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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

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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 5, 2017

The above-entitled matter came on for jury trial before the HONORABLE LYNN LEIBOVITZ, Associate Judge, in Courtroom 203, commencing at approximately 10:12 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:

On behalf of the Government:
Jennifer Kerkhoff, Esquire
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:

3 Thomas Healy, Esquire
4 Carrie Weletz, Esquire
5 Washington, DC

6 On behalf of Defendant Macchio:

7 Jamie Heine, Esquire
8 Christina Copsey, Esquire
9 Andrew Lazerow, Esquire
10 Alaina Whitt, Esquire
11 Washington, DC

12 On behalf of Defendant Harris:

13 Steven McCool, Esquire
14 Julie Coleman, Esquire
15 Washington, DC

16 On behalf of Defendant Wood:

17 Brett Cohen, Esquire
18 Washington, DC

19 On behalf of Defendant Simmons:

20 Tammy Jacques, Esquire
21 Washington, DC

22 Reported by:
23 Lisa Edwards, RDR, CRR
24 Official Court Reporter
25 Telephone (202) 879-1079

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1 THE DEPUTY CLERK: Now calling Co-Defendant matters

2 United States versus Brittne Lawson, 2017 CF2 1256; United

3 States versus Jennifer Armento, 2017 CF2 1193; United States

4 versus Michelle Macchio, 2017 CF2 1183; United States versus

5 Oliver Harris, 2017 CF2 1254; United States versus Alexei

6 Wood, 2017 CF2 1221; and United States versus Christina

7 Simmons, 2017 CF2 1210.

8 THE COURT: Good morning, everybody.

9 MS. KERKHOFF: Good morning, your Honor.

10 MR. QURESHI: Good morning, your Honor.

11 MS. COLEMAN: Good morning, your Honor.

12 THE COURT: I see the two Government lawyers at the

13 table.

14 Let's see. Ms. Macchio has all four.

15 Ms. Armento has two.

16 Is Ms. Kropf here yet?

17 MS. WELETZ: She was right outside. Let me see.

18 THE COURT: Ms. Kropf and Mr. Portnov are coming.

19 Ms. Jacques, are you over there? No.

20 We're missing Ms. Simmons and Ms. Jacques, but I

21 think they're coming in now.

22 Mr. Harris has two.

23 And Mr. Wood is here with Mr. Cohen.

24 MR. MCCOOL: Your Honor, Steven McCool.

25 May I hand this to you, Judge, to your Honor?

1 THE COURT: Yes.

2 MR. McCOOL: (Tenders document to the Court.)

3 THE COURT: Thank you.

4 MR. McCOOL: We've all gone over that. Can we do

5 that at some point?

6 THE COURT: Tell the jury?

7 MR. McCOOL: Yes. Otherwise, they're going to think

8 she's fed up with me and just left in the middle of trial.

9 No one objects.

10 THE COURT: What I've just been given is a note

11 saying Ms. Coleman will not be here December 6th through

12 December 14th. I, of course, am fine with that. And I just

13 need to make sure that Mr. Harris is fine with that as well.

14 DEFENDANT HARRIS: Yes, your Honor.

15 THE COURT: If you'll excuse me for just one minute.

16 (Discussion had off the record.)

17 THE COURT: Can we proceed? I know the jurors are

18 waiting for us.

19 MS. KERKHOFF: Yes. Just very briefly, I provided

20 counsel and the Court a revised exhibit list. It was driving

21 me a bit crazy. So I think we're in a much better spot with

22 that. Feel free to use the one you had or this one.

23 THE COURT: So I can get rid of the other three?

24 MS. KERKHOFF: I believe you can. I think this one

25 is a little easier to follow. So I apologize for that.

1 THE COURT: Thank you for that.

2 MS. KERKHOFF: The only other issue the Government

3 would raise is that, when counsel for, I think, Ms. Lawson

4 was setting up their computers, what flashed on the screen

5 when they put up the computer are three files that say

6 "Brittne is innocent."

7 Given how the sometimes computer comes up and then

8 we have to go into files, the Government is just concerned

9 that that could be displayed to the jury because that is how

10 the file folders were titled and displayed in this courtroom

11 when the testing was done.

12 THE COURT: You're saying just now, but not when the

13 jury was here?

14 MS. KERKHOFF: Correct.

15 THE COURT: So are we just going to keep that from

16 happening?

17 MR. PORTNOV: Your Honor, I apologize. I'm sorry.

18 It's been fixed. That will not come up.

19 THE COURT: Thank you. No need to say another word.

20 Can the Government bring the next witness in,

21 please.

22 MS. KERKHOFF: Yes.

23 THE COURT: And let's bring in the jury.

24 Ms. Jacques is here with Ms. Simmons.

25 (Thereupon, the witness entered

1 the courtroom and the following

2 proceedings were had:)

3 THE COURT: Sir, why don't you come on up, since

4 you've already been on the stand.

5 Ms. Kerkhoff, will you just tell us this witness's

6 name again, please.

7 MS. KERKHOFF: Officer Rembiszewski.

8 THE COURT: Rembiszewski. Thank you.

9 THE WITNESS: May I have a seat?

10 THE COURT: Yes. We're going to swear you again

11 just because it's been a while.

12 THE WITNESS: Okay.

13 (Whereupon, the jury entered the courtroom at

14 10:21 a.m. and the following proceedings were had:)

15 THE COURT: Good morning, ladies and gentlemen.

16 THE JURY: Good morning.

17 THE COURT: I hope you had a pleasant evening.

18 We are going to pick back up with the Government's

19 case. Though you've heard this witness before, we are

20 actually going to swear him again.

21 Sir, I'm going to ask you to stand and raise your

22 right hand. You've got to stand.

23 THE WITNESS: Oh, sorry.

24 THE COURT: Thank you.

25 KAMIL REMBISZEWSKI, GOVERNMENT WITNESS, SWORN.

1 THE COURT: Good morning, sir.

2 We're going to start fresh with you and hear your

3 name again.

4 MS. KERKHOFF: Thank you.

5 DIRECT EXAMINATION

6 BY MS. KERKHOFF:

7 Q. Officer, could you please reintroduce yourself for

8 the ladies and gentlemen of the jury.

9 A. I'm Officer Kamil Rembiszewski.

10 Q. Could you spelled that the benefit of our court

11 reporter.

12 A. First name is K-a-m-i-l. Last name is

13 R-e-m-b-i-s-z-e-w-s-k-i.

14 Q. Now, Officer Rembiszewski, after the group was

15 stopped -- well, on January 20th, you were at 12th and L.

16 Correct?

17 A. I don't know the specific location. But I was --

18 Q. Were you present when the group -- and you

19 previously testified you were following the group and

20 specifically you were trying to stop them. Correct?

21 A. Correct, ma'am.

22 Q. Were you present when the group was finally stopped

23 at a corner?

24 A. Yes, ma'am.

25 Q. Do you know the exact address?

1 A. I do not.

2 Q. And after the group was stopped, what was your
3 responsibility?

4 A. After the group was stopped, at first, I assumed
5 responsibility of making sure that -- basically providing
6 security for the platoon that had the group stopped.

7 The platoon was faced towards the group. So I was
8 faced away from the group and monitoring other members that
9 were outside of the group that could have potentially been a
10 threat to officers that were surrounding the group.

11 And then my responsibilities changed throughout the
12 course of the day. Later on, that CDU platoon that had them
13 surrounded, someone else surrounded the group and then the
14 responsibilities changed over time.

15 Q. Is it fair to say that you were present in the area
16 where the group was stopped for many hours?

17 A. Yes, ma'am.

18 Q. And you could observe the group and the area around
19 it. Is that correct?

20 A. Yes, ma'am.

21 Q. Now, prior to your testimony, have you had an
22 opportunity to view two exhibits that capture the group
23 itself when they were stopped, that is, Government's
24 Exhibit 141, a video, and Exhibit 122-A, another video?

25 A. I did watch videos in reference to that.

1 A. Yes, ma'am.

2 Q. And did you observe the process where individuals
3 were brought out one by one, items were removed, logged and
4 then photographed before the Defendant was placed into a
5 transport?

6 A. Yes, ma'am.

7 Q. And in preparation for your testimony here today,
8 have you had an opportunity to view videos that capture the
9 processing for Defendant Christina Simmons, that is,
10 Exhibit 124-B, Part 1, 124-N and 124-O?

11 A. Yes, ma'am.

12 Q. And one of those is your body cam. Correct?

13 A. Yes.

14 Q. And do those videos fairly and accurately capture
15 the processing of Defendant Christina Simmons?

16 A. Yes.

17 MS. KERKHOFF: At this time the Government offers
18 into evidence Government's Exhibit 124-B, Part 1; 124-N, as
19 in Nancy; and 124-O.

20 THE COURT: Any objection?

21 MS. JACQUES: No, your Honor.

22 THE COURT: I'll admit 124-B, Part 1; 124-N; and
23 124-O.

24 (Whereupon, Government's Exhibit Nos. 124-B, Part 1;
25 124-N; and 124-O were entered into evidence.)

1 Q. Did those two videos fairly and accurately depict
2 what was happening at that stop location on January 20th,
3 2017?

4 A. Yes, ma'am.

5 MS. KERKHOFF: At this time, the Government offers
6 into evidence Government's Exhibits 141 and 122-A.

7 THE COURT: Any objection?

8 MS. COLEMAN: No objection, your Honor.

9 THE COURT: 141 and 122-A are admitted.

10 (Whereupon, Government's Exhibit Nos. 141 and 122-A
11 were entered into evidence.)

12 BY MS. KERKHOFF:

13 Q. Now, Officer Rembiszewski, in addition to providing
14 what you'd expect in security, did you also assist in the
15 processing and arrest of Defendants?

16 A. I was assigned with being responsible for ten female
17 arrests.

18 Q. When you said "being responsible," were you deemed
19 the arresting officer --

20 A. Yes, ma'am.

21 Q. -- of those Defendants?

22 Is that a "yes"?

23 A. Yes, ma'am.

24 Q. As part of that, can you describe -- did you have
25 your photograph taken with individuals?

1 BY MS. KERKHOFF:

2 Q. And, Officer Rembiszewski, I'm just going to pull up
3 a portion of Government's Exhibit 124-O.

4 MS. KERKHOFF: And we can play that.

5 (Whereupon, segments of Government's Exhibit
6 No. 124-O were published in open court.)

7 MS. KERKHOFF: Pause it.

8 BY MS. KERKHOFF:

9 Q. Officer Rembiszewski, in the middle of the screen
10 stopped at 26:43, do you see the taller individual with the
11 helmet on in the middle of the screen?

12 A. Yes, ma'am.

13 Q. And who is that?

14 A. That is me.

15 Q. And we won't continue playing this now. That'll be
16 an exhibit that the jury has.

17 But as part of the processing, you said items were
18 seized from Defendants during the processing. Correct?

19 A. Yes, ma'am.

20 Q. I'm going to show you what's been marked as
21 Government's Exhibit 42.

22 THE COURT: Exhibit 42?

23 MS. KERKHOFF: Yes.

24 BY MS. KERKHOFF:

25 Q. Showing you what's been marked for identification as

1 Government's Exhibit No. 42, is that a property bag?
 2 A. Yes.
 3 Q. Is that a property bag in the name of Christina
 4 Simmons?
 5 A. Yes.
 6 MS. KERKHOFF: At this time, the Government offers
 7 into evidence Government's Exhibit 42.
 8 THE COURT: Any objection?
 9 MS. JACQUES: No, your Honor.
 10 THE COURT: It's admitted.
 11 (Whereupon, Government's Exhibit No. 42 was entered
 12 into evidence.)
 13 THE COURT: Actually, there's already an X on your
 14 list. Does that mean --
 15 MS. KERKHOFF: That was an error on my part. I
 16 apologize.
 17 THE COURT: Okay.
 18 MS. KERKHOFF: Unfortunately, I am going to have to
 19 ask Ms. Hodge for a pair of scissors again. They won't let
 20 me in the door with it.
 21 Thank you.
 22 BY MS. KERKHOFF:
 23 Q. Now, Officer Rembiszewski, while I'm opening this,
 24 as the arresting officer for Defendant Christina Simmons, do
 25 you see Ms. Simmons in this courtroom today?

1 A. I do.
 2 Q. Can you identify her by the place where she's seated
 3 and an article of clothing.
 4 A. She's sitting at the end of the table to my left, at
 5 the very end of the table, farthest away from me. She's
 6 wearing glasses. She has short hair. It looks like she has
 7 a black suit jacket and a light-colored shirt underneath.
 8 MS. KERKHOFF: If the record could reflect the
 9 in-court identification of the Defendant Christina Simmons by
 10 the witness.
 11 MS. JACQUES: No objection.
 12 THE COURT: The record will reflect an in-court
 13 identification.
 14 BY MS. KERKHOFF:
 15 Q. Officer Rembiszewski, these are small gloves. So
 16 I'll just hold on to them.
 17 A. Okay.
 18 Q. I won't make you put them on.
 19 And showing you Government's Exhibit 42, can you
 20 describe the three items -- or the items that are inside.
 21 What is this?
 22 A. It's a -- it's black gloves.
 23 Q. And this next item?
 24 A. Dark navy blue bandana.
 25 Q. And, finally, the last item?

1 A. A black hat. We usually refer to them as skullies.
 2 And it also has a skull on it.
 3 Q. And can you see what's in the middle of the skull?
 4 Let me show you this. On the inside, can you see what that
 5 is?
 6 A. There's some sort of mesh on the inside.
 7 Q. Mesh? That one could see through. Correct?
 8 A. If I wear it.... I can't really tell.
 9 Q. I won't make you put it on.
 10 MS. KERKHOFF: No further questions.
 11 THE COURT: Cross-examination, Ms. Jacques?
 12 MS. JACQUES: Yes.
 13 CROSS-EXAMINATION
 14 BY MS. JACQUES:
 15 Q. Good morning, Officer.
 16 A. Good morning, ma'am.
 17 Q. Officer, you testified that the processing of these
 18 200 or so people took many hours. Correct?
 19 A. Yes.
 20 Q. And while some people were being processed, the
 21 others were left on the sidewalk waiting their turn.
 22 Correct?
 23 A. Yes.
 24 Q. And when -- while Ms. Simmons was waiting her turn,
 25 she never tried to run away from the police. Correct?

1 A. Not that I'm aware of.
 2 Q. Okay. And while she was being -- while she was
 3 waiting her turn, she was standing with another female the
 4 entire time. Correct?
 5 A. I don't know who she was standing with.
 6 Q. Okay. While Ms. Simmons was waiting to be
 7 processed, she offered one of the officers some snacks from
 8 her backpack.
 9 Do you recall that?
 10 A. I don't recall that.
 11 Q. The three items that Government counsel showed you
 12 that were recovered from Ms. Simmons, she also was wearing a
 13 striped backpack that day. Correct?
 14 A. I don't remember the backpack, ma'am.
 15 Q. You don't recall a numerous-colored backpack?
 16 A. Again, that day I was observing a lot of events. I
 17 don't -- I don't remember a specific backpack.
 18 Q. Okay. No weapons were recovered from Ms. Simmons.
 19 Correct?
 20 A. I don't know. I didn't take the property off the
 21 person; so, I don't know.
 22 Q. And you're aware that no walkie-talkies were
 23 recovered from Ms. Simmons?
 24 A. I don't know what she had in her possession.
 25 Q. Do you have any reason to believe Ms. Simmons had

1 anything other than the three items you were shown here
 2 today?
 3 A. I can only assume.
 4 Q. While Ms. Simmons was being processed, she gave the
 5 officers her identifying information. Correct?
 6 A. As far as I'm aware.
 7 Q. She was cooperating with the process?
 8 A. Yes, ma'am.
 9 Q. Okay. And when she was told to get into the truck,
 10 she willingly went into the truck to be carried to the
 11 station. Correct?
 12 A. Correct.
 13 Q. Okay. Government counsel alluded to the
 14 photograph -- you having a photograph taken with Ms. Simmons.
 15 Do you recall that photograph?
 16 A. I don't -- I don't think I observed the photograph
 17 since that day.
 18 Q. Okay. Well, let me ask you: The chart that you
 19 were holding in the photograph --
 20 A. Okay.
 21 Q. -- well, let me ask you, were you holding a chart
 22 when you were photographed with individuals?
 23 A. I don't remember if I was holding a chart or if
 24 someone else held the chart.
 25 Q. Let me show you what's been marked as Ms. Simmons

1 No. 1.
 2 Officer, do you recognize this photo?
 3 A. Yes, ma'am.
 4 Q. Is that you in the photograph?
 5 A. Yes, ma'am.
 6 Q. Okay. And the chart that you're holding: Does that
 7 give Ms. Simmons' information?
 8 A. Yes.
 9 Q. At the bottom of the chart, it has a time.
 10 What time does the chart say?
 11 A. It's right next to the date. The time says -- it
 12 looks like 10:30 a.m.
 13 Q. And what was the date?
 14 A. 01-20.
 15 Q. Okay.
 16 A. It doesn't have the year.
 17 Q. Okay. Thank you.
 18 Did you write the information on that chart or did
 19 someone else?
 20 A. Someone else did.
 21 Q. Did you look at it before you were photographed with
 22 it?
 23 A. I don't remember.
 24 Q. The items that Government counsel showed you in
 25 court today, were you -- did you see those items being

1 recovered from Ms. Simmons?
 2 A. I was in the general area. I wasn't -- I don't
 3 think I was right next to her when the -- her property was
 4 taken.
 5 Q. Okay.
 6 MS. JACQUES: May I have the Court's very brief
 7 indulgence?
 8 THE COURT: Yes.
 9 MS. HEINE: Thank you. I don't have any further
 10 questions.
 11 THE WITNESS: Thank you.
 12 THE COURT: Any other cross-examination?
 13 Hearing no offers, is there any redirect?
 14 MS. KERKHOFF: Very briefly.
 15 REDIRECT EXAMINATION
 16 BY MS. KERKHOFF:
 17 Q. Officer Rembiszewski, I'm just going to pull up the
 18 beginning part of Government's Exhibit 124-O that we watched
 19 a few moments ago. And I think --
 20 MS. KERKHOFF: If you could scroll off that so the
 21 black bar goes down.
 22 Thank you.
 23 BY MS. KERKHOFF:
 24 Q. I think Ms. Jacques was asking you whether or not
 25 the Defendant, Christina Simmons, may have had a backpack,

1 and you said you were not certain.
 2 A. Yes, ma'am.
 3 Q. And you previously testified that the processing
 4 video is fair and accurate for your observations that day?
 5 A. Correct.
 6 Q. And I'm just directing your attention to the bottom
 7 left screen.
 8 Do you see what appears to be a multicolored
 9 backpack worn by Defendant Christina Simmons?
 10 MS. KERKHOFF: If you could play that a few seconds
 11 so we see who it is.
 12 (Whereupon, segments of Government's Exhibit
 13 No. 124-O were published in open court.)
 14 BY MS. KERKHOFF:
 15 Q. Do you know whether or not that multicolored
 16 backpack was placed on the prisoner's property that would
 17 allow the prisoner to pick it up?
 18 A. I do not know.
 19 Q. Thank you.
 20 MS. KERKHOFF: No further questions.
 21 THE COURT: Sir, you may be excused. Do not discuss
 22 your testimony with any other witness.
 23 (Witness excused.)
 24 MS. KERKHOFF: The United States calls Officer
 25 Matthew Layer.

1 MATTHEW LAYER, GOVERNMENT WITNESS, SWORN
 2 THE COURT: Good morning.
 3 DIRECT EXAMINATION
 4 BY MS. KERKHOFF:
 5 Q. Good afternoon, sir.
 6 A. Good afternoon.
 7 Q. Can you please introduce yourself to the ladies and
 8 gentlemen of the jury.
 9 A. My name is Officer Matthew Layer, L-a-y-e-r.
 10 Q. And where are you employed?
 11 A. Metropolitan Police Department.
 12 Q. How long have you been employed by the Metropolitan
 13 Police Department?
 14 A. Five and a half years.
 15 Q. And what is your current assignment?
 16 A. Patrol officer in the Fourth District.
 17 Q. I'd like to direct your attention to January 20th,
 18 2017.
 19 Were you working that day?
 20 A. Yes, I was.
 21 Q. And did you have occasion to be in the area of
 22 12th and L Streets Northwest on that day?
 23 A. Yes, I did.
 24 Q. What were your responsibilities there?
 25 A. At that time, I was part of the CDU platoon in

1 reference to the inauguration. At that point, there was a
 2 very large disturbance or riot happening at that time.
 3 Q. Did you assist in the processing and arrest of
 4 individuals in the area of 12th and L Streets?
 5 A. I did.
 6 Q. And in advance of your testimony, did you have an
 7 opportunity to review body-worn camera of some of that
 8 processing?
 9 A. I did.
 10 Q. And, specifically, what's been admitted as
 11 Government's Exhibit 124-L, Part 2, does that video fairly
 12 and accurately capture what was happening that day in terms
 13 of processing?
 14 A. Yes, it does.
 15 Q. And were you assigned as the arresting officer for
 16 any Defendants?
 17 A. Yes, I was.
 18 Q. And as the arresting officer, what documentation or
 19 photography would happen for each Defendant?
 20 A. For each Defendant that I was the arresting officer,
 21 I would be -- there would be a picture taken of me with that
 22 Defendant.
 23 Q. Was that on scene in the area of 12th and L?
 24 A. No. That was not.
 25 Q. Where was it?

1 A. It was at the Academy.
 2 Q. Some of the individuals were --
 3 A. Some of them were. But mine was at the Academy.
 4 Q. Some of the individual were photographs on scene and
 5 some were photographed at the Academy after transport?
 6 A. Correct.
 7 Q. And why was that?
 8 A. I don't know that -- the reason for that.
 9 Q. Were individuals taken from 12th and L to the
 10 Academy to finish processing and arrest?
 11 A. Oh. Yes, they were. Yes.
 12 Q. As part of that processing, was every individual
 13 photographed?
 14 A. Yes. Yes.
 15 Q. So I'm going to show you what's previously been
 16 marked as Government's Exhibit 589.
 17 Do you recognize Government's Exhibit 589?
 18 A. Yes.
 19 Q. What is that?
 20 A. That is a picture of myself and Defendant Harris,
 21 one of my Defendants.
 22 Q. Okay. And Defendant -- is that Oliver Harris?
 23 A. Yes.
 24 Q. Okay. And is this the processing photograph that
 25 you just spoke about that occurred at the Academy as part of

1 the processing and arrest of Defendant Oliver Harris?
 2 A. Yes, it was.
 3 Q. That occurred on January 20th, 2017?
 4 A. Correct.
 5 MS. KERKHOFF: At this time the Government would
 6 offer into evidence Government's Exhibit 589.
 7 MS. COLEMAN: No objection, your Honor.
 8 THE COURT: It's admitted.
 9 (Whereupon, Government's Exhibit No. 589 was entered
 10 into evidence.)
 11 BY MS. KERKHOFF:
 12 Q. So the purpose of the photograph was to document
 13 what?
 14 A. The arrest of Defendant Harris.
 15 Q. Okay. Now, Officer Layer, do you know whether or
 16 not any property was seized from Oliver Harris and placed on
 17 prisoner's property or as evidence?
 18 A. There was no property that was taken as evidence.
 19 But there was a black backpack that was taken from him for
 20 prisoner's property.
 21 Q. And if something is prisoner's property, what can a
 22 Defendant do?
 23 A. He can get it the next day or whenever he gets
 24 released from jail.
 25 Q. And in this instance, do you know whether or not

- 1 Oliver Harris picked up that black backpack?
 2 A. Yes, he did.
 3 Q. And do you see Defendant Oliver Harris in this
 4 courtroom today?
 5 A. Yes, I do, ma'am.
 6 Q. Can you identify the place where he's seated and an
 7 article of clothing.
 8 A. He's going to be to my left in the black suit and
 9 blue tie.
 10 MS. KERKHOFF: At this time if the record could
 11 reflect an in-court identification of Defendant Oliver Harris
 12 by the witness.
 13 THE COURT: Any objection?
 14 MS. COLEMAN: No objection, your Honor.
 15 THE COURT: The identification will be reflected in
 16 the record.
 17 MS. KERKHOFF: No further questions.
 18 THE COURT: Any cross-examination? Ms. Coleman?
 19 MS. COLEMAN: Yes.
 20 CROSS-EXAMINATION
 21 BY MS. COLEMAN:
 22 Q. Good morning, Officer.
 23 A. Good morning.
 24 Q. My name is Julie Coleman, and I represent Oliver
 25 Harris.

- 1 Now, we spoke briefly about Government's
 2 Exhibit 124-L. That was the body-worn camera video that
 3 showed the processing of Mr. Harris. Is that correct?
 4 A. Correct. Yes.
 5 Q. And are you aware that the timestamp on that video
 6 is approximately 7:15 p.m. on January 20th, 2017?
 7 A. I don't recall the exact time.
 8 Q. Do you have a recollection that it took several
 9 hours from the time this group was stopped until Mr. Harris
 10 was processed?
 11 A. Yes. We were at 12th and L for a very long time. I
 12 was there.
 13 Q. From 10:50 a.m., which is about the time that the
 14 group was stopped -- would you agree with that?
 15 A. I don't recall the exact time when we stopped the
 16 group.
 17 Q. And fair to say that from 10:50 a.m. until about
 18 7:15 p.m. is a little over eight hours, if I'm counting
 19 correctly?
 20 A. Yes. That matches. Yeah.
 21 Q. And you were on the scene during that time?
 22 A. Yes.
 23 Q. While the processing was taking place?
 24 A. Uh-huh.
 25 Q. And during that eight hours or so, did you observe

- 1 whether medical care was offered to anybody in that group
 2 that was stopped?
 3 A. I don't recall if medical care was given to anyone
 4 at that point.
 5 Q. Do you recall anybody being offered access to a
 6 toilet during that time?
 7 A. I don't recall that as well.
 8 Q. And do you recall anyone being offered access to
 9 food or water during that time?
 10 A. I don't recall that either.
 11 MS. COLEMAN: Nothing further.
 12 THE COURT: Any other cross?
 13 Redirect?
 14 MS. KERKHOFF: Thank you.
 15 REDIRECT EXAMINATION
 16 BY MS. KERKHOFF:
 17 Q. Officer Layer, you said you were on the scene for
 18 quite some time?
 19 A. Yes, ma'am.
 20 Q. As long as the Defendants were there, you had to be
 21 there?
 22 A. Yes.
 23 Q. Were you slow-walking anybody or delaying the
 24 processing?
 25 A. No. I didn't want to be any longer than anyone

- 1 else. No.
 2 Q. And you had to stand outside?
 3 A. Yeah.
 4 Q. In the same conditions. Correct?
 5 A. Yeah.
 6 Q. Thank you.
 7 MS. KERKHOFF: No further questions.
 8 THE COURT: Sir, you may be excused. Do not discuss
 9 your testimony with anyone else.
 10 (Witness excused.)
 11 THE COURT: Please call your next witness.
 12 MS. KERKHOFF: The United States calls Officer Reid.
 13 ANDRE REID, GOVERNMENT WITNESS, SWORN
 14 THE DEPUTY CLERK: You may be seated.
 15 THE COURT: Good morning.
 16 Good morning. How are you?
 17 THE WITNESS: I'm fine. Thank you.
 18 DIRECT EXAMINATION
 19 BY MS. KERKHOFF:
 20 Q. Good morning, Officer.
 21 A. Good morning.
 22 Q. Can you please introduce yourself to the ladies and
 23 gentlemen of the jury.
 24 A. Sure. I'm Officer Andre Reid, Badge 5290,
 25 Metropolitan Police Department, Fourth District.

1 Q. How long have you been employed by the Metropolitan
2 Police Department?
3 A. 14 years.
4 Q. You said you were assigned to the Fourth District?
5 A. Yes.
6 Q. What are your responsibilities?
7 A. We basically patrol. Patrol.
8 Q. I want to direct your attention to January 20th,
9 2017.
10 Were you working that day?
11 A. Yes.
12 Q. And did you have occasion to be in the area of
13 12th and L Streets Northwest in Washington, DC, that day?
14 A. Yes.
15 Q. And how did you end up there?
16 A. Well, we were on -- in the CDU platoon, and we
17 had -- we was, I guess, monitoring the park and saw a large
18 group. And then we had to -- ended up following behind them.
19 And then, you know, they were breaking stuff and
20 breaking stuff up. So we had to follow them to try to stop
21 them from doing what they were doing.
22 Q. And, at some point, was the group stopped?
23 A. Yes.
24 Q. And while they were stopped in the area, was that at
25 12th and L?

1 A. Yes.
2 Q. Was each Defendant processed for arrest?
3 A. Yes.
4 Q. Did you assist in that processing?
5 A. Yes.
6 Q. It was a lengthy process?
7 A. Very.
8 Q. A lot of people?
9 A. Yes.
10 Q. Were you outside the whole time?
11 A. Yes.
12 Q. Now, in preparation for your testimony, have you had
13 opportunity to watch body-worn camera of the processing of
14 Defendant Michelle Macchio?
15 A. Yes.
16 Q. And, specifically, Exhibits 124-C, 124-D, 124-E and
17 124-H, do those four videos fairly and accurately depict the
18 processing --
19 A. Yes.
20 Q. -- of Defendant Michelle Macchio?
21 A. Yes.
22 Q. What was your role with respect to Defendant
23 Michelle Macchio?
24 A. I was the arresting officer.
25 MS. KERKHOFF: At this time the Government is going

1 to offer into evidence Government's Exhibits 124-C, 124-D,
2 124-E and 124-H.
3 THE COURT: Any objection?
4 MS. WHITT: No objection, your Honor.
5 THE COURT: They will be admitted.
6 (Whereupon, Government's Exhibit Nos. 124-C, 124-D,
7 124-E and 124-H were entered into evidence.)
8 BY MS. KERKHOFF:
9 Q. I'll put up Government's Exhibit 124-C at 20 seconds
10 in.
11 MS. KERKHOFF: If you could play that, Mr. Qureshi.
12 (Whereupon, segments of Government's Exhibit
13 No. 124-C were published in open court.)
14 MS. KERKHOFF: Pause that, Mr. Qureshi.
15 BY MS. KERKHOFF:
16 Q. Pausing at -- I believe it's 56 seconds in, this
17 process, what are we watching happening on the video?
18 A. We're processing, getting property off, getting
19 information from them and -- yeah. Just getting property and
20 getting information.
21 Q. What do you mean by property? When someone is
22 processed for arrest, what kinds of items have to be removed
23 from their person?
24 A. We have to take, like, bags, jewelry, money,
25 scarves, anything to that nature, all of the property that

1 they have on them.
2 Q. What about things like hoodie strings and shoe
3 strings?
4 A. Yes. We take all the strings.
5 Q. For safety reasons?
6 A. Yes. Absolutely.
7 Q. And was that done for each Defendant that you
8 assisted in processing?
9 A. Yes.
10 Q. Including Defendant Michelle Macchio?
11 A. Yes.
12 Q. And, Officer Reid, do you see Defendant Michelle
13 Macchio in this courtroom today?
14 A. Yes.
15 Q. And can you identify the place where she's seated
16 and an article of clothing.
17 A. She has all black, in the chair right there.
18 MS. KERKHOFF: If the record could reflect an
19 in-court identification of Defendant Michelle Macchio by the
20 witness.
21 THE COURT: Any objection?
22 MS. WHITT: No objection, your Honor.
23 THE COURT: The record will reflect the
24 identification.
25

1 BY MS. KERKHOFF:
 2 Q. Now, you talked about property.
 3 MS. KERKHOFF: Showing counsel what's been marked as
 4 Government's Exhibit 43.
 5 BY MS. KERKHOFF:
 6 Q. Showing you what's been marked as Government's
 7 Exhibit 43, you can -- you can take a seat. I'll wear the
 8 gloves.
 9 MS. KERKHOFF: At this time, your Honor, the
 10 Government is going to offer into evidence Government's
 11 Exhibit 43.
 12 MS. WHITT: No objection.
 13 THE COURT: The exhibit is admitted.
 14 (Whereupon, Government's Exhibit No. 43 was entered
 15 into evidence.)
 16 BY MS. KERKHOFF:
 17 Q. And, Officer, if you could just describe what it is
 18 I've pulled out of Government's Exhibit 43.
 19 A. It's a black backpack.
 20 Q. Okay. And what's this tag here?
 21 A. That's the tag when we get all the information and
 22 we take the property off the person. We put the information
 23 on the tag so we can know it's their property if they come
 24 back to try to get it.
 25 Q. And it's not just a black backpack.

1 This property tag notes there are items inside.
 2 Right?
 3 A. Correct.
 4 Q. So I'm just going to pull those out, and we'll
 5 identify those.
 6 So from the front pocket, what am I holding up?
 7 A. Two large Sharpies.
 8 Q. Okay.
 9 A. A pencil and a pen.
 10 Q. Okay.
 11 A. And this is a Florida driver's license for Michelle
 12 Macchio.
 13 Q. Okay. From the main pocket? Just to be clear, what
 14 brand backpack is this, if you didn't say?
 15 A. JanSport.
 16 Q. Thank you.
 17 And does it have, for the record, a JanSport logo on
 18 the front?
 19 A. Yes.
 20 Q. And inside?
 21 A. Goggles to protect your eyes.
 22 Q. Are they green --
 23 A. Green.
 24 Q. -- in color?
 25 A. Yes.

1 Q. Okay.
 2 A. That's a black bandana.
 3 A black hat, skull cap.
 4 Black gloves.
 5 Q. Okay.
 6 A. Like a black, kind of like -- kind of a ski mask
 7 kind of type.
 8 Q. Have you ever heard of the term "balaclava"?
 9 A. "Balaclava"? No.
 10 Q. You call this a ski mask?
 11 A. Yeah.
 12 Q. That's okay.
 13 A. Black shades.
 14 Q. Sunglasses?
 15 A. Black sunglasses.
 16 Q. All right.
 17 A. That's like a green energy....
 18 Q. Like an energy drink?
 19 A. Yeah. Energy drink. Yeah.
 20 That's a charger -- a phone charger.
 21 Q. With an accompanying cord?
 22 A. Yes. With a cord.
 23 Q. Okay.
 24 A. Those are two bandanas. But I believe there was --
 25 it had a smell, like it was soaked in film or soaked in

1 something -- some solution.
 2 Q. And put in a plastic bag?
 3 A. Put in a plastic bag. Yes.
 4 Q. Can you smell that now?
 5 A. Yes.
 6 Q. Finally, paperwork. What are these forms titled?
 7 A. "Jail Support."
 8 "Jail Support."
 9 "Jail Support."
 10 Q. There's multiple copies of the same form?
 11 A. Yes. All saying "Jail Support."
 12 Q. I'll close the bag.
 13 A. Right.
 14 MS. KERKHOFF: No further questions.
 15 THE COURT: Cross-examination, Ms. Whitt?
 16 MS. WHITT: Yes.
 17 CROSS-EXAMINATION
 18 BY MS. WHITT:
 19 Q. Good morning, Officer.
 20 My name is Alaina Whitt, and I represent Ms. Macchio
 21 in this case.
 22 A. Good morning.
 23 Q. Ms. Kerkhoff just walked you through a number of
 24 items that the police collected from Ms. Macchio on
 25 January 20th, 2017.

- 1 A. Yes.
- 2 Q. She showed you a backpack with several items inside,
3 including two bandanas soaked in vinegar?
- 4 A. Yes. This was something. Something like that.
- 5 Yeah.
- 6 Q. And vinegar is used to protect from pepper spray?
- 7 A. I'm not sure.
- 8 Q. And then inside the backpack there were a number of
9 items.
- 10 There were goggles?
- 11 A. Yes.
- 12 Q. A ski mask?
- 13 A. Yes.
- 14 Q. A knit hat?
- 15 A. Yes.
- 16 Q. Black gloves?
- 17 A. Yes.
- 18 Q. And you said that the backpack was a JanSport
19 backpack?
- 20 A. Correct.
- 21 Q. How many JanSport backpacks did you take from the
22 people arrested on January 20th, 2017?
- 23 A. I'm not sure.
- 24 Q. More than one?
- 25 A. I'm not sure.

- 1 Q. And other than the items that you just went through
2 with Ms. Kerkhoff, the police didn't take any other items
3 from Ms. Macchio?
- 4 A. Other than what's in that bag?
- 5 Q. Right.
- 6 A. No.
- 7 Q. And one more question about those items.
8 Ms. Kerkhoff mentioned "Jail Support" forms.
- 9 A. Yes.
- 10 Q. Those were blank?
- 11 A. Yes.
- 12 Q. Ms. Macchio had not filled out any of those forms?
- 13 A. No.
- 14 Q. Next I'd like to play what the Government has
15 identified as Exhibit 124-H.
- 16 This is body-worn camera footage from Officer Andrea
17 Green.
- 18 A. Okay.
- 19 MS. WHITT: I'd like to play the first 15 seconds
20 and we'll pause.
- 21 (Whereupon, segments of Government's Exhibit
22 No. 124-H were published in open court.)
- 23 MS. WHITT: We don't actually need audio. It's
24 okay.
- 25 (Whereupon, segments of Government's Exhibit

- 1 No. 124-H were published in open court.)
- 2 BY MS. WHITT:
- 3 Q. So this video we just watched shows the police
4 taking Ms. Macchio to get processed for arrest?
- 5 A. Yes.
- 6 Q. And you see the individual between the two police
7 officers?
- 8 A. Yes.
- 9 Q. She has a red cross on her jacket?
- 10 A. Yes.
- 11 Q. And I can go up there and point it out.
12 Do you see something that appears to be around her
13 waist?
- 14 A. Yes.
- 15 Q. Is that a fanny pack?
- 16 A. Yes. It looked like.
- 17 Q. And Ms. Macchio also had a first aid kit?
- 18 A. I'm not sure.
- 19 Q. She had Band-Aids?
- 20 A. I'm not sure.
- 21 Q. Bandages?
- 22 A. I'm not sure.
- 23 Q. Gauze rolls?
- 24 A. What?
- 25 Q. Gauze rolls, rolls of gauze.

- 1 A. Oh. I'm not sure.
- 2 Q. Alcohol swabs?
- 3 A. I'm not sure.
- 4 Q. So you don't know that Ms. Macchio had various
5 medical supplies?
- 6 A. No.
- 7 Q. Who searched her?
- 8 A. I'm not sure of the exact officer's name.
- 9 Q. But it wasn't you?
- 10 A. No.
- 11 Q. And none of these items, including the fanny pack
12 that we see here in Exhibit 124-H -- none of those are
13 included on the items that the police took from Ms. Macchio?
- 14 THE COURT: What does that mean? Do you mean on
15 paperwork?
- 16 MS. WHITT: Yes. Sorry.
- 17 BY MS. WHITT:
- 18 Q. On the property report, the PD-81.
19 None of these were included on that property report?
- 20 A. I don't have the 81. I'm not sure.
- 21 Q. Would it refresh your recollection if I handed you
22 the PD-81?
- 23 A. Yeah.
- 24 THE COURT: So --
- 25 MS. KERKHOFF: I'm going to object.

1 THE COURT: Can we just -- are you going to be
 2 calling the person who did the search? No?
 3 MS. KERKHOFF: No. The processing.
 4 THE COURT: Can counsel please approach.
 5 (Whereupon, the following proceedings were had at
 6 side-bar outside the presence of the jury:)
 7 THE COURT: Is one of the tapes that you've already
 8 admitted a processing video that would show the recovery of
 9 that stuff by somebody else?
 10 MS. KERKHOFF: This shows a search. In addition,
 11 the prisoner's property log also reflects the items were
 12 seized.
 13 THE COURT: But she wants to make the point that
 14 they were.
 15 So --
 16 MS. KERKHOFF: But I'm not --
 17 THE COURT: To the extent it's already in, is there
 18 a reason --
 19 MS. WHITT: We haven't been able to --
 20 THE COURT: Let me talk. Okay?
 21 Is there a reason that you can't cue up and show the
 22 video that shows those things being taken, if that's what you
 23 want to do?
 24 The objection is to this witness who doesn't have a
 25 clue. Right? And you've already testified as if certain

1 facts are true, even though he can't say it.
 2 MS. WHITT: Right.
 3 THE COURT: By "testify," I mean put facts in your
 4 question that aren't necessarily in evidence yet.
 5 And so the question is how you want to skin that
 6 cat. And it just seems silly to do it through a guy who
 7 can't answer the questions.
 8 MS. KERKHOFF: But I might be able to cue it up.
 9 You can see on the processing video her remove the fanny
 10 pack.
 11 MR. LAZEROW: We're not talking about the fanny
 12 pack.
 13 THE COURT: Can I just let Ms. Whitt do the talking?
 14 She happens to be taking this witness.
 15 MR. LAZEROW: Yeah.
 16 THE COURT: Ms. Whitt, how do you want to do this,
 17 other than by asking a witness who can't answer the question?
 18 MS. WHITT: Right. So we're looking for the -- so
 19 you can't see all of the things being removed in the video.
 20 You can see the fanny pack being removed.
 21 THE COURT: So do you want the officer who did the
 22 search?
 23 MS. WHITT: I think all we're trying to establish at
 24 this point is that there are items that were removed that
 25 were not in the property report.

1 THE COURT: He can't answer those questions. And
 2 rather than spend forever on this --
 3 MS. WHITT: I mean, I can hand him the PD-81 to
 4 confirm it.
 5 MS. KERKHOFF: I think I can clarify with him that
 6 items were placed -- some seized as evidence and some as
 7 prisoner's property.
 8 Counsel has all the prisoner's property logs. I'm
 9 not going to challenge if they want to seek to admit stuff.
 10 THE COURT: And so is this a stipulation?
 11 MS. WHITT: We looked through the prisoner's
 12 property log and we can't find Ms. Macchio.
 13 MS. KERKHOFF: This is the first I've heard of that.
 14 I'll try to find it.
 15 THE COURT: Can we just do this by stipulation?
 16 MS. KERKHOFF: We can.
 17 THE COURT: To the extent that this witness can't
 18 agree with things he has no personal knowledge of. If you
 19 had a video you could show him, we could probably get there.
 20 But....
 21 MS. KERKHOFF: The processing of the video does show
 22 the fanny pack being removed and placed in a bag and all of
 23 that.
 24 THE COURT: But they want the specific items in it.
 25 MS. WHITT: Right.

1 THE COURT: We'll do that through stipulation or get
 2 the officer who can testify to it.
 3 MS. KERKHOFF: Sure. We'll do that.
 4 (Whereupon, the following proceedings were had in
 5 open court:)
 6 BY MS. WHITT:
 7 Q. I'll move on just a little bit here.
 8 During the processing, Ms. Macchio was cooperative?
 9 A. Yes.
 10 Q. She answered all the questions by the police?
 11 A. Yeah.
 12 Q. And you testified during your direct examination
 13 that you followed most of the protest.
 14 A. Yes.
 15 Q. And then am I correct that you ultimately helped
 16 form the police lines that surrounded the protesters near
 17 12th and L?
 18 A. Yes.
 19 Q. And those police lines were formed a little bit
 20 before 11:00 a.m.
 21 Does that sound right?
 22 A. I'm not sure exactly what time.
 23 Q. It was late morning?
 24 A. I'm not sure exactly what time. It wasn't at night,
 25 though. But I'm not sure of the exact time.

- 1 Q. And the body-worn camera footage that the Government
2 showed you of Ms. Macchio's processing, that -- did that
3 occur around 5:00 p.m.?
4 A. I'm not sure exactly what time.
5 Q. Okay.
6 A. Yeah.
7 Q. From 11:00 until 5:00 p.m., that's about six hours?
8 A. That's fine.
9 Q. Is that right? Six hours?
10 A. I'm not sure exactly what time.
11 Q. Right.
12 A. Uh-huh.
13 Q. But if those times are right, that's six hours?
14 A. From what to what?
15 Q. 11:00 to 5:00 p.m.
16 A. Yeah.
17 Q. And during the time -- and you were at 12th and
18 L for a while?
19 A. Yes. Yeah. A long time.
20 Q. A long time.
21 And during that long time, the police didn't let the
22 protesters use the rest room?
23 A. I don't -- I don't think so. No.
24 Q. You didn't see anybody being led away to use the
25 rest room?

- 1 A. No.
2 Q. And the police didn't provide food or water for the
3 protesters?
4 A. No.
5 Q. And during that long time that you were at 12th and
6 L, the police didn't offer medical care to the protesters?
7 A. I didn't. I don't know whether anybody else did.
8 Q. Not that you saw?
9 A. No.
10 MS. WHITT: I have nothing further.
11 THE COURT: Any other cross?
12 Any redirect?
13 MS. KERKHOFF: Very briefly.
14 REDIRECT EXAMINATION
15 BY MS. KERKHOFF:
16 Q. Officer Reid, did Defendant Michelle Macchio request
17 medical care?
18 A. No. Not to me. No.
19 Q. And what happens if any Defendant requests medical
20 care when they're being processed for arrest?
21 A. If they request medical, they get medical.
22 Q. What does that mean, to get medical?
23 A. We'll call an ambulance.
24 Q. And that's standard. Correct?
25 A. Yeah.

- 1 Q. Now, you were asked questions about how long it took
2 to process all the Defendants.
3 Do you recall that?
4 A. Yes.
5 Q. It was a long time. Right?
6 A. Yes.
7 Q. What was happening as you were holding that line
8 surrounding the group? What was happening around you that
9 was --
10 A. Well, we were doing the process, other protesters
11 began throwing bricks and rocks and all types of stuff at us.
12 So we had to kind of deal with --
13 MS. WHITT: Objection, your Honor.
14 MS. KERKHOFF: Response --
15 THE COURT: Overruled.
16 THE WITNESS: So we had to deal with those other
17 protesters. We had a line there, but they were throwing
18 rocks and bricks and stuff. So we had to deal with that
19 situation.
20 And once we got that situation together, then we got
21 back to our process of getting them processed.
22 BY MS. KERKHOFF:
23 Q. And that's, in part, why it took so long. Correct?
24 A. Yes.
25 Q. Now, I'm going to pull up what counsel is playing,

- 1 which is a body-worn camera of Officer Green. I think
2 counsel didn't have the audio playing. But just so we have a
3 complete record....
4 (Whereupon, segments of Government's Exhibit
5 No. 124-H were published in open court.)
6 BY MS. KERKHOFF:
7 Q. And in that body-worn camera, you could see -- I
8 think they pointed out the fanny pack. Is that correct?
9 A. Yes.
10 Q. Could you also see those green goggles hanging from
11 Defendant Macchio's fanny pack as well?
12 A. Yes.
13 MS. KERKHOFF: No further questions.
14 THE COURT: Sir, you may be excused. Do not discuss
15 your testimony with any other witness.
16 THE WITNESS: Okay.
17 (Witness excused.)
18 MS. KERKHOFF: It's a longer witness.
19 THE COURT: Why don't we get started. You said it's
20 a long witness?
21 MS. KERKHOFF: A longer one.
22 The United States calls Officer Harrison Grubbs.
23 HARRISON GRUBBS, GOVERNMENT WITNESS, SWORN
24 THE COURT: Good morning.
25 THE WITNESS: Good morning.

- 1 DIRECT EXAMINATION
- 2 BY MS. KERKHOFF:
- 3 Q. Good afternoon, sir.
- 4 A. Good morning.
- 5 Q. I'm sorry. Good morning.
- 6 Can you please introduce yourself to the ladies and
- 7 gentlemen of the jury.
- 8 A. Officer Harrison Grubbs.
- 9 Q. Where are you employed?
- 10 A. The Metropolitan Police Department.
- 11 Q. For the benefit of our court reporter, can you spell
- 12 your first and last name.
- 13 A. H-a-r-r-i-s-o-n. Last name Grubbs, G-r-u-b-b-s.
- 14 Q. How long have you been employed with the
- 15 Metropolitan Police Department?
- 16 A. A little over five years.
- 17 Q. And what's your current assignment?
- 18 A. I'm assigned to the Seventh District, patrol.
- 19 Q. Where is the Seventh District located in the city?
- 20 A. The southeast portion of the city, the Anacostia and
- 21 Congress Heights neighborhood.
- 22 Q. And as an officer assigned on patrol office in that
- 23 area, what are your responsibilities?
- 24 A. I'm assigned to a full stride. I ride the mountain
- 25 bike every day, and we primarily are in business areas as

- 1 well as the high-crime areas as designated by the commander.
- 2 Q. Do you know Officer Ashley Anderson?
- 3 A. Yes.
- 4 Q. How do you know her?
- 5 A. She also works full stride.
- 6 Q. Now, I wanted to direct your attention to
- 7 January 20th, 2017.
- 8 Were you working that day?
- 9 A. Yes.
- 10 Q. What were you assigned to do?
- 11 A. I was assigned to CDU 74 for the inauguration.
- 12 Q. And "CDU" is "civil disturbance unit"?
- 13 A. Yes.
- 14 Q. And so Unit 74 is what kind of unit?
- 15 A. It's made up of mountain bikes, scooters and
- 16 motorcycles. It's a mobile platoon.
- 17 Q. And do you know what time you reported to work that
- 18 day?
- 19 A. I do not off the top of my head.
- 20 Q. Was it early in the morning?
- 21 A. Very early. Yes.
- 22 Q. Very early?
- 23 A. Yes.
- 24 Q. Okay. And what was your specific assignment? Where
- 25 did you have to go that day?

- 1 A. I don't recall off the top of my head. I know it
- 2 was on the mall -- near the mall.
- 3 Q. And during the course of January 20th, 2017, what
- 4 were your responsibilities? Were you stationary? Were you
- 5 mobile? What were you doing that day?
- 6 A. Initially, we were stationary, just kind of set up
- 7 in, I guess, a staging area in case we were needed to respond
- 8 to somewhere else.
- 9 Q. Did you have occasion to respond to locations?
- 10 A. Yes. We initially responded to one of the
- 11 entrances, a security checkpoint. There was an issue there.
- 12 Q. An issue. What do you mean by that?
- 13 A. I believe people were blocking the entrance and not
- 14 allowing people to enter.
- 15 Q. So what did you do when you arrived there?
- 16 A. We just showed up, stood by, and we didn't really do
- 17 anything.
- 18 Q. Any arrests?
- 19 A. No. Not that I know of.
- 20 Q. At some point, were you called to respond to the
- 21 area of 13th or 14th and I Street Northwest?
- 22 A. Yes.
- 23 Q. What was the purpose -- or what were you told why
- 24 you had to respond there?
- 25 A. They said there was a large group, approximately

- 1 200 people, dressed in all black, known as the anarchists in
- 2 that area.
- 3 Q. In that area.
- 4 So what did you do?
- 5 A. We went there and pretty much just showed up and saw
- 6 a large group of people dressed in black.
- 7 Q. Do you remember where you were when you saw them,
- 8 what street you were on?
- 9 A. Off the top of my head, I believe it was 13th Street
- 10 and I, by Franklin Square.
- 11 Q. And you said "we" responded. Who is "we"?
- 12 A. The entire CDU 74 platoon. But most -- I was riding
- 13 my bike with other officers on bikes.
- 14 Q. How many officers were with you on those mountain
- 15 bikes?
- 16 A. Approximately seven or eight.
- 17 Q. And was Officer Anderson one of them?
- 18 A. Yes.
- 19 Q. How were you dressed that day?
- 20 A. I was wearing my regular uniform of the day, a
- 21 mountain bike uniform like I'm wearing today.
- 22 Q. For the record, you're wearing kind of a blue shirt
- 23 and dark blue pants with a nametag, badge and insignia
- 24 designating you're an officer?
- 25 A. Correct.

- 1 Q. What kind of protection did you have for your face?
 2 A. I had my sunglasses and my bike helmet.
 3 Q. Did you have any riot batons or riot gear?
 4 A. Not with us. That was in a van that I have no idea
 5 where that was.
 6 Q. So when you responded to the area near 13th and
 7 I Street, what did you see?
 8 A. I saw a large group of people dressed in all black,
 9 walking in a large group.
 10 Q. And did the group come near you? Did they stay
 11 stationary? What happened next?
 12 A. Yes. They were moving kind of past us.
 13 Q. And past us. How many people? What do you mean by
 14 "us"?
 15 A. The six or seven of us on mountain bikes and the
 16 200 of them, approximately, walking past us.
 17 Q. Well, what did you do with your bikes at that point?
 18 A. We dismounted and kind of just set them up in front
 19 of us as a -- I guess a very small layer of protection.
 20 Q. You said you could see a large group of people
 21 wearing all black.
 22 What else could you see within the group?
 23 A. Not anything really specifically. Just --
 24 Q. Did you see any weapons?
 25 MS. WELETZ: Objection, your Honor.

- 1 THE COURT: Basis?
 2 MS. WELETZ: Leading.
 3 THE COURT: Overruled.
 4 THE WITNESS: I don't recall seeing people with
 5 weapons.
 6 BY MS. KERKHOFF:
 7 Q. Did you see any items being -- coming out of the
 8 crowd?
 9 A. Yes.
 10 Q. What? Like what?
 11 A. Like a piece of rock or a rock specifically was
 12 thrown and hit an officer's bike.
 13 Q. And what did the group do? Did it move past you?
 14 Did it move away from you? How did it move?
 15 A. Yes. It moved from my left to right.
 16 Q. Okay. And what did you see happen next?
 17 A. I observed people from the group destroying
 18 property.
 19 Q. What do you mean by that? What property?
 20 A. Like the window fronts and buildings, stuff like
 21 that.
 22 Q. Which ones? Do you remember the businesses?
 23 A. I don't recall off the top of my head. But I know,
 24 as we were stationary and set up initially at Franklin
 25 Square, it was to my right.

- 1 Q. And what could you hear?
 2 A. The sounds of breaking glass and property being
 3 destroyed.
 4 Q. Could you hear anything else from the group?
 5 A. Yes. They were chanting. I don't recall exactly
 6 what they were chanting.
 7 Q. When the group passed by, could you hear -- in
 8 addition to chants, could you hear any instructions,
 9 directions, being given or could you not hear that?
 10 A. You could hear at times from when the group was
 11 moving and we were following it people saying, "This way" or,
 12 you know, kind of like, "Recenter and stay together" and
 13 things of that nature.
 14 Q. Now, did you see where the people who were breaking
 15 the property were coming from?
 16 A. The group. They were all dressed in black. It was
 17 all people dressed in black clothing.
 18 Q. When you say they came from the group, describe what
 19 you saw.
 20 A. I saw just a flow of people moving from within the
 21 group to outside the group to back in the group.
 22 Q. And when they moved outside the group, what did they
 23 do?
 24 A. People were destroying property.
 25 Q. And then where would they go, the people who

- 1 destroyed the property?
 2 A. Back into the group.
 3 Q. But you saw people destroying property?
 4 A. Yes.
 5 Q. You're an officer. Correct?
 6 A. Yes.
 7 Q. Is that a crime, to destroy property?
 8 A. Yes.
 9 Q. Did you go and try to stop those specific
 10 individuals who you saw come out, destroy property and go
 11 back in the group?
 12 A. I did not.
 13 Q. Why not?
 14 A. It wouldn't be safe to do so, seeing as there was
 15 only about seven of us and 200 of them. It wouldn't have
 16 been a wise decision to try to go into the group and stop
 17 someone.
 18 Q. If you had gone into the group, could you have
 19 stopped the person or identified them?
 20 MR. LAZEROW: Objection.
 21 THE COURT: Overruled.
 22 THE WITNESS: I don't know that I could have.
 23 BY MS. KERKHOFF:
 24 Q. Why not?
 25 A. Based on the number of the group versus us.

- 1 Q. Did you make a mental note, though, of which
2 specific individuals were coming out and going back in the
3 group so you could identify them later?
4 A. No.
5 Q. Why not?
6 A. I could not.
7 Q. Why not?
8 A. Because there were so many and they all looked the
9 same.
10 Q. So what did you do?
11 A. I followed the guidance of our supervisor and we
12 pretty much just observed the group and ended up following
13 the group.
14 Q. On your bike or on foot?
15 A. On our bikes.
16 Q. And were you with Officer Anderson and the other --
17 the rest of your mountain bike squad?
18 A. Yes.
19 Q. At this point, were you trying to stop them?
20 A. I believe our instructions were to try to get in
21 front of the group.
22 Q. And what were you going to do when you got in front
23 of the group?
24 A. I do not know.
25 Q. At that moment -- what do you mean, you do not know?

- 1 Were you going to be able to stop them?
2 A. With the numbers that we had, no.
3 Q. Well, how were you feeling when you were told to get
4 in front of the group and stop them?
5 A. It was a little frightening.
6 Q. Why were you frightened?
7 A. Because we had objects being thrown at us and there
8 was 200 of them and not a lot of us.
9 Q. So you said objects were being thrown. You
10 described seeing an object hit Officer Anderson's bike.
11 Did you continue to see objects being thrown or are
12 you just referring to that one that hit Officer Anderson?
13 A. Specifically, I recall that one.
14 Q. Okay. Do you recall other objects being thrown at
15 you or at other officers?
16 A. Yes.
17 Q. Like what?
18 A. One particular individual threw what appeared to be
19 a large metal patio chair at an officer on a motorcycle.
20 Q. Now, as you're following the group, did you observe
21 officers -- other officers use pepper spray?
22 A. I don't recall specifically.
23 Q. Could you smell it or feel it in the air?
24 A. Yes.
25 Q. Taste it?

- 1 A. Yes.
2 Q. Get some on you?
3 A. Yes.
4 Q. Did it feel good?
5 A. No.
6 Q. Did you have goggles?
7 A. I had my sunglasses on, which I think helped out a
8 lot.
9 Q. Did you have a gas mask of any sort?
10 A. It was on -- I did have it attached to my duty belt
11 on my leg.
12 Q. Did you put it on?
13 A. No.
14 Q. So were you getting OC spray on you as well?
15 A. Yes.
16 Q. Did the -- when the OC spray was in the air, did
17 that stop the group at all?
18 A. No.
19 Q. What did the group continue to do?
20 A. They continued to kind of try to just get -- not get
21 in front of us, but just move together, constantly
22 reorganizing, and move away from us.
23 Q. Were you ever able to get in front of them?
24 A. I was not. No.
25 Q. Well, you said they were reorganizing or regrouping.

- 1 Where did you see that happen? One time or multiple
2 times?
3 A. I recall specifically in Franklin Square a few times
4 they would reorganize or people would -- if the group was
5 kind of broken up, someone would say, "Hey, form back up in
6 Franklin Square."
7 Q. Could you hear those kinds of instructions being
8 given?
9 A. Yes.
10 Q. Did you try to get around the group to get in front
11 of them?
12 A. Yeah, we did. Yes.
13 Q. Was anything blocking you?
14 A. There were all sorts of items like trash cans,
15 pieces of rock and all sorts of stuff on the ground, making
16 it more difficult to get around.
17 Q. Now, you said you recalled seeing a patio chair
18 being thrown at an officer.
19 What did you see at that point?
20 A. I was more or less on the side of the group. I saw
21 an individual throw a large, like, patio chair at an officer
22 on a motorcycle, and I heard the crowd then cheering at that
23 act.
24 Q. So what did you do?
25 A. Well, I then started to pedal a little bit quicker

- 1 to try to catch up to that person and stop them, since they
 2 were a little bit removed from the group.
 3 Q. Okay. So why at that moment -- you said previously
 4 you didn't feel comfortable stopping someone in the group.
 5 Why did you feel comfortable trying to stop the
 6 person who threw the patio chair at that point?
 7 A. I could see more officers were there. There was
 8 more officers on scooters and on motorcycles. They were
 9 there. I though we could maybe make a stop.
 10 Q. And who were you trying to stop?
 11 A. The individual who threw the chair at the officer.
 12 Q. Did you see where that individual had come from
 13 before they threw the chair?
 14 A. Not specifically.
 15 Q. Did you see where that -- did you stop that
 16 individual?
 17 A. I attempted to.
 18 Q. What happened?
 19 A. As the individual then fled, started to run, I
 20 started to bike faster. A bystander or another person
 21 grabbed that person and abruptly stopped them. And so, as I
 22 was pedalling by, I attempted to tackle the individual.
 23 Q. Did it work?
 24 A. Not really.
 25 Q. Where did the person you were trying to stop go?

- 1 Did they stay there?
 2 A. Well, after I tried to tackle them, we both fell to
 3 the ground.
 4 Q. And the person stayed there or did not stay there?
 5 A. No. The person did not stay there. And people from
 6 the group dressed in black as well pretty much grabbed that
 7 person and pulled them back into the group away from myself
 8 and the other officers.
 9 Q. And did the group continue to move then?
 10 A. Yes.
 11 Q. Away from you?
 12 A. Yes.
 13 Q. Now, Officer Tipps and Officer Brazoban, are those
 14 officers also on your mountain bike squad?
 15 A. They were members of CDU 74. Yes.
 16 Q. There's what I mean.
 17 And in preparation for your testimony, have you had
 18 an opportunity to review the body-worn camera footage from
 19 individuals on your mountain bike squad that day?
 20 A. Yes.
 21 Q. And does that fairly and accurately depict what you
 22 were seeing and hearing from your body cam perspective that
 23 day?
 24 A. Yes.
 25 MS. KERKHOFF: At this time the Government is going

- 1 to offer into evidence Government's Exhibit 123-D, a
 2 body-worn camera of Officer Grubbs; 123-I, a body-worn camera
 3 of Officer Tipps; and 123-N, a body-worn camera of Officer
 4 Brazoban.
 5 THE COURT: Can you just spell Brazoban.
 6 MS. KERKHOFF: B-r-a-z-o-b-a-n.
 7 THE COURT: Any objection?
 8 They're admitted.
 9 (Whereupon, Government's Exhibit Nos. 123-D, 123-I
 10 and 123-N were entered into evidence.)
 11 BY MS. KERKHOFF:
 12 Q. Now, Officer, I'm just going to pull up first
 13 Government's Exhibit 123-D, which is your body-worn camera.
 14 I'll pull it up at 14:14.
 15 THE COURT: So -N is Rembiszewski, according to your
 16 list.
 17 MS. KERKHOFF: 124-N. And I'm talking about 123-N.
 18 THE COURT: Okay.
 19 (Whereupon, segments of Government's Exhibit
 20 No. 123-D were published in open court.)
 21 BY MS. KERKHOFF:
 22 Q. At 14:28 on your body cam -- this is 123-D -- do you
 23 recall where you were at this point?
 24 A. (No response.)
 25 Q. I'm going to have Mr. Qureshi back it up to 14:18.

- 1 MS. KERKHOFF: Mr. Qureshi.
 2 (Whereupon, segments of Government's Exhibit
 3 No. 123-D were published in open court.)
 4 BY MS. KERKHOFF:
 5 Q. We watched there and there was a sign on the
 6 left-hand corner that said 14th and L Street.
 7 Would you have any reason to doubt me on that one?
 8 A. No.
 9 Q. So, for the record, at 14:18, 14th and L.
 10 So this is at 14th and L. At this point, do you
 11 recall how long you'd been following the group?
 12 A. Not specifically. But a good amount of time.
 13 Q. Let me ask you this: When you turned your body-worn
 14 camera on, when was that?
 15 A. That was when we first initially encountered the
 16 group in Franklin Square.
 17 Q. Was that just before you observed and heard damage
 18 to storefronts and windows?
 19 A. Yes.
 20 Q. And the counter on this, does that run in realtime?
 21 I mean, it's -- it doesn't speed up, your body-worn camera.
 22 It runs in realtime?
 23 A. Yes.
 24 Q. At this point, about 14 minutes in?
 25 A. Yes.

1 Q. Okay. I'm going to advance it just about a minute
 2 to 15:20. Again, this is your body-worn camera.
 3 (Whereupon, segments of Government's Exhibit
 4 No. 123-D were published in open court.)
 5 MS. KERKHOFF: Pause it a second.
 6 BY MS. KERKHOFF:
 7 Q. Now, Officer Grubbs, you previously testified that
 8 at one point, when you observed patio chairs being thrown,
 9 you were on the sidewalk. Correct?
 10 A. Correct.
 11 Q. As we continue watching at 15:34, I want to direct
 12 your attention to the motorcycle officer that is in front of
 13 you and what happens on the sidewalk directly in front of
 14 you.
 15 (Whereupon, segments of Government's Exhibit
 16 No. 123-D were published in open court.)
 17 MS. KERKHOFF: Pause it.
 18 BY MS. KERKHOFF:
 19 Q. And what -- it's hard to see from your body cam.
 20 But what did you observe at that time while you were
 21 riding your bike?
 22 A. I believe that's the instance when the individual
 23 threw a patio chair at a police officer.
 24 Q. We see that the motorcycle is down. Correct?
 25 A. Correct.

1 Q. And so you said previously you sped up and you tried
 2 to stop the person who did that. Correct?
 3 A. Correct.
 4 MS. KERKHOFF: We'll continue watching.
 5 (Whereupon, segments of Government's Exhibit
 6 No. 123-D were published in open court.)
 7 MS. KERKHOFF: If you could pause.
 8 BY MS. KERKHOFF:
 9 Q. And what are we looking at here right now at 15:59?
 10 There's a group of individuals all in black that have their
 11 backs to you, your body camera.
 12 A. Correct. That's pretty much the people that were
 13 pulling the person I was trying to stop away.
 14 Q. And we can see what appears to be a person who's
 15 crouched down and huddled up at the bottom of your body-worn
 16 camera at this point.
 17 Who is that?
 18 A. I can't say for sure.
 19 Q. We'll keep playing.
 20 (Whereupon, segments of Government's Exhibit
 21 No. 123-D were published in open court.)
 22 BY MS. KERKHOFF:
 23 Q. Do you recall who that is now?
 24 A. This gentleman on the left?
 25 Q. Yes.

1 A. He was the guy that grabbed the individual that was
 2 fleeing after throwing the chair.
 3 Q. He was the one that tried to stop the person that
 4 threw the chair?
 5 A. Yes.
 6 Q. Okay. We'll keep watching.
 7 (Whereupon, segments of Government's Exhibit
 8 No. 123-D were published in open court.)
 9 MS. KERKHOFF: Pause it.
 10 BY MS. KERKHOFF:
 11 Q. And two things.
 12 First, at this point, Officer Grubbs, did you pull
 13 out your -- what did you pull out?
 14 A. That was my OC canister.
 15 Q. Is that your personal one that's issued to every
 16 officer?
 17 A. Yes.
 18 Q. Why did you pull it out?
 19 A. I feared for my safety as well as the safety of the
 20 other officers, to include the one that had fallen to the
 21 ground.
 22 Q. And you said the one that had fallen to the ground.
 23 Just after you pulled that out, did you observe, for
 24 the record, on video another officer fall to the ground?
 25 A. Yes.

1 Q. And do you recall how that happened?
 2 A. No. I don't recall exactly how he fell.
 3 MS. KERKHOFF: If we could continue playing.
 4 (Whereupon, segments of Government's Exhibit
 5 No. 123-D were published in open court.)
 6 BY MS. KERKHOFF:
 7 Q. Now, Officer Grubbs, as we watch -- and we're at
 8 16:39 -- there are a number of individuals who are walking
 9 around this group of officers that are on the street. Is
 10 that correct?
 11 A. Yes.
 12 Q. Dressed in black. Correct?
 13 A. Yes.
 14 Q. Did you stop any of them?
 15 A. No.
 16 Q. Did you see anyone stop them?
 17 A. No.
 18 MS. KERKHOFF: Resume playing, Mr. Qureshi.
 19 (Whereupon, segments of Government's Exhibit
 20 No. 123-D were published in open court.)
 21 BY MS. KERKHOFF:
 22 Q. Now, Officer Grubbs, I think we heard you using
 23 something choice language about your wrist.
 24 What are you talking about?
 25 A. I had a sharp pain in my right wrist.

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1 Q. Okay. Something was wrong with your wrist?
 2 A. Yes.
 3 Q. Did you continue following the group at this point?
 4 A. I did not. No.
 5 Q. I think you also said on the video you had a flat.
 6 What did you mean by that?
 7 A. I had a flat tire on my bike.
 8 Q. So where did you go after this?
 9 A. I went to -- spoke with the sergeant, saying that my
 10 wrist was hurt. We walked -- I walked to a nearby fire
 11 station for treatment.
 12 Q. And what was wrong with your wrist?
 13 A. It was diagnosed later with a fracture of a small
 14 bone in my wrist.
 15 Q. And did that take you out of work?
 16 A. Yes.
 17 Q. For how long?
 18 A. I didn't return to full duty for approximately six
 19 months.
 20 Q. Why so long?
 21 A. It's a broken bone. It just took a while to heal.
 22 Q. Do you still have any issues with that wrist?
 23 A. Yeah. Sometimes I still have some pain in the
 24 wrist.
 25 Q. And so when did you return to work?

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1 A. It was approximately six months. I want to say
 2 towards the end of July.
 3 Q. Now, as you were following the group -- and I think
 4 we just watched from 15:20 to about 7:10 or 7:20 -- so, about
 5 17 minutes that you were following this group -- did you ever
 6 stop people who walked away?
 7 A. No.
 8 Q. Did you see any officers just stopping people who
 9 you were walking away up to that point?
 10 A. Not that I recall. No.
 11 Q. Could you hear sirens and see lights?
 12 A. Yes.
 13 Q. And about how many officers could you see that were
 14 trying to follow or stop the group?
 15 A. Everyone that we saw there we were all following. I
 16 don't recall seeing anyone trying to make any stops.
 17 Q. Did you see people leaving the group and just
 18 walking away from it?
 19 A. I don't recall.
 20 MS. KERKHOFF: No further questions.
 21 THE COURT: I think we should take our break now.
 22 It's 11:30. I'll have you come back at quarter of.
 23 Ladies and gentlemen, don't discuss the case. Don't
 24 make any decisions about it. I'll see you in 15 minutes.
 25 (Whereupon, the jury exited the courtroom at

1 11:32 a.m. and the following proceedings were had:)
 2 THE COURT: Sir, I'll excuse you for 15 minutes.
 3 Don't discuss your testimony with anyone.
 4 THE WITNESS: Yes, ma'am.
 5 THE COURT: Thank you.
 6 Anything before we break? No?
 7 I'll see you in 15. Thank you.
 8 (Thereupon a recess was taken, after which the
 9 following proceedings were had:)
 10 THE DEPUTY CLERK: Now calling United States versus
 11 Brittne Lawson, 2017 CF2 1256, et al.
 12 THE COURT: We're picking back up. Both Government
 13 counsel are here.
 14 Is Mr. Lazerow coming back?
 15 MS. KERKHOFF: Yes.
 16 THE COURT: Mr. Cohen, do you want to go get your
 17 client. Here he comes.
 18 All Defendants and all counsel are now here.
 19 And we're going to pick back up. We'll get the
 20 jury, if you'd like to bring the witness back in.
 21 Thank you.
 22 MR. LAZEROW: We have a different order of cross,
 23 FYI, your Honor.
 24 THE COURT: Okay. Are there any PPMS issues we need
 25 to address with this gentleman?

1 MR. LAZEROW: I think they've been worked out.
 2 (Thereupon, the witness entered
 3 the courtroom and the following
 4 proceedings were had:)
 5 (Whereupon, the jury entered the courtroom at
 6 11:49 a.m. and the following proceedings were had:)
 7 THE COURT: Good morning again, ladies and
 8 gentlemen.
 9 Officer Grubbs has resumed the witness stand.
 10 Sir, I'll remind you you're still under oath.
 11 And Mr. Portnov will cross-examine.
 12 CROSS-EXAMINATION
 13 BY MR. PORTNOV:
 14 Q. Good morning, Officer Grubbs.
 15 A. Good morning.
 16 Q. My name is Dan Portnov. I represent Ms. Lawson. I
 17 just have a few questions for you.
 18 I believe on your body-worn camera that we just
 19 watched, Exhibit 123-D --
 20 MR. PORTNOV: If we can publish that.
 21 BY MR. PORTNOV:
 22 Q. -- a few moments ago, you identified that as the
 23 person -- you identified this person as the one who tried to
 24 grab the protester. Is that correct?
 25 A. Yes. Individual fleeing. Yes.

- 1 Q. This man is wearing a black leather jacket?
 2 A. Yes.
 3 Q. And he's carrying a black helmet with graphics on
 4 it. Is that right?
 5 A. That's what it looks like.
 6 Q. And he's wearing black jeans, dark jeans?
 7 A. Yes.
 8 Q. Did you come to understand at that time or shortly
 9 after that this was a biker for Trump?
 10 MS. KERKHOFF: Objection. Relevance.
 11 THE COURT: Overruled.
 12 THE WITNESS: What was the question?
 13 BY MR. PORTNOV:
 14 Q. Was this man a biker for Trump?
 15 A. I don't know.
 16 Q. You stuck around, though, for a few moments before
 17 you sought medical help, right, after this -- after you hurt
 18 your wrist?
 19 A. Yes.
 20 Q. Okay. Isn't it true that this man stuck around the
 21 scene as well?
 22 A. Yes.
 23 Q. And that you spoke briefly?
 24 A. Yes.
 25 Q. And so he never identified himself to you as a biker

- 1 for Trump?
 2 A. No.
 3 Q. You testified earlier that you walked down the
 4 street to a fire station to get help for your wrist?
 5 A. Yes.
 6 Q. That was at the insistence of your sergeant?
 7 A. I don't recall exactly how that happened. I was
 8 just following.
 9 Q. Following his --
 10 A. The sergeant and -- yeah.
 11 Q. Okay. Did you end up with a splint or a cast on
 12 your wrist?
 13 A. Yes.
 14 Q. I'm sorry.
 15 Which one? A splint or a cast?
 16 A. Through the recovery, both.
 17 Q. That was your right wrist?
 18 A. Yes.
 19 Q. Got you.
 20 After you went to the fire station, you had to be
 21 transported to the hospital?
 22 A. Correct.
 23 Q. And that's because the fire station didn't have any
 24 splints?
 25 A. They put me in a little splint initially at first

- 1 and then they said I needed to go to the hospital.
 2 Q. Got you.
 3 Now, you reviewed body-worn camera that was taken
 4 from you on January 20th, 2017. Correct?
 5 A. Yes.
 6 Q. And you reviewed body-worn camera footage from
 7 Officer Tipps?
 8 A. I don't recall.
 9 Q. Don't recall?
 10 A. Exactly which officer's cameras I've reviewed.
 11 Q. And how about Officer Brazoban?
 12 A. I don't recall.
 13 Q. In any of your review of body-worn camera, you
 14 didn't see any EMS on the scene helping anyone at that
 15 intersection, did you?
 16 A. I don't recall. No.
 17 MR. PORTNOV: No further questions.
 18 THE COURT: Any other cross?
 19 Mr. McCool?
 20 CROSS-EXAMINATION
 21 BY MR. COHEN:
 22 Q. Good morning.
 23 Brett Cohen. I represent Alexei Wood. I just have
 24 a couple of quick questions.
 25 A. Good morning.

- 1 Q. You indicated that you followed the group for more
 2 than 15 minutes --
 3 A. Yes.
 4 Q. -- before you -- before you jumped off your bicycle?
 5 A. Approximately. Yes.
 6 Q. And during that 15 minutes, did you have the
 7 opportunity to observe reporters?
 8 A. I don't recall exactly. I remember there were
 9 people with cameras. I don't know if they were reporters.
 10 Q. You don't know if they were reporters or not?
 11 A. No.
 12 Q. And you don't know if they were journalists or not?
 13 A. No.
 14 THE COURT: Just so the record is clear, since I
 15 said Mr. McCool, this truly is Mr. Cohen. I don't want the
 16 record to be unclear because I had said the name McCool and
 17 it's Mr. Cohen talking.
 18 MR. COHEN: Sorry.
 19 THE COURT: I didn't want it to be --
 20 MR. COHEN: I looked Mr. McCool's way.
 21 MR. McCOOL: I lost a lot of weight.
 22 MR. COHEN: May I continue? I apologize.
 23 THE COURT: Yes, please. I didn't want the
 24 transcript to be confusing.
 25 MR. COHEN: Thank you.

- 1 BY MR. COHEN:
 2 Q. For the 15 or more minutes that you were following
 3 the group, did you observe any persons with cameras or photo
 4 equipment try to change their appearance?
 5 A. I don't recall.
 6 Q. Do you recall anybody taking -- putting photographic
 7 equipment in or photographic equipment out? Did you observe
 8 any of that?
 9 A. I don't recall.
 10 MR. COHEN: No further questions.
 11 THE COURT: Next? Ms. Weletz?
 12 CROSS-EXAMINATION
 13 BY MS. WELETZ:
 14 Q. Good morning, Mr. Grubbs. How are you?
 15 A. Fine.
 16 Q. A few minutes ago, you stated you were part of a CDU
 17 unit that day. Correct?
 18 A. Yes.
 19 Q. That's the civil disturbance unit?
 20 A. Yes.
 21 Q. Now, a CDU unit typically has about 30 members in
 22 it.
 23 Are you familiar with that, a platoon?
 24 A. Yes.
 25 Q. But you said that you arrived at Franklin Square

- 1 with just eight bicycle or -- seven or eight bicycle cops.
 2 Correct?
 3 A. Yes. I was initially just with my squad of mountain
 4 bike officers. There were other members of CDU 74 responding
 5 to that area. But since they were on motorcycles, they got
 6 there even quicker or were in a different spot than I when I
 7 first arrived.
 8 Q. And you indicated that you responded to Franklin
 9 Square because you got a radio run that there were anarchists
 10 at Franklin Square. Correct?
 11 A. Yes. That's what it was indicated over the radio.
 12 Q. Now, at that time, a group was just forming in this
 13 square. Is that correct? You said you saw a group forming
 14 in the square?
 15 A. I saw a group in the square. Yes.
 16 Q. And you said that you didn't see any particular
 17 person with any type of weapons. Correct?
 18 A. No.
 19 Q. Now, you indicated that this group was chanting and
 20 yelling things?
 21 A. Correct.
 22 Q. And you didn't hear what they were chanting.
 23 Correct?
 24 A. I don't recall exactly what they were chanting.
 25 Q. And you said that you saw a rock come from the

- 1 group, but you don't know where that rock came from.
 2 Correct?
 3 A. From the group.
 4 Q. But you don't know who in the group threw the rock.
 5 Correct?
 6 A. No.
 7 Q. Now, you said that you heard some people yelling
 8 things like, "Go this way" or, "Stay together." Correct?
 9 A. Correct.
 10 Q. But you don't -- do you know who specifically in the
 11 group was yelling those words?
 12 A. No, ma'am.
 13 Q. And do you know who those words exactly were
 14 directed at?
 15 A. No, ma'am.
 16 Q. Do you know who within the group could hear those
 17 words?
 18 A. No, ma'am.
 19 Q. Now, you testified that there were, by your
 20 estimate, about 200 people. Correct?
 21 A. Correct.
 22 Q. And you said that they were dressed similarly in
 23 dark clothes?
 24 A. Yes.
 25 Q. And they were very hard to distinguish each other --

- 1 one from the other, is your testimony. Correct?
 2 A. Yes.
 3 Q. And -- but your testimony was that it was also very
 4 loud that day. Correct?
 5 A. Yes.
 6 Q. And there were a lot of sirens going off and there
 7 was a noise coming from this crowd. Correct?
 8 A. Yes.
 9 Q. Now, you said that you broke away from the crowd
 10 when you saw this or you broke away from your squad members
 11 when you saw this chair thrown. Correct?
 12 A. I don't know that I broke away from my squad. I
 13 pursued the individual to try to stop that person.
 14 Q. And isn't it stand -- standard operating procedure
 15 for CDU units to stay together as a group?
 16 A. I think we're all supposed stay together. Yes.
 17 Q. And you said that -- specifically, your direct
 18 testimony was that, when you saw the chair thrown, you heard
 19 some sort of cheer?
 20 A. Yes.
 21 Q. But do you know who in the group was cheering?
 22 A. No, ma'am.
 23 MS. WELETZ: The Court's indulgence.
 24 No further questions.
 25 THE COURT: Next? Ms. Jacques?

CROSS-EXAMINATION

- 1
2 BY MS. JACQUES:
3 Q. Good afternoon, Officer.
4 My name is Tammy Jacques. I represent Christina
5 Simmons. How are you?
6 A. I'm well. Thank you.
7 Q. Just a couple questions.
8 Ms. Kerkhoff asked you if you knew that it was a
9 crime to destroy property.
10 A. Yes.
11 Q. Okay. And it's fair to say that not all 200-plus
12 people were destroying property. Correct?
13 A. Correct.
14 Q. And you talked about the group pulled the man back
15 into the crowd that had thrown the patio chair?
16 A. Yes.
17 Q. Is it fair to say that there were about five people
18 who pulled the man back into the crowd?
19 A. I don't recall specifically, but more or less.
20 Q. It wasn't 200-plus people pulling one man into the
21 crowd. Correct?
22 A. Correct.
23 Q. And when the officer was down in front of Maddy's,
24 there were protesters who continued to walk by on the
25 sidewalks. Correct?

- 1 A. Correct.
2 MS. JACQUES: I don't have anything else.
3 THE COURT: Next?
4 MS. JACQUES: Thank you.
5 MR. LAZEROW: No questions, your Honor.
6 MS. COLEMAN: No questions, your Honor.
7 THE COURT: And we've heard from Mr. Portnov.
8 That's everyone.
9 Redirect?
10 MS. KERKHOFF: Very briefly.
11 REDIRECT EXAMINATION
12 BY MS. KERKHOFF:
13 Q. I believe Mr. Portnov asked about the man that he
14 called -- asked you whether you knew he was a biker for
15 Trump.
16 Do you remember that man?
17 A. Yes.
18 Q. Did that man cover his face?
19 A. No. I don't think his face was covered.
20 Q. Did that man run away from law enforcement?
21 A. No.
22 MS. KERKHOFF: No further questions.
23 THE COURT: Sir, you may excused. Do not discuss
24 your testimony with any other witness.
25 THE WITNESS: Yes, ma'am. Thank you.

- 1 (Witness excused.)
2 THE COURT: Please call your next witness.
3 MS. KERKHOFF: The United States calls Officer
4 Howden.
5 MICHAEL HOWDEN, GOVERNMENT WITNESS, SWORN
6 THE COURT: Good afternoon.
7 THE WITNESS: Hi.
8 DIRECT EXAMINATION
9 BY MS. KERKHOFF:
10 Q. Good afternoon.
11 A. Good afternoon.
12 Q. Can you please introduce yourself to the ladies and
13 gentlemen of the jury.
14 A. I am Officer Michael Howden of the Seventh District
15 with the Metropolitan Police Department.
16 Q. Can you spell your first and last name for the
17 benefit of our court reporter.
18 A. M-i-c-h-a-e-l, H-o-w-d-e-n.
19 Q. You said you're employed by the Metropolitan Police
20 Department?
21 A. That is correct.
22 Q. For how long?
23 A. Coming up on four years -- a little more than four
24 years.
25 Q. So you said you're assigned to the Seventh District?

- 1 A. Yes.
2 Q. What are your responsibilities in the Seventh
3 District?
4 A. A patrol officer in Sector 1, specifically, PSA 703,
5 on the evening shift. I also am assigned to a CDU platoon,
6 CDU 74, as a scooter rider.
7 Q. Just to clarify, PSA 703: Is that a patrol service
8 area?
9 A. Correct. Sorry. Yes. PSA.
10 Q. So we all understand.
11 That's a geographic area within the Seventh
12 District --
13 A. That is correct.
14 Q. -- that you focus your assignments on. Right?
15 A. Yes.
16 Q. And all patrol officers are generally assigned to
17 certain PSAs?
18 A. Correct.
19 Q. You said you're also assigned to a civil disturbance
20 unit?
21 A. Yes.
22 Q. And what do you do in that civil disturbance unit?
23 A. Well, without going into too much detail about how
24 CDUs are structured, CDU 74 is a motorized/bicycle platoon.
25 And I ride a little Honda motorcycle, scooter, in that

- 1 platoon.
- 2 Q. So are you allowed to call it a motorcycle or do you
- 3 have to call it a scooter?
- 4 A. Other people call it a motorcycle. It's not.
- 5 Q. It's a scooter?
- 6 A. I mean, it's a motorcycle, but it's a scooter.
- 7 Q. You're the --
- 8 A. It's a baby motorcycle. It's embarrassing next to
- 9 the big motorcycles to call it a motorcycle. But, you
- 10 know....
- 11 Q. You're on the security squad?
- 12 A. Yes.
- 13 Q. One day do you hope to graduate to the motorcycle
- 14 squad?
- 15 A. I would love to. It would be nice.
- 16 Q. As part of the scooter squad, on January 20th, 2017,
- 17 where were you assigned?
- 18 A. Downtown, for inauguration.
- 19 Q. And what were your specific responsibilities that
- 20 day? Were you assigned to a certain location?
- 21 A. We might have been. I know that I was at specific
- 22 locations. I don't think that any specific location was
- 23 given to us. We just floated around as needed.
- 24 Q. As needed.
- 25 Were you directed to respond to various locations if

- 1 assistance was needed?
- 2 A. Yes.
- 3 Q. Did you do that on that day?
- 4 A. We did. Several locations.
- 5 Q. Do you know what time you reported to work that day?
- 6 A. It was a very long week. It was the end of very
- 7 long shifts. I have no idea. Probably 5:30 in the morning,
- 8 something like that.
- 9 Q. And you said you responded to several locations?
- 10 A. Yes.
- 11 Q. What kinds of locations were you responding to?
- 12 A. We went to the -- so the official inauguration area
- 13 is a secured area and it has entry points with magnetometers
- 14 and such.
- 15 One of those areas had some protesters, and they
- 16 were considering they were going to try to rush the
- 17 magnetometers.
- 18 So we went there. Stood by. Nothing happened.
- 19 They did their thing and left. Then we moved on to something
- 20 else.
- 21 Ultimately, we then were called to meet up with a
- 22 significantly more aggressive crowd. I don't remember the
- 23 location. I just know that I followed the person in front of
- 24 me.
- 25 Q. So going back to the first place at the checkpoint,

- 1 you said there were concerns that it would be aggressive?
- 2 A. They were just concerned that a group of protesters
- 3 would rush through the magnetometers, creating a security
- 4 breach.
- 5 Q. You went there and what you did was you monitored?
- 6 A. Correct. We stood there and they had their protest
- 7 and then they moved on and then we moved on.
- 8 Q. So, at some point, were you called to the downtown
- 9 area near 13th Street and I Street?
- 10 A. Yes. I don't remember the specific location that we
- 11 were called to. But it was in that general area, around the
- 12 park.
- 13 Q. Around the park?
- 14 A. Around the park. I don't work on that side of town,
- 15 so I don't know the name of the park, and I can't recall the
- 16 name of the park.
- 17 Q. Let me ask this: As part of your CDU platoon, is
- 18 there also a mountain bike unit of about eight officers?
- 19 A. Yes. Yes.
- 20 Q. And Officer Harrison Grubbs and Officer Ashley
- 21 Anderson, are they part of that?
- 22 A. They are.
- 23 Q. So when you responded in the area near a park, was
- 24 it with them or separate from them?
- 25 A. I believe it was with them.

- 1 Q. But you were on your scooter?
- 2 A. Correct.
- 3 Q. So when you responded to that area, what did you
- 4 see?
- 5 A. A large group of individuals running around,
- 6 carrying signs. They were dressed alike, all in black. Many
- 7 of them had goggles or face masks, faces covered and such,
- 8 running around.
- 9 I had not yet seen vehicles on fire. I did later in
- 10 the day. They were throwing trash cans and bricks and rocks
- 11 and bottles and hammers and sticks and all those sorts of
- 12 things as they ran through the streets, breaking windows out
- 13 of businesses and that sort of thing.
- 14 Q. Do you remember any of the names of the businesses
- 15 that you saw where the windows were being broken out?
- 16 A. I believe it was a Starbucks, maybe a Bank of
- 17 America, the big giant plate windows.
- 18 Q. And what were you doing when this was happening?
- 19 A. I was riding my scooter and we were -- there was a
- 20 lot going on. There was a lot of noise. There was a lot of
- 21 confusion.
- 22 There's a lot of people and there's a lot of safety
- 23 concerns because people are throwing things and I don't want
- 24 to get hit.
- 25 So we were kind of in a group the best we could stay

- 1 together, monitoring the crowd and observing as they
 2 destroyed things, really.
 3 Q. Did you see individuals break things?
 4 A. I did.
 5 Q. Did you go stop them?
 6 A. That was not going to be possible.
 7 Q. Why not?
 8 A. One, there were too many of them. Two, I mean,
 9 there weren't enough of us. And as we would go towards
 10 individuals, "we" being the police, they would run off,
 11 disappear into the crowd.
 12 Again, they're all of dressed very, very similarly,
 13 all black, face masks, goggles, and they're gone.
 14 Q. And you said they disappeared into the crowd. The
 15 crowd of what? What did the people look like?
 16 A. They were all dressed in dark clothing, faces
 17 covered, eye covering.
 18 Q. Was that crowd stationary?
 19 A. No. They were constantly on the move.
 20 Q. And where would the individuals who were breaking
 21 come from before they broke property, that you could see?
 22 A. From what I observed, they would come out of the
 23 crowd, cause their damage and destruction and then disappear
 24 back into the crowd.
 25 Q. And then what would the crowd do once they

- 1 disappeared back in? Stop or continue moving?
 2 A. Continue moving.
 3 Q. And at any point did you see anyone say, "That
 4 person right there" or point out individuals?
 5 A. No.
 6 Q. Okay. So did you follow the group?
 7 A. Yes.
 8 Q. Do you remember about how long you followed the
 9 group?
 10 A. 20, 30 minutes. I never really checked my watch.
 11 So any time frame would be an estimate.
 12 Q. And --
 13 A. It really wasn't even always following. Sometimes
 14 it was along the sides. Sometimes it was surrounded by. I
 15 got hit with things.
 16 Q. What kinds of things did you get hit with?
 17 A. I got hit with a pole. I think I got hit with,
 18 like, a spiked hammer.
 19 Q. And who was doing the hitting?
 20 A. The people dressed in the dark clothing. Again, it
 21 was impossible to identify any single person specifically
 22 because of the design of the situation.
 23 Q. So would people run out of the crowd that -- you
 24 said you got hit with a pole.
 25 When you were hit with a pole, was it an individual

- 1 dressed in all-black clothing?
 2 A. I believe so. Yes.
 3 Q. And did that person run out of the crowd and
 4 specifically hit you or were you trying to move alongside of
 5 the crowd and that's when it occurred?
 6 A. I believe the pole that I'm thinking of was moving
 7 along the side with the crowd. And someone in the crowd hit
 8 me with a pole.
 9 Q. Where were you hit?
 10 A. Like head, face. Kind of deflected it with my arm a
 11 little bit.
 12 Q. And what about -- I think you said a type of metal.
 13 A. A pick hammer. A hammer with a sharpened point on
 14 the other end.
 15 Q. And can you describe how that occurred.
 16 A. I was riding down -- probably on the sidewalk at the
 17 time. I don't remember exactly where I was. But something
 18 bounced off me and it fell on the ground. I looked down and,
 19 like, oh, it's a hammer. So....
 20 Q. Was it thrown at you or did the person strike you
 21 with it? Do you recall?
 22 A. It flew through the air at me. So I don't know how
 23 it originated.
 24 Q. Did you see other objects being thrown through the
 25 air from the group of individuals dressed in all black?

- 1 A. Yes.
 2 Q. Like what?
 3 A. Bricks, trash cans, chairs, chairs thrown at the
 4 police.
 5 Q. Now, in preparation for your testimony, did you have
 6 an opportunity to watch your body-worn camera?
 7 A. I did.
 8 Q. Now, when did you turn your body cam footage on?
 9 A. I feel bad about this. So, again, without going
 10 into how the body cam program got rolled out to MPD, I was
 11 fairly new to having a body-worn camera on the day of the
 12 event.
 13 So, initially, when we were going to make contact
 14 with the group, I tapped to turn my camera on. It didn't
 15 come on.
 16 So there had been contact and monitoring of the
 17 crowd for who knows how long, 10 or 15 minutes, before I
 18 glanced down and realized that it wasn't flashing.
 19 And then I remedied the situation and actually
 20 turned it on. So I did miss recording a good many events.
 21 Q. Are you aware that other officers had body --
 22 A. Oh, yeah. There were many, many cameras on that
 23 day.
 24 Q. So your body camera, though, picks up towards the
 25 end or --

1 A. Probably the middle.
 2 Q. The middle of where you were monitoring?
 3 A. Correct.
 4 Q. Did you also have an opportunity to watch body-worn
 5 camera from other officers, specifically Exhibits 123-O,
 6 123-P, and 123-W?
 7 A. I believe those are the letters.
 8 Q. The letters.
 9 And that body camera as well as yours, 123-A, which
 10 is yours, did that fairly and accurately capture what was
 11 happening on January 20th from the body camera of the various
 12 officers?
 13 A. Absolutely.
 14 MS. KERKHOFF: At this time the Government's going
 15 to offer into evidence Government's Exhibits 123-A, 123-O,
 16 123-P and 123-W.
 17 THE COURT: Any objection?
 18 MS. WELETZ: No objection.
 19 THE COURT: So I'll admit 123-A, -O, -P and -W.
 20 And, Ms. Kerkhoff, can you just slow down a bit,
 21 please.
 22 (Whereupon, Government's Exhibit Nos. 123-A, 123-O,
 23 123-P and 123-W were entered into evidence.)
 24 MS. KERKHOFF: Yes.
 25

1 BY MS. KERKHOFF:
 2 Q. Now, Officer Howden, you said that you had a type of
 3 hammer thrown at you and you looked down and it was on the
 4 ground.
 5 A. Yes.
 6 Q. Do you know what happened with that hammer?
 7 A. No idea.
 8 Q. Did you stop and establish a crime scene?
 9 A. No. That would not have been a reasonable or
 10 practical move.
 11 Q. What did you do instead?
 12 A. Kept on moving.
 13 Q. And moving to do what?
 14 A. To continue to monitor the crowd and dissuade the
 15 people from being destructive. We found that -- so this sort
 16 of thing is very new to us.
 17 Q. I'll just ask you to talk about your observations
 18 that day.
 19 A. Yeah. So my observations -- I continued to try and
 20 keep people from breaking things actively because, if they're
 21 moving, then they're not breaking.
 22 Q. How did you do that?
 23 A. By riding my scooter along with them.
 24 Q. Were you saying anything?
 25 A. Not generally. I said to some people, "Go home. Go

1 away."
 2 Q. Right.
 3 A. "Get out of the street," that sort of thing.
 4 Q. Did you see people leaving --
 5 A. Yes.
 6 Q. -- at any point --
 7 A. Yes.
 8 Q. -- in the 20 or 30 minutes that you said you were
 9 following them?
 10 A. Uh-huh.
 11 Q. Is that a "yes"?
 12 A. Yes. Yes. Sorry.
 13 Q. Did you stop those people?
 14 A. No.
 15 Q. Did you see any officers stop them?
 16 A. No.
 17 Q. Why not stop them? Why continue to follow the
 18 group?
 19 A. Because the group was the people causing the
 20 problem. They were causing the destruction. They were the
 21 ones actively throwing things at the police, that sort of
 22 thing.
 23 Q. At some point, were you able to maneuver your
 24 motorcycle to get in front of the group?
 25 A. Yes.

1 Q. Can you describe that.
 2 A. So I had been separated from my specific group at
 3 that point and was, I suppose, behind the crowd, but in front
 4 of a line of on-foot CDU personnel.
 5 I then realized I should be in a different place, I
 6 guess, and then went around the crowd to the right and then
 7 stopped where there was a line of people that I recognized
 8 forming.
 9 I got off my scooter and then was standing there in
 10 a line really just kind of waiting to see what the next step
 11 was.
 12 Q. Was this at 12th and L?
 13 A. I believe so. Yes.
 14 Q. You said -- were you -- you said you recognized
 15 people.
 16 Who are the people you recognized?
 17 A. Oh, Officer Grubbs, Officer Anderson, an individual
 18 by the name of Brett Snyder. I recognized him. So people
 19 from 70 -- people from CDU 74, the group that I should have
 20 been with. And so I stopped there with them.
 21 Q. And when you stopped, did you get off your scooter?
 22 A. I did.
 23 Q. And what happened?
 24 A. It wasn't but a couple of seconds and there was an
 25 organized charge by the crowd, people dressed in black, at

- 1 the police line. Some kid ran at me out of the blue and I
2 repelled him back.
- 3 And then we compressed down toward the corner of the
4 street there by the building where the line had tried to push
5 through, and some people did push through.
- 6 The remainder were stopped and then, at that point,
7 encircled. They weren't encircled before that point. That's
8 when they were encircled.
- 9 Q. Encircled by police?
10 A. Correct.
11 Q. And stopped. Correct?
12 A. Stopped. That was the end of that particular issue.
13 Q. And up until that time period when you maneuvered
14 your motorcycle in front of the group and stood at that line,
15 was the property damage, the windows breaking -- could you
16 still hear and see that through the whole route or can you
17 describe when that stopped?
18 A. It stopped from those people that we had encircled
19 right then. It had been going on from the time that I
20 originally made contact with the group until they were
21 encircled.
22 Q. Now, Officer Howden, while you were following this
23 group during those 20 or 30 minutes, did you see, hear or
24 smell officers using pepper spray?
25 A. I was sprayed a whole bunch. Yes.

- 1 Q. You were sprayed --
2 A. I was sprayed. I don't know if you're familiar with
3 pepper spray. But if you spray it, you're going to get it on
4 you yourself. That's just the nature of pepper spray.
5 Q. Did you have a gas mask or other mask on?
6 A. It is not used for pepper spray. No.
7 Q. Did you have any --
8 A. No.
9 Q. -- anything in your mouth?
10 A. Well, I had my covering for the cold air because I
11 was riding a scooter on a very cold day.
12 Q. But you yourself got sprayed?
13 A. Oh, yes.
14 Q. By other officers?
15 A. By other officers.
16 Q. Did that prevent you from doing your job?
17 A. No, it did not.
18 Q. Did it feel good?
19 A. It burns. Uncomfortable. It's an irritant.
20 Q. Did it stop the group?
21 A. No, it did not.
22 MS. KERKHOFF: No further questions.
23 THE COURT: For Ms. Macchio? Ms. Copsey.
24 CROSS-EXAMINATION
25

- 1 BY MS. COPSEY:
2 Q. Good morning.
3 My name is Christina Copsey. I represent Michelle
4 Macchio.
5 A. Sure.
6 Q. So the police were extremely wild with pepper spray
7 on January 20th?
8 MS. KERKHOFF: Object to the form.
9 THE COURT: So can you just ask a more specific
10 question, please.
11 BY MS. COPSEY:
12 Q. The police were extremely wild with pepper spray --
13 THE COURT: I'm sustaining the objection to that
14 question. Can you please rephrase.
15 BY MS. COPSEY:
16 Q. Didn't you tell another officer on January 20th that
17 the police were extremely wild with pepper spray that day?
18 A. I did not say that.
19 Q. I'm going to play for you what's been marked for
20 identification as Macchio 8, which is a video clip from your
21 body-worn camera for the --
22 THE COURT: No objection at this point. Right?
23 MS. KERKHOFF: No objection.
24 (Whereupon, segments of Defendant Macchio's Exhibit
25 No. 8 were published in open court.)

- 1 BY MS. COPSEY:
2 Q. That was your voice that said "It's for this orange
3 stuff on me"?
4 A. Yes.
5 Q. And "orange stuff" means pepper spray?
6 A. It was pepper spray.
7 Q. And that was your voice that said, "They're
8 extremely wild"?
9 A. I was having a conversation with a captain. Yes.
10 Q. So that was your voice that said, "They're extremely
11 wild"?
12 A. Yes, it was.
13 Q. So you told that captain that the police were
14 extremely wild with pepper spray that day?
15 A. I said something about wild.
16 Q. Would it help if we replayed the clip?
17 A. I mean, you can replay it if you'd like. But I
18 think you're taking something out of context. Quite the
19 contrary.
20 I personally reviewed the video this morning of the
21 police being very conscientious with their use of pepper
22 spray, specifically reminding each other to be careful and
23 not spray from too close a distance.
24 I believe those are the items that the prosecutor
25 had into evidence a moment ago.

1 Q. But then you told the captain they're extremely
2 wild, referring to orange stuff?
3 A. I had a side conversation with a captain.
4 Q. Thank you.
5 MS. COPSEY: Nothing further.
6 THE COURT: For Ms. Armento?
7 MS. WELETZ: I'll check my technology before I go up
8 there. Thank you.

CROSS-EXAMINATION

10 BY MS. WELETZ:

11 Q. Good morning -- or afternoon, Officer. How are you?
12 A. I'm well. How are you?
13 Q. Good.
14 MR. HEALY: I'm going to test the sound. Okay.
15 BY MS. WELETZ:
16 Q. Now, you indicated that you had some problems
17 turning on your body-worn camera. Correct?
18 A. I did. But I believe -- that looks more like the
19 beginning of my video.
20 (Whereupon, segments of Defendant Armento's Exhibit
21 No. 2 were published in open court.)
22 BY MS. WELETZ:
23 Q. And this is your video at Franklin Square. Correct?
24 Does this appear to be the park that you came to first when
25 you responded?

1 A. Yes.
2 THE COURT: And can you just give us the exhibit
3 number, please.
4 MS. WELETZ: I'm sorry.
5 This would be Armento Exhibit No. 2. I'm not going
6 to play anything right now. But the still is Armento No. 2.
7 And that's from his body-worn camera.
8 Give me a timestamp, Tom.
9 MR. HEALY: Zero.
10 MS. WELETZ: Zero seconds, apparently.
11 MR. HEALY: Of 53:48.
12 BY MS. WELETZ:
13 Q. So your body-worn camera did work at the park.
14 Correct?
15 A. Yes.
16 Q. And when you asked -- when you talked to -- on your
17 direct with Ms. Kerkhoff, you indicated that you had reviewed
18 your entire body-worn camera?
19 A. I reviewed the item that she requested that I
20 review.
21 Q. So you only reviewed what she asked you to?
22 A. Correct.
23 Q. Okay. So you reviewed a portion of your body-worn
24 camera?
25 A. I don't know the difference between what I was shown

1 and how much was recorded.
2 Q. Okay. That's fair.
3 Now, you indicated that you basically followed the
4 group. Correct? Those were your instructions as the CDU
5 unit?
6 A. I believe some of our instructions included trying
7 to get in front of the group.
8 Q. And at any point in time did you try to get in front
9 of the group?
10 A. I did not, to my recollection, get in front of the
11 group until the very end as they were encircled.
12 Q. And you were riding a scooter. Correct? That was
13 your testimony?
14 A. Yes.
15 Q. And that -- that scooter could go faster than these
16 individuals walking. Isn't that correct?
17 A. Sure. Yes. It's a motorized vehicle.
18 Q. And isn't it true that, at one point, you start --
19 you yell and hit people and shove them aside?
20 A. Could you be more specific with your question.
21 Q. Sure.
22 Let's just watch what I'll mark as Armento No. 3,
23 starting at five minutes on your body-worn camera.
24 (Whereupon, segments of Defendant Armento's Exhibit
25 No. 3 were published in open court.)

1 MS. WELETZ: We're playing for approximately
2 30 seconds.
3 MR. HEALY: We're starting at 5:01 -- no -- 5:00
4 even.
5 (Whereupon, segments of Defendant Armento's Exhibit
6 No. 3 were published in open court.)
7 MS. WELETZ: Stopping at 5 --
8 MR. HEALY: 58.
9 BY MS. WELETZ:
10 Q. So at that point in time, did you either get off
11 your vehicle or use your vehicle and shove people aside? Did
12 you see people fall to the ground?
13 A. I believe that that video depicts me stopping after
14 seeing someone assault Officer Grubbs.
15 Q. Now, that --
16 A. And -- I'm sorry. Go ahead.
17 Q. Did you see Mr. Grubbs -- Officer Grubbs assaulted?
18 A. Yes. I can't tell you specifics. Things were
19 happening very fast. But there was an assault that took
20 place.
21 I stopped as quickly as I could and dismounted as
22 quickly as I could after I saw some female whose name I do
23 not know go up and appeared to steal something from Officer
24 Grubbs' bicycle.
25 Q. So your testimony is you saw someone steal something

1 from Officer Grubbs' bicycle?
 2 A. I did not see what was stolen or if anything
 3 specifically was stolen. But an unidentified-to-me female
 4 went for his personal supply bag attached to the back of the
 5 bike.
 6 Q. And do you know what happened to Officer Grubbs that
 7 day?
 8 A. He broke his wrist.
 9 Q. Is it still your testimony that, when you came to
 10 12th and L, you saw Officer Grubbs and Officer Anderson
 11 there?
 12 A. I saw people that I recognized. I believe that
 13 Officer Grubbs and Officer Anderson were there.
 14 Q. So your testimony is, after Officer Grubbs broke his
 15 wrist, he then responded to 12th and L?
 16 A. Are you sure your sequence of events are correct?
 17 Q. Your testimony, sir, during direct is, when you got
 18 to 12th and L, you saw people you knew, including Officer
 19 Grubbs and Officer Anderson.
 20 I'm just asking: Did you see Officer Grubbs at
 21 12th and L?
 22 A. Well, I believe we're pretty much at 12th and L
 23 there; are we not? Again, I don't work downtown. You throw
 24 out street names to me. It means nothing. I don't know my
 25 way around.

1 Q. So you were behind the group. Correct?
 2 A. Correct.
 3 Q. You were, in fact, herding the group. Correct?
 4 A. I don't think that's a fair characterization of my
 5 activities.
 6 Q. You don't remember telling an officer that you were
 7 herding people just like in Barry Farms and using the word
 8 "herding"?
 9 A. Well, so I'm sure you're going to try and play some
 10 video that shows me saying things to people that I work with
 11 on a daily basis in a side conversation.
 12 So what is your question, ma'am?
 13 Q. Do you recall using the word "herding" when
 14 referring to the demonstrators that you were following?
 15 A. I don't recall saying it.
 16 MS. WELETZ: Armento No. 4. If I could play the
 17 body-worn camera of Officer Howden at 24 minutes.
 18 THE COURT: This is Exhibit No. 4?
 19 MS. WELETZ: This would be Exhibit No. 4 by my
 20 count.
 21 MR. HEALY: Starting at 23:59.
 22 (Whereupon, segments of Defendant Armento's Exhibit
 23 No. 4 were published in open court.)
 24 BY MS. WELETZ:
 25 Q. First of all, is that your voice on this body-worn

1 camera?
 2 A. It sounds like my voice. Yes.
 3 Q. And you say that it's like herding people at Barry
 4 Farms?
 5 A. That is what I said.
 6 Q. Officer Howden, where is Barry Farms?
 7 A. Barry Farm is in PSA 703.
 8 Q. Is it what someone would call subsidized housing or
 9 a project?
 10 A. It is a notorious project where people often fight
 11 the police.
 12 Q. And so you testified that you experienced some of
 13 that OC spray in the air. Correct?
 14 A. I've been OC-sprayed multiple times in my career.
 15 Q. Let me be more specific.
 16 On January 20th, 2017, your direct testimony was
 17 that you experienced that there was some OC spray in the air.
 18 Correct?
 19 A. Yes.
 20 Q. But, in fact, you didn't get it in your eyes at all,
 21 did you?
 22 A. Yes.
 23 Q. You did get it in your eyes?
 24 A. Yes.
 25 MS. WELETZ: I'd like to mark Armento No. 5, Officer

1 Howden's body-worn camera.
 2 If we could start playing at 18:36.
 3 (Whereupon, segments of Defendant Armento's Exhibit
 4 No. 5 were published in open court.)
 5 MS. WELETZ: Play it for about ten seconds.
 6 MR. HEALY: I will start at 18:36 and, for the
 7 record, the last one went to 12 -- to 24:08.
 8 (Whereupon, segments of Defendant Armento's Exhibit
 9 No. 5 were published in open court.)
 10 BY MS. WELETZ:
 11 Q. Now, again, this is your body-worn camera, isn't it?
 12 A. I believe so.
 13 Q. And do you hear yourself saying there, "These
 14 glasses are a godsend"?
 15 A. Yeah. They're pretty good glasses.
 16 Q. So isn't it true that, because you're wearing your
 17 glasses, you didn't get a direct OC spray in the eye?
 18 Correct?
 19 A. I did not receive any direct OC spray in the eye.
 20 Q. And because you were wearing those glasses and had
 21 them on your face, they were a godsend. Correct? You didn't
 22 get it directly in the face? Those glasses prevented you
 23 from getting it directly in the face. Correct?
 24 A. They also prevented me from getting rocks and
 25 hammers and sticks in the face, which, again, I don't

- 1 remember exactly my conversation that day.
- 2 But I may very well have been referring to that. Do
- 3 you have -- I mean, again, side conversations a year ago is
- 4 hard to remember.
- 5 Q. Understandable.
- 6 So when you came to this area -- and, for reference,
- 7 we're looking at the end of Armento No. 5 -- this is where
- 8 the individuals were inevitably surrounded. Correct?
- 9 A. I believe so. Yes.
- 10 Q. And I know you don't know the area.
- 11 But would you believe me if this was 12th and
- 12 L Street?
- 13 A. Sounds reasonable.
- 14 Q. And when you arrived at this area, you actually came
- 15 from the back at first. Correct?
- 16 A. Yes.
- 17 Q. And you were pushing people in towards the front
- 18 line, correct, with your motor scooter?
- 19 A. I don't believe that I was pushing people with my
- 20 scooter. No.
- 21 Q. So as you remember driving towards the group from
- 22 the back, how were they responding?
- 23 A. They were going away, if I was behind them.
- 24 Q. So they were walking forward, away from you?
- 25 A. A lot of times they were running. But yes.

- 1 Q. Is it your testimony that they were running at
- 2 12th and L at this point in time when you came from behind
- 3 them?
- 4 A. No.
- 5 Q. Okay. Now, you indicated that at -- during your --
- 6 I believe it was your direct or your cross-examination --
- 7 that you were yelling certain things at people you -- I think
- 8 you said that you told them to go away, something to that
- 9 effect. Correct?
- 10 A. Something to that effect.
- 11 Q. At any point in time, were you ordered to officially
- 12 disperse this crowd or tell them to leave the area?
- 13 A. I don't know that I recall any specific orders of
- 14 any kind. Again, this is about a year ago.
- 15 I do know that early on, if they had just gone away
- 16 and stopped destroying things, then the police wouldn't have
- 17 paid any attention to them, just like I didn't pay any
- 18 attention to people that weren't part of that specific crowd
- 19 doing things.
- 20 Q. Thank you, Officer.
- 21 MS. WELETZ: No further questions.
- 22 THE COURT: Ms. Jacques?
- 23 MS. JACQUES: Yes, your Honor. Just one question.
- 24 CROSS-EXAMINATION
- 25 BY MS. JACQUES:

- 1 Q. Good afternoon, Officer.
- 2 A. Hi. How are you?
- 3 Q. Good. How are you?
- 4 A. All right.
- 5 Q. Officer, my name is Tammy Jacques. I represent
- 6 Ms. Simmons.
- 7 You testified on direct that, after some protesters
- 8 broke the police line, the remainder were stopped and
- 9 encircled.
- 10 But isn't it fair to say that not everyone ran
- 11 towards the police line when it was broken?
- 12 A. I don't recall specifically. But I don't believe
- 13 that everyone ran towards the line.
- 14 Q. Okay.
- 15 MS. JACQUES: I don't have any further questions.
- 16 Thank you.
- 17 THE COURT: Mr. Cohen?
- 18 MR. COHEN: Thank you. Just a few questions.
- 19 CROSS-EXAMINATION
- 20 BY MR. COHEN:
- 21 Q. Good afternoon, Officer. Brett Cohen. I represent
- 22 Alexei Wood.
- 23 You observed this group for about 20 to 30 minutes
- 24 before encircling them?
- 25 A. Again, I don't know the exact time frame. But

- 1 that's a fair approximation.
- 2 Q. Well, from the time you were at the park until the
- 3 time they were encircled?
- 4 A. Again, I don't -- I wasn't looking at my watch. I
- 5 was watching other things. But that sounds reasonable, based
- 6 on what I've seen.
- 7 Q. Well, from those two times you saw some -- at least
- 8 during all that time, between the park and the encirclement,
- 9 you saw at least some protesters, right, the whole time?
- 10 A. Sure.
- 11 Q. You also saw people who were capturing what was
- 12 going on, in other words, photographers?
- 13 A. There were people that were not involved around.
- 14 Yes.
- 15 Q. Journalists?
- 16 A. There were some journalists.
- 17 Q. And did you observe any journalists trying to change
- 18 their appearance while you were observing what was going on?
- 19 A. I don't know that I was watching any one specific
- 20 person long enough to know whether they were changing their
- 21 appearance or not.
- 22 Q. Did you observe anybody put away or take out camera
- 23 equipment or anything of that nature?
- 24 A. I saw camera equipment that day.
- 25 Q. But did you see anybody take it out or just see it

- 1 out?
- 2 A. Again, I think you're asking for details that I
- 3 don't recall and don't -- it wouldn't have meant anything
- 4 specifically to me that day. So there wouldn't have been any
- 5 reason for me to try and remember.
- 6 MR. COHEN: I have no further questions.
- 7 THE COURT: For Mr. Harris?
- 8 MS. COLEMAN: No questions, your Honor.
- 9 THE COURT: For Ms. Lawson?
- 10 MS. KROPF: Yes, your Honor.
- 11 CROSS-EXAMINATION
- 12 BY MS. KROPF:
- 13 Q. Good afternoon.
- 14 A. Hello. How are you today?
- 15 Q. Good. My name is Sara Kropf, and I represent
- 16 Brittne Lawson.
- 17 Did I hear you correctly testify that Officer Grubbs
- 18 was hurt when he was assaulted by a protester?
- 19 A. The incident ended with him having a broken wrist.
- 20 Q. I understand that.
- 21 But I'm asking: Did you just testify that Officer
- 22 Grubbs was assaulted by a protester?
- 23 A. He was assaulted, causing him to fall off his
- 24 bicycle. Yes.
- 25 Q. So the protester affirmatively assaulted Officer

- 1 Grubbs?
- 2 A. It is my understanding that that is what happened.
- 3 Q. Okay. All right. And you said that you were hit by
- 4 a pole. Is that right?
- 5 A. I believe I was hit by a pole, a long pole.
- 6 Q. Okay. And you said you warded it off with your arm?
- 7 A. I believe I swatted it away.
- 8 Q. Did your sunglasses help to ward off that pole or
- 9 anything?
- 10 A. They might have. They're very good sunglasses.
- 11 Q. Okay. They must be.
- 12 And you said also you were hit -- or a hammer was
- 13 thrown at you. Is that right?
- 14 A. Yes.
- 15 Q. Okay. But there's no -- no body-worn camera footage
- 16 of this. Right?
- 17 A. If there is, it wasn't captured by the camera.
- 18 Q. Well, I was asking: Did you have your body-worn
- 19 camera on?
- 20 A. I have not seen body-worn camera of the hammer being
- 21 thrown or flying in my direction. No.
- 22 Q. So here's the thing: What I'm asking you is whether
- 23 or not your body-worn camera captured you being hit by a
- 24 pole.
- 25 A. I don't recall. I haven't watched all of my

- 1 body-worn camera.
- 2 Q. Okay. So the prosecutor didn't show you any -- the
- 3 prosecutor didn't show you any of your body-worn camera
- 4 showing what you say when you got hit by a pole. Correct?
- 5 A. That is correct.
- 6 Q. Okay. And the prosecutor didn't show you a clip of
- 7 your body-worn camera when you say a hammer was thrown at
- 8 you. Right?
- 9 A. I have not seen that video. No.
- 10 Q. Okay. And I take it from your testimony today that
- 11 you persevered.
- 12 You kept going, even though you were hit by a pole.
- 13 Is that right?
- 14 A. Yes.
- 15 Q. Okay. And I guess you kept going even though a
- 16 hammer was thrown at you with a spiked tip. Is that right?
- 17 A. Yes.
- 18 Q. Okay. Did you get any medical care from being hit
- 19 by the pole?
- 20 A. No.
- 21 Q. None?
- 22 Did you fill out a form or something like that after
- 23 you were hit by the pole?
- 24 A. No.
- 25 Q. Okay. Did you -- when that hammer was thrown at

- 1 you, you say -- did it hit you?
- 2 A. I believe so. Yes. I felt -- if I remember
- 3 correctly, it hit my left arm.
- 4 Q. Your left arm?
- 5 A. Correct.
- 6 Q. So you remember that pretty specifically?
- 7 A. Again, if I remember correctly, it hit my left arm.
- 8 Q. This is what you're remembering from a year ago.
- 9 Right?
- 10 A. Correct.
- 11 Q. Just a few mints ago, when Ms. Weletz was asking you
- 12 questions, you said: I can't remember that very well because
- 13 it's a year ago.
- 14 Do you remember saying that?
- 15 A. There are differences in things that people
- 16 remember, things that are more specific and memorable to them
- 17 than others.
- 18 Q. I think that's fair to say.
- 19 Okay. So just to finish the -- close the loop, did
- 20 you fill out any forms, you know, indicating that you were
- 21 hit by a hammer with a pointed tip on the end?
- 22 A. No.
- 23 Q. None?
- 24 A. (No response.)
- 25 Q. None? No forms?

- 1 A. No forms.
- 2 Q. Okay. Now, how can -- about how long were you there
- 3 when you were seeing the protesters that day as they were
- 4 moving as a group?
- 5 A. Again, the best I can recall, it's initially about
- 6 half an hour.
- 7 Q. About half an hour.
- 8 And did I hear you correctly saying that they ran
- 9 through the streets? Do you remember saying that?
- 10 A. I don't remember saying that. But, again, I don't
- 11 remember everything that I said.
- 12 Q. But that was only about ten minutes ago.
- 13 You don't remember saying that the protesters, as a
- 14 group, ran through the streets? You don't remember saying
- 15 that?
- 16 A. They were running through the streets. Yes.
- 17 Q. Okay. So your testimony is that this group was
- 18 running through the streets.
- 19 Is that fair to say?
- 20 A. I believe it's fair to say. Yes.
- 21 Q. Okay. And you said that -- if I heard you
- 22 correctly, that you saw the Starbucks and Bank of America
- 23 windows being broken. Is that right?
- 24 A. I believe that's the name of the businesses. Yes.
- 25 Q. And when you saw the Starbucks and the Bank of

- 1 America windows being broken, was that group running through
- 2 the streets at that time?
- 3 A. The people that were breaking the windows, no. They
- 4 were standing in front of the windows, breaking them.
- 5 Q. Okay. That wasn't my question. My question was the
- 6 group.
- 7 You just testified that the group was running
- 8 through the streets. Right?
- 9 A. I don't know the speed of the group at that time.
- 10 Q. I'm not asking you to give the speed, Officer
- 11 Howden.
- 12 A. Well, that's the difference between running and
- 13 walking. I don't recall the speed of the group at that time.
- 14 Q. Okay. But you testified earlier that they were
- 15 running. Right?
- 16 A. They were running at points. Yes.
- 17 Q. So you know the difference and you can observe the
- 18 difference between running and walking. Correct?
- 19 A. Generally. Yes.
- 20 Q. So you testified that the group was running through
- 21 the streets. Right?
- 22 A. Sure. They were running through the streets.
- 23 Q. Okay. And when you saw the Bank of America and the
- 24 Starbucks windows being broken, was the group, not the
- 25 individuals who broke the windows -- was the group running

- 1 through the street?
- 2 A. Again, I don't recall the speed of the group at that
- 3 time.
- 4 Q. Would you say they were running?
- 5 A. I do not recall the speed of the group at that time.
- 6 Q. Okay. So I guess -- are you correcting your
- 7 testimony? The group wasn't running through the streets the
- 8 whole time?
- 9 A. I am not doing that.
- 10 Q. Okay. So if the group was not running through the
- 11 streets the whole time, were they walking some of the time?
- 12 A. Would you mind asking me a specific question? I'm
- 13 sorry. I feel like I'm answering this.
- 14 Q. I am asking you a very specific question.
- 15 When you saw the Bank of America and the Starbucks
- 16 windows being broken, was the group of protesters -- were
- 17 they running when that happened?
- 18 A. I do not recall the speed of the group at that time.
- 19 Q. Okay. And you said on direct examination a few
- 20 minutes ago that pepper spray is, quote, an irritant.
- 21 Correct?
- 22 A. Yes.
- 23 Q. Okay. It's a little more than that, though, isn't
- 24 it?
- 25 A. I -- not really. I mean, that's what it is. It's

- 1 an irritant.
- 2 Q. Well, it's a pretty extreme irritant. The point of
- 3 it is to incapacitate someone. Right?
- 4 A. No.
- 5 Q. You wouldn't say a pepper spray can be
- 6 incapacitating?
- 7 A. I didn't say that it can't be incapacitating.
- 8 That's not the point of pepper spray.
- 9 Q. Okay. All right. Can pepper spray be
- 10 incapacitating?
- 11 A. Yes.
- 12 Q. And that day you were wearing your -- these kind of
- 13 amazing sunglasses.
- 14 They kept you from being sprayed with pepper spray
- 15 in the eyes. Right?
- 16 A. They kept a lot of things out of my eyes.
- 17 Q. Thank you.
- 18 MS. KROPF: Nothing further.
- 19 THE COURT: I think that's everybody.
- 20 Redirect?
- 21 MS. KERKHOFF: Briefly.
- 22 REDIRECT EXAMINATION
- 23 BY MS. KERKHOFF:
- 24 Q. Officer Howden, I just want to be clear.
- 25 I believe you previously testified on direct and on

1 cross that, at times, the group was walking and, at times, it
 2 was running.
 3 A. Yes.
 4 Q. Okay. So did the speed vary?
 5 A. It did.
 6 Q. And do you recall at what points it was a run versus
 7 a walk?
 8 A. I do not.
 9 Q. Okay. Now, I want to just ask you a couple
 10 questions about your body cam.
 11 So Government's Exhibit 123-A. I'm going to pull it
 12 up.
 13 THE COURT: I hate to do this, but I need to break
 14 now, unless it's literally one question.
 15 We're just going to break now, ladies and gentlemen,
 16 and come back at five minutes to 2:00. That's because I have
 17 a meeting I just have to go to at a quarter of.
 18 So please don't discuss the case. I'll see you back
 19 at five minutes to 2:00.
 20 Have a very good lunch break.
 21 (Whereupon, the jury exited the courtroom at
 22 12:42 p.m. and the following proceedings were had:)
 23 THE COURT: Sir, I'm excusing you until five minutes
 24 to 2:00. Don't discuss your testimony with anyone.
 25 THE WITNESS: Yes, ma'am. Absolutely.

1 THE COURT: Thank you.
 2 THE WITNESS: Great.
 3 THE COURT: See you then.
 4 You are excused. Thank you.
 5 (Thereupon, a luncheon recess was taken, after which
 6 the following proceedings were had:)
 7 THE COURT: Good afternoon, everybody.
 8 We're just going to get on the recording system.
 9 Since we do have a court reporter, we'll get going.
 10 We're resuming in the United States against Macchio,
 11 et al.
 12 Government counsel are here.
 13 Mr. Healy's missing.
 14 We've got all four -- it looks like everybody but
 15 Mr. Healy is here.
 16 So we're going to pick up with the officer's
 17 testimony.
 18 Yes, Ms. Heine.
 19 MS. HEINE: I just want to flag -- it's not an issue
 20 for this witness. But for who I think the next witness will
 21 be, we will have some objections to the exhibits.
 22 I'm happy to discuss that whenever it is
 23 appropriate. But I just wanted to flag that for the Court.
 24 THE COURT: And who is the next witness?
 25 MS. KERKHOFF: Detective Pemberton, your Honor.

1 These are exhibits that were produced more than a
 2 week ago to the defense. I asked --
 3 THE COURT: So what specifically are you objecting
 4 to, Ms. Heine?
 5 MS. HEINE: A few different things.
 6 So Exhibit 187 is -- which is incorporated into this
 7 board and a couple other exhibits --
 8 THE COURT: I want just a list right now because --
 9 MS. HEINE: Okay. So the board, this.
 10 THE COURT: Okay.
 11 MS. HEINE: The PowerPoint, which is --
 12 THE COURT: And how long have you had these things?
 13 MS. HEINE: The board we've had two weeks, I think.
 14 And then the others we got last night.
 15 MS. KERKHOFF: Correction.
 16 They got all of the video clips previously. The
 17 PowerPoint is simply a PowerPoint with the same clips
 18 contained on it that were produced several weeks ago.
 19 MS. HEINE: That's accurate.
 20 THE COURT: And so what I was discussing last week
 21 about Friday kind of applied to any witness who was going to
 22 testify, particularly since all we had was two and a half
 23 days this week.
 24 Is there a reason you did not raise this before the
 25 week began?

1 MS. HEINE: We've raised --
 2 THE COURT: I got an email I think from you in
 3 particular that said there would be no issues.
 4 MS. HEINE: That was with respect to PPMS.
 5 THE COURT: Oh, okay. So you were being
 6 particularized about what you said there would be no issues
 7 about and we would be able to go fine through the next two
 8 and a half days except for Detective Pemberton's testimony?
 9 MS. HEINE: Your Honor, we do have objections to
 10 some of these exhibits that are going forward. We don't --
 11 some of them we have raised with the Court. For example,
 12 113 we filed a motion to strike. 113 is incorporated into
 13 some of these.
 14 THE COURT: And that's, I think, a failure of
 15 authentication?
 16 MS. HEINE: Yes.
 17 THE COURT: So we're going to go through. If
 18 there's after we use all these things a reason to strike
 19 something, we can talk about it later and you can tell me
 20 your objections as we're going through.
 21 MS. HEINE: Okay.
 22 THE COURT: To the extent that the portions of
 23 videos used in the PowerPoint are things that have already
 24 been admitted, then that's fine.
 25 If there are things that have not already been

1 admitted in any portion of it, can you let me know before
 2 showing it?
 3 MS. KERKHOFF: Yes. There are portions. We had
 4 another officer who was here to complete the authentication.
 5 Of course, we believe we've authenticated. Because of
 6 Commander DeVille taking so long, that officer is not
 7 available today.
 8 We understand the Court's ruling that it could
 9 strike. We understand that. We believe the officer can lay
 10 that foundation, as he was present.
 11 THE COURT: But he's coming back to do it later?
 12 MS. KERKHOFF: Yes, he is.
 13 THE COURT: So it will be connected up?
 14 MS. KERKHOFF: Yes, he is.
 15 THE COURT: So are you saying everything on the
 16 PowerPoint will be connected up?
 17 MS. KERKHOFF: Correct. If it's not already been
 18 admitted, it will be.
 19 THE COURT: And how many of the portions of the
 20 PowerPoint are from 113?
 21 MS. KERKHOFF: For Ms. Macchio, it is several
 22 seconds.
 23 THE COURT: I'm saying the PowerPoint.
 24 MS. KERKHOFF: The PowerPoint is -- is the videos
 25 that are contained in the still images. It's all of the same

1 events. Yeah.
 2 THE COURT: We're going to proceed. If I need to
 3 address motions to strike later, I will.
 4 MS. KERKHOFF: Yes, your Honor.
 5 THE COURT: Please bring the witness in.
 6 I'm not in a position to understand what you're
 7 objecting to other than that you filed something in writing
 8 about 113, and I understand that.
 9 I would have appreciated a heads-up before seconds
 10 before the witness is called. I thought that's what the
 11 point of Friday was. I was informed that you all didn't need
 12 a hearing Friday and that we were going to roll this week.
 13 So I'm -- I guess I'll say again that, if this is
 14 going to happen, I want you to alert me well ahead of time so
 15 that we can discuss at a time when the jury is not either
 16 sitting in the box or sitting outside in the jury room these
 17 issues.
 18 MS. HEINE: We will do that.
 19 THE COURT: I thought I was told you would do that
 20 before today. That's what I understood.
 21 Can you please bring your witness back in.
 22 (Whereupon, the witness entered
 23 the courtroom and the following
 24 proceedings were had:)
 25 THE COURT: So what did happen to Ms. Hodge? I

1 don't have a clerk here. I have to go get my own jury.
 2 THE COURT REPORTER: I'll go, Judge.
 3 THE COURT: That's okay.
 4 (Whereupon, the jury entered the courtroom at
 5 2:06 p.m. and the following proceedings were had:)
 6 THE COURT: Good afternoon, ladies and gentlemen.
 7 Welcome back, sir. I remind you you're still under
 8 oath.
 9 THE WITNESS: Yes, ma'am.
 10 BY MS. KERKHOFF:
 11 Q. Good afternoon, sir.
 12 A. Good afternoon.
 13 Q. I really do just have a couple of questions left.
 14 So you were asked a lot of questions about your body
 15 cam.
 16 Where is your body cam located on your person when
 17 you wear it?
 18 A. If I was -- so I was wearing my raincoat that day.
 19 It's magnetically clipped between the button line and the
 20 left breast pocket.
 21 Q. Is it on your chest?
 22 A. Yes.
 23 Q. Does it face forward?
 24 A. Yes.
 25 Q. So it captures what's in front?

1 A. Yes.
 2 Q. And you just signaled with your hands kind of moving
 3 out in a bit of an angle in front of your chest?
 4 A. Correct. It's not particularly wide. It's got a
 5 forward, relatively narrow focus.
 6 Q. When you were struck with the pole, did that come
 7 from the front of you or did that come from the side?
 8 A. I do not -- the pole? I believe it was the front
 9 from my right. So I believe it was in front of me.
 10 Q. What about the hammer? Did it come from the side or
 11 the front?
 12 A. The side.
 13 Q. Okay. Now, counsel pulled up Government's
 14 Exhibit 123-A. And I believe it was Ms. Weletz. She asked
 15 you about being in the park, seeing the group in the park and
 16 saying so you were there at the park.
 17 Do you remember that line of examination about your
 18 body cam?
 19 A. (No response.)
 20 Q. How about I pull up 123-A?
 21 A. Sure.
 22 MS. KERKHOFF: Please play it, Mr. Qureshi.
 23 (Whereupon, segments of Government's Exhibit
 24 No. 123-A were published in open court.)
 25

1 BY MS. KERKHOFF:
 2 Q. At this point, we see you facing a park. Correct?
 3 A. Yes.
 4 Q. Do you know if this was the first or second time the
 5 group went through Franklin Square Park?
 6 A. I don't remember specifically.
 7 Q. Okay.
 8 A. Actually, I think it's the second time.
 9 Q. All right. And so, if we just continued watching
 10 this, which the jury will have an opportunity to do, that
 11 will tell us whether it was the first or second time you went
 12 through the park?
 13 A. Yes.
 14 Q. Thank you.
 15 MS. KERKHOFF: No further questions.
 16 THE COURT: All done?
 17 MS. KERKHOFF: Yes.
 18 THE COURT: Sir, you're excused. Do not discuss
 19 your testimony with anyone.
 20 THE WITNESS: Of course. Thank you.
 21 (Witness excused.)
 22 THE COURT: Please call your next witness.
 23 MS. KERKHOFF: Thank you.
 24 The United States called Detective Gregory
 25 Pemberton.

1 GREGGORY PEMBERTON, GOVERNMENT WITNESS, SWORN
 2 THE COURT: Good afternoon.
 3 THE WITNESS: Good afternoon, your Honor.
 4
 5 DIRECT EXAMINATION
 6 BY MS. KERKHOFF:
 7 Q. Good afternoon.
 8 A. Good afternoon.
 9 Q. Can you please introduce yourself for the ladies and
 10 gentlemen of the jury.
 11 A. Sure. Detective Gregory Pemberton.
 12 G-r-e-g-g-o-r-y, P-e-m-b-e-r-t-o-n.
 13 Q. Where are you employed?
 14 A. Metropolitan Police Department, Criminal
 15 Investigations Division, Seventh District, Detective Unit.
 16 Q. How long have you been employed by the Metropolitan
 17 Police Department?
 18 A. It'll be 13 years in February.
 19 Q. How long have you been a detective with the
 20 Metropolitan Police Department?
 21 A. Nine years.
 22 Q. You said you are assigned to the Criminal
 23 Investigations Division at the Seventh District?
 24 A. Yes, ma'am.
 25 Q. I'd like to direct your attention to January 20th,

1 2017.
 2 Were you in downtown DC in the area of 13th and
 3 I Street during the time period of 10:19 a.m. to 10:52 a.m.?
 4 A. No, I was not.
 5 Q. Did you have occasion to participate in the
 6 investigation of the events that occurred during that time
 7 period?
 8 A. Yes, ma'am, I did.
 9 Q. And what is your role?
 10 A. I was contacted by my lieutenant to respond to
 11 501 New York Avenue, which is where the command staff was
 12 located at that time. They were in the process of processing
 13 a mass arrest.
 14 Q. A large number of Defendants being arrested?
 15 A. Yes.
 16 Q. And what is your role with respect to that
 17 investigation?
 18 A. They asked me to assist with compiling the relevant
 19 information regarding probable cause and to assist with the
 20 papering or the processing of those arrests.
 21 Q. Are you the lead detective in the investigation?
 22 A. Yes.
 23 Q. Now, directing your attention to 10:19 a.m. to
 24 10:52 a.m., do you know -- I'm sorry.
 25 You said that you were asked to compile and assist

1 with this investigation, compile evidence.
 2 A. Yes.
 3 Q. What kind of evidence were you compiling?
 4 A. The majority of the evidence that was collected was
 5 video evidence.
 6 Q. And photographs.
 7 What else?
 8 A. Photographs, property that was recovered, property
 9 that was seized from the Defendants. Speak with witnesses,
 10 visit the crime scenes. All the evidence that was related to
 11 the incident that happened that day.
 12 Q. And from where were you obtaining videos, photos and
 13 other items during your investigation?
 14 A. Relatively anywhere we could find it. I mean, it
 15 was a widely reported incident. So the Internet was a wealth
 16 of information for videos, photographs.
 17 It could have been YouTube, Facebook, Twitter, any
 18 number of websites, personal websites of individuals that had
 19 posted videos or photographs that we downloaded and retained
 20 for evidence.
 21 Q. How about body-worn camera worn by officers?
 22 A. Yes. There was a lot of that.
 23 Q. What do you mean by "a lot"?
 24 A. I think, regarding that entire day, there was over
 25 20 terabytes of body-worn camera footage.

1 Q. What, if any, evidence did you attempt to obtain
2 from phones seized from individuals arrested?

3 A. Yes. I completed, along with other detectives, a
4 number of search warrants where we accessed information on
5 Defendants' cell phones.

6 And some of those cell phones yielded evidence of
7 the incident that occurred that day, photographs and videos.

8 Q. And what kind of -- you said YouTube, social media,
9 Twitter, Facebook.

10 Are these public sources?

11 A. Yeah. It would be open source. Yes.

12 Q. "Open source" meaning you publicly do it?

13 A. Yes, ma'am.

14 Q. If you observed -- when you observed video or
15 photographs that appeared to relate to January 20th, 2017,
16 during that time period of 10:19 a.m. to 10:52 a.m., what
17 would you do to try to obtain the information?

18 A. Well, initially, we would try to download whatever
19 existed. If it was a video or photograph, we'd try to
20 download it from the Internet.

21 There were times where we felt like what had been
22 posted was a portion of what that individual or that entity
23 had, and we made an effort to contact those individuals to
24 see if they would give us raw, unedited footage or any other
25 footage that they had that could assist with the

1 investigation.

2 Q. And did some entities or individuals provide that?

3 A. Some did. Yes.

4 Q. Not everyone?

5 A. Not everyone. No.

6 Q. In total, approximately how many videos are we
7 talking about here?

8 A. I don't think I could put a number on it. It's --

9 Q. More than 100?

10 A. Yes.

11 Q. How many times have you reviewed those videos?

12 A. Hundreds. Hundreds of times.

13 Q. During what time period?

14 A. So I've been assigned to this case since
15 January 21st. This is the only case that I've been working
16 since then.

17 I've spent 40, 50, upwards of 60 hours a week on
18 this case. And I would say the vast majority, maybe
19 80 percent of that time, I've been examining and analyzing
20 video.

21 THE COURT: Can I just ask counsel to approach.

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

24 THE COURT: Other than the portions of Exhibit 113
25 that you've objected to, I'd like you to -- while you're

1 listening to this, since you have a lot of help over there,
2 make a list on a piece of yellow paper identifying the
3 exhibit and portions thereof that you object to. Just make a
4 list and hand it up to me.

5 MS. HEINE: Okay.

6 THE COURT: I don't want explanations. I don't want
7 reasons. I just want exactly what it is.

8 MS. HEINE: Yeah.

9 THE COURT: Poster, whatever.

10 MS. HEINE: Yes.

11 THE COURT: Picture on poster. Item you're
12 objecting to.

13 MS. HEINE: Got it.

14 THE COURT: With respect to 113, there are two
15 portions objected to in your pleadings. Other than those
16 portions, am I about to hear objections to other portions of
17 113 or any excerpts therefrom on any poster?

18 MS. HEINE: No.

19 THE COURT: Okay. And with respect to those two
20 portions, you're saying that an officer will tie up the
21 portions that are objected to, even though you maintain that
22 it's all admissible anyway?

23 MS. KERKHOFF: Correct. There was an officer
24 standing at the top end of the park watching the events.

25 THE COURT: There's stuff on the other side of the

1 white truck?

2 MS. KERKHOFF: Yes. He was not blocked by the bus.

3 THE COURT: And what about the other part on --

4 MS. KERKHOFF: The officer was following them with
5 the group, your Honor, and can attest --

6 THE COURT: So the second part as well?

7 MS. KERKHOFF: I believe so. Again, I understand --

8 THE COURT: I'm asking you a straight-up question.

9 I don't want the argument. I'm just asking about officers
10 that also will be tying up the other part or not. I just
11 want to know.

12 MS. KERKHOFF: I believe he will. I honestly didn't
13 say, "Where with respect to the dump truck at this second
14 were you?" because I don't believe that's a valid objection.

15 And I think we've already authenticated that --

16 THE COURT: I know.

17 But I'm just asking you: Do you expect that the
18 officer is or is not going to tie up the second minute and a
19 half that's being objected to?

20 MS. KERKHOFF: I do believe he will.

21 THE COURT: Okay.

22 MS. KERKHOFF: Yes.

23 THE COURT: All right. Thank you.

24 (Whereupon, the following proceedings were had in
25 open court:)

1 THE COURT: Sir, you can come back. Thank you.
 2 THE WITNESS: (Retakes the stand.)
 3 BY MS. KERKHOFF:
 4 Q. Now, before we move on to some of the videos, I want
 5 to talk specifically about body-worn camera, body-worn camera
 6 that was obtained in connection with this case.
 7 And where is body-worn camera footage stored by MPD
 8 in any case?
 9 A. It's stored on a server with the website
 10 evidence.com.
 11 Q. Did you in the course of your investigation assist
 12 in making all of that body-worn camera available to the
 13 defense?
 14 A. I did. Yes.
 15 Q. Did you also assist, for example, in making the
 16 exhibits from that data on evidence.com that are admitted
 17 here at this trial?
 18 A. Yes.
 19 Q. Because you know how to download and -- how do you
 20 do that?
 21 A. So when you look at body-worn camera footage from
 22 any incident, it shows you a timeline just like any video you
 23 would look at on the Internet.
 24 In evidence.com, the site that hosts that video, you
 25 can put markers in for a significant incident in that video

1 or you can download sections of that video.
 2 You could say from this time frame to this time
 3 frame and you could download just that segment. And then you
 4 could save that as a separate file.
 5 Q. And, for example, did you save as a separate file
 6 Government's Exhibit 123-A, body-worn camera for Officer
 7 Howden?
 8 A. Yes, I did.
 9 Q. Did you in any way edit, shorten or do anything to
 10 alter that body-worn camera?
 11 A. No. Not at all.
 12 Q. Was there any other body-worn camera from Officer
 13 Howden during the time period of 10:19 a.m. to 10:52 a.m.?
 14 A. No.
 15 Q. What exists is what you made as an exhibit for
 16 123-A. Correct?
 17 A. That's correct. Yes.
 18 Q. All right. And for any of the body-worn camera that
 19 shows portions of the events from 10:19 to 10:52 a.m. that
 20 you assisted in making exhibits, did you in any way edit,
 21 shorten or alter portions of those videos?
 22 A. No.
 23 Q. Now, with respect to processing videos from
 24 body-worn camera, did you -- what, if any, edits did you make
 25 to those?

1 A. A lot of body-worn camera footage was from after the
 2 arrests that day, the processing of individuals that were
 3 arrested.
 4 So there were huge chunks of video, hours long,
 5 sometimes four hours long, of officers going through the
 6 process of taking an individual out of the group, searching
 7 them, getting their name and information and getting them
 8 transported off the scene.
 9 Obviously, if you're looking at a specific
 10 Defendant, most of that four hours is irrelevant. So what we
 11 can do is go in and just take the minute and a half or five
 12 minutes around a specific Defendant and save that particular
 13 chunk of video.
 14 Q. Within -- when a -- for example, a Defendant was on
 15 the processing video, did you make any other edits other than
 16 to remove portions relating to other Defendants before and
 17 after?
 18 A. No. Not at all.
 19 Q. No other edits. Correct?
 20 A. Correct.
 21 Q. And then everything thereon you assisted in
 22 providing to the defense. Correct?
 23 A. That's right. Yes.
 24 Q. Now, with respect to the videos that you gathered
 25 that showed the events from 10:19 a.m. to 10:52 a.m., you

1 said you spoke with witnesses.
 2 Did you go to any of the locations where damage
 3 occurred?
 4 A. Yes, I did.
 5 Q. And are you familiar with the landmarks, physical
 6 buildings and streets in that area?
 7 A. Yes, I am.
 8 Q. How is it -- when you say 10:19 a.m. to 10:52 a.m.,
 9 how is it you know that time is when this incident occurred?
 10 A. So there's quite a bit of video of this incident.
 11 As you'll see, some of it has timestamps. Some of it does
 12 not.
 13 Some of the video that has timestamps is accurate
 14 and can be verified, whether it's from aircraft or from
 15 body-worn camera, CCTV of private establishments where we've
 16 established that the timestamps are correct.
 17 Because of that information and those videos, we're
 18 able to corroborate the fact that that's the time frame in
 19 which this incident occurred, 10:19 to 10:52.
 20 Q. So, for example, the Starbucks video admitted as
 21 Government's Exhibit No. 100, was there a timestamp on that?
 22 A. Yes.
 23 Q. And did you have an opportunity to verify that that
 24 timestamp was accurate for that recording system?
 25 A. I did. Yes.

1 Q. And did you cross-compare that to the body-worn
 2 camera, which is also time-stamped?
 3 A. That's correct. Yes.
 4 Q. To reflect that that was, in fact, an accurate
 5 timestamp?
 6 A. As well as the aerial footage. Yes.
 7 Q. Okay.
 8 MS. KERKHOFF: At this time the Government's going
 9 to offer into evidence Government's Exhibit No. 310,
 10 previously provided to counsel.
 11 THE COURT: Any objection to 310?
 12 MS. COLEMAN: No objection, your Honor.
 13 THE COURT: 310 is admitted.
 14 (Whereupon, Defendant's Exhibit No. 310 was entered
 15 into evidence.)
 16 BY MS. KERKHOFF:
 17 Q. I'm going to show you -- put it up here --
 18 Government's Exhibit No. 310.
 19 Can you describe for the ladies and gentlemen of the
 20 jury what it is we're looking at here.
 21 A. So this is an aerial map of the area between Logan
 22 Circle and Franklin Square, and this encompasses the entire
 23 body of the riot that we're discussing.
 24 Q. Okay. And what is -- there are markers throughout
 25 the route. Correct?

1 A. Yes.
 2 Q. And what are those markers depicting?
 3 A. So they're obviously landmarks of the locations that
 4 were affected by this, the BP gas station, the Au Bon Pain,
 5 Starbucks and such. Also, Logan Circle and Franklin Square
 6 are marked.
 7 And then within the lettered areas, that indicates
 8 or denotes where damage occurred. And then the specific
 9 damage is listed on the list in the upper left.
 10 Q. And through your review of all of the video, through
 11 your review of photographs and speaking with witnesses, does
 12 this exhibit fairly and accurately document not only the
 13 route, but the location, of specific damage or incidents?
 14 A. Yes, ma'am. It does.
 15 Q. So, for example, this is listed -- I'm pointing here
 16 to the middle at the item marked "Limousine, FK."
 17 A. Right.
 18 Q. In the black box, what is depicted as K?
 19 A. K says "Limo destroyed."
 20 Q. And, for example, L?
 21 A. L says "Brick thrown at Officer Anderson."
 22 Q. And the jury will have that in the back.
 23 Now, in connection with your review of all of the
 24 video, did you assist in preparing a much more condensed
 25 compilation of the many videos to capture those incidents at

1 those locations throughout the time period of 10:19 a.m. to
 2 10:52 a.m.?
 3 A. Yes, I did.
 4 MS. KERKHOFF: At this time, the Government is going
 5 to offer into evidence Government's Exhibit No. 156,
 6 previously provided to counsel.
 7 MS. HEINE: Can we approach?
 8 THE COURT: That is -- are you familiar with what
 9 that is? Is that --
 10 MS. KERKHOFF: It's a video, your Honor. 156.
 11 THE COURT: So, counsel, please approach so I know
 12 what we're talking about.
 13 (Whereupon, the following proceedings were had at
 14 side-bar outside the presence of the jury:)
 15 THE COURT: Is that what you've described as the
 16 PowerPoint or is that something I've actually seen?
 17 MS. KERKHOFF: It's portions of videos that have
 18 been admitted or will be firmed up or contained in -- it's
 19 just a compilation so we don't have to play in full all of
 20 the videos.
 21 THE COURT: So it's not something I've seen. It's
 22 not the thing that's the combo of the radio run and stills --
 23 MS. KERKHOFF: No. It's a different compilation.
 24 THE COURT: Is that the thing that you were
 25 objecting to because it had part of 113 on it?

1 MS. HEINE: The objection to this one is that
 2 we've -- we've requested to know which exhibits are clipped
 3 into it so that we know whether the exhibit's been admitted,
 4 whether we actually have an objection to the videos that are
 5 actually in and haven't received the list of exhibits. If we
 6 knew that, we could check thoroughly.
 7 MS. KERKHOFF: What I can say is that it is the list
 8 of exhibits that I've previously advised would be admitted
 9 through both Officer Rank and Officer Anderson. They are
 10 exhibits that have previously been provided as numbered and
 11 marked exhibits. I can give her the list right now.
 12 I received this objection this morning. This is
 13 simply --
 14 THE COURT: Just hold on. Okay?
 15 So you're saying you gave them this compilation
 16 yesterday and, though it includes things you've already given
 17 and many things that are in evidence, before now they have
 18 not gotten any kind of understanding of what's actually in
 19 it?
 20 MS. KERKHOFF: That's slightly inaccurate in that
 21 they received all of these clips this weekend, a separate
 22 clip. We simply put them into one item.
 23 THE COURT: So over the weekend you're saying you
 24 identified these clips as things you would be putting in a
 25 composite?

1 MS. KERKHOFF: Correct. And they were produced
 2 on -- as exhibits -- as a marked exhibit and they were
 3 produced as a separate clip to show them each of the clips
 4 which was being used to make this video.
 5 THE COURT: And so did you produce these all over
 6 the portal or did you produce them as a set of things that
 7 you said are going into the composite?
 8 MS. KERKHOFF: Produced over the portal, each clip,
 9 separately produced.
 10 THE COURT: Did they know that this was something
 11 that was going into the portal?
 12 MS. KERKHOFF: Yes, your Honor. They're marked as
 13 trial exhibits. We have a separate portal for them.
 14 THE COURT: I mean, into the composite.
 15 MS. KERKHOFF: Yes. And I told them last night this
 16 is the same set of --
 17 THE COURT: So you got a set of clips over the
 18 weekend. Assuming you got a set of clips over the weekend
 19 marked as exhibits, the Government's saying they're all in
 20 this composite.
 21 MS. HEINE: The issue is that they're labeled things
 22 like, you know, "Riot, 11th Street." I've seen the clip and
 23 I've seen the exhibit they're about to show, but I don't know
 24 that "Riot, 11th Street" comes from an admitted exhibit.
 25 THE COURT: So whether it does or not, do you have

1 an objection to what you got? If you got it over the weekend
 2 and had an objection, would there have been a time you could
 3 have told me before --
 4 MS. HEINE: Well --
 5 THE COURT: Since I'm not hearing any objection in
 6 particular to anything, you're just going to have to tell me
 7 what you object to when you see it.
 8 The problem is, if it's all stuff you sent them over
 9 the weekend, does that mean that what you sent them were cut
 10 clips from other things?
 11 MS. KERKHOFF: Yes. Things that they've had for
 12 months, things that were --
 13 THE COURT: Do they know what they're clips from?
 14 MS. KERKHOFF: I can give them the list, your Honor.
 15 Just to be clear --
 16 THE COURT: You can now. But did you before?
 17 MS. KERKHOFF: I didn't receive a request for that.
 18 These are all marked exhibits that we've told them we're
 19 introducing.
 20 THE COURT: How many are there?
 21 MS. KERKHOFF: I have a list. I can get --
 22 THE COURT: 5? 10? 15?
 23 MS. KERKHOFF: It's approximately 15 to 20.
 24 THE COURT: 15 to 20.
 25 So, of the things over the weekend, right now I'm

1 asking you all: Is there any objection to any of them? I'm
 2 not hearing a specific objection.
 3 So I guess you can watch it and tell me what your
 4 objection is once you've seen it.
 5 MS. KERKHOFF: They're all exhibits I've previously
 6 marked for you, just portions of them, all exhibits that
 7 they've previously had and Ms. Heine told me on Friday they
 8 reviewed and she has no objection to them other than
 9 foundation. That's what she told me Friday.
 10 THE COURT: We're going to proceed on that
 11 representation.
 12 (Whereupon, the following proceedings were had in
 13 open court:)
 14 THE COURT: Please come back. Thank you.
 15 I've gotten one of these from Ms. Heine, but not
 16 from anybody else. So if anybody else has a list for me, I'd
 17 like it now.
 18 Let's proceed.
 19 BY MS. KERKHOFF:
 20 Q. I'm pulling up Government's Exhibit No. 156.
 21 Can you tell us what it is we're looking at here.
 22 A. This is a satellite image of the area of Logan
 23 Circle. North is -- the top side of the screen is facing
 24 north and the bottom of the scene is facing south. The image
 25 will turn around shortly and you can follow the route

1 southbound down 13th Street.
 2 THE COURT: So this is 156?
 3 MS. KERKHOFF: Yes, your Honor.
 4 THE COURT: I'm admitting it, subject to a motion to
 5 strike.
 6 (Whereupon, Government's Exhibit No. 156 was entered
 7 into evidence.)
 8 MS. KERKHOFF: Thank you.
 9 (Whereupon, segments of Government's Exhibit No. 156
 10 were published in open court.)
 11 MS. KERKHOFF: Pause it, Mr. Qureshi.
 12 BY MS. KERKHOFF:
 13 Q. Detective Pemberton, do you recognize this location?
 14 A. Yes. That's Logan Circle.
 15 Q. Okay. So just to be clear, can you just briefly
 16 explain how this video compilation works. We just saw a map
 17 of Logan Circle.
 18 Now what are we going to see?
 19 A. Sure.
 20 So the aerial footage will show you the route that
 21 it took and sort of fly over the area that you've seen on the
 22 map just previously.
 23 As we get to specific locations, it will cut into
 24 video that's happening on the ground. So we can understand
 25 exactly what happened at those locations.

1 Q. Thank you.
 2 MS. KERKHOFF: Mr. Qureshi.
 3 (Whereupon, segments of Government's Exhibit No. 156
 4 were published in open court.)
 5 BY MS. KERKHOFF:
 6 Q. As Government's Exhibit 156 plays, what kind of
 7 camera is this?
 8 A. This is an MPDC trailer camera. It's a remote
 9 camera that hitches to the back of a vehicle and can be
 10 erected at different locations throughout the city. This one
 11 happened to be at Logan Circle and 13th Street that day.
 12 (Whereupon, segments of Government's Exhibit No. 156
 13 were published in open court.)
 14 THE COURT: Ms. Kerkhoff, as we go to each clip, I
 15 would like you to please identify each clip by the exhibit
 16 number you've previously used in identifying it to the
 17 parties.
 18 MS. KERKHOFF: Thank you.
 19 THE COURT: I don't mean by identifying it to the
 20 jury. I mean identifying it to them --
 21 MS. KERKHOFF: Okay.
 22 THE COURT: -- in production.
 23 (Whereupon, segments of Government's Exhibit No. 156
 24 were published in open court.)
 25 MS. KERKHOFF: For the record, Exhibit 149.

1 THE COURT: Can you just stop it.
 2 Are there other numbers we've just seen before this
 3 one?
 4 MS. KERKHOFF: Yes, your Honor.
 5 THE COURT: Can you tell me what the numbers of
 6 those were.
 7 MS. KERKHOFF: I'll get my list.
 8 Video clips --
 9 THE WITNESS: I think I can answer you.
 10 THE COURT: I'm not asking you. I'm asking
 11 Ms. Kerkhoff.
 12 THE WITNESS: Sorry.
 13 MS. KERKHOFF: I believe 148-12, No. 15; 148-15;
 14 110; 144; and 106.
 15 BY MS. KERKHOFF:
 16 Q. Are those the clips that we're going to be looking
 17 at?
 18 A. The second one is 148-14.
 19 THE COURT: Ms. Kerkhoff, I'm asking you, what we've
 20 already watched in Exhibit 156, can you tell me the clip
 21 number that we've already watched? That's what I want to
 22 know.
 23 MS. KERKHOFF: Yes, your Honor. 148-12, 148-15,
 24 110, and 144.
 25 THE COURT: And right now we're in the midst of 149?

1 MS. KERKHOFF: Correct.
 2 BY MS. KERKHOFF:
 3 Q. Is that accurate, Detective?
 4 A. I believe it's 148-14, the second clip, not 148-15.
 5 THE COURT: As we go, would you please identify as
 6 we switch from clip to clip.
 7 MS. KERKHOFF: Yes, your Honor.
 8 (Whereupon, segments of Government's Exhibit No. 156
 9 were published in open court.)
 10 BY MS. KERKHOFF:
 11 Q. Detective, I believe while I was speaking about the
 12 exhibits, the trailer cam was playing.
 13 There were some individuals --
 14 MS. KERKHOFF: If you could pause it, Mr. Qureshi.
 15 BY MS. KERKHOFF:
 16 Q. There were some individuals taking a photograph in
 17 front of the police cruiser a few moments ago.
 18 Did you see that?
 19 A. Yes.
 20 Q. I won't back it up here.
 21 But what's contained on the video, does it document
 22 something's happening to the front of that marked police
 23 cruiser?
 24 A. Yes. Someone spray-painted an "A" on the front of
 25 the hood of the police cruiser parked there.

1 Q. Thank you.
 2 (Whereupon, segments of Government's Exhibit No. 156
 3 were published in open court.)
 4 MS. KERKHOFF: Stop it.
 5 I believe this is 106, your Honor --
 6 THE COURT: Thank you.
 7 MS. KERKHOFF: Previously shown to the defense.
 8 -- keep playing.
 9 (Whereupon, segments of Government's Exhibit No. 156
 10 were published in open court.)
 11 THE COURT: Is this a number?
 12 BY MS. KERKHOFF:
 13 Q. Is this also No. 106, Detective?
 14 A. That's 127.
 15 Q. Thank you. 127. Thank you.
 16 (Whereupon, segments of Government's Exhibit No. 156
 17 were published in open court.)
 18 BY MS. KERKHOFF:
 19 Q. This is 110. Is that correct?
 20 A. Yes, ma'am.
 21 Q. Just for the record, on Government's Exhibit 156,
 22 from Exhibit 127, what landmark could we see on the -- that
 23 we just previously watched? What landmark do we see on the
 24 right rear side of the screen?
 25 A. That's the BP gas station.

1 Q. Thank you.
 2 MS. KERKHOFF: If we could continue playing.
 3 (Whereupon, segments of Government's Exhibit No. 156
 4 were published in open court.)
 5 MS. KERKHOFF: Could you stop.
 6 BY MS. KERKHOFF:
 7 Q. I believe we just watched a portion. Is this
 8 148-25?
 9 A. Yes.
 10 Q. Thank you.
 11 (Whereupon, segments of Government's Exhibit No. 156
 12 were published in open court.)
 13 BY MS. KERKHOFF:
 14 Q. Is this also 127?
 15 A. That's correct.
 16 (Whereupon, segments of Government's Exhibit No. 156
 17 were published in open court.)
 18 BY MS. KERKHOFF:
 19 Q. What number of video are we looking at there?
 20 A. 106.
 21 Q. Thank you.
 22 (Whereupon, segments of Government's Exhibit No. 156
 23 were published in open court.)
 24 BY MS. KERKHOFF:
 25 Q. Is this 116?

1 A. Yes, ma'am.
 2 (Whereupon, segments of Government's Exhibit No. 156
 3 were published in open court.)
 4 MS. KERKHOFF: Pause it, please.
 5 THE COURT: I'm sorry?
 6 BY MS. KERKHOFF:
 7 Q. Is there also Exhibit 127?
 8 A. Yes, ma'am. It's 127.
 9 (Whereupon, segments of Government's Exhibit No. 156
 10 were published in open court.)
 11 MS. KERKHOFF: Stop it there.
 12 BY MS. KERKHOFF:
 13 Q. Is this 113? Do you want me to play it out?
 14 A. I'm sorry. Can you play it?
 15 Q. Sure.
 16 MS. KERKHOFF: Back up.
 17 (Whereupon, segments of Government's Exhibit No. 156
 18 were published in open court.)
 19 BY MS. KERKHOFF:
 20 Q. And do you recognize this video? Is this 113?
 21 A. Yes.
 22 Q. And the previous video was not No. 113. It was, in
 23 fact, 148, I believe, 20 -- I'm looking at my notes -- 26 or
 24 28. Is that correct?
 25 A. I believe it is 28. Yes.

1 Q. Thank you. I'm checking my notes. 148-28, all
 2 previously produced?
 3 THE COURT: And that was the immediately preceding
 4 video?
 5 MS. KERKHOFF: Immediately preceding before the
 6 screen changed to an up-and-down shorter screen.
 7 This is now 113.
 8 (Whereupon, segments of Government's Exhibit No. 156
 9 were published in open court.)
 10 MS. KERKHOFF: Pause that.
 11 BY MS. KERKHOFF:
 12 Q. What number video are we looking at here?
 13 A. This is 127.
 14 (Whereupon, segments of Government's Exhibit No. 156
 15 were published in open court.)
 16 BY MS. KERKHOFF:
 17 Q. Is this also 127?
 18 A. Yes, ma'am.
 19 Q. Thank you.
 20 (Whereupon, segments of Government's Exhibit No. 156
 21 were published in open court.)
 22 MS. KERKHOFF: I'm going to pause it very quickly
 23 now.
 24 BY MS. KERKHOFF:
 25 Q. Now, Detective Pemberton, during that video, we

1 heard a portion of some sound. It appeared to be edited out.
 2 Is that correct?
 3 A. Yes.
 4 Q. Did you make those edits at my request consistent
 5 with the Court's orders?
 6 A. Yes.
 7 Q. Thank you.
 8 Did you make any other edits with respect to the
 9 video itself or insert any audio?
 10 A. No. Never.
 11 Q. And do you know what exhibit we're looking at here?
 12 A. I --
 13 Q. I can let it play out.
 14 (Whereupon, segments of Government's Exhibit No. 156
 15 were published in open court.)
 16 BY MS. KERKHOFF:
 17 Q. Is that -- would that be 145?
 18 A. I believe it's 144.
 19 Q. I'm sorry. Yes. I'm sorry.
 20 A. 144 was the previous clip.
 21 (Whereupon, segments of Government's Exhibit No. 156
 22 were published in open court.)
 23 MS. KERKHOFF: Pause it.
 24 BY MS. KERKHOFF:
 25 Q. Is this also Government's Exhibit 127?

1 A. Yes.
 2 Q. Thank you.
 3 (Whereupon, segments of Government's Exhibit No. 156
 4 were published in open court.)
 5 MS. KERKHOFF: Pause it.
 6 BY MS. KERKHOFF:
 7 Q. I believe this was previously compiled.
 8 Do you recall which exhibit this is?
 9 A. It's a 148 exhibit. I don't recall the -- 148-26 --
 10 sorry -- 36. 36 sounds right. 148-36. I think so. Yeah.
 11 Q. Thank you.
 12 (Whereupon, segments of Government's Exhibit No. 156
 13 were published in open court.)
 14 THE WITNESS: That should be 144.
 15 (Whereupon, segments of Government's Exhibit No. 156
 16 were published in open court.)
 17 BY MS. KERKHOFF:
 18 Q. Is that also 116?
 19 A. 116. Yes.
 20 (Whereupon, segments of Government's Exhibit No. 156
 21 were published in open court.)
 22 BY MS. KERKHOFF:
 23 Q. Have you split-screened this with the aerial and
 24 another video?
 25 A. Yes. This should be 116 on the right, 113 on the

1 left.
 2 (Whereupon, segments of Government's Exhibit No. 156
 3 were published in open court.)
 4 BY MS. KERKHOFF:
 5 Q. And is this Government's Exhibit No. 140-A?
 6 A. Yes.
 7 (Whereupon, segments of Government's Exhibit No. 156
 8 were published in open court.)
 9 BY MS. KERKHOFF:
 10 Q. And that's 140 -- or as 156 plays, looking at the
 11 clip from 140-A, where is this camera located, the DDOT
 12 camera?
 13 A. From the northeast corner of 13th and I.
 14 Q. So what is kind of immediately below and behind this
 15 camera?
 16 A. Starbucks Coffee at 1225 I Street.
 17 (Whereupon, segments of Government's Exhibit No. 156
 18 were published in open court.)
 19 BY MS. KERKHOFF:
 20 Q. Government's Exhibit 225?
 21 A. Yes.
 22 (Whereupon, segments of Government's Exhibit No. 156
 23 were published in open court.)
 24 BY MS. KERKHOFF:
 25 Q. And which numbered video is this?

1 A. 106.
 2 (Whereupon, segments of Government's Exhibit No. 156
 3 were published in open court.)
 4 BY MS. KERKHOFF:
 5 Q. Do I have this correct as 110? Is this No. 110?
 6 A. No. I don't think it is. I think it's 106 again.
 7 Q. Oh, I'm sorry. Thank you.
 8 (Whereupon, segments of Government's Exhibit No. 156
 9 were published in open court.)
 10 BY MS. KERKHOFF:
 11 Q. Is this No. 112?
 12 A. Yes.
 13 (Whereupon, segments of Government's Exhibit No. 156
 14 were published in open court.)
 15 BY MS. KERKHOFF:
 16 Q. What exhibit number is this?
 17 A. 106 again.
 18 Q. Thank you.
 19 (Whereupon, segments of Government's Exhibit No. 156
 20 were published in open court.)
 21 BY MS. KERKHOFF:
 22 Q. What exhibit is this?
 23 A. (No response.)
 24 Q. Do --
 25 A. It's in the 175 range. I don't recall which --

1 Q. This is a video obtained from a media recording
 2 device from a Defendant. Correct?
 3 A. That's correct. Yes.
 4 Q. Yes.
 5 A. I don't recall the exact exhibit number.
 6 MS. KERKHOFF: If you can play it.
 7 (Whereupon, segments of Government's Exhibit No. 156
 8 were published in open court.)
 9 MS. KERKHOFF: Pause it.
 10 BY MS. KERKHOFF:
 11 Q. Is this also 106?
 12 A. 106 again. Yes.
 13 Q. Thank you.
 14 (Whereupon, segments of Government's Exhibit No. 156
 15 were published in open court.)
 16 BY MS. KERKHOFF:
 17 Q. We're looking at 112 again?
 18 A. Yes.
 19 (Whereupon, segments of Government's Exhibit No. 156
 20 were published in open court.)
 21 BY MS. KERKHOFF:
 22 Q. We're looking at 116 again?
 23 A. Yes.
 24 (Whereupon, segments of Government's Exhibit No. 156
 25 were published in open court.)

1 BY MS. KERKHOFF:
 2 Q. What video we looking at here?
 3 A. 118.
 4 (Whereupon, segments of Government's Exhibit No. 156
 5 were published in open court.)
 6 BY MS. KERKHOFF:
 7 Q. 116 again?
 8 A. Yes.
 9 (Whereupon, segments of Government's Exhibit No. 156
 10 were published in open court.)
 11 BY MS. KERKHOFF:
 12 Q. 113?
 13 A. Yes.
 14 (Whereupon, segments of Government's Exhibit No. 156
 15 were published in open court.)
 16 MS. KERKHOFF: Pause it.
 17 BY MS. KERKHOFF:
 18 Q. And I just want to go back to Government's
 19 Exhibit 310 so you can identify.
 20 Do you recognize where the location is?
 21 A. Yes. That's the intersection of 12th and I Street
 22 Northwest.
 23 Q. So at this point on Government's Exhibit No. 156,
 24 using Government's Exhibit 310, where has the group traveled
 25 and where are we now?

1 A. So it left Logan Circle at the top of the map, come
 2 all the way down 13th Street to K, made a right on K Street,
 3 passed the limousine, came down through Franklin Square, and
 4 they're now going east again on I Street where you saw the
 5 Starbucks and the Bank of America videos.
 6 They then came out of the 1200 block of I, turned
 7 south on 12th Street and back up New York Avenue. And at
 8 this point they've been turned around by the police and
 9 they're now starting to head back down towards -- down
 10 New York Avenue, westbound.
 11 Q. Okay. And referencing Government's Exhibit 310,
 12 does the group go back through -- what we see on the video --
 13 back through Franklin Square a second time, this time in the
 14 opposite direction?
 15 A. Yes. That's correct.
 16 Q. And coming out on what street?
 17 A. 14th.
 18 Q. 14th and K, heading north?
 19 A. Yes.
 20 MS. KERKHOFF: If you could play, Mr. Qureshi.
 21 (Whereupon, segments of Government's Exhibit No. 156
 22 were published in open court.)
 23 MS. KERKHOFF: Hit pause.
 24 BY MS. KERKHOFF:
 25 Q. What video is this?

1 A. 118.
 2 (Whereupon, segments of Government's Exhibit No. 156
 3 were published in open court.)
 4 BY MS. KERKHOFF:
 5 Q. What video are we looking at here?
 6 A. I believe that's 112.
 7 Q. A portion from the same video we watched at the Bank
 8 of America. Correct?
 9 A. Yes. That's right.
 10 (Whereupon, segments of Government's Exhibit No. 156
 11 were published in open court.)
 12 BY MS. KERKHOFF:
 13 Q. Is this 133?
 14 A. Yes.
 15 (Whereupon, segments of Government's Exhibit No. 156
 16 were published in open court.)
 17 MS. KERKHOFF: Pause.
 18 BY MS. KERKHOFF:
 19 Q. What video number is this?
 20 A. I don't remember this exhibit number.
 21 Q. Hold on. Let me see if I can find it from my list.
 22 MS. KERKHOFF: We'll find that for counsel and the
 23 Court.
 24 If you can continue playing.
 25 (Whereupon, segments of Government's Exhibit No. 156

1 were published in open court.)
 2 BY MS. KERKHOFF:
 3 Q. Is this 119?
 4 A. 118.
 5 Q. I'm sorry. 118. Yes.
 6 MS. KERKHOFF: Go ahead.
 7 (Whereupon, segments of Government's Exhibit No. 156
 8 were published in open court.)
 9 MS. KERKHOFF: Pause.
 10 BY MS. KERKHOFF:
 11 Q. What video number is this?
 12 A. 133.
 13 (Whereupon, segments of Government's Exhibit No. 156
 14 were published in open court.)
 15 MS. KERKHOFF: If you could hit pause.
 16 BY MS. KERKHOFF:
 17 Q. What video is this?
 18 A. 119.
 19 (Whereupon, segments of Government's Exhibit No. 156
 20 were published in open court.)
 21 BY MS. KERKHOFF:
 22 Q. Is this 102?
 23 A. Yes.
 24 (Whereupon, segments of Government's Exhibit No. 156
 25 were published in open court.)

1 BY MS. KERKHOFF:
 2 Q. This is 104?
 3 A. Yes.
 4 (Whereupon, segments of Government's Exhibit No. 156
 5 were published in open court.)
 6 THE COURT: This is all 102?
 7 MS. KERKHOFF: This is all 104.
 8 (Whereupon, segments of Government's Exhibit No. 156
 9 were published in open court.)
 10 MS. KERKHOFF: Pause it.
 11 BY MS. KERKHOFF:
 12 Q. Is this 113?
 13 A. 113. Yes.
 14 (Whereupon, segments of Government's Exhibit No. 156
 15 were published in open court.)
 16 BY MS. KERKHOFF:
 17 Q. Is this 123-A, Howden?
 18 A. I think it's Seaward.
 19 Q. I'm sorry. 123-P, I believe. I'll confirm. 123-P.
 20 Yes.
 21 THE COURT: So 123 what?
 22 MS. KERKHOFF: P, previously admitted today.
 23 (Whereupon, segments of Government's Exhibit No. 156
 24 were published in open court.)
 25

1 BY MS. KERKHOFF:
 2 Q. 116?
 3 A. Yes.
 4 (Whereupon, segments of Government's Exhibit No. 156
 5 were published in open court.)
 6 MS. KERKHOFF: If you could just pause it here.
 7 BY MS. KERKHOFF:
 8 Q. We were just looking at Government's Exhibit No. 156
 9 with a portion from 115, the aerial. Correct?
 10 A. Yes.
 11 Q. Did you recognize what intersection that was?
 12 A. Yes.
 13 Q. What was that?
 14 A. It's 13th and L.
 15 Q. So the group that we saw moving, would you for the
 16 record describe the speed at which they moved.
 17 A. Yeah. They were running. Some of them were in a
 18 full sprint.
 19 Q. And was that through 13th and L?
 20 A. Yes.
 21 Q. Now we're coming into the area of 12th and L.
 22 Correct?
 23 A. Yeah. They were on L Street. They crossed 13th
 24 eastbound towards 12th.
 25 MS. KERKHOFF: Go ahead.

1 (Whereupon, segments of Government's Exhibit No. 156
 2 were published in open court.)
 3 BY MS. KERKHOFF:
 4 Q. Is this 123-A?
 5 A. Yes.
 6 (Whereupon, segments of Government's Exhibit No. 156
 7 were published in open court.)
 8 BY MS. KERKHOFF:
 9 Q. Is this Exhibit 116?
 10 A. Yes.
 11 (Whereupon, segments of Government's Exhibit No. 156
 12 were published in open court.)
 13 BY MS. KERKHOFF:
 14 Q. That's Government's Exhibit No. 156. Correct?
 15 A. Yes.
 16 Q. Now, I wanted to talk to you about the individual
 17 Defendants that are here today.
 18 How -- when the Defendants were -- after they were
 19 stopped, when they were processed on the scene, how were they
 20 photographed or documented?
 21 A. So a group of officers would remove them from the
 22 group that was detained and take them to an area outside of
 23 that. There was an initial search that was performed to
 24 remove any sort of bags or external garments.
 25 A lot of them had arm guards and shin guards and

1 things like that that wasn't safe to allow them to keep. So
 2 the officers would take those items from individuals and send
 3 them to a second stage of processing where they went through
 4 a full arrestee search to take their shoelaces and other
 5 items.
 6 At that point in time, they would document the name
 7 or the information that they would need to process that
 8 individual and they would also take what's called a field
 9 arrest photograph on the scene with the arresting officer.
 10 Q. And was that done for every Defendant who was
 11 removed and arrested?
 12 A. Yes.
 13 Q. Now, I'm going to --
 14 MS. KERKHOFF: At this time I'll move to admit
 15 Government's Exhibit 500 to 717. 589 has already been
 16 admitted, your Honor.
 17 THE COURT: That's exhibit what?
 18 MS. KERKHOFF: 500 to 717. Government's Exhibit 589
 19 has already been admitted.
 20 THE COURT: 500 through 717, but not 589?
 21 MS. KERKHOFF: It was already admitted.
 22 THE COURT: Right.
 23 Is there any objection?
 24 MS. COLEMAN: No objection, your Honor.
 25 THE COURT: So I'll admit 500 through 717.

1 (Whereupon, Government's Exhibit Nos. 500 through
 2 717, excluding 589, were entered into evidence.)
 3 MS. KERKHOFF: I won't publish them all right now.
 4 The jury will have these in the back.
 5 BY MS. KERKHOFF:
 6 Q. But looking through Government's Exhibit 500 through
 7 717, what are we looking at?
 8 A. These are the field arrest photos that I just
 9 discussed of each Defendant.
 10 Q. Okay. Just using 500 as an example, an individual
 11 would be documented as they appeared when pulled out with an
 12 officer, with their name. Correct?
 13 A. That's right.
 14 Q. Now, did you also -- after processing on the scene,
 15 are individuals taken -- what are commonly referred to as mug
 16 shots?
 17 A. Yes.
 18 Q. Where are those taken?
 19 A. Back at a processing facility, like a police
 20 district or a processing area.
 21 Q. Okay. And was that done for the Defendants in this
 22 case?
 23 A. Yes.
 24 Q. And directing your attention to the six Defendants
 25 on trial here, Jennifer Armento, Oliver Harris, Brittne

1 Lawson, Michelle Macchio, Christina Simmons and Alexei Wood,
 2 asking you to look at Government's Exhibits 725, 726, 726-A,
 3 and 727 through 730.
 4 A. Yes. These are the mug shots of the Defendants in
 5 this case.
 6 MS. KERKHOFF: At this time the Government offers
 7 into evidence Exhibit 725, a mug shot of Jennifer Armento;
 8 726, a front mug shot of Oliver Harris; 726-A, the side shot
 9 of Oliver Harris; 727, a mug shot of Brittne Lawson; 728, the
 10 mug shot of Michelle Macchio; 729, the mug shot of Christina
 11 Simmons; and 730, the mug shot of Defendant Alexei Wood.
 12 THE COURT: Any objection?
 13 MS. KROPF: Objection, your Honor. Foundation.
 14 BY MS. KERKHOFF:
 15 Q. Officer, when a mug shot is taken of an individual,
 16 how and where is it stored?
 17 A. In a police database. It keeps all the information
 18 about arrested suspects.
 19 Q. Okay. Do you have access to that database?
 20 A. Yes, I do.
 21 Q. Does it also reflect the date that the mug shot is
 22 taken?
 23 A. Yes.
 24 Q. And, in this case, as part of your investigation,
 25 did you pull the mug shots that were dated from January 20th,

1 2017, for each of the Defendants?
 2 A. Yes, I did.
 3 Q. And is that what is contained in Government's
 4 Exhibits 725, 726, 726-A, 727 through 730?
 5 A. Yes, ma'am.
 6 THE COURT: And so I'm just going to reserve on that
 7 and we'll discuss it tomorrow morning at 9:00.
 8 BY MS. KERKHOFF:
 9 Q. Now, Detective Pemberton, in connection with --
 10 THE COURT: So I'll admit 725, 726, 726-A, 727,
 11 728 -- no. Not 727. I'm reserving on that -- 728, 729, 730,
 12 but reserve on 727. We'll talk about that tomorrow, as I
 13 said.
 14 MR. COLEMAN: We're going to join that objection,
 15 your Honor.
 16 THE COURT: So now there is an objection, everyone?
 17 Everyone is joining?
 18 MR. LAZEROW: Yes.
 19 THE COURT: I'll reserve on all of them.
 20 MR. HEALY: Yeah. We will.
 21 BY MS. KERKHOFF:
 22 Q. Officer, have you ever been present when a mug shot
 23 was taken?
 24 A. Yes.
 25 Q. Can you describe the system that takes it.

1 THE COURT: So can counsel please approach.
 2 Can we just save this? We're going to be here
 3 tomorrow anyway well after we have our discussion first thing
 4 tomorrow morning at 9:00 when the jurors will not be here.
 5 MS. KERKHOFF: I understand that.
 6 THE COURT: So set the alarm clocks, everybody, and
 7 we'll discuss this in the morning.
 8 MS. KERKHOFF: All right.
 9 BY MS. KERKHOFF:
 10 Q. Now, Detective, as the lead detective in this case,
 11 did you also have occasion to go through items of evidence
 12 that were seized from Defendants in this case?
 13 A. Yes, I did.
 14 Q. Can you explain, initially, how were those items
 15 cataloged?
 16 A. Well, initially, at the time of arrest, a lot of
 17 property was marked as prisoner's property, which is
 18 different than evidence.
 19 Prisoner's property can be obtained by the arrestee
 20 once they're released and returned to the station to get --
 21 collect their property.
 22 But upon realizing that that -- the property was
 23 probably valuable to this investigation, given the
 24 circumstances, there was a decision that was made later to
 25 seize a lot of those items.

1 And so we made an effort later in the night and into
2 next day in an effort to seize those items that were listed
3 as prisoner's property to help us with the investigation.

4 Q. And did you have occasion to look at everything that
5 was seized as evidence in this case?

6 A. Yes, I did.

7 Q. And were you present when these items were cataloged
8 as well as photographed?

9 A. Yes, I was.

10 Q. Now, you mentioned a few moments ago about the types
11 of evidence that were seized from Defendants who were
12 arrested in the area of 12th -- at 12th and L.

13 What kinds of items did you observe?

14 A. Clothing, backpacks, weapons, masks, gas masks,
15 flags, goggles, cell phones, other electronic devices,
16 cameras. Those were among the things that were seized.

17 Q. Now, I just want to be very clear about this.

18 When you're talking about items that were initially
19 received as prisoner's property and that the police worked to
20 move and seize as evidence, is that different from what
21 someone like Ms. Hassberger at the Department of Forensic
22 Sciences seized on scene at 12th and L that day?

23 A. That's correct.

24 Q. So I'm talking about items that were later pulled
25 from property -- what's called prisoner's property and put as

1 evidence.

2 A. That's correct.

3 Q. So that's in addition to or different from what DFS
4 or what Ms. Hassberger seized. Correct?

5 A. Yes.

6 Q. So what of those items did you seize? Gas masks?

7 A. Gas masks, goggles, masks, clothing, cameras, cell
8 phones, backpacks.

9 Q. How about walkie-talkies?

10 A. Yes. There were two-way radios. Yes.

11 Q. Did you see any protective gear?

12 A. Yes. Shin guards and arm guards.

13 Q. And you said you observed weapons.

14 What did you observe?

15 MR. McCOOL: Objection. Relevance, your Honor.
16 These Defendants?

17 THE COURT: Please approach.

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

20 THE COURT: He's pulling stuff out of the prisoner's
21 property. What are we about to hear that he's done with it?
22 Bringing it to you, fetching it and bringing it?

23 MS. KERKHOFF: It's simply logged as evidence from
24 individuals received. One of the arguments that has been
25 made by counsel is you simply stopped people in an area.

1 The Government has to prove that, for a riot, that
2 this assemblage.

3 THE COURT: Let me back up so I understand.

4 So this witness is saying that he's the one who got
5 stuff out of prisoner's property.

6 MS. KERKHOFF: He's saying he was present when it
7 was being catalogued, pulled, and reviewed it while it was
8 being photographed.

9 THE COURT: And none of it is the stuff that's
10 physically been presented so far?

11 MS. KERKHOFF: By DFS.

12 THE COURT: But there were other things that were
13 identified, for instance, a hammer, a crowbar.

14 MS. KERKHOFF: Correct.

15 THE COURT: Those things are not -- those things are
16 not the things that this witness is going to talk about?

17 MS. KERKHOFF: Correct.

18 THE COURT: And are you going to be physically
19 bringing in any of the things he is talking about?

20 MS. KERKHOFF: I'm not physically bringing them in.
21 If counsel wants to dispute this --

22 THE COURT: I'm just asking a question.

23 MS. KERKHOFF: No. I can use photos.

24 THE COURT: And you're not planning to use photos
25 either? You're just asking what he saw there.

1 MS. KERKHOFF: Correct. On redirect, we might bring
2 photos in. But no. Right now I'm talking about the kinds of
3 things they were seizing as evidence that had initially been
4 put as prisoner's property.

5 THE COURT: Okay. And your objection to the
6 testimony is?

7 MR. McCOOL: Well, there's some person that had a
8 shin guard. How does that make it more likely that my client
9 committed any of the crimes charged in the indictment?

10 THE COURT: Well, I mean, I've talked to -- we've
11 talked a bit in this trial about the fact that rioting is a
12 group crime, conspiracy is a group crime --

13 MR. McCOOL: That's right.

14 THE COURT: -- and that the knowledge of any one
15 person is based on the perception of the entire event.

16 So there's 100 million reasons why the things that
17 one person did in this case would be relevant to your client,
18 *Pinkerton* among them, aiding and abetting among them.

19 So if that's your objection, I can overrule it now.

20 That's the only objection that's being made?

21 MS. KROPF: Sara Kropf.

22 Your Honor, I think also we're getting into highly
23 cumulative and overly prejudicial testimony. If she's going
24 to bring in the 40 cameras that they found --

25 THE COURT: She's not. She's having him simply

1 describe the kinds of things he saw in prisoner's property.
2 So I don't know if you could hear because I know you were a
3 little bit far away at the moment it was being said.

4 But I believe all that's happening right now is he's
5 describing the kinds of things that were pulled from
6 prisoner's property, which is in addition to stuff that was
7 either found at the location at 12th and L or stuffed in the
8 back in the SUV and recovered at the scene.

9 MS. KROPF: If we're done with the topic, then I
10 don't have any objection -- any further objection. But if he
11 plans to go into great deal about every weapon that was
12 found, I do think that is prejudicial. It has nothing to do
13 with these Defendants.

14 We're getting extremely cumulative. We've heard
15 about the crowbars. We've seen the hammers. There's a point
16 where this is just becoming cumulative. We object.

17 THE COURT: So your point -- I mean, I'm assuming
18 it's to complete the places from which objects were
19 collected, since we've already got the locations on the scene
20 and whatever was taken from people.

21 This is the third place where stuff was kept or
22 found?

23 MS. KERKHOFF: Correct. And --

24 THE COURT: And so what is your response to the
25 cumulative or prejudicial argument?

1 MS. KERKHOFF: Well, it's not cumulative because we
2 haven't talked about any of this stuff yet. What we've
3 talked about is what DFS seized on the scene. These were
4 items on people's persons.

5 And there's an additional place which is -- which is
6 items that remained on the scene, meaning DFS wasn't called
7 back. I think, for the totality, counsel has argued it's a
8 handful of people. We saw some weapons, but not a massive
9 amount.

10 That there were other things that were recovered
11 from the group I think is relevant. I'm not diving deep into
12 this. I've asked several questions. I think it's not
13 cumulative because we haven't talked about this yet.

14 It is not what DFS collected.

15 THE COURT: And so anyone else?

16 MR. HEALY: Just simply that what Detective
17 Pemberton is going to be speaking about doesn't describe the
18 location on the person's body. If it was hidden and not
19 visible by any of the other Defendants, I don't see how it
20 could possibly be relevant.

21 It needs to have been visible in some way to make it
22 part of the conspiracy, conspiratorial activity. If it's
23 simply hidden on their body, in their underwear, what's on
24 their legs, under their pants, under their shirts, this is
25 not something that anyone else would be aware of while they

1 were engaged with this group.

2 So he's got to be able to describe the location on
3 the body where it was.

4 THE COURT: Any other argument?

5 All right. So to the extent that the objections are
6 either to relevance, cumulative or prejudicial, I overrule
7 those objections.

8 I don't agree that the fact that persons, not the
9 six people charged here today -- or on trial here today, who
10 were otherwise arrested from within that kettle at 12th and
11 L -- the fact that those people had on their persons weapons
12 and other items that reflected an intention to participate in
13 a riot is either irrelevant or cumulative.

14 These items have not yet been described. Other
15 items, by definition, not these items, have been described,
16 the items taken by DFS, the items observed in piles on the
17 street.

18 And so these are not things that have already been
19 described.

20 The quantity of items of destruction, things that
21 would be brought to a riot rather than to a protest that was
22 simply meant to be an articulation by words do have relevance
23 here.

24 I conclude they are probative and that their
25 prejudicial effect does not substantially outweigh probative

1 value. To the extent that those are the objections, I
2 overrule them.

3 (Whereupon, the following proceedings were had in
4 open court:)

5 THE COURT: I will overrule the objections.

6 Maybe now is a good time -- well, let's go another
7 couple minutes. We've had a lot of tapes playing.

8 BY MS. KERKHOFF:

9 Q. I believe, Detective, you were talking about weapons
10 that you observed -- or items that you observed that could be
11 used as weapons that were taken from initially prisoner's
12 property and seized as evidence.

13 A. Yes. Most of the weapons had been seized by DFS.
14 But the ones that were recovered from the prisoner's property
15 that had been moved to evidence were folding knives, Mace,
16 sort of chemical sprays, pepper spray, like that. I believe
17 there was a baton -- an expandible baton that was found
18 amongst that property.

19 Q. Do you recall smoke bombs?

20 A. Yes. One individual had three smoke bombs.

21 Q. Now, with respect to the Defendants in this trial,
22 Defendant Lawson, Defendant Macchio, Defendant Simmons and
23 Defendant Wood, as well as Defendant Armento, did you observe
24 their property?

25 A. Yes.

- 1 Q. And was that property photographed?
- 2 A. Yes.
- 3 Q. And I'm going to direct you to Government's
- 4 Exhibits 800 through 803 and 805 to 806.
- 5 THE COURT: Are those photos?
- 6 MS. KERKHOFF: Photographs. Yes, your Honor.
- 7 THE COURT: Is there any objection to 800 to 803 and
- 8 805 to 806?
- 9 No objection?
- 10 I'll admit those.
- 11 (Whereupon, Government's Exhibit No. 800 through
- 12 803, 805 and 806 were entered into evidence.)
- 13 BY MS. KERKHOFF:
- 14 Q. Those are photographs of property seized from those
- 15 Defendants?
- 16 A. Yes.
- 17 Q. As well as another Defendant by the name of Daniel
- 18 Kaufman. Is that correct?
- 19 A. That's correct.
- 20 Q. Now, with respect to Defendant Oliver Harris, have
- 21 you reviewed the body camera?
- 22 A. Yes.
- 23 Q. From the processing?
- 24 A. Yes.
- 25 Q. And what, if any, item can you see being taken from

- 1 Oliver Harris?
- 2 A. A black backpack.
- 3 Q. And did you investigate whether or not that black
- 4 backpack was kept as prisoner's property or moved over as
- 5 evidence?
- 6 A. Yes. It was kept as prisoner's property.
- 7 Q. Did you determine whether or not Mr. Harris ever
- 8 picked up that backpack?
- 9 A. He did. He picked it up, I believe, on the 22nd.
- 10 Q. How do you know if somebody picks up prisoner's
- 11 property?
- 12 A. There's a property book. It's actually a bound book
- 13 in every district. An officer makes an arrest. They
- 14 document any items that were taken as prisoner's property on
- 15 that book and leave that property at the station.
- 16 When that arrestee returns, they have to produce
- 17 some ID and then they sign for that property when the station
- 18 gives it back to them on the opposite page of the book.
- 19 Q. And with respect to Jennifer Armento, from the
- 20 processing video, can you see a purple backpack recovered
- 21 from her person?
- 22 A. Yes.
- 23 Q. And did you investigate whether or not that purple
- 24 backpack was moved as evidence or was kept as prisoner's
- 25 property?

- 1 A. It remained as prisoner's property, and it also was
- 2 picked up by Ms. Armento.
- 3 Q. And there's one additional question.
- 4 You stated that Government's Exhibit 500 to 717 were
- 5 field arrest photos for the Defendants that were arrested
- 6 that day. Correct?
- 7 A. That's correct.
- 8 Q. What about Defendant Kaitlyn Rorke? Is there a
- 9 field arrest photo of her?
- 10 A. No, there's not.
- 11 Q. Why not?
- 12 A. Ms. Rorke required medical attention. She was
- 13 transported to Howard University Hospital during the time
- 14 that she would have had a field arrest photo taken.
- 15 When she was treated and released, she was taken
- 16 directly to a processing facility where she only had a mug
- 17 shot taken, and there is no field arrest photo for Ms. Rorke.
- 18 Q. And what kind of forms are prepared when somebody
- 19 receives medical attention or treatment while in your care?
- 20 A. It's known as a PD 313, which is an arrestee's
- 21 injury or illness report.
- 22 Q. Have you reviewed the PD 313 for Ms. Rorke?
- 23 A. I have.
- 24 Q. Did Ms. Rorke have shrapnel injuries?
- 25 A. No.

- 1 Q. What is documented as her injury?
- 2 A. Sprained ankle and abrasions to her calves.
- 3 Q. And did Ms. Rorke provide any explanation for how
- 4 she got that?
- 5 A. She did not. It said that she refused.
- 6 MS. KERKHOFF: I think I'm moving into the next
- 7 area, your Honor. Would you like to stop here?
- 8 THE COURT: Sure.
- 9 MS. KERKHOFF: Okay.
- 10 THE COURT: It's 25 of, ladies and gentlemen. So
- 11 we'll come back at 10 of. Please don't discuss the case.
- 12 (Whereupon, the jury exited the courtroom at
- 13 3:34 p.m. and the following proceedings were had:)
- 14 THE COURT: Sir, I'll excuse you until 10 of.
- 15 Please don't discuss your testimony with anyone.
- 16 THE WITNESS: Yes, your Honor.
- 17 THE COURT: Everybody just have a seat briefly,
- 18 please.
- 19 So we're going to start tomorrow morning at 9:00. I
- 20 just want to understand how many issues we have to address
- 21 before we can bring the jury back.
- 22 But I first want to ask, how many more witnesses do
- 23 you have after this witness?
- 24 MS. KERKHOFF: Your Honor, there's some
- 25 stipulations. I guess, depending upon what the Court's

1 rulings are, we have the officer who was present and moved
2 with the group to authenticate and complete further
3 foundation for videos.

4 And that's -- with the exception of admission of
5 exhibits, that's what we intend. Detective --

6 THE COURT: So the officer who would -- so that
7 officer you expect to authenticate the two portions of
8 113 that are being objected to?

9 MS. KERKHOFF: And many other videos. Yes.

10 THE COURT: And so, to the extent that there are
11 other videos in 156 that have not yet, as far as I know, been
12 admitted, that officer would also authenticate those?

13 MS. KERKHOFF: Yes, your Honor.

14 THE COURT: And the basis for that is that he
15 traveled with the group, in other words, I'm saying embedded,
16 but from within the group and surrounded by people --

17 MS. KERKHOFF: He was a plainclothes on the edge.

18 He wasn't back with the police officers. He was
19 plainclothes, moving with the group.

20 And he -- for example, at Franklin Square, because
21 the group was spreading out, he stood at the corner so he
22 could ensure that he could see the entirety of the park,
23 walked through, assessed the damage, came back out.

24 I believe the objection -- so he literally moved
25 with the group and was -- in fact, at times, received some

1 anyone else expect any objections that are, you know,
2 time-consuming to any other Government exhibits?

3 MS. KROPF: We have -- Sara Kropf, your Honor.

4 We're going to have an objection to the board that
5 they're going to use for Ms. Lawson, which contains her mug
6 shot. I think it's probably the same objection that others
7 will have.

8 THE COURT: And so the boards: Are those things --
9 they're not their composites. Are the boards themselves
10 things that have been shown to the defense before now?

11 MS. KERKHOFF: Yes, your Honor.

12 THE COURT: When?

13 MS. KERKHOFF: The initial set of boards were
14 posted, several of them, several weeks ago. The others were
15 over the weekend.

16 With Ms. Armento we did make an addition to the
17 board last night, although I have advised counsel a week ago,
18 where we additionally located her in terms of the video and
19 the location.

20 THE COURT: So for each board it's literally just
21 the board?

22 MS. KERKHOFF: It's a board that contains images
23 either from photographs or images from videos that are
24 otherwise admitted or being admitted in this case.

25 THE COURT: And so here's what I'm going to want to

1 pepper spray. He was moving with the group. He was not
2 uniformed.

3 THE COURT: And so the objections that I've got from
4 Ms. Heine are to 156 and, also, 187, 312, a PowerPoint and
5 152.

6 MS. KERKHOFF: Correct.

7 THE COURT: So are there going to be other
8 objections from anyone else about any of the Government's
9 exhibits going forward?

10 MR. McCOOL: Your Honor, there's a reference to a
11 prisoner property receipt. I don't believe that we had that.
12 I think we requested it.

13 MS. KERKHOFF: It --

14 MR. McCOOL: So perhaps we can work that out with
15 counsel. But that would be an issue --

16 THE COURT: Here's what I'm going to do: I'm going
17 to order that, after we conclude today, the parties meet this
18 evening for as long as it takes for you all to understand
19 what evidence the Government's going to be offering going
20 forward and what you object to so that you're in a position
21 tomorrow morning to tell me what's contested.

22 And then we'll start at 9:00 in the morning. I'll
23 address the objections to the five exhibits I've been told
24 about.

25 Other than prisoners' property, receipts, does

1 do tomorrow morning: I want them all lined up against the
2 jury box --

3 MS. KERKHOFF: Yes.

4 THE COURT: -- with a little Post-It on anything
5 that you believe has already been admitted so that I will
6 know what hasn't been admitted, and we can talk about what
7 the problem with it is.

8 The other thing I'm going to assume is, if there's
9 an authentication problem that you should be prepared to have
10 somebody here to authenticate the thing on Monday morning.

11 MS. KERKHOFF: I understand that.

12 The problem, your Honor, is, for example, we were
13 just told today about 187, which was admitted with no
14 objection. It was video obtained from a Defendant's media
15 device. Detective Evans has spoken to that.

16 THE COURT: I was going through and doing my best to
17 see what was in, although from 187, I actually put a question
18 mark there. I didn't remember -- I can't remember whether --
19 I don't know who Payton McDonald is.

20 MS. KERKHOFF: He was a Defendant. It was the video
21 images Detective Evans put in. Detective Evans is no longer
22 available to testify, as I advised counsel. So laying the
23 function --

24 THE COURT: Just slow down.

25 So you recall that I admitted that?

1 MS. KERKHOFF: You did.
 2 THE COURT: And there was no objection?
 3 MS. KERKHOFF: Correct.
 4 THE COURT: Okay. So we'll talk about how it is
 5 that that happened and how you've now changed your minds; and
 6 to the extent that Detective Evans is no longer available,
 7 you'll have to talk it through, because I don't know what the
 8 heck is on it.
 9 So we'll have to be able to -- we'll have to talk
 10 about it.
 11 And 187: Is that something that is going to be used
 12 in any -- is it in 156? Yes. I know you noted it.
 13 Is it going to be on any of the boards?
 14 MS. KERKHOFF: It is in Michelle Macchio's board.
 15 It's a -- it is a portion of a video of what we believe to be
 16 Defendant Macchio. They've had the still image and composite
 17 for months, and they've had that it was from Payton McDonald.
 18 THE COURT: It is a video taken by a Co-Defendant --
 19 MS. KERKHOFF: In Logan Circle.
 20 THE COURT: -- in Logan Circle?
 21 MS. KERKHOFF: Correct. Seized from --
 22 THE COURT: And so --
 23 MS. KERKHOFF: Seized from his media device and time
 24 stamped dated January 20th.
 25 THE COURT: How long is the video?

1 MS. KERKHOFF: The video itself is just a few
 2 seconds. It's a clip.
 3 THE COURT: While we're on the break, can you email
 4 that to my two lovely law clerks and they'll just put it up
 5 on my computer and I can watch it tonight?
 6 MS. KERKHOFF: Sure.
 7 THE COURT: So I'll take a look at that.
 8 And then the boards -- unless you have photographs
 9 of them --
 10 MS. KERKHOFF: I have the board out here. The
 11 problem is that we're going to be getting into Alexei Wood's
 12 board before we break for the day.
 13 Again, we've produced these, and I'm hearing
 14 objections. We produced mug shots. We said we were
 15 admitting these. I never heard an objection.
 16 THE COURT: Is Alexei Wood's board off his own
 17 footage?
 18 MS. KERKHOFF: No, your Honor, because his own
 19 footage does not -- some of it is. Some of it is from other
 20 videos.
 21 THE COURT: And so when did you produce that board
 22 to Mr. Cohen?
 23 MS. KERKHOFF: Mr. Wood's board was produced --
 24 composites themselves and the compilation were produced a
 25 week ago. I believe the board itself was produced several

1 days ago. I'd have to go back and look when it was uploaded.
 2 THE COURT: So, Mr. Cohen, are you objecting to the
 3 board for Mr. Wood?
 4 MR. COHEN: Well, I first think 111 still hasn't
 5 been admitted. There's two pictures from 111. That's the
 6 Wood video.
 7 THE COURT: Oh, it's been admitted. The only
 8 question I have is whether I was going to allow the reference
 9 to Seattle in '99. But I have *in limine* ruled that it's
 10 admissible.
 11 MR. COHEN: I just object to the use of the arrows
 12 on the board.
 13 THE COURT: And I actually think you weren't
 14 objecting to the admission of 111.
 15 MR. COHEN: No, I wasn't. But I was -- it hasn't --
 16 I don't think it's been introduced, though, during this
 17 trial.
 18 THE COURT: It may not have been. But --
 19 MR. COHEN: It's just the -- it's something that
 20 needs to happen. I mean, that's all. I'm just saying that
 21 it hasn't happened. I don't know what the Government is
 22 going to do next.
 23 I'm assuming --
 24 THE COURT: This doesn't have to happen for a still
 25 from it to be on the board if you don't object to its

1 admission.
 2 MS. KERKHOFF: We do intend to play the video.
 3 That's the next step. I will be -- I believe Officer
 4 Anderson authenticated it --
 5 THE COURT: Can I just ask? She's authenticated it?
 6 MS. KERKHOFF: She authenticated that that was
 7 fairly and accurately capturing of the portion she observed.
 8 Detective Pemberton can describe where it came from. And to
 9 the extent there's other portions that happened earlier, the
 10 other officer can talk about that.
 11 THE COURT: So are you or are you not objecting to
 12 the Wood board this afternoon, Mr. Cohen? That's either a
 13 yes or a no.
 14 MR. COHEN: I will not object.
 15 THE COURT: Okay. So that one you can use this
 16 afternoon.
 17 MS. KERKHOFF: Thank you, your Honor.
 18 THE COURT: And for the rest of them, just for
 19 tomorrow morning at 9:00, just put a sticky on everything
 20 that you believe has been admitted.
 21 MS. KERKHOFF: Yes.
 22 THE COURT: Everything that hasn't, we'll talk
 23 about. We're talking about these other exhibits then.
 24 MS. KERKHOFF: Thank you.
 25 THE COURT: And just so I know how much talking

1 we're going to have to do, this PowerPoint, what is it?

2 MS. KERKHOFF: The PowerPoint is simply the map
3 that's previously been admitted, 301. And it shows the
4 location of where each of the images is put in a compilation,
5 videos per Defendant.

6 So, for example, for Defendant Alexei Wood, here are
7 the videos that show where he is during -- and identify him
8 so that the jury can see if it's him during the riot.

9 The PowerPoint is simply --

10 THE COURT: And so is every single video on that
11 PowerPoint or excerpts thereof something that has been
12 admitted?

13 MS. KERKHOFF: Or will be, subject to the further
14 foundation from the officer. Yes.

15 THE COURT: So it'll be 111 and other things?

16 MS. KERKHOFF: Correct. It's whatever is in the
17 compilation that was produced weeks ago for each Defendant.
18 It's not new things; it simply shows the jury where.

19 THE COURT: And so if you all need to know what
20 specifically is in the PowerPoint, that's what you're going
21 to learn tonight at the meeting that you have after court.
22 So if you have a question about what's in the PowerPoint and
23 where it comes from, you can ask those questions then,
24 because I don't want to hear tomorrow morning that you don't
25 know what those things are.

1 That's when you get to ask, because if you're
2 curious, you can ask the Government questions outside the
3 courtroom rather than waiting for the witness to be walking
4 into the courtroom to say you don't know what's on the
5 exhibit that the Government intends to use.

6 So any questions you have you should get answered
7 this evening. That way, you can tell me in the morning what
8 your objection is to any portion of it.

9 And I'm going to want to know from you,
10 Ms. Kerkhoff, what hasn't been admitted --

11 MS. KERKHOFF: Yes.

12 THE COURT: -- that's in that PowerPoint.

13 152: What's that?

14 MS. KERKHOFF: No. 152? That is the compilation of
15 every -- of videos where the Government believes it has
16 identified Defendant Macchio throughout the various videos.

17 So --

18 THE COURT: And in 152, is there any excerpt from
19 any video that has not already been admitted?

20 MS. KERKHOFF: Or subject to admission through the
21 other officer. No, your Honor.

22 THE COURT: So it's 113 and other things already
23 admitted?

24 MS. KERKHOFF: Correct.

25 THE COURT: So again, if there are questions about

1 what is in 152, you should ask those questions tonight.

2 MS. KERKHOFF: I would also note that 152, as we did
3 for every Defendant for the video compilation, contains a
4 screen shot that lists what exhibit it came from and the
5 timestamp. So that was already part of it.

6 THE COURT: But you all will be able to work that
7 out this evening.

8 MS. KERKHOFF: Yes.

9 THE COURT: Okay. So I guess I think I need to tell
10 the jury to come back tomorrow at 10:30. That'll give us an
11 hour and a half to go over all objections.

12 Do you think I'm going to need that long? I could
13 give it an hour. That way we can make a little more
14 progress. So 9:00 to 10:00. And we ask them to come back at
15 10:10. I have literally no matters tomorrow, so we can start
16 with the detective back at 10:00 a.m.

17 And then you have the officer who's going to tie up
18 113 on Monday. Any other officers we need to complete
19 authentications of whatever is needed on Monday morning.
20 But.

21 You're saying Evans just will not be available,
22 period?

23 MS. KERKHOFF: Correct. And again, this is why the
24 Government had asked counsel to raise their authentication
25 issues and address it, so we could have the appropriate

1 witnesses.

2 THE COURT: I know. Let's just -- and so other than
3 finishing Pemberton and these witnesses who tie up the
4 authentications, you expect that you will rest on them on
5 Monday morning?

6 MS. KERKHOFF: I don't think it'll be Monday morning
7 with the cross. But yes, I do.

8 We do have some stipulations. If counsel will not
9 stipulate, for example, to additional damage documents for
10 the destruction of two properties, we will have to put on the
11 custodians for those for the damage at the Bank of America,
12 that kind of thing.

13 We've proposed stipulations --

14 THE COURT: So I'd ask that you also work that out
15 this weekend.

16 MS. KERKHOFF: Yes.

17 THE COURT: Let's break. Let's take it until 4:00,
18 please.

19 MS. KERKHOFF: Thank you.

20 (Thereupon a recess was taken, after which the
21 following proceedings were had:)

22 THE COURT: Good afternoon.

23 I'm going to direct that nobody sit in the row right
24 by the jury. They were being disturbed by the sounds of
25 typing. I'm really hoping that nobody who's not an attorney

1 has had electronics in here. If you have, you're not
 2 supposed to.
 3 But I'm going to ask that that row be vacated and
 4 moved back, please.
 5 (Whereupon, certain members of the public vacated
 6 the first row of the courtroom gallery.)
 7 THE COURT: Thank you.
 8 THE DEPUTY CLERK: Re-calling United States versus
 9 Brittne Lawson, 2017 CF2 1256, et al.
 10 THE COURT: All counsel and all Defendants are here.
 11 We're leaving that row vacant. Vacant. No
 12 electronics allowed. Thank you.
 13 And can the witness come on back in.
 14 (Thereupon, the witness entered
 15 the courtroom and the following
 16 proceedings were had:)
 17 (Whereupon, the jury entered the courtroom at
 18 4:11 p.m. and the following proceedings were had:)
 19 THE COURT: Good afternoon again, ladies and
 20 gentlemen.
 21 I know you're wondering about tomorrow's schedule.
 22 I'm going to be bringing you in at 10:15 tomorrow morning.
 23 You'll be excused at about ten minutes to 1:00. I'm supposed
 24 to be someplace at 1:00 to get trained for my next
 25 assignment.

1 So you'll be off for the rest of the week, coming
 2 back Monday morning.
 3 So I'm just reminding you that that's our plan.
 4 And we're going to pick back up now with Detective
 5 Pemberton's testimony.
 6 Sir, I remind you you're still under oath.
 7 THE WITNESS: Yes, your Honor.
 8 THE COURT: And, Ms. Kerkhoff, you may go ahead.
 9 MS. KERKHOFF: Thank you.
 10 BY MS. KERKHOFF:
 11 Q. Detective, when we left off, we were talking about
 12 property that had been recovered.
 13 And you had property you said that the Department of
 14 Forensic Sciences seized on the scene at 12th and L.
 15 Correct?
 16 A. Yes.
 17 Q. Property that was taken from the Defendants and that
 18 was initially logged as prisoners' property, and some was
 19 moved on as evidence. Is that correct?
 20 A. That's correct. Yes.
 21 Q. Through the course of your investigation, was there
 22 evidence that was on scene at 12th and L?
 23 A. Yes.
 24 Q. And this is after the Defendants were processed?
 25 A. That's correct.

1 Q. Visible in many of the videos?
 2 A. Yes.
 3 Q. And was that evidence or items seized?
 4 A. They were not.
 5 Q. Why is that?
 6 A. I believe that they were discarded.
 7 Q. DFS never went back to the scene to collect it after
 8 the processing?
 9 A. No. This was several hours after DFS had cleared
 10 the scene.
 11 Q. So I want to direct your attention to a video,
 12 Government's Exhibit No. 111.
 13 During the course of your investigation, did you
 14 become aware of a live-stream video that was posted on the
 15 Internet?
 16 A. I did.
 17 Q. Did you download it and obtain it?
 18 A. I did. Yes.
 19 Q. Was it publicly available?
 20 A. It was.
 21 Q. Did it identify who posted the video?
 22 A. Yes.
 23 Q. Who?
 24 A. Defendant Wood.
 25 Q. Alexei Wood?

1 A. Yes.
 2 Q. Have you had an opportunity to review Government's
 3 Exhibit 111?
 4 A. Yes, I have.
 5 Q. Is that a copy of what you downloaded from the
 6 Internet that was live-streamed?
 7 A. Yes, it is.
 8 Q. Have you had an opportunity to compare that video
 9 with various landmarks in Washington, DC?
 10 A. I have.
 11 Q. Have you also had an opportunity to cross-reference
 12 images from that with other videos to include body-worn
 13 camera, DDOT camera that was obtained in this case with this
 14 case?
 15 A. That's correct.
 16 Q. What does that show?
 17 A. That the video contained in Exhibit 111 was taken
 18 contemporaneously with those other images, which I believe it
 19 was -- the video was an entire live stream, a continuous
 20 running stream of video, of the riot from 10:15 to 10:52.
 21 MS. KERKHOFF: At this time, the Government offers
 22 into evidence Government's Exhibit No. 111.
 23 MR. COHEN: No objection.
 24 THE COURT: So no objection.
 25 Any other objection?

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1 MS. HEINE: No new objection.
 2 THE COURT: I will admit the entirety of the video,
 3 including all audio.
 4 (Whereupon, Government's Exhibit No. 111 was entered
 5 into evidence.)
 6 MS. KERKHOFF: I am playing Government's Exhibit No.
 7 111 on the screen.
 8 (Whereupon, segments of Government's Exhibit No. 111
 9 were published in open court.)
 10 THE COURT: Is there a way to get a counter on the
 11 screen?
 12 MS. KERKHOFF: There is. It just will cut off a
 13 portion of the video, Exhibit 804 now. We can do it
 14 occasionally if we put the counter on.
 15 THE COURT: That would be helpful.
 16 MS. KERKHOFF: We can put it on every now and then.
 17 THE COURT: Thank you.
 18 MS. KERKHOFF: Sure.
 19 (Whereupon, segments of Government's Exhibit No. 111
 20 were published in open court.)
 21 MS. KERKHOFF: Pause it.
 22 For the record, we paused at 23:42.
 23 THE COURT: We're going to break for the day.
 24 Ladies and gentlemen, as I said, I'm going to ask
 25 you to return at 10:15 tomorrow morning. We'll be finished

1 you're going to sit down and hash out whatever is left for me
 2 to resolve in terms of admissibility of the Government's
 3 exhibits.
 4 Ms. Kerkhoff, are you going to email something to my
 5 staff?
 6 MS. KERKHOFF: As soon as I get back to the office.
 7 I'll email 187. I will email copies of the board.
 8 THE COURT: You can't do it from here?
 9 MS. KERKHOFF: I don't have -- it's on my server.
 10 THE COURT: Okay. So I should let you get out of
 11 here, then, because I'd like to take a look at it tonight.
 12 I'll see you all at 9:00 a.m.
 13 (Proceedings concluded.)
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1 by ten of 1:00 tomorrow afternoon.
 2 Have a good evening.
 3 And don't discuss the case. Don't read or look at
 4 anything about it and don't make any decisions about it.
 5 Thank you. Once again, your presence is much
 6 appreciated.
 7 (Whereupon, the jury exited the courtroom at 4:39
 8 p.m. and the following proceedings were had:)
 9 THE COURT: Sir, I'll excuse you until 10:15
 10 tomorrow. Don't discuss your testimony with anybody.
 11 THE WITNESS: Thank you, your Honor.
 12 (Witness excused.)
 13 THE COURT: For the record, as I said, the only
 14 thing I reserved on was the one line in this exhibit, "This
 15 is my Seattle '99."
 16 I have concluded that that should be admitted. I
 17 don't believe that it's so inflammatory that the reference to
 18 something, to an event preceding it, would constitute
 19 prejudice that substantially outweighs its probative value.
 20 This is commentary. It's commentary in furtherance of the
 21 conspiracy. It's a description and characterization of this
 22 event.
 23 And for that reason, I'm admitting it. That's the
 24 only thing that I had delayed on.
 25 And so I am asking that you all sit down wherever

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, et al., in said Court on the 5th day of
 9 December, 2017.
 10 I further certify that the foregoing 204 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 5th day of December, 2017.
 17
 18
 19
 20 Lisa Edwards, RDR, CRR
 21 Official Court Reporter
 22
 23
 24
 25