. If you can again describe where
 7 that was recovered and what it is.
 8 A. It is also one red hammer with a black handle. I
 9 was also not able to read the brand. It was from Cruiser S,
 10 as in Sam, -602.
 11 Q. While you're opening that up, Ms. Hassberger, how
 12 did you know what was in the back of the cruiser wasn't
 13 police equipment versus what was evidence you needed to
 14 recover?
 15 A. The officers I spoke to indicated what they wanted
 16 me to collect.
 17 Q. Thank you.
 18 MR. QURESHI: I'll move 23 over to counsel's table.
 19 BY MR. QURESHI:
 20 Q. Ms. Hassberger, I'm going to show you first
 21 Government's Exhibits 13 and 27 --
 22 MR. QURESHI: Which the Government, your Honor,
 23 moves into evidence.
 24 BY MR. QURESHI:
 25 Q. -- along with 10. Let's start --

1 THE COURT: Let me just ask if there's any objection
 2 to 10, 13 or 27.
 3 MS. COLEMAN: No objection, your Honor.
 4 THE COURT: They're all admitted.
 5 (Whereupon, Government's Exhibit Nos. 10, 13 and 27
 6 were entered into evidence.)
 7 BY MR. QURESHI:
 8 Q. Let's handle 13 and 27 together. I don't want you
 9 to open those items.
 10 But can you just describe what they are and where
 11 they were recovered.
 12 A. They are both each individually one Mace brand
 13 pepper spray, from the corner in front of 1201 L Street
 14 Northwest.
 15 Q. Okay. Thank you.
 16 If you don't mind opening up that exhibit, which is
 17 10. Correct?
 18 A. Yes. 10.
 19 Q. Thank you.
 20 What's the item you're pulling out from 10 and where
 21 was it recovered?
 22 A. It was a silver Gerber knife, from the corner in
 23 front of 1201 L Street Northwest.
 24 Q. Thank you. You can throw that back in there.
 25 A. (Witness complies.)

1 Q. I'm handing you what has been marked as Government's
 2 Exhibits 9 and 15.
 3 MR. QURESHI: Which the Government moves into
 4 evidence.
 5 THE COURT: What and 19?
 6 MR. QURESHI: 9 and 15, your Honor.
 7 THE COURT: 9 and 15.
 8 Any objection to 9 and 15?
 9 MS. COLEMAN: No objection, your Honor.
 10 THE COURT: They'll be admitted.
 11 (Whereupon, Government's Exhibit Nos. 9 and 15 were
 12 entered into evidence.)
 13 BY MR. QURESHI:
 14 Q. Let's start with Exhibit 9.
 15 Can you tell us where it was recovered and what the
 16 item is.
 17 A. It's a black ASP. It was recovered from the corner
 18 in front of 1201 L Street Northwest.
 19 Q. Do you know what an ASP is?
 20 A. I mean, I don't know the specific definition of what
 21 it is. But, yes, I'm familiar with them.
 22 Q. Okay. And that's Exhibit 9. Correct?
 23 A. Yes. Exhibit No. 9.
 24 THE COURT: Can you hold that up, please.
 25 THE WITNESS: (Witness complies.)

1 THE COURT: Thank you.
 2 BY MR. QURESHI:
 3 Q. Do you know how to open up an ASP?
 4 A. Yes.
 5 Q. Can you show the ladies and gentlemen of the jury.
 6 A. Is it all right if I stand?
 7 MR. QURESHI: Sure.
 8 Your Honor, is that okay?
 9 THE COURT: Yes.
 10 THE WITNESS: (Complies.)
 11 BY MR. QURESHI:
 12 Q. Thank you. I'll take that.
 13 A. (Tenders item to counsel.)
 14 Q. And Exhibit 15: What is that and where was it
 15 recovered?
 16 A. It is a blue Dasco Pro metal punch, from the corner
 17 of -- in front of 1201 L Street Northwest.
 18 Q. Thank you.
 19 I'm handing you what has been marked as Government's
 20 Exhibit 24.
 21 MR. QURESHI: I would move it into evidence, your
 22 Honor.
 23 THE COURT: Any objection to 24?
 24 MR. COHEN: No objection.
 25 THE COURT: It'll be admitted.

1 (Whereupon, Government's Exhibit No. 24 was entered
 2 into evidence.)
 3 BY MR. QURESHI:
 4 Q. What is that?
 5 A. It's a black ASP and it's from Cruiser S-602.
 6 Q. You don't have to take that out.
 7 A. Okay.
 8 Q. And turning to the final item, what's been marked as
 9 Government's Exhibit 22, which looks like it's already poking
 10 out of the bag, do you recognize that?
 11 A. I do.
 12 Q. What is the item and where was it recovered?
 13 A. A yellow Stanley 18-inch wrecking bar from
 14 Cruiser S-602.
 15 MR. QURESHI: Your Honor, the Government moves this
 16 item into evidence.
 17 MS. COLEMAN: No objection.
 18 THE COURT: It's admitted.
 19 (Whereupon, Government's Exhibit No. 22 was entered
 20 into evidence.)
 21 MR. QURESHI: Thank you.
 22 BY MR. QURESHI:
 23 Q. Finally, Ms. Hassberger, I'm handing you what is
 24 marked as Government's Exhibit --
 25 MR. QURESHI: 2, Ms. Kerkhoff?

1 MS. KERKHOFF: Yes.

2 BY MR. QURESHI:

3 Q. -- 2.

4 Do you recognize that?

5 A. I do.

6 Q. And what is it?

7 A. It is a vest with miscellaneous items that we

8 recovered.

9 Q. And where did you retrieve that from?

10 A. This was handed to me by an officer. I believe he

11 pronounce his name "Amadeo." I might be mispronouncing it.

12 MR. QURESHI: Your Honor, the Government moves 2

13 into evidence.

14 THE COURT: So you're saying it's a vest with other

15 things in it?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Any objection?

18 MS. COLEMAN: No objection.

19 THE COURT: Can I just -- I'm going to want to break

20 down what the other things are.

21 MR. QURESHI: Absolutely. I'm about to do that.

22 THE COURT: Oh, okay. It's admitted.

23 (Whereupon, Government's Exhibit No. 2 was entered

24 into evidence.)

25 MR. QURESHI: Can she move into the well, your

1 Honor?

2 THE COURT: Yes.

3 BY MR. QURESHI:

4 Q. Can you pull Government's Exhibit 2 out of there for

5 me, please.

6 A. (Witness complies.)

7 THE COURT: Before we do that, I'm assuming

8 everybody else knows what we're about to see and is not

9 objecting.

10 And are those broken down into sub-exhibit numbers

11 or it's all just a part of 2?

12 MR. QURESHI: It's all just a part of 2, your Honor,

13 but I will ask the witness what was included in there.

14 THE COURT: Just make them -A, -B, -C, -D, -E for

15 the record.

16 MR. QURESHI: Okay.

17 BY MR. QURESHI:

18 Q. Now, Ms. Hassberger, did you delineate anywhere the

19 items that were found on the street that you're holding up,

20 Government's Exhibit 2?

21 A. Yes. In my notes and in my final report.

22 Q. Do you know off the top of your head right now what

23 was inside of this, you know, with the exception of looking

24 through it?

25 A. Off the top of my head, I do not.

1 Q. You can take the witness stand.

2 Would anything refresh your memory about what was

3 included in this vest?

4 A. Yes. My notes and my report.

5 Q. I'm handing you a 16-page document, which is a DFS

6 crime scene report, along with notes.

7 Do you recognize that?

8 THE COURT: While she's looking, it just needs a

9 number.

10 MR. QURESHI: Oh. 270, your Honor. Thank you.

11 THE WITNESS: Yes. I recognize it.

12 BY MR. QURESHI:

13 Q. Can you take a look at -- what is Government's

14 Exhibit 270?

15 A. It is my finished crime scene report, and it is also

16 the notes I took along with Danielle Van on the 20th of

17 January.

18 Q. Take a look at that and let us know if that

19 refreshes your memory about what was included in Government's

20 Exhibit 2.

21 A. It does.

22 Q. So let's go through that very quickly.

23 Can you identify for the jury as you go through your

24 notes.

25 A. It includes a gas mask, which is here.

1 MR. QURESHI: Which we'll call 2-A, your Honor.

2 THE WITNESS: There's an additional mask. I believe

3 that's -- sorry. Let me get it.

4 We have cigarettes.

5 BY MR. QURESHI:

6 Q. That's unopened?

7 A. Unopened. Yes. I'm sorry.

8 MR. QURESHI: We'll call that 2-B, your Honor, a

9 pack of cigarettes.

10 THE WITNESS: An ID case.

11 MR. QURESHI: 2-C is an ID case.

12 THE WITNESS: There's a pair of gloves.

13 MR. QURESHI: Which we'll mark as 2 -- am I up to

14 -D? -E?

15 THE WITNESS: A mask.

16 MR. QURESHI: We'll call that 2-F.

17 BY MR. QURESHI:

18 Q. And you pulled that out of where?

19 A. I guess it would be right Velcro pocket near the

20 shoulder area, kind of near your -- right by your shoulder, I

21 guess.

22 We have a pair of handcuffs, black in color.

23 Q. We'll call this 2-G.

24 Where was that pulled from? Is it similarly a

25 pocket on the vest?

1 A. It's a pocket on the vest on the right-hand side.
 2 Yes.
 3 We have an ASP in a pocket on the front of the vest
 4 on the right-hand side.
 5 Q. We'll call that 2-G.
 6 MS. KERKHOFF: 2-H.
 7 MR. QURESHI: 2-H. I'm sorry.
 8 THE WITNESS: I referred to this as an electronic
 9 device. Because I'll be honest: I'm not 100 percent what it
 10 is. But it has a cable with it. Again, in another pouch --
 11 a Velcro-style pocket on the vest.
 12 BY MR. QURESHI:
 13 Q. 2-I.
 14 A. This is a knife now on the left-hand side.
 15 Q. 2-J?
 16 A. A flashlight, another pocket.
 17 Q. 2-K is the flashlight.
 18 A. We have an open pack of cigarettes and lighter.
 19 Q. All from the same pocket?
 20 A. Yes. The open pack of cigarettes and the lighter
 21 are from the same pocket on the left side of the vest.
 22 Q. 2 --
 23 MR. QURESHI: Ms. Kerkhoff?
 24 MS. KERKHOFF: -L.
 25

1 In my notes, I could get a better idea what time we left that
 2 area because we went to a secondary location. But the time I
 3 was done with the entire response was the time that you
 4 mentioned.
 5 Q. Do you still have your notes in front of you?
 6 A. I don't. No. I'm sorry.
 7 MR. QURESHI: Here they are.
 8 MR. LAZEROW: Thank you.
 9 BY MR. LAZEROW:
 10 Q. I'm now handing you what I believe is Government's
 11 Exhibit 270.
 12 MR. QURESHI: Yes.
 13 BY MR. LAZEROW:
 14 Q. Did you want to look through that and see if that
 15 refreshes your recollection as to see when you left the area
 16 of 12th and L?
 17 A. It was about 1608 hours. So just a little bit after
 18 4:00 in the afternoon.
 19 Q. And when you were there the entire time from
 20 12:15 to 4:08 p.m., did you see that there were a group of
 21 people who were trapped in by police surrounding them?
 22 A. Yes, sir.
 23 Q. And were they still there -- or a large part of
 24 those people still there when you left at 4:08 p.m.?
 25 A. I don't know if it was all the same people. But

1 BY MR. QURESHI:
 2 Q. -L. Sorry.
 3 A. And a pair of glasses, which are in a smaller
 4 pocket, also Velcro, on the left-hand side.
 5 Q. It's 2-M.
 6 Is there anything else after looking at Government's
 7 Exhibit 270 that you might have noted that you haven't
 8 referenced yet?
 9 A. No. Nothing else that I've noted.
 10 Q. Thank you. I'll take 270 back as well.
 11 A. Okay.
 12 MR. QURESHI: I have nothing further, your Honor.
 13 THE COURT: For Ms. Macchio?
 14 CROSS-EXAMINATION
 15 BY MR. LAZEROW:
 16 Q. Good afternoon, ma'am.
 17 My name is --
 18 A. Hi.
 19 Q. -- Andrew Lazerow. I represent Ms. Macchio in this
 20 case.
 21 Do I understand you showed up at the corner of
 22 12th and L about 12:15 on January 20th, 2017?
 23 A. Yes, sir.
 24 Q. And you left that area at 1700 hours?
 25 A. We left that area a little bit earlier than that.

1 there were still people there. Yes.
 2 Q. Did you ever enter that area when the police had
 3 that area surrounded?
 4 A. We walked through, like, on the streets. But we
 5 didn't enter into the crowd. No.
 6 Q. You personally did not go past the police line into
 7 where there were people circled by the police?
 8 A. Correct.
 9 MR. LAZEROW: Thank you very much.
 10 THE COURT: For Ms. Armento?
 11 MS. WELETZ: Yes. Thank you.
 12 CROSS-EXAMINATION
 13 BY MS. WELETZ:
 14 Q. Attorney Carrie Weletz on behalf of Jennifer
 15 Armento.
 16 You indicated that this was a fluid scene. Correct?
 17 A. Yes, ma'am.
 18 Q. As you indicated, typically, when you respond to
 19 crimes, there's a crime scene cordoned off. Correct?
 20 A. Typically, yes.
 21 Q. But this wasn't how this crime scene was. Correct?
 22 A. Correct.
 23 Q. People were moving in and out?
 24 A. Yes.
 25 Q. And were there cars driving in and out of the area?

1 A. The immediate area, I don't remember. But there was
 2 traffic on the streets outside the immediate area. But I
 3 don't remember if there were cars right at 12th and L that
 4 were going in and out. I'm sorry.
 5 Q. And you collected a bunch of stuff and you just
 6 identified these things that you collected. Correct?
 7 A. Yes, ma'am.
 8 Q. Did you do any type of DNA analysis or
 9 fingerprinting on those items?
 10 A. I did not. No.
 11 Q. So, to your knowledge, you have no idea how those
 12 items got to the ground where you collected them from.
 13 Correct?
 14 A. I was told that officers placed them where I saw
 15 them. But I don't know which officer or anything of that
 16 nature. No.
 17 Q. So someone collected these things, placed them there
 18 for you to catalog. Correct?
 19 A. Yes.
 20 Q. It's not normal for an officer to move items on a
 21 crime scene, is it, in your experience?
 22 A. It really does depend. We prefer if they don't.
 23 But lifesaving measures, safety, that sort of thing, always
 24 takes priority.
 25 So if they move something while trying to save

1 someone's life or to prevent someone from getting injured
 2 further, that's normal and expected.
 3 Q. Thank you.
 4 MS. WELETZ: No further questions.
 5 THE COURT: For Ms. Simmons?
 6 MS. JACQUES: Yes.
 7 CROSS-EXAMINATION
 8 BY MS. JACQUES:
 9 Q. Good afternoon.
 10 A. Hi.
 11 Q. My name is Tammy Jacques. I represent Ms. Simmons.
 12 Just a couple more questions.
 13 You indicated that some items were in the back of
 14 the SUV?
 15 A. Yes.
 16 Q. You have no -- you have no idea how long they had
 17 been in the back of the SUV before you photographed them.
 18 Correct?
 19 A. That's correct. I don't know.
 20 Q. And the items that were collected, I guess, on the
 21 sidewalk, is that the -- there were two sets of items, one
 22 set in the SUV and another set on the sidewalk?
 23 A. They were kind of on the sidewalk, kind of on the
 24 pavement.
 25 Q. And you didn't see any of those items being

1 collected. Correct?
 2 A. I did not see them being collected. No. No, I did
 3 not.
 4 Q. So you don't know how long the items had been on the
 5 sidewalk either. Correct?
 6 A. Correct.
 7 MS. JACQUES: I don't have anything else. Thanks.
 8 THE COURT: For Mr. Wood?
 9 MR. COHEN: Just briefly.
 10 CROSS-EXAMINATION
 11 BY MR. COHEN:
 12 Q. I'm Brett Cohen for Mr. Wood. Good afternoon.
 13 When you were collecting the items, were you putting
 14 them in the bags right there on the scene?
 15 A. Yes.
 16 Q. And so you were hand-writing things on the bags and
 17 on your notes out there on the scene?
 18 A. Danielle did most of the writing, but we were
 19 working together.
 20 MR. COHEN: No further questions.
 21 THE COURT: For Mr. Harris?
 22 MS. COLEMAN: No questions, your Honor.
 23 THE COURT: For Ms. Lawson?
 24 MS. KROPF: No questions, your Honor.
 25 THE COURT: Redirect?

1 MR. QURESHI: Nothing further, your Honor. Thank
 2 you.
 3 THE COURT: You may be excused.
 4 You're not to discuss your testimony with any other
 5 witness.
 6 (Witness excused.)
 7 MR. QURESHI: Your Honor, I'm going to need the
 8 scissors.
 9 THE COURT: You may have them.
 10 MR. QURESHI: Thank you.
 11 THE COURT: Please call your next witness.
 12 MR. QURESHI: Thank you, your Honor.
 13 The Government calls Brittany Gerrald to the stand.
 14 (Thereupon, the witness entered
 15 the courtroom and the following
 16 proceedings were had:)
 17 THE COURT: Ma'am, please come up here. Good
 18 afternoon.
 19 THE WITNESS: Hello.
 20 THE COURT: If you'll remain standing, please, and
 21 raise your right hand.
 22 BRITTANY GERRALD, GOVERNMENT WITNESS, SWORN
 23 DIRECT EXAMINATION
 24 BY MR. QURESHI:
 25 Q. Good afternoon, ma'am.

1 A. Good afternoon.

2 Q. Can you please introduce yourself to the ladies and

3 gentlemen of the jury by stating and spelling your first and

4 last name, please.

5 A. Brittany Gerrald. B-r-i-t-t-a-n-y. Gerrald,

6 G-e-r-r-a-l-d.

7 Q. Ms. Gerrald, how are you employed?

8 A. I'm a patrol officer for Metropolitan Police

9 Department.

10 Q. And how long have you been with MPD?

11 A. I was with MPD in 2013 to 2016 and then went to DFS

12 as a crime scene investigator from 2016 to October of 2017,

13 and now I'm back at Metropolitan Police Department as an

14 officer.

15 Q. Where are you -- what do you do as an officer?

16 A. Patrol.

17 Q. Any particular district?

18 A. Sixth District.

19 Q. When you were at DFS, what were your duties and

20 responsibilities there?

21 A. Crime scene investigator. So I would collect

22 evidence from scenes, evidence in the District of Columbia,

23 process evidence such -- either chemically or, like, vehicles

24 or firearms for any type of crimes that were felonious or any

25 crimes that District crime scene wouldn't handle.

1 Q. Did you recognize that lady that just walked out of

2 the courtroom a minute ago?

3 A. Yes.

4 Q. How do you know her?

5 A. We were on the same team.

6 Q. So you had similar jobs --

7 A. Yes.

8 Q. -- when you were at DFS? Okay.

9 I want to direct your attention to January 20, 2017.

10 Were you working at MPD at that point or DFS?

11 A. DFS.

12 Q. And do you recall receiving any calls for service

13 that morning?

14 A. Yes.

15 Q. And where, if at all, did you respond?

16 A. K Street, L Street Northwest.

17 Q. And when you responded -- Northwest, you said?

18 A. Yes. I believe Northwest.

19 Q. And when you responded to those locations, what were

20 you tasked to do?

21 A. Basically, I was told to take pictures of any damage

22 that had occurred or destruction that had occurred and

23 collect any of the weapons that were being used during the

24 damage.

25 Q. And how did you know where to look for damage to

1 take pictures of?

2 A. Because I could see the smoke and large crowds and

3 officers.

4 Q. And do you rely on officers to direct you or did you

5 just do that on your own?

6 A. Typically, if there's a detective on the scene or a

7 higher command on the scene, then they'll direct us. Or if

8 they're not on the scene, then based on information that

9 we're given, then we go and assess the scene and then process

10 the scene.

11 Q. Who -- were you accompanied by anybody when you --

12 A. Grant Greenwalt.

13 Q. And what does he do?

14 A. He was basically like the second in command, like

15 the second director.

16 Q. So I want to direct your attention to a couple

17 Government exhibits, Government's Exhibits 272 through 280.

18 I'm going to display these for you.

19 MR. QURESHI: Your Honor, I'd move to admit

20 272 through 280.

21 THE COURT: Any objection?

22 MS. COLEMAN: No objection, your Honor.

23 THE COURT: They'll all be admitted.

24 (Whereupon, Government's Exhibit No. 272 through 280

25 was entered into evidence.)

1 THE COURT: Are they photos?

2 MR. QURESHI: Yes, your Honor.

3 BY MR. QURESHI:

4 Q. I'm showing you what's on the screen there as

5 Government's Exhibit 272.

6 Do you recognize this?

7 A. Yes.

8 Q. And who took this picture?

9 A. I did.

10 Q. And were you directed to take this picture or...?

11 A. No. When Grant Greenwalt had told me to take

12 pictures of all of the damage that was outside, anything that

13 I saw that was destructed or damaged, I just took pictures.

14 Q. Just for the record, what is this a picture of?

15 A. It's a bus stop -- a public bus stop area.

16 Q. I'll show Government's Exhibit 273.

17 Do you recognize this?

18 A. Yes.

19 Q. Who took this picture?

20 A. I did.

21 Q. What is it a picture of?

22 A. A bus stop area and the limo behind it that I had

23 processed.

24 Q. What does it mean to process something?

25 A. Take pictures, collect anything -- like, collect

1 weapons or anything that was used to either damage or
 2 destruct it, potentially swab for DNA and dust for
 3 fingerprints. But, at the time, the only thing I was
 4 instructed to do was take pictures.
 5 Q. Okay. I'll move to 274.
 6 Do you recognize that?
 7 A. Yes.
 8 Q. What is that?
 9 A. The limousine that I took pictures of and processed.
 10 Q. Now, did you just process this limousine on its own
 11 or did you also encounter any victims, civilians?
 12 A. The driver of the limo was standing in front of the
 13 limo.
 14 Q. What, if anything, were you instructed to do with
 15 him?
 16 A. I took pictures of his injuries.
 17 Q. Government's Exhibit 274: Can you generally
 18 describe what you're looking at.
 19 A. Just the limo -- the destructed damage to the limo.
 20 Q. Showing you Government's Exhibit 275, what is this a
 21 picture of?
 22 A. The back of the limousine.
 23 Q. 276: What is this a picture of?
 24 A. It was a picture -- still the limousine, but inside
 25 of the limousine, which there was a brick that was -- that

1 the driver had said was thrown into the vehicle.
 2 Q. Showing you Government's Exhibit 277, what is this a
 3 picture of?
 4 A. In the middle portion of the limousine, it was
 5 another brick. All of the damage was the windows and then
 6 there was a flare as well on the -- laying on the seat.
 7 Q. And this is -- to be clear, it's a passenger
 8 compartment area of the limo. Is that correct?
 9 A. Yes.
 10 Q. Showing you 278, do you recognize that?
 11 A. Yes. That's the flare.
 12 Q. And did you learn from the driver where that came
 13 from?
 14 A. I don't remember. But I -- I remember when I had
 15 processed -- I kept remembering him talking about the bricks.
 16 But I don't remember anything about the flare, with the
 17 exception of it being thrown inside.
 18 Q. Okay. I'll show you Government's Exhibit 279.
 19 Who is that?
 20 A. The driver of the limousine.
 21 Q. I'll show you Government's Exhibit 280.
 22 What is that a picture of?
 23 A. The injuries that he had sustained.
 24 Q. Okay. The final thing, Ms. Gerrald -- or Officer
 25 Gerrald, I'm going to show you what's been marked as

1 Government's Exhibit 34.
 2 MR. QURESHI: If I may, your Honor.
 3 BY MR. QURESHI:
 4 Q. Do you recognize Government's Exhibit 34?
 5 A. Yes.
 6 Q. What is it?
 7 A. The flare.
 8 Q. How do you know that's the flare you recovered from
 9 the limousine on January 20th of 2017?
 10 A. Because I wrote "One red Orion flare" on it -- on
 11 the packaging.
 12 Q. Is the date indicated there as well?
 13 A. Yes.
 14 Q. Do you mind opening that up and showing that to the
 15 ladies and gentlemen of the jury.
 16 MR. QURESHI: Your Honor, the Government moves
 17 34 into evidence.
 18 THE COURT: Any objection?
 19 MS. COLEMAN: No objection, your Honor.
 20 THE COURT: I'll admit it.
 21 (Whereupon, Government's Exhibit No. 34 was entered
 22 into evidence.)
 23 THE COURT: But I really don't want her to cut
 24 herself while she's doing that.
 25 MR. QURESHI: I don't either, your Honor.

1 THE COURT: Or break a nail. They look far too nice
 2 for that.
 3 Since we're in front of the jury, I'm happy to have
 4 you do it, Mr. Qureshi.
 5 MR. QURESHI: That's fine. I don't want to mess up
 6 my nails either, Judge.
 7 THE COURT: They're probably less expensive.
 8 BY MR. QURESHI:
 9 Q. After you recovered the items that we've discussed,
 10 particularly the flare, what, if anything, did you do on the
 11 scene there?
 12 A. After collecting the flare?
 13 Q. Yes.
 14 A. Continued to take pictures and then, after
 15 collecting the flare and taking pictures of the limo and then
 16 taking pictures of the driver, I collected the flare and then
 17 met up with Laurel.
 18 She was, like, up the street. So I met up with her
 19 because then I saw the crowd coming back in my direction.
 20 They were walking back in my direction.
 21 Q. Okay.
 22 A. A crowd of people. So then I walked up the street.
 23 THE COURT: You met up with Laurel?
 24 BY MR. QURESHI:
 25 Q. Who is Laurel? What is her last name?

1 A. Hassberger.
 2 Q. Is that the lady who was just in here a moment ago?
 3 A. Yes.
 4 Q. I'm holding up Government's Exhibit 34.
 5 Does this look like the flare you recovered from the
 6 limousine?
 7 A. Yes.
 8 MR. QURESHI: The Court's brief indulgence, your
 9 Honor.
 10 BY MR. QURESHI:
 11 Q. Officer Gerrald, do you have a specific recollection
 12 at what time you responded and processed this particular
 13 limousine?
 14 A. On my photograph, there's pictures at the bottom
 15 that shows which time, like, for the limousine.
 16 Q. So we're looking at Government's Exhibit 280. But
 17 the time on there is today's date, December 4th of 2017.
 18 That's not what you mean. Right?
 19 A. No.
 20 Q. Would you have indicated it anywhere else?
 21 A. Yes. Through my report.
 22 Q. Would that refresh your memory?
 23 A. Yes.
 24 MR. QURESHI: Your Honor, we'll mark this as
 25 Government's Exhibit 271.

1 BY MR. QURESHI:
 2 Q. Take a look at that, Officer Gerrald.
 3 A. "Gerrald."
 4 Q. "Gerrald." Sorry.
 5 Let me know when your memory has been refreshed, and
 6 look up when your memory has been refreshed, please.
 7 A. Okay.
 8 Q. I'll take that back, Officer Gerrald.
 9 What time did you process this vehicle?
 10 A. 11:30 I arrived at the scene. And then at 12:15 I
 11 began the processing.
 12 Q. Did you have anything to do with this vehicle later
 13 on in the day?
 14 A. Yes.
 15 Q. What we're looking at is what you did at 11:30.
 16 That was a separate incident. Correct?
 17 A. Yes.
 18 Q. And did you respond a second time to do that?
 19 A. Yes.
 20 MR. QURESHI: Nothing further, your Honor.
 21 THE COURT: For Ms. Macchio?
 22 MR. LAZEROW: No questions, your Honor. Thank you.
 23 THE COURT: For Ms. Armento?
 24 MS. WELETZ: No questions, your Honor.
 25 THE COURT: For Ms. Simmons?

1 MS. JACQUES: No questions.
 2 THE COURT: For Mr. Wood?
 3 MR. COHEN: No questions, your Honor.
 4 THE COURT: For Mr. Harris?
 5 MS. COLEMAN: No questions, your Honor.
 6 THE COURT: And for Ms. Lawson?
 7 MS. KROPF: No questions, your Honor.
 8 THE COURT: You may be excused, ma'am. Don't
 9 discuss your testimony with any other witness.
 10 THE WITNESS: Okay.
 11 THE COURT: Thank you.
 12 (Witness excused.)
 13 MS. KERKHOFF: Your Honor, we're going to get some
 14 more property out. Is now a good time to take a break?
 15 THE COURT: Yes. We'll take a break so that they
 16 can clean up and make room for the next pile. It's 25 after.
 17 I'll bring you back in at 20 of. Thank you, ladies and
 18 gentlemen.
 19 (Whereupon, the jury exited the courtroom at
 20 3:23 p.m. and the following proceedings were had:)
 21 THE COURT: I'll see you in 15 minutes. Thank you.
 22 (Thereupon a recess was taken, after which the
 23 following proceedings were had:)
 24 THE COURT: Good afternoon. We're going to pick
 25 back up.

1 MS. KERKHOFF: Good afternoon, your Honor.
 2 THE COURT: Re-calling United States versus Brittné
 3 Lawson, et al., 2017 CF2 1256.
 4 MS. KERKHOFF: Should I get the next witness?
 5 THE COURT: Yes. Please get the next witness. I
 6 know the jurors are eager to come back in. They're all
 7 waiting out there.
 8 For the record, all counsel are here. Mr. Portnov
 9 is now here. Mr. Healy is not. Otherwise, all personnel
 10 remains the same.
 11 I'm taking from the silences there aren't going to
 12 be PPMS issues that I have to sort through with you all.
 13 Does anybody think I'm going to have to?
 14 (Thereupon, the witness entered
 15 the courtroom and the following
 16 proceedings were had:)
 17 THE COURT: He can have a seat there.
 18 I can have the jury come back tomorrow at probably a
 19 quarter of, if there's nothing we need to talk about.
 20 MS. KERKHOFF: A lofty aspiration.
 21 THE COURT: I don't mind if you cut things open and
 22 put them in front of the witness, you know. The bag is not
 23 the exhibit; the thing in it is.
 24 MS. KERKHOFF: I'll take care of that.
 25 THE COURT: Rather than the cutting of bags and

1 things.

2 MS. KERKHOFF: Mr. Qureshi likes ceremony.

3 (Whereupon, the jury entered the courtroom at 3:45

4 p.m. and the following proceedings were had:)

5 THE COURT: Good afternoon.

6 We're going to pick back up with the Government's

7 next witness.

8 MS. KERKHOFF: Thank you.

9 The United States calls Officer Michael Molinari.

10 MICHAEL MOLINARI, GOVERNMENT WITNESS, SWORN

11 THE COURT: Good afternoon.

12 THE WITNESS: Good afternoon.

13 DIRECT EXAMINATION

14 BY MS. KERKHOFF:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Can you please introduce yourself to the ladies and

18 gentlemen of the jury.

19 A. Officer Michael Molinari.

20 Q. And where are you employed?

21 A. Metropolitan Police Department, Fourth District.

22 Q. What are your responsibilities in the Fourth

23 District?

24 A. Patrol officer.

25 Q. And what does that mean, to be a patrol officer?

1 A. Assigned to a particular beat. And I drive around,

2 answer radio runs.

3 Q. And --

4 THE COURT: I'm just going to ask you both to show

5 it down a little bit for the court reporter.

6 THE WITNESS: Okay.

7 THE COURT: Thank you.

8 BY MS. KERKHOFF:

9 Q. How long have you been employed at the Metropolitan

10 Police Department?

11 A. Six years.

12 Q. Now, I want to direct your attention to January 20,

13 2017.

14 Were you working that day?

15 A. Yes, ma'am.

16 Q. And what was your assignment that day?

17 A. To the CDU, civil disturbance unit.

18 Q. And in connection with your work with the civil

19 disturbance unit, did you have occasion to assist in the

20 processing and arrest of individuals in the area of 12th and

21 L Streets, Northwest, in Washington, DC?

22 A. Yes, ma'am.

23 Q. Okay. And can you describe how that processing and

24 arrest took place. What was the process that was used?

25 A. We took people out of the crowd and we take them

1 out. We'd search each individual and then we took a picture

2 with them and then we took them to the station to be

3 processed more.

4 Q. In terms of any items or property they had, were

5 they allowed to keep those or were those taken from them?

6 A. They were taken from them.

7 Q. Where were they put?

8 A. They were brought to the station.

9 Q. And were the items taken off an individual bagged or

10 collected together and tagged with that individual's name?

11 A. Yes, ma'am.

12 Q. For each person?

13 A. For each person.

14 Q. So you didn't just have everything going in the back

15 of a cruiser. Right?

16 A. No.

17 Q. Okay. Now, during the course of this, have you had

18 occasion to watch body-worn camera both from yourself and

19 other officers marked as Exhibits 124-L, Part 2;

20 Exhibit 124-I; and Exhibit 124-J?

21 A. Yes, ma'am.

22 Q. And do those body-worn cameras fairly and accurately

23 depict what was happening during the processing of certain

24 Defendants?

25 A. Yes, ma'am.

1 MS. KERKHOFF: At this time, the Government offers

2 into evidence Government's Exhibits 124-L, Part 2; 124-I; and

3 124-J.

4 THE COURT: Any objection?

5 MS. COLEMAN: No objection, your Honor.

6 THE COURT: They're all admitted.

7 (Whereupon, Government's Exhibit Nos. 124-L, Part 2;

8 124-I; and 124-J were entered into evidence.)

9 BY MS. KERKHOFF:

10 Q. Now, Officer Molinari, during the processing, did

11 you assist in the processing and arrest of a Defendant by the

12 name of Alexei Wood?

13 A. Yes, ma'am.

14 Q. Now I'm going to pull up Government's Exhibit 124-I.

15 (Whereupon, segments of Government's Exhibit No.

16 124-I were published in open court.)

17 MS. KERKHOFF: It starts at zero.

18 (Whereupon, segments of Government's Exhibit No.

19 124-I were published in open court.)

20 BY MS. KERKHOFF:

21 Q. I'm going to hit pause at two seconds in. Can you

22 tell us what we're looking at?

23 A. It's the body-worn camera footage of myself and the

24 Defendant.

25 Q. Is that you on the right-hand side?

1 A. It is.
 2 Q. Do you see the individual who identified themselves
 3 as Alexei Wood on the body-worn camera?
 4 A. Yes, ma'am.
 5 Q. And during what part of the processing or arrest was
 6 this?
 7 A. This is the initial processing.
 8 Q. And is this when the Defendant was searched?
 9 A. Yes, ma'am.
 10 Q. Okay.
 11 MS. KERKHOFF: If we could go ahead and play the
 12 exhibit.
 13 (Whereupon, segments of Government's Exhibit No.
 14 124-I were published in open court.)
 15 MS. KERKHOFF: Pause it, please.
 16 BY MS. KERKHOFF:
 17 Q. Now, at this time, Officer Molinari, at one minute
 18 and 10 seconds in, we see another officer with a clipboard.
 19 Is that correct?
 20 A. Yes, ma'am.
 21 Q. What is that person doing?
 22 A. Writing down all his biographical information.
 23 Q. And the other officers that we've observed who are
 24 working on camera and have some property: What are they
 25 doing?

1 A. They were searching him, taking all his property off
 2 him, placing it into a bag.
 3 Q. And was this done for every Defendant?
 4 A. Yes, ma'am.
 5 Q. This was the process set up?
 6 A. Yes, ma'am.
 7 Q. Now -- and who was the official arresting officer
 8 for Defendant Alexei Wood?
 9 A. I was.
 10 Q. Do you recognize Defendant Alexei Wood in this
 11 courtroom?
 12 A. Yes, ma'am.
 13 Q. Could you identify the place where he's seated and
 14 an article of clothing.
 15 A. He's sitting in the back with a gray suit and a
 16 purple tie.
 17 MS. KERKHOFF: If the record could reflect an
 18 in-court identification of Defendant Wood by the witness.
 19 MR. COHEN: No objection.
 20 THE COURT: The record will so reflect.
 21 BY MS. KERKHOFF:
 22 Q. Now I'm going to show you a number of items.
 23 THE COURT: Can I just ask counsel to approach,
 24 please.
 25 (Whereupon, the following proceedings were had at

1 side-bar outside the presence of the jury:)
 2 THE COURT: I forgot to pay close-enough attention
 3 to what he was wearing when he's being walked down the
 4 street. I just wanted to describe it, and you can tell me if
 5 I'm right or wrong: A black puffer jacket, a shirt that is a
 6 colorful color and pants of a description I cannot recall.
 7 I'm just -- either you could flash the picture back upon my
 8 screen, if that's possible, or tell me.
 9 MS. KERKHOFF: I think that's accurate. There is
 10 some purple, I think, in the undershirt. The coat is black,
 11 dark gray.
 12 MR. COHEN: Yes. It's dark gray.
 13 MS. KERKHOFF: And the pants also.
 14 THE COURT: Thank you.
 15 MS. KROPF: Sara Kropf.
 16 I'm a little concerned they're playing the Social
 17 Security numbers as they're spoken by the Defendants. I know
 18 at least for Ms. Lawson I do not want her Social Security
 19 number announced in open court. If there's a way to stop it,
 20 maybe flip ahead five seconds, just make sure --
 21 MS. KERKHOFF: That's fine. I didn't hear it.
 22 MR. COHEN: Yeah.
 23 MS. KERKHOFF: That's because we're getting a lot of
 24 feedback. That's fine.
 25 MR. COHEN: I would ask that ultimately the exhibit

1 that -- from that part gets --
 2 MS. KERKHOFF: We'll redact that.
 3 THE COURT: Thank you.
 4 (Whereupon, the following proceedings were had in
 5 open court:)
 6 BY MS. KERKHOFF:
 7 Q. Now, Officer Molinari, I'll come up -- I think
 8 Mr. Cohen wants to join us, if that's okay -- with
 9 Government's Exhibits 45 to 50. I'm going to hand you a pair
 10 of gloves unless you have your own.
 11 A. No. I'm fine.
 12 Q. Are those small?
 13 A. What size are those?
 14 Q. I did get them from a female crime scene officer.
 15 I'm sorry.
 16 A. We'll figure it out. It's okay.
 17 THE COURT: 45 to 50.
 18 BY MS. KERKHOFF:
 19 Q. I guess we'll just work as we pull this out. I'm
 20 going to show you what's been marked as Government's Exhibit
 21 No. 50.
 22 MS. KERKHOFF: At this time, your Honor, the
 23 Government's going to offer into evidence Government's
 24 Exhibit Nos. 45 to 50.
 25 THE COURT: Any objection?

- 1 MR. COHEN: No objection.
 2 THE COURT: They're all admitted.
 3 (Whereupon, Government's Exhibit Nos. 45 through 50
 4 were entered into evidence.)
 5 BY MS. KERKHOFF:
 6 Q. Showing you Government's Exhibit 50, can you just
 7 take a look at that and for the record tell us what we're
 8 looking at.
 9 A. A backpack.
 10 THE COURT: Just speak up, if you don't mind.
 11 THE WITNESS: A black backpack.
 12 BY MS. KERKHOFF:
 13 Q. And for the record, No. 46 is what?
 14 A. A silver multiple-purpose tool.
 15 Q. If you want to speak up a little bit.
 16 THE COURT: A silver multipurpose tool?
 17 THE WITNESS: Yes.
 18 BY MS. KERKHOFF:
 19 Q. Government's Exhibit 47?
 20 A. Three pairs of goggles.
 21 Q. If you could hold those up for the jury to see.
 22 A. (Witness complies.)
 23 Q. Those are like swim goggles?
 24 A. Yes. Swimming goggles.
 25 Q. And I'm going to show you Government's Exhibit 49.

- 1 A. A camera.
 2 Q. And just to be clear, that camera has what appears
 3 to be a microphone or a sound-recording device on it. Is
 4 that right?
 5 A. Yeah. That's correct.
 6 Q. Okay. And finally, Government's Exhibit -- the
 7 second-to-the-last is 45. What are we looking at with this?
 8 A. It's some black clothing.
 9 Q. How about I open it up for you?
 10 A. Sure.
 11 Q. (Counsel opens exhibit.)
 12 A. Can I take it out?
 13 Q. Sure. Describe what you've got as you're taking it
 14 out.
 15 A. A black windbreaker jacket with a hood.
 16 Q. Okay. Next item?
 17 A. Two black beanies, skullcaps.
 18 A black hoodie.
 19 A pair of black windbreaker pants.
 20 Q. Finally?
 21 A. A black glove.
 22 Q. We'll put Government's Exhibit 45 all back in the
 23 backpack.
 24 Now Government's Exhibit 46: What is Government's
 25 Exhibit 46?

- 1 A. It appears to be a press pass with a lanyard.
 2 Q. Can you open that up or tell me who the name of the
 3 person in that press pass is.
 4 A. The name on the press pass is Osburn.
 5 Q. Can you spell that.
 6 A. First name John, J-O-H-N; last name Osburn,
 7 O-S-B-U-R-N.
 8 Q. And whose photograph is depicted as John Osburn?
 9 A. The Defendant's.
 10 Q. Defendant Alexei Wood?
 11 A. Yes, ma'am.
 12 Q. And where purportedly is that a press badge issued
 13 by or from?
 14 A. Indy Media, I-N-D-Y.
 15 Q. Officer, have you ever seen a fake ID?
 16 A. Yes, ma'am.
 17 Q. Can you compare that to this?
 18 MR. COHEN: Objection.
 19 THE COURT: Sustained.
 20 BY MS. KERKHOFF:
 21 Q. Go ahead and put that back in.
 22 A. (Witness complies.)
 23 Q. What number was that?
 24 A. 48.
 25 Q. I apologize. 48 is the ID. I apologize.

- 1 THE COURT: The ID is something other than the thing
 2 in the lanyard?
 3 MS. KERKHOFF: No. It was 48. I think I called it
 4 as 46.
 5 BY MS. KERKHOFF:
 6 Q. Now, with respect to money or other personal items,
 7 what happens to those when they're taken off a Defendant?
 8 A. They're taken back to the district and placed on the
 9 prisoner's property book.
 10 Q. And what is the difference between prisoner's
 11 property and items seized as evidence?
 12 A. A prisoner's property, the Defendant's allowed to go
 13 back to the station and pick up after they're released.
 14 Q. They just have to sign for it?
 15 A. That's correct.
 16 Q. Okay. Now, during the course of your work at 12th
 17 and L Street, did you also assist in the processing of an
 18 individual by the name of Oliver Harris?
 19 A. Yes, ma'am.
 20 Q. Okay. And I'm going to pull up Government's Exhibit
 21 124-L, Part 2.
 22 Before we begin, when an individual was taken out of
 23 the group, what happened first before they were taken further
 24 back to be searched?
 25 A. They would be checked for weapons.

1 MS. KERKHOFF: Can you play Government's Exhibit
2 124-L.
3 (Whereupon, segments of Government's Exhibit No.
4 124-L, Part 2, were published in open court.)
5 BY MS. KERKHOFF:
6 Q. Now, Officer Molinari, is this your body cam?
7 A. I believe so. Yes.
8 Q. And in -- on the right-hand side, there appears to
9 be you holding -- what are you holding?
10 A. It looks like a black bag.
11 Q. Okay. And that kind of manila-colored tag: What is
12 that?
13 A. That would be a tag that we would affix to the bag
14 and put the Defendant's information on it.
15 Q. And so you were in possession of a black backpack as
16 depicted in Government's Exhibit 124-L in connection with
17 Oliver Harris?
18 A. That's correct.
19 Q. Do you know whether or not that black backpack was
20 seized as evidence or placed in prisoner's property?
21 A. I believe prisoner's property.
22 Q. Which means what?
23 A. Which means that the Defendant would be free to pick
24 it up once they were released.
25 Q. Thank you.

1 MS. KERKHOFF: No further questions.
2 MR. LAZEROW: May we approach, your Honor?
3 THE COURT: Yes.
4 (Whereupon, the following proceedings were had at
5 side-bar outside the presence of the jury:)
6 MR. LAZEROW: For the record, we are renewing our
7 motion to sever. This press pass, this press package that
8 was just introduced into evidence, is new evidence that was
9 not part of our motion to sever. So I want to make sure that
10 we have maintained a record that we continue to believe that
11 Mr. Wood should be severed from this trial.
12 THE COURT: Because of the press badge?
13 MR. LAZEROW: Right. The case law is clear that we
14 do not have to renew our motion to sever based on your
15 Honor's denial in order to make sure we can appeal that.
16 However, there is some question in the case law as
17 to whether when there is new evidence --
18 THE COURT: Right. I'm not faulting you for that.
19 You're worried about that?
20 MR. LAZEROW: Right.
21 THE COURT: You're saying the press badge, you've
22 never seen it before. But certainly if he's been talking
23 about it since this --
24 MR. LAZEROW: I understand that. But now we've had
25 it introduced, with him reading the name of some other name

1 besides the Defendant using the Defendant's picture.
2 THE COURT: Okay. And so -- yes. Do you oppose the
3 motion to sever?
4 MS. KERKHOFF: I do.
5 I would also note that photographs of this item were
6 produced as part of discovery in the case to include the
7 name; and I have talked about it in advance.
8 THE COURT: This is not news to me, the fact that
9 there was a purportedly fake press pass that's been discussed
10 in the case for quite some time.
11 MR. LAZEROW: Right.
12 THE COURT: To the extent it's now physically been
13 introduced into evidence, I think without objection, I don't
14 consider that to be a basis on which I could sever, having
15 already concluded there's no basis for severance. And I
16 don't believe that that additional piece of evidence changes
17 the calculus.
18 So --
19 MR. LAZEROW: Thank you, your Honor.
20 (Whereupon, the following proceedings were had in
21 open court:)
22 THE COURT: Is this the time for cross now?
23 MR. LAZEROW: I think so. That's the reason I
24 jumped up.
25 THE COURT: You're done with this officer.

1 Yes. On behalf of Ms. Macchio?
2 MR. LAZEROW: No questions, your Honor.
3 THE COURT: On behalf of Ms. Armento, any cross?
4 MS. WELETZ: None, your Honor.
5 THE COURT: From Ms. Simmons?
6 MS. JACQUES: No, your Honor. Thank you.
7 THE COURT: For Mr. Wood?
8 MR. COHEN: Yes, your Honor. Please.
9 CROSS-EXAMINATION
10 BY MR. COHEN:
11 Q. Good afternoon.
12 A. Good afternoon.
13 Q. Did you personally observe the items being removed
14 from Mr. Wood during his arrest?
15 A. Yes, sir.
16 Q. And after the items were removed, they were placed
17 in a bag?
18 A. Yes, sir.
19 Q. Were there two bags, like one for prisoner's
20 property and one for evidence?
21 A. I believe so.
22 Q. Do you know if that's what was going on out there on
23 the street?
24 A. I don't believe on the street that they took
25 anything as evidence right away. I don't recall.

1 Q. So my question is: Were items being placed for each
 2 Defendant -- at least for Mr. Wood, were they being placed in
 3 one or two bags?
 4 A. I believe at the time it was all one bag.
 5 Q. If that were the case, it would have been sorted out
 6 at the police station or wherever is -- what's prisoner's
 7 property and what's evidence?
 8 A. Yes, sir.
 9 Q. Did you have any involvement in the property return
 10 forms otherwise known as PD-81s?
 11 A. No, sir.
 12 Q. Did you ever have the opportunity to review the
 13 PD-81s, as least for Mr. Wood, before testifying here today?
 14 A. No, sir.
 15 Q. Sir, if the PD-81 -- you wouldn't know why the PD-81
 16 for Mr. Wood, if it only said it had one goggles, for
 17 example, as opposed to the three that you testified to here
 18 today, you would have no idea why that would be the case?
 19 A. No, sir.
 20 Q. One of the items that was --
 21 MR. COHEN: The Court's indulgence.
 22 BY MR. COHEN:
 23 Q. One of the items was -- that isn't here today, do
 24 you recall there being a -- what I'll call a selfie stick or
 25 something that the camera itself was on?

1 A. I believe so. Yes.
 2 Q. There was also a lens for the camera?
 3 A. I believe so. I can't recall now.
 4 Q. And in fact, when Mr. Wood was pulled out from --
 5 did you personally pull Mr. Wood out from the kettle?
 6 A. I don't recall if I personally took him out or not.
 7 Q. Do you recall that when he came out or -- do you
 8 recall at any time that he had his camera around his neck?
 9 A. I know he had the camera. I don't recall if it was
 10 around his neck or not.
 11 Q. You never observed Mr. Wood with any kind of weapon.
 12 Correct?
 13 A. No.
 14 Q. You didn't observe him with a -- something that
 15 might be referred to as a baton?
 16 A. I don't recall. No.
 17 Q. Or an ASP?
 18 A. No.
 19 Q. Would you describe Mr. Wood's behavior during the
 20 processing, at least what you saw, as cooperative?
 21 A. He was cooperative.
 22 Q. And he provided you his name when you asked him?
 23 A. When the individual taking down the information
 24 asked him. Yes. Correct.
 25 Q. And he didn't make any reference to a John Osburn.

1 Right?
 2 A. Not verbally. I don't believe so. No.
 3 Q. The only reference to that name was on the -- was on
 4 that press pass that you just testified to?
 5 A. I believe so. Yes.
 6 Q. Mr. Wood had identification on him. Correct?
 7 A. I don't recall if he had identification on him.
 8 Q. You don't recall if he had his driver's license on
 9 him?
 10 A. No, I do not.
 11 Q. You would have -- if you saw that there was another
 12 identification on him, you would have asked further about
 13 which one is correct. Right?
 14 A. Correct.
 15 Q. You want to know who you're arresting?
 16 A. Correct.
 17 Q. And in fact, Mr. Wood had a bunch of business cards
 18 on him. Correct?
 19 A. I do not recall. No.
 20 Q. I'm approaching with what I'm going to mark as Wood
 21 2.
 22 MR. COHEN: I'm approaching the witness.
 23 THE COURT: Is this something you've seen?
 24 MS. KERKHOFF: No.
 25 THE COURT: Can you show it to the Government?

1 MR. COHEN: I should have shown it to the
 2 Government. I'm sorry. I'm very sorry.
 3 (Tenders document to counsel.)
 4 MS. KERKHOFF: Yes.
 5 MR. COHEN: Sorry. I just showed it to the
 6 Government.
 7 THE COURT: No problem.
 8 MR. COHEN: Thank you.
 9 BY MR. COHEN:
 10 Q. Now I'm again showing it to the witness.
 11 Do you remember seeing -- you can look at the front
 12 or back -- that on the day of Mr. Wood's arrest?
 13 A. I don't recall seeing it. No.
 14 Q. If I could have it back.
 15 A. Yeah.
 16 Q. If Mr. Wood had these on his person, this would have
 17 been considered prisoner's property and not evidence. Right?
 18 A. Correct. I believe so.
 19 THE COURT: This for the record is -- what appears
 20 to be a business card. Is that correct?
 21 THE WITNESS: It appears to be a business card.
 22 Yes.
 23 BY MR. COHEN:
 24 Q. Were there any other issues regarding his processing
 25 that you can recall?

1 A. Not that I'm aware of. No.
 2 MR. COHEN: I have no further questions.
 3 THE COURT: Any cross on behalf of Mr. Harris?
 4 MS. COLEMAN: No questions, your Honor.
 5 THE COURT: On behalf of Mr. Lawson?
 6 MS. KROPF: No, your Honor.
 7 THE COURT: Redirect?
 8 MS. KERKHOFF: Very briefly.
 9 REDIRECT EXAMINATION
 10 BY MS. KERKHOFF:
 11 Q. Officer, I'm going to pull up Government's Exhibit
 12 124 that we had. Mr. Cohen asked you a couple questions
 13 about the long stick and the camera lens. You said you
 14 thought so, but you weren't sure. This is a video we just
 15 watched. Correct?
 16 A. Uh-huh.
 17 Q. Just showing you at nine seconds in, do you see
 18 yourself holding that same camera?
 19 A. Yes.
 20 Q. It has a lens on it?
 21 A. Yes.
 22 Q. And a long stick like a selfie stick. Right?
 23 A. Yes, ma'am.
 24 MS. KERKHOFF: Thank you. No further questions.
 25 THE COURT: Sir, you may be excused. Do not discuss

1 your testimony with any other witness.
 2 THE WITNESS: Okay.
 3 (Witness excused.)
 4 THE COURT: Please call your next witness.
 5 MS. KERKHOFF: The United States calls Officer Jamie
 6 Cullen-Dega.
 7 (Thereupon, the witness entered
 8 the courtroom and the following
 9 proceedings were had:)
 10 JAMIE CULLEN-DEGA, GOVERNMENT WITNESS, SWORN
 11 THE COURT: Good afternoon.
 12 THE WITNESS: Good afternoon.
 13 DIRECT EXAMINATION
 14 BY MS. KERKHOFF:
 15 Q. Good afternoon, ma'am?
 16 A. Good afternoon.
 17 Q. Can you please introduce yourself to the ladies and
 18 gentlemen of the jury.
 19 A. Jamie Cullen-Dega. I'm with the Metropolitan Police
 20 Department.
 21 Q. Thank you.
 22 Can you spell your first and last name for our court
 23 reporter.
 24 A. J-A-M-I-E C-U-L-L-E-N hyphen D-E-G-A.
 25 Q. And where are you employed?

1 A. Metropolitan Police Department.
 2 Q. What is your current rank and assignment?
 3 A. Officer assigned to the narcotics and special
 4 investigations division, gun recovery unit.
 5 Q. How long have you been employed by the Metropolitan
 6 Police Department?
 7 A. 20 years.
 8 Q. How long have you been assigned to the narcotics and
 9 special investigations division's gun recovery unit?
 10 A. Ten years.
 11 Q. I would like to direct your attention to January 20,
 12 2017.
 13 Were you working that day?
 14 A. Yes.
 15 Q. And did you have occasion to go to 12th and L
 16 Streets, Northwest, shortly after 11:00 a.m.?
 17 A. Yes.
 18 Q. Why did you go to that location?
 19 A. I was part of the prisoners' process and transport
 20 unit. We were called to that area because they had arrests.
 21 Q. And so what was the responsibilities of a narcotics
 22 and special investigation division when there was a large
 23 arrest?
 24 A. To search prisoners, place them on transport wagons
 25 and transport them to the off-site arrest processing center.

1 Q. And did you assist in a search of Defendants that
 2 day?
 3 A. Yes.
 4 Q. And just so I understand, how many female officers
 5 are with the narcotics and special investigation division?
 6 A. Maybe three. Three or four, maybe.
 7 Q. What is MPD policy regarding whether a male or
 8 female officer should search a male or female prisoner?
 9 A. Females search females.
 10 Q. So about how many individuals did you search on
 11 January 20, 2017?
 12 A. A lot. The most I've ever in my career.
 13 Q. You didn't have enough female officers. Is that
 14 right?
 15 A. Yes.
 16 Q. Did you have to call more female officers in to
 17 assist with the search?
 18 A. Yes, we did.
 19 Q. So I'd like to direct your attention to the search
 20 of a particular Defendant.
 21 And prior to testifying today, did you have an
 22 opportunity to review several exhibits from body-worn camera?
 23 That's Exhibit 124-A, 124-G, and 124-F, Part 3, all of which
 24 are portions of body-worn camera from January 20, 2017.
 25 A. Yes, I did.

1 Q. And does that body-worn camera fairly and accurately
2 reflect the events of January 20, 2017?
3 A. Yes.
4 MS. KERKHOFF: At this time, the Government offers
5 into evidence Government's Exhibits 124-A, 124-G, and 124-F,
6 Part 3.
7 THE COURT: Any objection?
8 MS. WELETZ: No objection.
9 MS. COLEMAN: No objection.
10 THE COURT: So 124-A, 124-G and 124-F, Part 3, will
11 be admitted.
12 (Whereupon, Government's Exhibit Nos. 124-A, 124-G
13 and 124-F, Part 3, were entered into evidence.)
14 BY MS. KERKHOFF:
15 Q. Officer, did you conduct a search of an individual
16 who identified themselves as Jennifer Armento?
17 A. Yes.
18 Q. And I'm going to pull up Government's Exhibit No.
19 124-A, starting at 2:40.
20 (Whereupon, segments of Government's Exhibit No.
21 124-A were published in open court.)
22 BY MS. KERKHOFF:
23 Q. And, Officer Cullen-Dega, do you see yourself on
24 Government's Exhibit 124-A that we stopped at three minutes
25 and three seconds in?

1 A. Yes.
2 Q. Where are you?
3 A. Wearing the neon jacket there. I have my hair
4 pulled back.
5 Q. Right now you're just behind the individual who has
6 identified herself as Jennifer Armento?
7 A. Yes.
8 Q. And did you perform a search of Ms. Armento?
9 A. Yes, I did.
10 Q. And let me ask you this: When you are searching an
11 individual, what is it you are looking for? Is it a
12 pat-down? Is it a full search?
13 A. It's a full search.
14 Q. Can you describe it?
15 A. Go through all the pockets, waistband, down the
16 legs. A whole body search.
17 Q. And what -- when an individual's wearing multiple
18 layers of clothing, how does that impact the search?
19 A. It makes it more difficult. You have to unzip each
20 layer, go through all the pockets of each layer.
21 Q. Do you recall how many layers Ms. Armento was
22 wearing?
23 A. I think it was three.
24 Q. And do you see Ms. Armento in this courtroom today?
25 A. Yes, I do.

1 Q. Can you identify her by a place where she's seated
2 or an article of clothing?
3 A. On the back side there with the -- a black jacket
4 like mine, wearing glasses.
5 MS. KERKHOFF: If the record could reflect an
6 in-court identification of Defendant Jennifer Armento by the
7 witness.
8 THE COURT: Any objection?
9 MS. WELETZ: No objection.
10 THE COURT: The record will reflect the
11 identification.
12 BY MS. KERKHOFF:
13 Q. Now, at the time that you are searching Ms. Armento,
14 what are you doing with the physical property or items that
15 you take or remove from her?
16 A. They're going into a trash bag.
17 Q. To be trashed or to be put together?
18 A. To be put together as prisoner's property.
19 Q. At the time, were you seizing anything as evidence?
20 A. I don't believe so at that time.
21 Q. So you were keeping all the items in one place?
22 A. Yes.
23 Q. Now I'm going to show you what's been marked as
24 Government's Exhibit 41.
25 Officer Cullen-Dega, I'm going to show you what's

1 been marked as Government's Exhibit 41. Is that an evidence
2 bag?
3 A. Yes, it is.
4 Q. And what is an evidence bag?
5 A. We use it for prisoners' property. We use it for
6 really any evidence that will fit in a bag like this.
7 Q. And do you -- is information about where this came
8 from logged on as part of -- logged onto the bag as part of
9 the process of obtaining the evidence?
10 A. Yes.
11 MS. KERKHOFF: At this time the Government offers
12 into evidence Government's Exhibit No. 41.
13 THE COURT: Any objection?
14 MS. WELETZ: No objection.
15 THE COURT: It's admitted.
16 (Whereupon, Government's Exhibit No. 41 was entered
17 into evidence.)
18 BY MS. KERKHOFF:
19 Q. I'll go ahead and cut this open. It's already cut
20 open.
21 Can you tell us -- I'll give you a pair of gloves --
22 what it is we're looking at.
23 A. A pair of goggles.
24 Q. I'll go ahead and take it out.
25 A. Thanks.

- 1 Q. A pair of goggles?
 2 A. Yes.
 3 Q. And what else? Just a --
 4 A. Like scarfy thing.
 5 Q. And a pair of goggles?
 6 A. Yes.
 7 Q. Clear plastic goggles.
 8 During the search of Ms. Armento, was there also a
 9 backpack recovered from her?
 10 A. Yes.
 11 Q. Do you recall, having reviewed the body-worn camera,
 12 what color that backpack was?
 13 A. I believe it was purple.
 14 Q. And do you know whether or not that backpack was
 15 seized as evidence or placed as prisoner's property for which
 16 the Defendant could pick it up?
 17 A. I believe it was placed as prisoner's property.
 18 MS. KERKHOFF: No further questions.
 19 THE COURT: Any cross?
 20 MR. LAZEROW: No questions, your Honor.
 21 THE COURT: Ms. Weletz?
 22 MS. WELETZ: Yes.
 23 CROSS-EXAMINATION
 24 BY MS. WELETZ:
 25 Q. Good afternoon, Officer.

- 1 So you conducted, you said, a lot of female searches
 2 that day. Correct?
 3 A. Correct.
 4 Q. And it's safe to say that a lot of females that you
 5 searched were wearing multiple layers. Correct?
 6 A. Yes.
 7 Q. In fact, in the body-worn camera that we saw, you
 8 yourself were wearing at least two layers. Correct?
 9 A. Three.
 10 Q. You were wearing three layers.
 11 It was January in Washington, DC. Correct?
 12 A. Yes.
 13 Q. It was cold out?
 14 A. Yeah.
 15 Q. In fact, at some point while you were processing --
 16 well, how long were you out there processing these
 17 individuals?
 18 A. Ten hours.
 19 Q. And do you remember at some point it started to
 20 drizzle or rain?
 21 A. Yes.
 22 Q. And you indicated that as you were searching all of
 23 the different layers, you didn't separate things. You just
 24 put everything into a big bag, correct, for each individual?
 25 A. Correct.

- 1 Q. And you said that for Ms. Armento, you found a pair
 2 of clear goggles, correct, that came out of that bag?
 3 A. I didn't pull goggles off of her. I don't recall
 4 pulling the goggles off of her.
 5 Q. So during your processing, you never actually saw
 6 those goggles?
 7 A. No. Not that I can recall. No.
 8 Q. During your processing of Ms. Armento, did you ever
 9 see that black headband that Ms. Kerkhoff showed you?
 10 A. She was wearing a couple different scarf-looking
 11 things. I don't recall that specific one.
 12 Q. And you indicated that you believe based on your
 13 review of the body-worn camera she had a purple backpack?
 14 A. Yes.
 15 Q. But that's the only description that you could give
 16 of what the backpack looked like. It was purple. Correct?
 17 A. Correct.
 18 Q. And during the search of all these individuals that
 19 day, you saw a lot of people with a lot of backpacks.
 20 Correct?
 21 A. Yes.
 22 MS. WELETZ: No further questions.
 23 THE COURT: Anyone else?
 24 MS. JACQUES: No.
 25 THE COURT: Redirect?

- 1 MS. KERKHOFF: No. Thank you, your Honor.
 2 THE COURT: Ma'am, you may be excused. Don't
 3 discuss your testimony with any other witness.
 4 THE WITNESS: Thank you. Yes, your Honor.
 5 (Witness excused.)
 6 MS. KERKHOFF: The Government calls Officer Minier
 7 to the stand.
 8 (Thereupon, witness entered the
 9 courtroom and the following
 10 proceedings were had:)
 11 THE COURT: Sir, please come up here to the witness
 12 stand.
 13 RICARDO MINIER, GOVERNMENT WITNESS, SWORN
 14 THE COURT: Good afternoon.
 15 THE WITNESS: Good afternoon.
 16 DIRECT EXAMINATION
 17 BY MS. KERKHOFF:
 18 Q. Good afternoon. Can you please introduce yourself
 19 to the ladies and gentlemen of the jury.
 20 A. I'm Officer Minier with the Metropolitan Police
 21 Department, Fourth District.
 22 Q. How long -- you've been employed --
 23 THE COURT: Can he spell that, please.
 24 BY MS. KERKHOFF:
 25 Q. Could you spell your first and last names, please.

- 1 A. First name, R-I-C-A-R-D-O. Last name, M-I-N-I-E-R.
 2 Q. And we're going to try to get you out of here, so
 3 you don't have to speed up.
 4 How long have you been employed by the Metropolitan
 5 Police Department?
 6 A. A little over four and a half years.
 7 Q. And what is your current assignment?
 8 A. Fourth District, patrols.
 9 Q. I want to direct your attention to January 20, 2017.
 10 Did you assist in the processing and arrest of
 11 individuals in the area of 12th and L Streets?
 12 A. Yes, I did.
 13 Q. Okay. And specifically, what did you do?
 14 A. I processed ten arrests.
 15 Q. That means ten individuals?
 16 A. Ten individuals. Correct.
 17 Q. And for those individuals, you were the arresting
 18 officer. Is that correct?
 19 A. Correct.
 20 Q. Now, was one of those individuals Defendant Brittne
 21 Lawson?
 22 A. Yes.
 23 Q. And do you recall Ms. Lawson from that day? Do you
 24 remember what she looked like?
 25 A. Yes.

- 1 Q. Do you see Ms. Lawson in this courtroom?
 2 A. Yes. I see her here.
 3 Q. And where -- can you identify her where she's
 4 seated?
 5 A. To my far left, second row.
 6 Q. What is she wearing?
 7 A. Gray, and a blue shirt under.
 8 Q. What color is her hair?
 9 A. Blonde hair.
 10 MS. KERKHOFF: If the record could reflect an
 11 in-court identification of the Defendant by the witness.
 12 THE COURT: Any objection?
 13 MS. KROPF: No objection.
 14 THE COURT: The record will reflect the
 15 identification.
 16 BY MS. KERKHOFF:
 17 Q. Now, Officer, during the processing of Defendant
 18 Brittne Lawson, were certain items of property taken off of
 19 her person and recovered as potential evidence?
 20 A. Yes.
 21 Q. I'll show you what's previously been shown to
 22 counsel.
 23 MS. KERKHOFF: At this time, the Government offers
 24 into evidence Government's Exhibit No. 39.
 25 THE COURT: Any objection?

- 1 MS. KROPF: No objection. I'm sorry. Is 39
 2 everything in the box?
 3 MS. KERKHOFF: I believe so.
 4 Mr. Qureshi, can you confirm that for me?
 5 MR. QURESHI: A belt and a helmet.
 6 MS. KERKHOFF: Yes. That is everything in the box.
 7 THE COURT: We'll make it A and B.
 8 (Whereupon, Government's Exhibit Nos. 39-A and 39-B
 9 were entered into evidence.)
 10 BY MS. KERKHOFF:
 11 Q. Officer Minier, I'm told these gloves are small, so
 12 I'll put them on.
 13 I'm showing you what's been marked and admitted as
 14 Government's Exhibit No. 39. Can you describe what it is
 15 we're looking at here.
 16 A. That's some of the property she had on her that day
 17 that was taken from her.
 18 Q. Okay. So it's kind of like a belt or a utility belt
 19 or fanny pack of sorts?
 20 A. Yes.
 21 Q. And there are what inside of it that you can see?
 22 A. It appears to be first aid equipment.
 23 Q. And water bottles?
 24 A. Water bottles.
 25 Q. We also have a white helmet marked with red tape,

- 1 correct, in crosses?
 2 A. Right.
 3 Q. And I'm just going to show you inside of the pouch
 4 portion. Can you describe what it is we're looking at here?
 5 A. Looks like first aid equipment in there.
 6 Q. And some granola bars. Is that right?
 7 A. Yes. Gloves.
 8 Q. We could use those. Gloves.
 9 Alcohol pads. Is that right?
 10 A. Yes.
 11 Q. Sharpies?
 12 A. Yes.
 13 Q. Ear protection. Correct?
 14 A. Yes.
 15 Q. Honey gel?
 16 A. (Nods head in the affirmative.)
 17 Q. Ace bandages?
 18 A. (Nods head in the affirmative.)
 19 THE COURT: You've got to let him answer your
 20 questions.
 21 BY MS. KERKHOFF:
 22 Q. I need you to say "yes" or "no."
 23 A. Yes.
 24 Q. It looks like we've got gauze here.
 25 A. Yes.

- 1 Q. Tampons?
- 2 A. Correct.
- 3 Q. And Vaseline?
- 4 A. Yeah.
- 5 Q. Band-Aids?
- 6 A. Yes.
- 7 MS. KERKHOFF: No further questions.
- 8 THE COURT: Ms. Kropf?
- 9 CROSS-EXAMINATION
- 10 BY MS. KROPF:
- 11 Q. Good afternoon.
- 12 A. Good afternoon.
- 13 Q. My name is Sara Kropf. I represent Brittne Lawson.
- 14 We didn't watch any body-worn camera of Ms. Lawson's
- 15 processing. Have you reviewed body-worn camera of her
- 16 processing?
- 17 A. No.
- 18 Q. Was it your body-worn camera of her? Was there --
- 19 did you have body-worn camera?
- 20 A. Yes.
- 21 Q. But you didn't review it for today?
- 22 A. No.
- 23 Q. The prosecutor didn't ask you to review that in
- 24 advance of coming today?
- 25 A. I was on leave.

- 1 Q. Okay.
- 2 A. I was on vacation.
- 3 Q. You were here before we broke for lunch. Is that
- 4 right?
- 5 A. Yes.
- 6 Q. Did you -- did the prosecutor ask you to review it
- 7 over lunch?
- 8 A. No.
- 9 Q. Who searched Ms. Lawson --
- 10 A. I don't recall --
- 11 Q. -- on January 20?
- 12 A. I don't recall.
- 13 Q. You don't know if it was a man who searched her?
- 14 A. I don't know.
- 15 Q. Is it your understanding of MPD policy that a woman
- 16 is supposed to search a woman who's being arrested?
- 17 A. Correct.
- 18 Q. Okay. So if a man searched her, that would be
- 19 against MPD policy?
- 20 A. Against policy. Yes.
- 21 Q. And we looked at Exhibit 39. I'm going to spend a
- 22 few minutes looking at it.
- 23 But that was taken as evidence in the case. Right?
- 24 A. Exhibit 39?
- 25 Q. Yes.

- 1 A. What is that?
- 2 Q. Her fanny pack you just testified about.
- 3 A. Yes.
- 4 Q. That was taken as evidence in this case?
- 5 A. It was taken initially as prisoner's property.
- 6 Q. Right. But it wasn't returned to Ms. Lawson.
- 7 Correct?
- 8 A. Okay.
- 9 Q. Correct?
- 10 A. Correct.
- 11 Q. I mean, it's here as evidence.
- 12 A. Yes.
- 13 Q. So that means that the police or the prosecutors
- 14 believed it was evidence of the supposed crimes by
- 15 Ms. Lawson. Right?
- 16 A. Yes.
- 17 Q. Let's take a little closer look at it. This went
- 18 awfully fast, so I want to make sure we see it.
- 19 So now first is the white helmet. Right?
- 20 A. Yes.
- 21 Q. It's a pretty bright white. Correct?
- 22 A. Yes, it is.
- 23 Q. And it has red crosses on both sides. Is that
- 24 right?
- 25 A. Yes.

- 1 Q. Okay. And you see this water bottle?
- 2 A. Yes.
- 3 Q. And this has the squeeze top. Right?
- 4 A. Yes.
- 5 Q. And have you ever squeezed one of these?
- 6 A. Yes. It squirts the water.
- 7 Q. It squirts the water. Right? Exactly.
- 8 There's a lot of stuff here. Hold on.
- 9 I want to take a little closer look at what you all
- 10 seized as evidence from Ms. Lawson.
- 11 This is her Metro card --
- 12 A. Yeah.
- 13 Q. -- right?
- 14 A. Yes.
- 15 Q. Now, do you see what these are?
- 16 A. Those look like -- they look like gloves.
- 17 Q. Let's make sure. Right? These are medical gloves?
- 18 A. Yes.
- 19 Q. There's a couple -- two pairs of those so far.
- 20 Right?
- 21 A. Yes.
- 22 Q. Okay. Oops. Sorry. Four pairs --
- 23 A. Yes.
- 24 Q. -- of medical gloves?
- 25 A. Yes.

- 1 Q. Now let's see. This says Medihoney Gel, wound and
2 burn dressing.
3 Do you see that?
4 A. Yes. I see it.
5 Q. So they seized that.
6 And a Sharpie?
7 A. Yes.
8 Q. Okay. It's a red Sharpie. Right?
9 A. Yes. It appears to be a red top.
10 Q. And a Clif Bar?
11 A. Yes.
12 THE COURT: FYI, we're going to stop in about five
13 minutes.
14 MS. KROPF: Sure. I will try to finish.
15 BY MS. KROPF:
16 Q. Another Clif Bar?
17 A. Yes.
18 Q. Now, what are these?
19 A. These are alcohol pads.
20 Q. So we've got a whole bunch of alcohol pads. Right?
21 A. Yes.
22 Q. These are like the kinds when you're in the doctor's
23 office before they're about to give you a shot, they swab you
24 down?
25 A. Yes.

- 1 Q. All right. And do you see what that is?
2 A. Tape. Red tape.
3 Q. Exactly. Red duct tape. Right?
4 A. Exactly.
5 Q. Just like a roll of it.
6 Can you tell what that is?
7 A. I don't know.
8 Q. Okay. Me either.
9 Ear plug?
10 A. Ear plug. Yeah.
11 Q. What's that?
12 A. It's a hemostatic dressing for cuts and injuries.
13 Q. For cuts and injuries?
14 A. Yeah.
15 Q. All right. Can you see what those are?
16 A. Yes.
17 Q. What are those?
18 A. Those are clips.
19 Q. Like safety pans?
20 A. Safety pins. Yes.
21 Q. All right, sir. Let's see what else we've got here.
22 A pen?
23 A. A black pen.
24 Q. A lighter?
25 A. A lighter.

- 1 Q. What do we have more of here?
2 A. Red duct tape.
3 Q. Does it look like the same red duct tape that's all
4 over this white helmet?
5 A. Yes. Very similar.
6 Earplugs.
7 Q. All right. I'm not going to take all of these out,
8 but there are several tampons in here. Correct?
9 A. Yes.
10 Q. All right. Let's see what else we've got. What is
11 that? Does that look like a bandage?
12 A. A bandage.
13 Q. A sterile bandage. Right?
14 A. Yes.
15 Q. Like at the doctor's office?
16 A. Yes.
17 Q. A whole bunch of those.
18 Let's see what else. This looks like another
19 bandage. Is that correct?
20 A. Yeah.
21 Q. Some regular Band-Aids?
22 A. More Band-Aids.
23 Q. More of the same.
24 All right. Do you recognize that?
25 A. Yes.

- 1 Q. Like an ACE bandage?
2 A. Yes. An ACE bandage.
3 Q. If someone sprains their ankle, you might wrap them
4 up with it?
5 A. Yeah.
6 Q. There's a couple of those in there. Do you see a
7 second one?
8 A. Yes. I see a second one.
9 Q. Let's see. What are these? Can you read that?
10 A. Glucose tablets.
11 Q. Okay. So if someone is, say, diabetic?
12 A. Yes. It raises low blood. So -- low levels.
13 Q. It raises low blood levels in someone who is
14 diabetic and needs that. All right.
15 Is that the same thing? More glucose tablets?
16 A. Yes.
17 Q. Used frequently by diabetics?
18 A. Yes.
19 Q. Okay. More earplugs?
20 A. Earplugs.
21 Q. This?
22 A. A flashlight.
23 Q. Do you want to make sure? That's not a weapon or
24 anything. Right? That's a flashlight.
25 A. Yeah.

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1 Q. It doesn't work.
 2 And do you see that?
 3 A. Yes.
 4 Q. What does that say on it?
 5 A. Gauze pad.
 6 Q. Gauze pad. So there's several of these gauze pads
 7 in here.
 8 Do you see that?
 9 A. Yes.
 10 Q. Okay. I think that might be everything. Let me
 11 make sure. I think that's all of those pockets.
 12 Did I get everything important?
 13 A. Yes.
 14 Q. Great.
 15 MS. KROPF: Nothing further, your Honor.
 16 THE COURT: Any additional cross?
 17 MS. JACQUES: No, your Honor.
 18 THE COURT: Any redirect?
 19 MS. KERKHOFF: No redirect.
 20 THE COURT: All right. And so take a hold of that
 21 pack so it doesn't all fall off. Pick it up so we can finish
 22 the day here. Hand that to the Government or put it in the
 23 box or something.
 24 MS. KROPF: I'll repack it, your Honor.
 25 THE COURT: Just put it down for now. You're going

1 with a new offense. And it has a five-year jail term and a
 2 1,200 -- a \$12,500 fine.
 3 Thank you.
 4 MR. McCOOL: Goodnight, your Honor.
 5 MS. COLEMAN: Thank you, your Honor.
 6 THE COURT: And I think she wants you to sign.
 7 (Proceedings concluded.)
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1 back to counsel table and I'll let the jurors go.
 2 MS. KROPF: Okay.
 3 THE COURT: Ladies and gentlemen, we're ending for
 4 the day. I'm excusing you until 10:00 a.m. tomorrow. And I
 5 really, really believe we will start at 10:00 a.m. So I'm
 6 sorry about the delays we've had. I will see you tomorrow.
 7 Have a good evening. Do not read or watch or look at
 8 anything about this case. Don't make any decisions about it.
 9 Don't talk to anybody about it.
 10 Thank you.
 11 (Whereupon, the jury exited the courtroom at 4:40
 12 p.m. and the following proceedings were had:)
 13 THE COURT: Sir, I'll excuse you. Don't discuss
 14 your testimony with anyone.
 15 THE WITNESS: All right.
 16 (Witness excused.)
 17 THE COURT: As the officer is walking out there, is
 18 there anything we need to talk about before we break?
 19 MS. KERKHOFF: Not from the Government.
 20 THE COURT: Okay. I'll see you tomorrow. I think
 21 Ms. Lis wanted me to give notice to everybody for 9:30. I
 22 don't expect we're going to start before 10:00.
 23 But I'm giving you all notice to return tomorrow
 24 morning at 9:30 a.m. If you fail to appear, a warrant could
 25 issue for your arrest. In addition, you could be charged

1 **CERTIFICATE**
 2 I, Lisa Edwards, RDR, CRR, an Official Court
 3 Reporter for the Superior Court of the District of
 4 Columbia, do hereby certify that I reported by machine
 5 shorthand, in my official capacity, the proceedings had and
 6 testimony adduced, upon the Trial in the case of the United
 7 States of America v. Michelle Macchio, Criminal Action No.
 8 2017 CF2 1183, in said Court on the 4th day of December,
 9 2017.

10 I further certify that the foregoing 196 pages
 11 constitute the official transcript of said proceedings, as
 12 taken from said shorthand notes, my computer realtime
 13 display, together with the audio sync and digital recording
 14 of said proceedings.

15 In witness whereof, I have hereto subscribed my
 16 name, this 4th day of December, 2017.
 17
 18
 19

20 Lisa Edwards, RDR, CRR
 21 Official Court Reporter
 22
 23
 24
 25