

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

UNITED STATES OF AMERICA

Criminal Action
No. 1:25-252

Plaintiff,

vs.

Washington, DC
November 4, 2025

SEAN CHARLES DUNN,

Defendant.

9:06 a.m.

_____ /

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE CARL J. NICHOLS
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

DEPUTY CLERK: Good morning, Your Honor. This is criminal case 2025-252, *United States of America vs. Sean Charles Dunn*.

Counsel, please come forward and introduce yourselves for the record, beginning with the government.

MR. DiLORENZO: Good morning, Your Honor. On behalf of the government, Michael DiLorenzo, John Parron and we have Mariela Andrade at counsel table.

THE COURT: Yes. Good morning, everyone.

Ms. Shroff, good morning.

MS. SHROFF: Good morning, Your Honor. And good morning to everyone else. For Mr. Dunn, Sabrina Shroff, Julia Gatto and Nick Silverman. We're all present at defense counsel table.

THE COURT: Thank you very much.

I just wanted to note for the record before we start that, as the parties are aware, I circulated, last night, my take on the parties' respective positions about the definition of "forcibly."

I did that, even though, of course, I'm not instructing the jury about that definition now and I won't do that until we're ready to do the final instructions, I wanted to provide the government with guidance on what I thought the appropriate definition was in order to allow the

1 government to do its opening.

2 Does the government have enough from me to do an
3 opening?

4 **MR. PARRON:** On "forcible," yes, Your Honor.

5 **THE COURT:** All right. Thank you.

6 My plan now is to bring the jury in, do
7 preliminary instructions, openings, and then we'll go from
8 there. Okay?

9 **MR. PARRON:** There is one, I think -- or, I guess,
10 two preliminary issues that we did want to raise.

11 One, the defense made a request for some gifts
12 that were provided to Agent Lairmore after the incident. We
13 don't think that they are relevant or discoverable under any
14 theory. We are prepared to disclose them, if the Court
15 orders it. But we don't think they are discoverable.

16 **THE COURT:** Okay.

17 **MR. PARRON:** Second, our last witness,
18 Officer McDonald, had a medical issues that raised itself
19 last night. She had to call out of work and she is
20 currently on her way to urgent care.

21 Basically, she was going to be called to introduce
22 a short video clip. We think we can get it in through
23 another witness. We tried to work out a stipulation with
24 defense and we weren't able to do so. So it's just going to
25 potentially take a little bit longer with the witness.

1 **THE COURT:** I understand. Obviously, I hope
2 she -- is it "she"?

3 **MR. PARRON:** Yes, Your Honor.

4 **THE COURT:** I hope, obviously, that she feels
5 better. It seems to me that -- let's see how things go with
6 whether you're able to get that video in through someone
7 else. In the event that you're not, we'll discuss what, if
8 anything, we do about her health and potential testimony but
9 I understand.

10 **MR. PARRON:** Perfect.

11 **THE COURT:** On the discoverability question, what
12 would you like me to do right now? Be aware of the issue?

13 **MR. PARRON:** Yes, Your Honor.

14 **THE COURT:** Does it affect preliminary
15 instructions or the openings or the testimony of the first
16 witness?

17 **MR. PARRON:** I think it would affect our first
18 witness. They would like to have it for their
19 cross-examination of this witness, I believe.

20 **THE COURT:** My guess is we're not going to get to
21 cross-examination before the morning break. So let's talk
22 about it then, if at all.

23 **MR. PARRON:** That works for the government. Yes,
24 Your Honor.

25 **THE COURT:** Thank you.

1 **MS. SHROFF:** Your Honor, just on the witness
2 issue. We, of course, all hope everybody feels better when
3 they're sick. We are not going to stipulate to something
4 that --

5 **THE COURT:** I heard that part.

6 **MS. SHROFF:** We are happy to discuss with the
7 government if they want to come back later today or tomorrow
8 morning when she feels better. We're happy to be --

9 **THE COURT:** We'll figure that out when we get to
10 it, if we need to; yes, agreed.

11 **MS. SHROFF:** I just wanted to make sure there was
12 a limit to our unreasonableness --

13 **THE COURT:** I didn't hear anything unreasonable
14 from your position articulated by the government. It seems
15 to me that this is something we will work through, but I'm
16 certain we will get there.

17 **MS. SHROFF:** Okay. We do object to it coming in
18 through the witness they referred to because we don't think
19 it is admissible that way. Thank you.

20 **THE COURT:** Understood. Thank you very much.

21 Okay. Let's bring the jury in, please.

22 (Jury enters the courtroom.)

23 **THE COURT:** Good morning, everyone.

24 First of all, I want to thank everyone for being
25 here on time. It is much appreciated.

1 Also, this is not a preliminary instruction but I
2 realize it is cold in the courtroom right now. You'll see
3 that the temperature will rise over the course of the day
4 with people in the courtroom, so we sort of start cold for
5 that reason.

6 Now onto the preliminary instructions before
7 trial. Before we begin the trial, I want to explain some of
8 the legal rules that will be important in this trial. I
9 want to emphasize that these remarks are not meant to be a
10 substitute for the detailed instructions that I will give at
11 the end of the trial just before you start your
12 deliberations. These preliminary instructions are intended
13 to give you a sense of what will be going on in the
14 courtroom and what your responsibilities as jurors will be.

15 When you took your seats, you probably noticed
16 that each of you had a notebook and pencil waiting for you.
17 That is because during the trial jurors who want to take
18 notes are permitted to do so. Whether you take notes or not
19 is entirely up to you. Many people find that taking notes
20 helps them remember testimony and evidence. Others find it
21 distracts them from listening to the witnesses.

22 You will be permitted to take your notebooks back
23 with you into the jury room during deliberations. You
24 should remember, however, that your notes are only an aid to
25 your memory. They are not evidence in the case and they

1 should not replace your own memory of the evidence. Those
2 jurors who do not take notes should rely on their own memory
3 of the evidence and should not be influenced by another
4 juror's notes.

5 Other than during your deliberations, the
6 notebooks will remain locked in the courtroom during
7 recesses and overnight. You will not be able to take the
8 notebooks with you as you come and go. And you will not be
9 permitted to take them home with you overnight.

10 At the end of the trial, when you come back to the
11 courtroom to deliver your verdict, your notebooks will be
12 collected and the pages torn out and destroyed. No one,
13 including myself, will ever look at any notes you have
14 taken. So you may feel free to write whatever you wish.

15 You will probably notice that there are 14 of you
16 sitting in the jury box. Only 12 of you will retire to
17 deliberate in this matter. I will not disclose who the
18 ultimate jurors are until the end of my final instructions,
19 just before you begin your deliberations.

20 It is therefore important each of you think of
21 yourselves as regular jurors during the trial and that all
22 of you give this case your fullest and most serious
23 attention.

24 At the beginning of the jury selection process you
25 were introduced to some witnesses, all by name, I believe.

1 If at any time during this trial you suddenly realize that
2 you recognize or might know any witness, lawyer, someone who
3 is mentioned in the testimony or evidence or anyone else
4 connected with this case in any way, you should raise your
5 hand immediately and ask to speak with me.

6 Now, let me explain briefly some of the procedures
7 we will follow and some of the rules of law that will be
8 important in this case.

9 This is a criminal case that began when the
10 United States Attorney filed a charging document called an
11 Information with the Court.

12 The Information alleges that on or about
13 August 10, 2025, within the District of Columbia, Mr. Dunn
14 did forcibly assault, resist, oppose, impede, intimidate or
15 interfere with an officer or employee of the United States,
16 Gregory Lairmore, an agent with U.S. Customs and Border
17 Protection, while such person was engaged in or on account
18 of the performance of official duties.

19 You should understand clearly that the information
20 that I just read is not evidence. The information is just a
21 formal way of charging a person with a crime in order to
22 bring him to trial. You must not think of the Information
23 as any evidence of the guilt of Mr. Dunn, drawing a
24 conclusion about the guilt of Mr. Dunn just because he's
25 been formally charged.

1 At the end of the trial you will have to decide
2 whether or not the evidence presented has convinced you
3 beyond a reasonable doubt that the defendant committed the
4 offenses with which he has been charged.

5 Every defendant in a criminal case is presumed to
6 be innocent. This presumption of innocence remains with the
7 defendant throughout the trial unless and until he is proven
8 guilty beyond a reasonable doubt.

9 The burden is on the government to prove the
10 defendant guilty beyond a reasonable doubt and that burden
11 of proof never shifts throughout the trial. The law does
12 not require a defendant to prove his innocence or to produce
13 any evidence.

14 If you find that the government has proven beyond
15 a reasonable doubt every element of a particular offense
16 with which the defendant is charged, it is your duty to find
17 him guilty of that offense.

18 On the other hand, if you find that the government
19 has failed to prove any element of a particular offense
20 beyond a reasonable doubt, you must find the defendant not
21 guilty of that offense.

22 As I explain how the trial will proceed, I will
23 refer to the government and to the defense or the defendant.
24 When I mention the government, I'm referring to Assistant
25 United States Attorneys Mr. John Parron and Mr. DiLorenzo.

1 When I mention the defendant or the defense, I am
2 referring to either the defendant, Mr. Dunn, to his
3 attorneys, Ms. Shroff, Ms. Gatto, Mr. Silverman.

4 As the first step in this trial the government and
5 the defendant will have an opportunity to making opening
6 statements. The defendant may make an opening statement
7 immediately after the government's opening statement or he
8 may wait until the beginning of the defendant's case or he
9 may choose not to make an opening statement at all.

10 You should understand that the opening statements
11 are not evidence. They are only intended to help you
12 understand the evidence that the lawyers expect will be
13 introduced.

14 After the opening statement or statements, the
15 government will put on what is called its "case-in-chief."
16 This means that the government will call witnesses to the
17 witness stand and ask them questions. This is called direct
18 examination.

19 When the government is finished with the witness,
20 the defense may ask questions. This is called
21 cross-examination. When the defense is finished the
22 government may have brief redirect examination.

23 After the government presents its evidence, the
24 defendant may present evidence but he is not required to do
25 so. The law does not require, as I said already, the

1 defendant to prove his innocence or to produce any evidence.
2 If the defense does put on evidence, the defense will call
3 witnesses to the stand and ask questions on direct
4 examination, the government will cross-examine and the
5 defense may have brief redirect examination.

6 When the defense is finished, the government may
7 offer a rebuttal case, which will operate along the same
8 lines as its case-in-chief.

9 At the end of all the evidence I will instruct you
10 on the rules of law that you are to apply in your
11 deliberations when you retire to consider your verdict in
12 this case. Then each side will have a chance to present
13 closing arguments in support of the case.

14 The statements of the lawyers in their closing
15 arguments, just as in their questions and opening
16 statements, are not evidence in this case. They are
17 intended only to help you understand the evidence and what
18 each side claims the evidence shows.

19 Finally, at the end of the closing arguments, I
20 will have a few additional instructions for you before you
21 begin your deliberations.

22 I want to briefly describe my responsibilities as
23 the Judge and your responsibilities as the jury.

24 My responsibility is to conduct this trial in an
25 orderly, fair and efficient manner, to rule on legal

1 questions that come up in the course of trial and to
2 instruct you about the law that applies to this case. It is
3 your sworn duty as jurors to accept and apply the law as I
4 stated to you.

5 Your responsibility as jurors is to determine the
6 facts in this case. You, and only you, are the judges of
7 the facts. You alone determine the weight, the effect and
8 the value of the evidence, as well as the credibility or
9 believability of the witnesses.

10 You must consider and weigh the testimony of all
11 witnesses who appear before you. You alone must decide the
12 extent to which you believe any witness.

13 You must pay very careful attention to the
14 testimony of all of the witnesses because you will not have
15 any transcripts or summaries of the testimony available to
16 you during your deliberations. You will have to rely
17 entirely on your memory and your notes, if you choose to
18 take any.

19 As human beings we all have personal likes,
20 dislikes, opinions, prejudices and biases. Generally, we
21 are aware of these things but you should also consider the
22 possibility that you have implicit biases, that is biases of
23 which you may not be consciously aware.

24 Personal prejudices, preferences or biases have no
25 place in a courtroom, where the goal is to arrive at a just

1 and impartial verdict. All people deserve fair treatment in
2 the legal system, regardless of race, national or ethnic
3 origin, religion, age, disability, sex, gender identity or
4 expression, sexual orientation, education, income level or
5 any other personal characteristic.

6 You should determine the facts solely from a fair
7 consideration of the evidence.

8 During this trial, I may rule on motions and
9 objections by the lawyers, make comments to lawyers,
10 question the witnesses and instruct you on the law. You
11 should not take any of my statements or actions as any
12 indication of my opinion about how you should decide the
13 facts.

14 If you think that somehow I have expressed or even
15 hinted at an opinion as to the facts in this case, you
16 should disregard it. The verdict in this case is your sole
17 and exclusive responsibility.

18 You may consider only the evidence properly
19 admitted in this case. That evidence includes the sworn
20 testimony of witnesses and the exhibits admitted into
21 evidence.

22 Sometimes a lawyer's question suggests the
23 existence of a fact but the lawyer's question alone is not
24 evidence. If the evidence includes anything other than
25 testimony and exhibits, I will instruct you about these

1 other types of evidence when they are admitted during the
2 trial.

3 During the trial, if the Court or a lawyer makes a
4 statement or asks a question that refers to evidence that
5 you remember differently, you should rely on your memory of
6 the evidence during your deliberations.

7 The lawyers may object when the other side asks a
8 question, makes an argument or offers evidence that the
9 objecting lawyer believes is not properly admissible. You
10 must not hold such objections against the lawyer who makes
11 them or the party he or she represents. It is the lawyer's
12 responsibility to object to evidence that they believe is
13 not admissible.

14 If I sustain an objection to a question asked by a
15 lawyer, the question must be withdrawn and you must not
16 guess or speculate what the answer to the question would
17 have been. If a question is asked and answered, and I then
18 rule that the answer should be stricken from the record, you
19 must disregard both the question and the answer in your
20 deliberations. You should follow the same rule if any of
21 the exhibits are stricken.

22 I'm going to repeat some of what I said last night
23 now. So forgive me but I am going to give you the full
24 instruction on this point.

25 You are not permitted to discuss this case with

1 anyone until this case is submitted to you for your decision
2 at the end of my final instructions. This means that until
3 the case is submitted to you, you may not talk about it,
4 even with your fellow jurors; that is because we don't want
5 you making any decisions until you've heard all of the
6 evidence and the instructions of law.

7 In addition, you may not talk about the case with
8 anyone else. It should go without saying that you may also
9 may not read about the case electronically through any blog,
10 posting or other communication, including social networking
11 sites, such as Facebook or Twitter, until you have delivered
12 your verdict and the case is over.

13 This is because you must decide the case based on
14 what happens here in the courtroom, not on what someone may
15 or may not tell you outside the courtroom.

16 I'm sure that you may have told people last night
17 you were selected for a jury, as they may have undoubtedly
18 asked what kind of case you are sitting on. As I said last
19 night, you should continue telling them you are sitting on a
20 criminal case and nothing else. When the case is over, you
21 may discuss any part of it with anyone you wish. But until
22 then, you may not do so.

23 Although it is a natural human tendency to talk
24 with people with whom you come into contact, you must not
25 talk to any of the parties, their attorneys or any witnesses

1 in this case during the time you serve on this jury. If you
2 encounter anyone connected with the case outside of the
3 courtroom, you should avoid having any conversation with
4 them, overhearing their conversation or having any contact
5 with them at all.

6 For example, if you find yourself in a courthouse
7 corridor, elevator or any other location where the case is
8 being discussed by attorneys, parties, witnesses or anyone
9 else, you should immediately leave the area to avoid hearing
10 such discussions. If you do overhear a discussion about the
11 case, you should report that to me as soon as you can.

12 Finally, if you see any of the attorneys or
13 witnesses involved in the case and they turn and walk away
14 from you, they are not being rude. They are merely
15 following the same instructions that I gave to you to them.

16 It is very unlikely but if someone does try to
17 talk to you about the case you should refuse to do so and
18 immediately let me know by telling the clerk or the marshal.
19 Don't tell the other jurors. Just let me know and I will
20 bring you in to discuss it.

21 Between now and when you are discharged from jury
22 duty, you must not provide to or receive from anyone, be it
23 coworkers, friends and family members, any information about
24 your jury service.

25 Again, you may tell those who need to know where

1 you are that you've been picked for a jury and how long the
2 case may take, which I said yesterday should be no more than
3 two days; however, you must not give anyone information
4 about the case itself or the people involved in the case.

5 You must also warn people not to try to say
6 anything to you or write to you about your jury service or
7 the case. This includes face-to-face, phone or computer
8 communications.

9 I'm just going to stress again that in this age of
10 electronic communication you must not use electronic devices
11 or computers to talk about this case, including tweeting,
12 texting, blogging, emailing, posting information on a
13 website or chat room or any other means at all. Do not
14 accept or send messages, including email or text messages,
15 about your jury service.

16 You must not disclose your thoughts about your
17 jury service or ask for advice on how to decide any case.
18 You must decide the facts based on the evidence presented in
19 court and according to the legal principles about which I
20 will instruct you.

21 You are not permitted during the course of the
22 trial to conduct any independent investigation or research
23 about the case. That means, for example, you cannot use the
24 Internet to do research about the facts or the law or the
25 people involved in the case. Research includes something

1 even as simple or seemingly harmless as using the Internet
2 to look up a legal term or view a satellite photo of the
3 scene of the alleged crime.

4 I will explain briefly the reasons why you should
5 not conduct your own investigation, and I alluded to this
6 yesterday. All parties have a right to have the case
7 decided only on evidence and legal rules that they know
8 about and they have a chance to respond to. Relying on
9 information that you get outside of this courtroom is unfair
10 because the parties will not have a chance to refute,
11 correct or explain it.

12 Unfortunately, information that we get over the
13 Internet or from other sources may be incomplete or
14 misleading or just plain wrong. It is up for you to decide
15 whether to credit any evidence presented in court and only
16 the evidence presented in court may be considered.

17 If evidence or legal information has not been
18 presented in court, you cannot rely on it. Moreover, if you
19 do your own research about the facts of the law this may
20 result in different jurors basing their decisions on
21 different information. Each juror must make his or her
22 decision based on the same evidence and the same rules.

23 In some cases there may be reports in the
24 newspaper or on the radio, Internet or TV concerning the
25 case while the trial is on going. If there should be such

1 media coverage in this case you may be tempted to read,
2 listen to or watch it. You must not do so. That is, you
3 must not read, listen to or watch such reports because you
4 must decide this case solely on the evidence presented in
5 this courtroom.

6 If any publicity about this trial inadvertently
7 comes to your attention during trial, do not discuss it with
8 other jurors or anyone else. Just let me or my clerk know
9 as soon after it happens as you can and then I will briefly
10 discuss it with you.

11 After I submit the case to you, you may then
12 discuss it only when I instruct you to do so and only in the
13 jury room and only in the presence of all your fellow
14 jurors. It is important that you keep an open mind and not
15 decide any issue in the case until after I submit the entire
16 case to you with my final instructions.

17 With that, we will begin with the government's
18 opening statement.

19 You may proceed, Counsel.

20 (Government's opening statement.)

21 **MR. PARRON:** No matter who you are, you can't just
22 go around throwing stuff at people because you're mad at
23 them. In our society, we operate under an understanding, a
24 shared agreement, that when we have disputes we settle them
25 verbally we don't let them turn physical.

1 That defendant violated that agreement, that
2 understanding, when he went from berating and yelling at the
3 officers to throwing a sandwich at the chest of one of the
4 law enforcement officers; that's something you just can't
5 do.

6 Over the course of this trial you're going to hear
7 a little background about why Agent Lairmore was where he
8 was that night. In short, him and a few other agents from
9 customs and border patrol were assigned to assist the Metro
10 Transit Police in patrolling the city that night. They were
11 not there on some personal mission. They were there just
12 doing the job they were asked to do.

13 After some initial preparation, we pick up with
14 the group going from -- taking the train from the Capital
15 One Arena area to U Street, 14th and U. There were a few
16 FBI agents with them when they went.

17 You will see their surveillance footage when they
18 get there. They just sort of set up shop, start looking
19 around. They will tell you there was no particular target
20 in mind, no special mission they were planning. They
21 weren't there to bother anyone. They were just there to do
22 their job.

23 Defendant, he arrives on scene and he escalates.
24 He confronts Agent Lairmore. He starts yelling at them
25 before he turns his anger to the rest of the group. Let's

1 be clear. That's totally fine. He can do that. He can
2 express himself. That's not why we're here today. That's
3 just the context.

4 Because over the next several minutes the
5 defendant continues to yell at these officers. At one point
6 he goes across the street and continues to berate them,
7 calling them derogatory names and yelling obscenities at
8 them. Eventually, he goes back to these two. He is fixated
9 on them. First, he singles out another agent, Agent Trejo,
10 who was there as another customs and border patrol agent.
11 He starts yelling at him, similar to how it was with
12 Agent Lairmore earlier, before eventually he turns his
13 attention back to Agent Lairmore.

14 Now, up until this point, and really throughout
15 the rest of the night, law enforcement acts exactly how they
16 should: Calm, collected, professional. They tell the
17 defendant to have a nice night. Keep it moving.

18 But he wasn't done yet. He went back to
19 Agent Lairmore and within arm's reach he starts yelling at
20 him again. You will see the footage of it. His body is
21 bobbing up and down. He is really angry.

22 Agent Lairmore responds with restraint. You will
23 see him. He stands there, stands firm, arms by his side.
24 No real reaction. He doesn't make any movements towards
25 him, acting as he should.

1 Up until this point, while maybe frustrating for
2 these officers, the defendant hasn't really done anything
3 wrong. Right? He is allowed to stand there. He can yell
4 at police all night.

5 The defendant doesn't stop there. While he is,
6 again, within arm's reach of Agent Lairmore, he takes a
7 sandwich in his hands, he cocks it back and he throws it at
8 the agent, hitting him in his chest. He takes off quickly.
9 He knew that he had done something wrong. He knew that at
10 that point that he had crossed the line.

11 He makes it about a city block before a law
12 enforcement vehicle sort of cuts off his ability to go
13 forward. He stops. He gives up and is taken into custody.
14 No takedown. No force used. Not really much incident
15 there.

16 Later, we learn a little bit about why the
17 defendant did this. From his own mouth, he admits to
18 throwing the sandwich. He says he was doing it to draw them
19 away from where they were. He was trying to impede and
20 interfere with their assignment that night.

21 Look, I understand you may all have views about
22 the federal law enforcement presence in D.C. You all may
23 have views about whether or not you want Agent Lairmore at
24 that intersection that night.

25 **MS. GATTO:** Objection.

1 **THE COURT:** Overruled.

2 **MR. PARRON:** That's fine. We are not trying to
3 convince you otherwise. Respectfully, that's not what this
4 case is about. This case is about the fact that you can't
5 go around throwing stuff at people when you are mad. You
6 can't do it to your neighborhood. You can't do it to law
7 enforcement.

8 The defendant is charged with misdemeanor count of
9 assaulting a federal officer --

10 **MS. GATTO:** Objection, Your Honor.

11 **THE COURT:** Let's get on the phone.

12 (Bench conference.)

13 **THE COURT:** I assume the objection is to the use
14 of the word "misdemeanor"?

15 **MS. GATTO:** Yes, Your Honor.

16 **THE COURT:** You can't use that word. That goes to
17 potential punishment. Okay?

18 **MR. PARRON:** Yes, Your Honor.

19 **MS. GATTO:** Your Honor, I have to think a little
20 bit about what the remedy can be since we can't remove that.
21 Probably --

22 **THE COURT:** I will instruct the jury at some point
23 they can't consider the potential consequences.

24 **MS. GATTO:** Your Honor, I really don't think that
25 that captures it, especially because it's not just the

1 remedy. It talks to the level of offense, Your Honor.

2 **THE COURT:** I understand. So what's your
3 proposal, if anything?

4 **MS. GATTO:** I will have to come back after I -- my
5 brain isn't working that fast. I will come back with a
6 proposal, Your Honor, after --

7 **THE COURT:** Do you want me to say anything right
8 now about it?

9 **MS. GATTO:** No.

10 **THE COURT:** Okay. Okay.

11 **MS. GATTO:** Thank you.

12 **THE COURT:** So we are not going to talk about --
13 We're not going to refer to --

14 Can everyone hear me?

15 **MR. PARRON:** Yes, Your Honor.

16 **THE COURT:** We are not referring to the potential
17 consequences of a guilty verdict here in any way:
18 Misdemeanor, punishment, employment consequences. We are
19 not doing that. Certainly not unless and until it is
20 pre-cleared with me, and misdemeanor is one version of that.

21 **MR. PARRON:** I apologize. That wasn't my
22 intention.

23 **THE COURT:** Understood.

24 **MR. PARRON:** Thank you.

25 (Bench conference concluded.)

1 **THE COURT:** You may proceed, Counsel.

2 **MR. PARRON:** The defendant is charged with one
3 count of assaulting a federal officer, which can include
4 other things, such as impeding or interfering with that
5 officer. That's what the evidence is going to show here,
6 that when the defendant threw that sandwich at Agent
7 Lairmore, he did forcibly assault him. He impeded what he
8 was doing that night and interfered with what he was doing
9 that night, the assignment that he had that night.

10 It's unlikely that the basic facts here are going
11 to be super complicated. This case isn't going to test your
12 ability to wade through a thicket of complex evidence.
13 Instead, it's going to test your ability to do two things:
14 One, to honor the oath that you took yesterday when you were
15 sworn in; and two, to follow the instructions the Court will
16 give you when you deliberate.

17 Because when you do that and apply the evidence to
18 the law in this case, two things will become clear: One,
19 that a crime was committed that night, the one charged here,
20 and that Sean Dunn committed it.

21 You just can't do what the defendant here. He
22 crossed the line. He just took it too far. That's why,
23 after you've heard all of the evidence in this case, we are
24 going to come back before you and ask you to return the only
25 verdict that is consistent with the law and the facts in

1 this case, and that's guilty.

2 Thank you.

3 **THE COURT:** Thank you, Counsel.

4 Does the defendant intend to give an opening now?

5 **MS. GATTO:** Yes, Your Honor.

6 **THE COURT:** You may proceed, Counsel.

7 (Defendant's opening statement.)

8 **MS. GATTO:** He did it. He threw the sandwich. It
9 was Sunday, August, on U Street, outside a bar called
10 Bunker. And yes, our client, Sean Dunn, he threw a
11 sandwich. He threw the sandwich towards the chest of a very
12 heavily armed Customs Border and Protection agent, who,
13 along with a dozen maybe more agents like him, were amassed
14 in force on the corner of U and 14th in the middle of
15 Washington, D.C.

16 He threw a sandwich at that agent and now the
17 United States Attorneys Office for the District of Columbia
18 has turned that moment, a thrown sandwich, into a criminal
19 case, a federal criminal case charging a federal offense.
20 Forcibly interfering. Forcibly impeding. Forcibly
21 assaulting a law enforcement officer. Forcibly, with a
22 sandwich.

23 This is going to be a very short trial. And at
24 the end you're going to be asked, did they prove their case
25 beyond a reasonable doubt. Did they convince you beyond a

1 reasonable doubt that what happened that night is a federal
2 crime?

3 You're not going to be asked whether you approve
4 of the conduct. You're not going to be asked whether you
5 feel badly for the agent who took a sandwich to his chest.
6 There is one question, whether what happened that
7 night -- which is largely not in dispute. It's on video.
8 Whether what happened that night is a federal crime.

9 **MR. PARRON:** Your Honor, I object.

10 **THE COURT:** Overruled.

11 **MS. GATTO:** This is a straightforward case. The
12 government is right. You are going to see some videos. You
13 are going to hear some agents. You're going to learn why
14 those federal law enforcement officers were on that local
15 corner. Why Custom, Border and Protection, instead of
16 patrolling the border, were patrolling the people of D.C.

17 And you will learn that Mr. Dunn has very strong
18 feelings about those policies that brought those officers
19 there. He is not a fan. He thinks recent immigration
20 enforcement is racist. He thinks the militarization and the
21 takeover of local law enforcement is fascism. He thinks
22 that.

23 And on August 10th, when he was on that corner and
24 he saw quite literally a wall of border patrol uniforms in
25 his city -- and we'll hear him on the video; he'll explain

1 what he thinks -- turning his hometown into a military
2 occupation. Standing out front -- immigration
3 officers -- in front of a gay club that was hosting a Latin
4 night. Sean Dunn expressed his opinions. He expressed them
5 loudly and he expressed them, maybe you think, vulgarly but
6 he expressed his opinions.

7 And words without force are never assault. Words
8 without force don't impede law enforcement. They don't
9 interfere with law enforcement. They don't even intimidate
10 law enforcement. And they certainly don't assault law
11 enforcement. Because words without force are never assault.

12 What about the sandwich? What about the thrown
13 sandwich? You are going to see it. I have 100 percent
14 certainty the government is going to show you the video
15 several times. So you will see it with your own eyes. And
16 you will see it for what it is. It is a punctuation. It is
17 an exclamation mark at the end of a verbal outburst. It is
18 a harmless gesture that did not and could not cause harm or
19 injury. Forcibly, that is what he is charged with. The use
20 of force. It can be threatening or attempting to inflict
21 bodily injury; that's the standard.

22 **MR. PARRON:** Your Honor, I object to that.

23 **THE COURT:** I agree. We are not going to define
24 legal terms now.

25 **MS. GATTO:** They will not come close to convincing

1 you beyond a reasonable doubt that the conduct was forcible.
2 It was a harmless gesture at the end of exercising his right
3 to speak out. His conduct is not a federal criminal case.
4 It is not close.

5 He is overwhelmingly not guilty.

6 Thank you.

7 **THE COURT:** Thank you, Counsel.

8 Ready to proceed with the first witness?

9 **MR. PARRON:** We are, Your Honor. The government
10 calls Agent Greg Lairmore.

11 **THE COURT:** You may bring in the agent.

12 (Witness sworn.)

13 **THE COURT:** Good morning, Agent. Please just,
14 when you sit down, make sure your microphone is close.

15 **THE WITNESS:** Testing.

16 **THE COURT:** Perfect. Thank you.

17 You may proceed.

18 **MR. PARRON:** Thank you, Your Honor.

19 **DIRECT EXAMINATION OF GREG LAIRMORE**

20 **BY MR. PARRON:**

21 **Q.** Good morning. Can you state your name and spell
22 it for the record.

23 **A.** My name is Gregory A. Lairmore, L-a-i-r-m-o-r-e.

24 **Q.** Where do you work?

25 **A.** I work for the United States border patrol.

1 **Q.** How long with have you been with the border
2 patrol?

3 **A.** Just over 23 years.

4 **Q.** What does Custom and Border Protection do?

5 **A.** So I've been an agent 23 years. I've done a lot
6 of different things. Primarily, border patrol is
7 responsible for securing the border and points of entry
8 along the southern border, northern border and coastal
9 borders.

10 **Q.** What's your current title?

11 **A.** I am a division chief.

12 **Q.** What do you do?

13 **A.** Currently, I am assigned to U.S. border patrol
14 headquarters. I am a division chief with the strategic
15 planning analysis directorate, and I lead the systems
16 division for United States Border Patrol. So all of our
17 enforcement information systems.

18 **Q.** What is ATAK?

19 **A.** ATAK, otherwise known as ATAK, stands for the
20 Android Team Awareness Kit. It's a blue force tracking
21 tool. It's an application on a cellular device that allows
22 for agents to see each other and also have communications
23 with other agents.

24 It's primarily to prevent any type of blue-on-blue
25 scenario, where agents or officers utilizing ATAK are able

1 to see who else is out there. We pair it with other
2 agencies that are working the same area of operations. So
3 we are able to see their positions; they are able to see our
4 positions. It assists in operational awareness and officer
5 safety.

6 Q. Is that part of what your division --

7 A. That's one of the many programs that I am
8 responsible for, yes.

9 Q. Now, you said you are a division chief. I think
10 you also said you are an agent with Border Patrol; is that
11 right?

12 A. Yes, sir.

13 Q. How long have you been considered an agent?

14 A. An agent since I entered on duty with border
15 patrol in 2002. You are always an agent. In the border
16 patrol, you're always in a law enforcement position no
17 matter where you're at. You're either supervising, doing
18 administrative duties, but you're always an agent first.

19 Q. What does it mean to be an agent with Customs and
20 Border Protection?

21 A. It means a lot of different things. Primarily, it
22 is securing the national border, preventing terrorists and
23 terrorist weapons from coming into the United States,
24 preventing illegal immigration from coming back into the
25 United States forcing border patrol involvement.

1 **THE COURT:** Yeah.

2 **MS. SHROFF:** I apologize ...

3 **THE COURT:** I got it. If everyone could speak
4 more loudly with the air on. I get that some people may not
5 be able to hear well. So both counsel and witness, just
6 don't yell but try to speak very loudly.

7 **MR. PARRON:** Yes, Your Honor. Thank you.

8 **BY MR. PARRON:**

9 **Q.** So have you received training on your
10 investigatory powers as an agent with CBP?

11 **A.** Several times. Through the border patrol academy,
12 primarily. And then as we go through our career, through
13 supervisory training, through legal training, primarily
14 refresher training before we go on any significant
15 deployment just reminding us of our authorities, organic.
16 And then if we're working with another agency, what their
17 authorities are and where our responsibilities lie in
18 relation to the other agency.

19 **Q.** What is your authority as an agent with CBP?

20 **A.** Primarily, our immigration authority is vested
21 under Title VIII, Immigration and Nationality Act. We're
22 also designated to enforce customs, Title XIX, and the DEA
23 under Title XVIII and Title XXI.

24 **Q.** You mentioned "organic authority." What does that
25 mean?

1 **A.** Organic authority. As immigration and customs
2 officers or agents, it's our organic authority invested
3 under the Immigration and Nationality Act, under either 287
4 or 235. Mostly Title VIII and XIX are CBP's organic
5 authorities.

6 **Q.** What does that entail as far as maybe crimes that
7 were committed in your presence?

8 **A.** Usually it's immigration law is our -- is
9 primarily what we enforce but we do have the organic
10 authority under Title XIX to arrest for any felonies or
11 misdemeanors committed in our presence -- federal felonies
12 or federal misdemeanors.

13 **Q.** Understood.

14 Now, I'm going to take you back to August 10th,
15 2025. Were you on duty as a customs and border patrol agent
16 that night?

17 **A.** Yes, sir.

18 **Q.** What was your assignment then?

19 **A.** My initial assignment was to come and assess
20 communications because ATAK is one of the programs that we
21 oversee, or I oversee. It was to assess the other agency's
22 ability, what their capabilities were for ATAK.

23 Following that, then we proceeded to -- we were
24 there in support of the Executive Order to make D.C. safe
25 and beautiful.

1 We were working with United States Park Police and
2 the U.S. Marshals Service that night. So it was primarily
3 to support the local law enforcement agencies in their high
4 visibility crime patrol and prevention that night.

5 **Q.** Was it normal for you to be on duty at that time?

6 **A.** No, sir.

7 **Q.** How did you receive your assignment that night?

8 **A.** So, after the Executive Order that weekend, they
9 were requesting some volunteers from basically every agency
10 around, the United States border patrol included, other
11 components of CBP were included.

12 As I said, the deputy chief ran a -- asked for
13 volunteers and then I was contacted by the acting deputy
14 executive -- I can't speak -- Deputy Executive Assistant
15 Commissioner Blanchard to come and support with ATAK
16 coordination and try to help get an initial assessment on
17 what our assessment and capabilities were like that night.

18 I then called the team that works for me that runs
19 the ATAK program and elicited their support to come out that
20 night, give the assessment and then work the operation that
21 night.

22 **Q.** Do you know why CBP was a part of this?

23 **A.** We're a federal agency. We routinely work with --

24 **Q.** I'm sorry. There was an objection.

25 **THE COURT:** I heard something but it wasn't at all

1 apparent to me.

2 **MS. SHROFF:** I had an objection, Your Honor, based
3 on relevance.

4 **THE COURT:** Can you tell me at least the basic
5 nature of the objection?

6 **MS. SHROFF:** Yes, Your Honor. It was on relevance
7 grounds. Did you want me to elaborate?

8 **THE COURT:** Overruled.

9 **BY MR. PARRON:**

10 **Q.** You can continue answering. I'm sorry I cut you
11 off. Do you know why CBP was part of this that night?

12 **A.** We're one of many federal agencies. So the call
13 was to any and all federal agencies to support the District
14 of Columbia Metropolitan Police Department, U.S. Park
15 Police, U.S. Marshals in supporting the Executive Order that
16 night.

17 **Q.** Okay. Let's walk through how that night started.
18 Where did you go first?

19 **A.** So first we reported to the Reagan Building before
20 we -- that's where we report to on a daily basis. So we
21 were there to get our uniforms, body armor, equipment we
22 would need for the night, cell phone chargers.

23 **Q.** The Reagan Building, is that where you're normally
24 based out of?

25 **A.** Yes, that's where we report on a daily basis.

1 Q. Sorry. Continue.

2 A. Once we were there we met up and then we drove
3 over to the United States Park Police headquarters, over off
4 of Anacostia Drive. I don't remember the exact address;
5 that's where all of the other agencies and Park Police were
6 coordinating all the events. Showed up there. Again,
7 talked to the other agencies about their capabilities for
8 ATAK. We were trying to get a feel for what the situation
9 was.

10 Q. You said "we went." Were you with other Customs
11 and Border Protection agents?

12 A. Yes, sir. My ATAK team, that included Assistant
13 Chief Trejo, Assistant Chief John Hanson, and there was
14 another agent by the name of Matt Bower.

15 Q. When you got there, what happened when you got to
16 Park Police?

17 A. At Park Police there were a lot of different
18 agencies there. So there was a lot of, initially, talk. It
19 was one of the first nights of the operation. So there
20 wasn't a lot of clear direction. We were able to make
21 contact with Park Police and U.S. Marshals. So we got a
22 little more clarity.

23 Then everybody that was supporting the operation
24 that night was deputized by the United States Marshal
25 Service to expand the authorities that they had to support

1 the operation.

2 Q. Were you paired up with any other law enforcement
3 agencies?

4 A. Yes, sir. That night we were paired up with D.C.
5 Metro Transit; FBI was with us; United States border patrol.
6 The four of us were there and there were a bunch of
7 different agencies around but that was -- the team that was
8 working with us that night was FBI, border patrol and Metro
9 Transit.

10 Q. About how big was the team?

11 A. About 10 total.

12 Q. What was your understanding about what your role
13 was to be that night?

14 A. Our role that night was to support Metropolitan
15 Transit Authority. Just really high-visibility crime
16 prevention and then responding to anything that happened to
17 happen while we were there.

18 Any violation of law that Metro Transit was
19 responding to, we were there to support them. And then,
20 obviously, anything that happened in front of us or around
21 us, again, just making sure that the population was safe,
22 both pedestrian traffic, vehicular traffic, whichever we
23 happened to come across.

24 Q. That specific night, were specifically you out
25 there to enforce the customs and immigration laws?

1 **A.** No, sir.

2 **Q.** Were you even aware of any targets that were out
3 there that would be subject to customs and immigration laws
4 that night?

5 **A.** No, sir.

6 **Q.** Just to be clear, what would happen if you
7 encountered a violation?

8 **MS. SHROFF:** Objection. Speculation.

9 **THE COURT:** Sustained. But I think the question
10 can be rephrased in an appropriate way.

11 **BY MR. PARRON:**

12 **Q.** Was there any situation in which you would have
13 applied the customs and border patrol laws?

14 **MS. SHROFF:** Same objection.

15 **THE COURT:** Same ruling.

16 **MR. PARRON:** Brief indulgence, Your Honor.

17 **THE COURT:** Sure.

18 (Discussion off the record between government counsel.)

19 **MR. PARRON:** What immigration authorities would
20 you apply that night?

21 **MS. SHROFF:** Same objection.

22 **THE COURT:** May I try?

23 **MR. PARRON:** Yes, Your Honor.

24 **THE COURT:** What was your understanding that night
25 about what you could do to enforce immigration laws?

1 **THE WITNESS:** We weren't there to primarily
2 enforce immigration law; however, if we encountered any
3 violation of immigration law during the course of the night,
4 we were free to enforce immigration law as we would
5 normally.

6 **MR. PARRON:** Thank you, Your Honor.

7 **BY MR. PARRON:**

8 **Q.** So this particular team that you were a part of,
9 what was the assignment?

10 **A.** Again, it was high-visibility patrols, crime
11 prevention, mostly. We were afoot. We followed Metro
12 Transit Authority, our assigned officers, to the Capital One
13 Arena area, that metro station there. Me not being very
14 familiar with it, the team the same, we kind of, for lack of
15 a better term, gaggled along with them until we kind of got
16 our wits about us and our area of familiarization.

17 We stayed in teams of four and then we would
18 patrol on foot two or three blocks in a radius around
19 Capital One Arena and just high-visibility crime prevention,
20 pedestrian traffic, vehicular traffic, whichever happened
21 our way.

22 **Q.** Maybe I should have asked this earlier. What was
23 everyone wearing?

24 **A.** I'm sorry. We wore our normal uniform, green law
25 enforcement designators, with ballistic armor. Again, law

1 enforcement designators front and back to indicate that we
2 were law enforcement.

3 Q. Was anybody in your group wearing a mask or
4 anything like that?

5 A. No, sir. Not that night.

6 Q. So what happened after you were at the Capital One
7 Arena area?

8 A. There wasn't a lot there. Some public interaction
9 but nothing really. There was some high-crime spots that
10 Metro Transit was aware of around the U Street station. So
11 we collectively went via the Metro or to the U Street
12 station and initiated similar type of patrols there.

13 Q. Any other particular reason why you went
14 specifically to that U Street area?

15 A. No. They had had a high rate of crime there --

16 MS. SHROFF: Objection.

17 THE COURT: What is the objection? Just the
18 nature of it.

19 MS. SHROFF: Yes, Your Honor.

20 THE COURT: What's the nature of it?

21 MS. SHROFF: Oh, I'm sorry.

22 THE COURT: Like, a word or two.

23 MS. SHROFF: I think the designation attributed to
24 the area is problematic. I don't think there's personal
25 knowledge or any basis that he has.

1 **MR. PARRON:** I can rephrase, Your Honor.

2 **THE COURT:** Sure.

3 **BY MR. PARRON:**

4 **Q.** Was there any specific target in mind when you
5 went to that area?

6 **A.** No, sir.

7 **Q.** Were you targeting anything specific?

8 **A.** No, sir.

9 **Q.** What did you personally know about that area
10 before you went there?

11 **A.** I had never been to that area before.

12 **Q.** All right. So when you first got there, what were
13 you all doing?

14 **A.** Similar to what we did at Capital One, just get an
15 area of familiarity. Patrolling, again, as a large group.
16 As we became more familiar, just walking around in smaller
17 groups of anywhere from four to six.

18 **MR. PARRON:** Can I show the witness Government's
19 Exhibit 1000, please.

20 **THE COURT:** Let me just mention to the jury. This
21 is the first time a potential exhibit has come up. There's
22 a process that we follow. Before the particular exhibit is
23 admitted into evidence, you won't see it on your screen.
24 And each of you has the ability to watch things on a screen
25 in front of you. You can push it out when it pops up -- I

1 mean, when we use the screens.

2 Until then, until it's admitted, the witness will
3 see the exhibit. I'll see the exhibit. There will be a
4 colloquy about the exhibit that will hopefully not identify
5 it too much. Then if I admit the exhibit, I will say, "The
6 exhibit may be published to the jury." At that time, you
7 will see it. There will be a few questions before you're
8 able to see the exhibit.

9 You may proceed.

10 **MR. PARRON:** Thank you, Your Honor.

11 **BY MR. PARRON:**

12 **Q.** Just at a very high level, what are we looking at?

13 **A.** From what I see, it looks like the area of U
14 Street and 14th up to U Street and 15th.

15 **Q.** Does it fairly and accurately depict that area as
16 it was that night?

17 **A.** To my recollection, yes, sir.

18 **MR. PARRON:** Your Honor, I move Government's
19 Exhibit 1000 into evidence.

20 **MS. SHROFF:** Your Honor, may I have a brief voir
21 dire?

22 **THE COURT:** Sure.

23 **MS. SHROFF:** May I just do it from here?

24 **THE COURT:** Sure.

25 **MS. SHROFF:** Thank you.

EXAMINATION OF GREG LAIRMORE**BY MS. SHROFF:**

Q. Good morning, Officer.

Sir, how long have you known the area around U and 14th?

A. It was that night and I don't think I've been there before that night.

Q. And you've not been there since; is that correct?

A. No, ma'am, I have not.

Q. And other than somebody having told you that's U and 14th, you don't know if that's U and 14th. Correct?

A. It appears to be the same image that was displayed on the ATAK device that we were operating on that night.

Q. You compared the two appearances and you conclude that's 14th and U?

A. I don't have the ATAK device with me right now. So I have not had a chance to compare this. I'm just going off of pure recollection.

Q. And were you prepared to testify about this exhibit by this prosecutor?

A. I've seen this picture before, yes.

Q. When he was prepping you?

A. Yes, ma'am.

MS. SHROFF: Okay. I have no objection.

THE COURT: Government's -- it looks like 1000.1

1 Exhibit?

2 **MR. PARRON:** I think the .1 is just the program we
3 are using to present it this is just supposed to be 1000.

4 **THE COURT:** Government's Exhibit 1000 is admitted
5 and may be published to the jury.

6 (Government's Exhibit 1000 was admitted and published.)

7 **DIRECT EXAMINATION OF GREG LAIRMORE (CONT'D)**

8 **BY MR. PARRON:**

9 **Q.** On August 10th, where were you set up?

10 **A.** That night, in and around the U Street station. I
11 think we centered around the 14th and U area that night.

12 **Q.** Can you see that area on the map?

13 **A.** Yes, sir. It's on the right of the particular
14 picture.

15 **THE COURT:** You have the ability, if you would
16 like, I think, using the screen, to circle or basically put
17 a marking on it if you want.

18 **THE WITNESS:** [Complied]

19 Right around that area, if memory serves.

20 **BY MR. PARRON:**

21 **Q.** Did you interact with any civilians while you were
22 there?

23 **A.** Several; yes, sir.

24 **Q.** Tell me about those interactions.

25 **A.** As we were patrolling, we would get some that

1 would thank us for being there.

2 **MS. SHROFF:** Objection. Hearsay.

3 **MR. PARRON:** Did you have any interactions with
4 civilians that --

5 **MS. SHROFF:** Objection.

6 Was there a ruling, Your Honor? I apologize.

7 **THE COURT:** Hold on a second.

8 What is your response to the hearsay objection?

9 **MR. PARRON:** That's fine. That wasn't where I was
10 going. I will rephrase.

11 **THE COURT:** Okay. We will strike that question
12 and answer.

13 You may ask another question.

14 **BY MR. PARRON:**

15 **Q.** Did you have any interactions with civilians that
16 brings you to court today?

17 **A.** Can you repeat the question, please?

18 **Q.** Did you have interactions with any civilians that
19 brings you to court today?

20 **A.** Yes, sir.

21 **Q.** Can you, at a very high level, describe what that
22 interaction was?

23 **A.** The interaction with the individual here in court
24 is he -- I was right outside the Subway restaurant there at
25 14th and U, with a group of other agents and officers from

1 Metro Transit, just observing pedestrian traffic. And
2 subject came out of the Subway and asked me what I was doing
3 there. My response was, I am here supporting the Executive
4 Order to make D.C. safe and beautiful.

5 And then he asked me again, no, what are you doing
6 here?

7 I said, I'm a federal agent out here doing my job
8 to protect the citizens of D.C. and supporting the Executive
9 Order to make D.C. safe and beautiful.

10 At that time, he became really irritated and
11 started yelling obscenities and berating me directly and
12 then other agents, officers that were there.

13 **Q.** Do you see that person in the courtroom today?

14 **A.** I do. He is standing right behind you, or
15 sitting, rather.

16 **Q.** Would you mind just pointing him out and identify
17 an article of clothing he is wearing?

18 **A.** [Complied]

19 He is wearing a blue jacket, green tie.

20 **MR. PARRON:** I would like the record to reflect
21 the witness was identified.

22 **THE COURT:** It shall so reflect that.

23 **MR. PARRON:** Thank you.

24 **BY MR. PARRON:**

25 **Q.** Did anything specific happen that brings you to

1 court today with relation to that interaction?

2 **A.** Yes, sir. After several or an extended amount of
3 interaction with subject in the courtroom today, he threw a
4 Subway-style sandwich at me, which struck me in the chest.

5 **MR. PARRON:** I would like to show the witness
6 Government's Exhibit 2000, please.

7 May I remove the blue circle?

8 **THE COURT:** You can do it if you know how.

9 **MR. PARRON:** Can we play just the first
10 five seconds of this video for the witness.

11 (Video played.)

12 **BY MR. PARRON:**

13 **Q.** Have you watched this video before?

14 **A.** Yes, sir.

15 **Q.** Does it fairly and accurately reflect the events
16 of August 11th, 2024?

17 **A.** Yes, sir.

18 **MR. PARRON:** Your Honor, I move to admit
19 Government's Exhibit 2000 into evidence.

20 **MS. SHROFF:** No objection.

21 **THE COURT:** Government's Exhibit 2000 is admitted
22 and may be published to the jury.

23 (Government's Exhibit 2000 was admitted and published.)

24 **MR. PARRON:** Please continue playing. I believe
25 we are at 10 seconds.

1 (Video played.)

2 If possible, can we zoom in on that area at the
3 top right-hand area of the screen.

4 (Video played.)

5 Let me stop it here at 33 seconds, please.

6 **BY MR. PARRON:**

7 **Q.** Do you see yourself in this image?

8 **A.** Yes, sir, I do.

9 **Q.** And where are you?

10 **A.** Just beyond the stoplight post, just to the left
11 of the Subway establishment.

12 **Q.** You say the Subway. Where is the Subway?

13 **A.** The Subway is the middle of the screen, door in
14 the center, kind of lighted all the way around. You can't
15 really see the Subway sign but it is the restaurant.

16 **Q.** Looking at this clip that we just watched, what is
17 happening here?

18 **A.** That was when Mr. Dunn exited the Subway
19 restaurant and then asked me what I was doing there twice
20 and then became really irritated.

21 **Q.** What was his demeanor like at first?

22 **A.** At first, I thought it was going to be one of many
23 interactions that we had with the public that night, where
24 he was asking what we were there doing for and was going to
25 have a positive or a negative reaction and go about his way.

1 **Q.** Did his demeanor change at all during the course
2 of this conversation?

3 **A.** After the second time I answered his question, his
4 demeanor immediately changed to the hyper negative. It was
5 red-faced, enraged and just became really, really mad,
6 started swearing, berating, calling me and my colleagues all
7 kinds of names, telling us we were fascist, using a
8 multitude of profanities, directed towards us.

9 **Q.** How did you respond?

10 **A.** I didn't respond. That's his constitutional right
11 to express his opinion.

12 **MR. PARRON:** Keep playing from 33 seconds, please.

13 (Video played.)

14 Stop it here at 52 or 53 seconds, please.

15 **BY MR. PARRON:**

16 **Q.** What's go on now?

17 **A.** It was a continuance of the berating, profanities,
18 the shame. He is pointing his finger in an aggressive
19 manner towards all of the agents and officers that were
20 there, getting extremely close, really inside of what would
21 be a normal person's space of interaction. Where you are
22 uncomfortably close.

23 **Q.** Now, this part, is it directed at you
24 specifically?

25 **A.** No. I am standing to the left there. He is

1 directing his profanities and beratelements to the other
2 officers and agents that are standing there.

3 Q. Was anyone reacting to what he was saying?

4 A. No. They are wishing him a good day, trying to
5 de-escalate the situation, trying not to react to him,
6 trying not to escalate the situation.

7 Q. How loud was his voice?

8 A. Oh, he was screaming at the top of his lungs.
9 Everybody probably within at least a half-block radius could
10 hear what he was saying.

11 MR. PARRON: Keep playing from 53 seconds, please.

12 (Video played.)

13 You can zoom back out now at a minute and 17.

14 (Video played.)

15 Stop it here at a minute and 27, please.

16 BY MR. PARRON:

17 Q. What's he doing now?

18 A. He's continuing the beratement. He's continuing
19 to call us fascists, to use profanity against us. He is
20 talking to us. He's talking to anybody that's around us, I
21 think trying to sway anyone else's opinion that is of like
22 mind of him. But it's almost like a sermon where he was
23 trying to speak to anybody.

24 Q. Now, as he's crossing the street is your focus on
25 him at this point?

1 **A.** We are watching -- I'm watching as he's going
2 away, just to make sure that nothing else is going to
3 happen, that he's not going to draw a crowd. Just more for
4 officer's safety. But at this point, my assessment is he's
5 okay. He de-escalated. He walked away. He will continue
6 to be mad but we are good.

7 **MR. PARRON:** Continue playing from a minute and
8 37 seconds, please.

9 (Video played.)

10 **Q.** We are watching here at 3 minutes and 55 seconds.
11 Are you having any interaction with him? I know there is no
12 sound at this point, is there?

13 **A.** Not at this time, no, sir.

14 (Video played.)

15 **Q.** Here at 3 minutes and 55 seconds, what are you all
16 doing at that intersection?

17 **A.** Observing vehicular traffic, pedestrian traffic,
18 high-visibility crime prevention.

19 (Video played.)

20 **Q.** I'm going to draw your attention to the sidewalk
21 on the right that you were on here at 4 minutes and
22 54 seconds. What do you see here?

23 **A.** We are seeing Mr. Dunn this time running towards
24 us. And, again, started his profanities and beratement of
25 everyone standing there or standing on the corner.

1 (Video played.)

2 Q. When he came back was his attention focused on
3 you?

4 A. Not necessarily on me right away. More just on
5 the group.

6 [REPORTER'S NOTE: Objection stated off mic.]

7 MR. PARRON: I'm sorry. Wait one second.

8 THE COURT: Sustained. I think the question can
9 be asked in an appropriate way.

10 MR. PARRON: Sure.

11 BY MR. PARRON:

12 Q. When he came back were you interacting with him
13 specifically?

14 A. No, sir, not initially.

15 (Video played.)

16 MR. PARRON: Stop it at 5 minutes and 15 seconds,
17 please.

18 BY MR. PARRON:

19 Q. What was going on here?

20 A. At that point he had gone around the corner. I
21 believe there was an establishment around the corner. And
22 then had come back. We could hear him yelling and screaming
23 from around the corner and then he had come back. He was
24 directly, again, in the face of officers and agents there,
25 continuing his beratement, profanities, just trying

1 any -- throwing a bunch of insults. A lot of different
2 things were coming out of the gentleman's mouth.

3 Q. Thank you. We just zoomed in on that area, for
4 the record.

5 What was the rest of your group doing while he did
6 that?

7 A. So at this point, because there is a group, our
8 concern is not only for our safety because he's there, that
9 he might do something there, but also that additional
10 civilians might join in, just with any potential action like
11 that. So we are, again, trying not to escalate it. Trying
12 to de-escalate it. Trying to not provoke a reaction.

13 Q. Did anybody make any threats towards him?

14 A. No. Everybody was of the same, hey, he's not
15 doing anything wrong, he can express his opinion. Several
16 of us wished him a good night in an attempt to, you're free
17 to go, thank you. Again, just trying not to escalate the
18 situation. Not trying to step towards or do anything that
19 might escalate the situation overall.

20 MR. PARRON: Can we keep playing from 5 minutes
21 and 15 seconds, please.

22 (Video played.)

23 MR. PARRON: Stop it at 5 minutes and 55 seconds
24 in, please.

25

1 **BY MR. PARRON:**

2 **Q.** What's he doing here?

3 **A.** More of the same. Pointing, shaking his fists.

4 Just really using a whole bunch of profanity. Insulting

5 known members of organizations, DHS as a whole. Calling us

6 fascists. Telling us to get the blank out of his city.

7 We're not needed. Anything I think he can do to insult or

8 berate us at that point.

9 **Q.** Do you see yourself in this still?

10 **A.** I do. I am the furthest from the left there.

11 **MR. PARRON:** You can keep playing from 5 minutes
12 and 55 seconds, please.

13 (Video played.)

14 **MR. PARRON:** Stop it here at 6 minutes and 44.

15 At some point, does he single you out?

16 **MS. SHROFF:** Objection. Leading.

17 **THE COURT:** Sustained.

18 **BY MR. PARRON:**

19 **Q.** Did you have an interaction with him after this?

20 **A.** Yes. As he continued to berate the entire group,
21 he stepped towards me, directly towards me, got very close
22 to me, I would say within two feet of me, and continued to
23 shouted obscenities at me; F-U.

24 My assessment was that he was trying to get me to
25 react.

1 Q. Did you notice anything in his hand at this point?

2 A. He still had his Subway sandwich in his hand at
3 that point.

4 MR. PARRON: Continue playing, please.

5 (Video played.)

6 Stop here at 6 minutes and 58 seconds, please.

7 BY MR. PARRON:

8 Q. From this point, what happens next?

9 A. So at this point he is being just really
10 aggressive. He's getting close. He's making really
11 aggressive movements. Again, I think he was attempting to
12 elicit a response from me. I was being very deliberate to
13 not respond, again, trying to de-escalate the situation.
14 Wishing him a good night, indicating he could cross the
15 street.

16 And then immediately following this, he rears back
17 and throws the sandwich at me.

18 MR. PARRON: Keep playing from 6 minutes and
19 58 seconds, please.

20 (Video played.)

21 MR. PARRON: Stop at 7 minutes, 5 seconds. Zoom
22 out, please.

23 BY MR. PARRON:

24 Q. What's he doing now?

25 A. Now he's struck me with the sandwich and he knows

1 that we're attempting --

2 **MS. SHROFF:** Objection.

3 **THE COURT:** Sustained.

4 **BY MR. PARRON:**

5 **Q.** Just physically, what's he doing?

6 **THE COURT:** You can't testify about what you think
7 he knows. Just talk about what's happening.

8 **THE WITNESS:** He is running away from the agents.

9 **BY MR. PARRON:**

10 **Q.** What are you attempting to do?

11 **A.** We are attempting to place him under arrest.

12 **MR. PARRON:** Okay. Stop.

13 Please take that down and show the witness
14 Exhibit 4000.

15 (Video played.)

16 **BY MR. PARRON:**

17 **Q.** What are we looking at here?

18 **A.** It appears to be the Instagram video of him taken
19 from across the street, with the crowd from across the
20 street.

21 **Q.** Have you watched this video before?

22 **A.** Yes, sir.

23 **Q.** Does it fairly and accurately depict the events of
24 August 10th?

25 **A.** Yes, sir.

1 **MR. PARRON:** Your Honor, I move for Government's
2 Exhibit 4000 to be admitted.

3 **MS. SHROFF:** No objection.

4 **THE COURT:** Government's 4000 is admitted and may
5 be published to the jury.

6 (Government's Exhibit 4000 was admitted and published.)

7 **MR. PARRON:** Thank you, Your Honor.

8 Just play the first minute and 27 seconds.

9 (Video played.)

10 **BY MR. PARRON:**

11 **Q.** What part of the events that we just talked about
12 are we watching?

13 **A.** This is secondary. He's already had his
14 interaction with me from across the street. This is after
15 he crosses the street from the previous video, where the
16 other agents were getting ready to cross the street via the
17 crosswalk, and he is interacting with the small crowd that's
18 across the street.

19 **Q.** What were you guys doing at that point?

20 **A.** We were trying to keep an eye on him. We could
21 still hear shouting, but just make sure he wasn't going to
22 come back. Again, concerned for officer's safety or any
23 possible violation that he would have interaction with
24 another private citizen.

25 **MR. PARRON:** Keep playing from 27 seconds, please.

1 (Video played.)

2 **BY MR. PARRON:**

3 **Q.** Did you guys show up in a white car?

4 **A.** Not at that location, no, sir.

5 **Q.** Did you show up in a car that night?

6 **A.** We were in a white car. We parked over near
7 Capital One Arena.

8 **MR. PARRON:** Keep playing from 1:06, please.

9 (Video played.)

10 Stopping here at :17, please.

11 **BY MR. PARRON:**

12 **Q.** Who is he talking to here?

13 **A.** He was in between talking to the crowd around the
14 corner from the establishments, right around the corner at
15 14th and U, and then addressing the other agents and
16 officers that were standing on the corner with us.

17 **Q.** Who is the agent that he is standing closest to;
18 do you know?

19 **A.** I believe that is Agent Trejo.

20 **MR. PARRON:** Keep playing from 1:17, please.

21 (Video played.)

22 Stop here at 1:26.

23 **BY MR. PARRON:**

24 **Q.** Can you tell better now?

25 **A.** It definitely is Assistant Chief Trejo.

1 **Q.** And where are you in relation to where this is
2 happening?

3 **A.** I'm behind, again, towards the stoplight, probably
4 10 feet behind Agent Trejo.

5 **Q.** Do you see any people in your group respond to
6 this interaction he was having with Trejo?

7 **A.** No. Just watching to the left and right, again,
8 making sure no one was going to join Mr. Dunn in his
9 activities or making sure nothing would happen with
10 Assistant Chief Trejo and watching other pedestrian and
11 vehicular traffic. Just officer safety.

12 **MR. PARRON:** Keep playing from 1:26, please.

13 (Video played.)

14 Please stop it here at 2 minutes and 19 seconds,
15 please.

16 **BY MR. PARRON:**

17 **Q.** What's happening now?

18 **A.** He's yelling at the top of his lungs, screaming
19 profanities directed at me, just really making aggressive
20 movements. He is very, very close to me.

21 **Q.** How close is he?

22 **A.** Probably within two feet, a foot and a half,
23 uncomfortably close.

24 **Q.** What was his demeanor like?

25 **A.** Very, very aggressive, yelling, red-faced, kind of

1 pointing his fingers at me, kind of making that furtive
2 movement up and down with his upper body and just acting
3 pretty aggressive.

4 Q. Can you describe what you are doing with your body
5 posture here?

6 A. I am very deliberately not making any reaction,
7 not forward, not backwards. It's not a normal situation
8 that -- normally, in this type of situation, even from
9 training, you are trained to bring your hands up to defend
10 yourself because this is a potential aggressor.

11 But knowing that I could potentially escalate the
12 situation by doing that, stepping forward, stepping
13 backwards, putting my hands up, I am being very deliberate
14 not bringing my hands up and not trying to react.

15 Q. Why is that?

16 A. I didn't want to make the situation worse. Again,
17 he has done nothing wrong at this point. It's
18 uncomfortable, like I said, but he's expressing his opinion.
19 Be that what it may. But he's done nothing to cause me to
20 react. He's done -- there's no violation here.

21 Q. What does he do next?

22 A. Next, he takes a step back and then throws the
23 sandwich at me.

24 Q. How far away from you was he when he did that?

25 A. Probably about three feet.

1 Q. How much force did he use?

2 MS. SHROFF: Objection.

3 THE COURT: Sustained.

4 BY MR. PARRON:

5 Q. What was the impact like?

6 A. I could feel it through my ballistic vest. The
7 sandwich separated and kind of exploded all over my uniform.
8 I could smell the onions and mustard and had stuff all over
9 my uniform afterwards.

10 Q. Did you have a medical emergency or anything like
11 that?

12 A. No, sir.

13 Q. Were you hurt?

14 A. No, sir.

15 MR. PARRON: Keep playing from 2 minutes and
16 19 seconds.

17 (Video played.)

18 MR. PARRON: Can we publish Exhibit 1000, please.

19 BY MR. PARRON:

20 Q. I want to talk a little bit about the chase
21 afterwards. Earlier you testified that you started on the
22 right-hand side of this exhibit. Which direction did he go
23 in?

24 A. This exhibit, if north is up, then he is going
25 pretty much directly west. And then he crossed U Street

1 over to the southern part and then crossed back to the
2 northern part of U Street and then continued west.

3 Q. You can just use the marker to describe his flight
4 path.

5 A. Here, across the street, down, up and then
6 continued this way.

7 Q. And did you chase after him?

8 A. Yes, sir.

9 Q. Did you go across the street as well or did you
10 just stay on the top side?

11 A. We did cross the street. We weren't sure if there
12 was going to be a vehicle or pedestrian accident. We were
13 concerned --

14 MS. SHROFF: Objection to the "we". Objection to
15 "the concern". He can testify about what he did.

16 THE COURT: Yes. Just testify about your own view
17 at the time.

18 THE WITNESS: Yes, sir.

19 THE COURT: How you acted and what you did.

20 THE WITNESS: Yes, sir.

21 Myself and the other agents that were with me
22 pursued him up the street, across U Street. Again, concern
23 for us being impacted by vehicles that were going up and
24 down the street. I crossed back again to the north side of
25 U Street there and continued westbound on U Street towards

1 15th and U.

2 **BY MR. PARRON:**

3 Q. How did the chase end?

4 A. We were able to get one of the officers or agents,
5 I believe it was -- I don't remember who it was. But one of
6 the law enforcement that was in a vehicle came to 15th and U
7 and turned in to cut off his path there continuing up.

8 Q. And what did he do?

9 A. He saw, once the agents got out of that vehicle,
10 that he couldn't continue past. So he stopped running and
11 turned right there at the end of 15th and U and grabbed
12 ahold of -- it's some type of fence there.

13 Q. And what happened after that?

14 A. After that, we came upon him and then placed him
15 in restraints.

16 Q. Were you there when that happened?

17 A. Yes, sir.

18 Q. Were you aware of any force that was used during
19 his arrest?

20 A. There was no force necessary. He complied once we
21 were there and put his hands behind his back, and then we
22 placed him in restraints and then placed him in a seated
23 position.

24 **MR. PARRON:** The Court's brief indulgence.

25 (Brief pause in the proceedings.)

1 No further questions, Your Honor.

2 **THE COURT:** Thank you.

3 It seems to me this is a perfect time for a
4 mid-morning break.

5 The witness is reminded that you are under oath.
6 You are not to speak about your testimony with anyone during
7 this break.

8 Why don't we go back on the record at 10:50.
9 Okay?

10 (Jury exited the courtroom.)

11 **THE COURT:** Everybody can sit.

12 Actually, why don't you leave the courtroom,
13 Agent.

14 **THE WITNESS:** Certainly.

15 (Witness steps down and exited he courtroom.)

16 **THE COURT:** I'm not sure that was strictly
17 necessary. Okay. So there is this discovery dispute. What
18 are we talking about exactly? I heard something about GIFs
19 or something? What are these things? I know what GIFs are
20 but are there particular ones here?

21 **MR. PARRON:** Yes. After the event, some of his
22 colleagues gave him gag gifts.

23 **THE COURT:** Oh, gifts.

24 **MR. PARRON:** Yes. Sorry. Not GIFs. Gifts, with
25 a T.

1 THE COURT: Okay. Yes.

2 **MR. PARRON:** Commemorating the events. It
3 doesn't, from the government's perspective, have anything to
4 do with what happened here. It wasn't anything he asked
5 for. It isn't anything that he said.

6 **THE COURT:** What are they?

7 **MR. DiLORENZO:** I think they are at his office.
8 We have photographs of them.

9 **THE COURT:** Just describe to me what they are.

10 **MR. PARRON:** There is a plush Subway sandwich and
11 patch that has -- it says "felony foot-long" on it or
12 something like that.

13 **THE COURT:** Your view is that those are
14 both -- they weren't required to be disclosed during
15 discovery and, in any event, not admissible or useable on
16 cross-examination.

17 **MR. PARRON:** That's correct.

18 **THE COURT:** Okay. What's the defense view on
19 these?

20 MS. SHROFF: Your Honor, our view is that the gag
21 gifts given and gag gifts received by the person who is
22 testifying here today are reflective of the collective state
23 of mind of the CBP, as well as this particular agent's
24 coworkers.

25 The fact that he received the gifts --

1 **THE COURT:** Why is their collective state of mind
2 relevant?

3 **MS. SHROFF:** I was going to get to the relevant
4 part. I was just giving background for the record.

5 **THE COURT:** Okay.

6 **MS. SHROFF:** The fact that the witness kept the
7 gifts is reflective of his state of mind, that he too
8 understands this whole thing to be overblown, to be worthy
9 of a joke, to be worthy --

10 **THE COURT:** How is that relevant in this case,
11 whether the witness has that view? Why is the witness's
12 state of mind about the charges here relevant?

13 **MS. SHROFF:** The witness's state of mind of the
14 charges is relevant because it conflicts with the testimony
15 he has given so far. The testimony he has given so far,
16 apparently, as I heard it, and I did want to check my notes
17 so I don't get it wrong, was that he was genuinely concerned
18 about Mr. Dunn being an actual threat to him or to his
19 colleagues, and then after the sandwich was thrown at him
20 he's testified that he exploded -- the fact that he is
21 sitting in federal court testifying about that shows that he
22 is now saying this is a serious issue.

23 **THE COURT:** Now, to the extent that the witness
24 testified about the seriousness of the offense from his
25 perspective --

1 **MS. SHROFF:** Uh-huh.

2 **THE COURT:** -- not whether there should be a
3 charge, not whether the -- not the CBP's collective
4 knowledge or anything, but to the extent that the witness
5 testified about his reaction at the time, I believe it's
6 fair game for you to cross-examine him on how truly credible
7 he is on that question. And it seems to me that you can get
8 into whether he received gag gifts.

9 I don't think we need the gifts. I think you can
10 do the cross-examination. But I'm saying to the extent
11 that -- because I have the transcript here. I do think that
12 the witness suggested that it was a serious situation, both
13 before and during the sandwich throw and that you can
14 cross-examine him on whether he really believed that, and
15 that includes asking him whether he received gag gifts and
16 whether that's inconsistent with the nature of his
17 testimony.

18 So I am permitting the cross-examination, but I am
19 going to put you on a very short leash. I don't really
20 think you need the gifts to do this. And I'm certainly not
21 going to suspend --

22 **MS. SHROFF:** No, no, no. I wasn't disagreeing.

23 **THE COURT:** You just give me these looks like you
24 think I've said something that is irrational.

25 **MS. SHROFF:** No. It's my brain thinking. I'm not

1 giving you any look. I apologize for that.

2 **THE COURT:** So what's the problem with what I've
3 said?

4 **MS. SHROFF:** It's not. I was trying to think if I
5 could ask for an intermediate remedy, actually.

6 **THE COURT:** Okay. What's that?

7 **MS. SHROFF:** That was to ask if the Court would
8 require the government to at least describe the gifts in
9 some amount of detail. If he already has, I apologize. I
10 am having very hard --

11 **THE COURT:** I heard him say there was a fake
12 Subway sandwich and an award or something that described
13 something like a foot-long award.

14 **MS. SHROFF:** I thought there was a third gift.

15 **THE COURT:** Those are the two I heard.

16 **MR. PARRON:** I'm happy --

17 **THE COURT:** Why don't we do this, government shall
18 describe to you in some detail these gifts, enough for you
19 to cross-examine the witness on this point.

20 Again, I think that this is fair game for
21 cross-examination, to the extent that getting gag gifts tend
22 to undermine his testimony, either express or implied, that
23 at the time he thought this was a very serious event. Okay?

24 **MS. SHROFF:** Thank you.

25 **THE COURT:** Okay. See everyone, still, at 10:50.

1 **MS. SHROFF:** Okay.

2 (Recess from 10:39 a.m. to 10:52 a.m.)

3 (Jury entered the courtroom.)

4 **DEPUTY CLERK:** Your Honor --

5 **THE COURT:** Welcome back, everyone.

6 **DEPUTY CLERK:** -- we are now back on the record.

7 **THE COURT:** Yes. Please retrieve the agent and we
8 will begin with cross-examination. So you can come on up
9 and get ready.

10 Welcome back, Agent.

11 **THE WITNESS:** Thank you, sir.

12 **THE COURT:** Thank you. Just a reminder you are
13 still under oath. Once you are settled, Counsel may
14 proceed.

15 **MS. SHROFF:** Thank you, Your Honor.

16 **CROSS-EXAMINATION OF AGENT GREG LAIRMORE**

17 **MS. SHROFF:** Good morning, Officer Lairmore.

18 **THE COURT:** Don't look at the clocks in this
19 courtroom to try to figure out what time it is. You will be
20 confounded. Not a single one is correct, I bet.

21 **MS. SHROFF:** Thank you.

22 **THE COURT:** Actually, that one is as accurate as
23 I've ever seen. Okay. Sorry. I saw you look over there.

24 **MS. SHROFF:** I did. I was trying to find the
25 time.

1 **THE COURT:** It is, in fact, still morning, though.

2 **MS. SHROFF:** Okay.

3 **THE COURT:** You may proceed.

4 **MS. SHROFF:** I'm going to start where the
5 government stopped. Okay?

6 I'm going to ask for Government's Exhibit 1000, if
7 I may. Could you continue to look, please?

8 **MR. PARRON:** 4000?

9 **THE COURT:** I think 1000 is a still photo or
10 overhead. We are going to do 4000?

11 (Video played.)

12 **MS. SHROFF:** And if you could stop there.

13 **BY MS. SHROFF:**

14 **Q.** Did you recognize that sandwich?

15 **A.** It looks like a Subway sandwich.

16 **Q.** And that's the Subway sandwich that was thrown at
17 you?

18 **A.** I would assume so. I don't know.

19 **Q.** You don't know?

20 **A.** I did not go back to collect the sandwich, no,
21 ma'am.

22 **Q.** You watched this video with the prosecutor?

23 **A.** Yes, ma'am.

24 **Q.** How many times?

25 **A.** I think I've seen this at least twice with the

1 prosecutor.

2 Q. And did they review the actual video with you?

3 A. Yes, ma'am.

4 Q. They stopped and played it. Correct?

5 A. Yes, ma'am.

6 Q. They asked you questions about it?

7 A. Yes, ma'am.

8 Q. They told you I would ask you questions about it?

9 A. Yes, ma'am.

10 Q. And at no point did you say, That's not the
11 sandwich. Right?

12 A. I believe that's the sandwich. I don't have any
13 way to verify. I would assume so. Yes, ma'am.

14 Q. Thank you.

15 MS. SHROFF: Could we please finish playing that
16 exhibit.

17 (Video played.)

18 BY MS. SHROFF:

19 Q. Is it fair to say -- how should I address you?
20 CBP Officer Lairmore or what should I call you?

21 A. Typically, Agent Lairmore is fine.

22 Q. Okay. Bless you. So, Agent Lairmore, just to
23 state the obvious, on August 10th you were not dressed in a
24 suit. Correct?

25 A. No, ma'am. I was not.

1 **Q.** You were dressed in full -- is it called military
2 uniform?

3 **A.** Rough-duty uniform is what it's called.

4 **Q.** Say it again.

5 **A.** Rough-duty uniform.

6 **Q.** Rough-duty uniform?

7 **A.** Yes, ma'am.

8 **Q.** That consists of like a thick, long-sleeved shirt.
9 Right?

10 **A.** It's a buttoned-up uniform shirt, similar to -- I
11 guess not really similar to fatigues. The pants have EDU
12 pockets, but yes, ma'am.

13 **Q.** So it's long-sleeved. Correct? So your arms are
14 covered. Right?

15 **A.** Yes, ma'am.

16 **Q.** On your chest you have a vest. Correct?

17 **A.** Yes, ma'am.

18 **Q.** It's a bullet-proof vest. Right?

19 **A.** Yes, ma'am.

20 **Q.** Then you have long pants, so your legs are
21 covered. Correct?

22 **A.** Yes, ma'am.

23 **Q.** You have shoes on. Right?

24 **A.** Yes, ma'am.

25 **Q.** You had a hat on. Right?

1 **A.** Yes, ma'am.

2 **Q.** You had a belt on?

3 **A.** Yes, ma'am.

4 **Q.** You had a gun?

5 **A.** Yes, ma'am.

6 **Q.** How many guns?

7 **A.** Just one.

8 **Q.** Other than that gun, did you have anything else?

9 **A.** I have a collapsible steel baton.

10 **Q.** Say that again.

11 **A.** It's called a collapsible steel baton. It's a
12 less-lethal use-of-force instrument.

13 **Q.** It's a baton that you can hit people with?

14 **A.** You can hit, yes.

15 **Q.** You had all of that gear on August 10th. Correct?

16 **A.** Yes, ma'am.

17 **Q.** The only part of you that was not covered with any
18 piece of clothing was your face. Correct.

19 **A.** That is correct.

20 **Q.** Okay. And Mr. Dunn is wearing a pair of shorts.
21 Correct?

22 **A.** Yes, ma'am.

23 **Q.** And obviously, the video shows he is wearing a
24 pink shirt. Right?

25 **A.** Yes, ma'am.

1 Q. And he has nothing in his hand when you see him.

2 Correct?

3 A. Just the sandwich, yes, ma'am.

4 Q. Right. I'm sorry. Let me correct that. Is there
5 any point when you see him without the sandwich in his hand?

6 A. Only after he threw the sandwich at me.

7 Q. Okay. So before he throws the sandwich at you,
8 you see nothing but a sandwich in his hand. Correct?

9 A. That is correct, yes, ma'am.

10 Q. And you see that his shirt is open. Correct? He
11 is wearing an open, sort of, polo shirt. Right?

12 A. Yes, ma'am.

13 Q. You can see his bare chest. Correct?

14 A. Yes, ma'am.

15 Q. You're not worried there is anything under his
16 shirt. Right?

17 A. Nothing visible, no, ma'am.

18 Q. I'm still only talking now about August 10th.

19 Right. On August 10th of 2025, by that time, how long had
20 you been in the District?

21 A. We got to the District that night about 5 p.m. and
22 started our patrols around, I would say, 7, probably closer
23 to 8 p.m.

24 Q. Maybe that was an inartful question. My question
25 really was, was that the first time you were in Washington

1 D.C. or are you now stationed in D.C.?

2 **A.** I'm stationed in D.C. on a permanent basis. I
3 report to and work from the Ronald Reagan Building here in
4 D.C.

5 **Q.** So you moved from whatever original state you
6 lived in and you moved as a CBP officer to D.C. Correct?

7 **A.** That is correct. Yes, ma'am.

8 **Q.** And on August 10th, you said that you were
9 standing guard. Right? Is that the words you used?

10 **A.** I don't believe so, no, ma'am.

11 **Q.** According to you, what were you doing on
12 August 10th?

13 **A.** We were supporting the Metropolitan Transit
14 Authority with high-visibility crime prevention.

15 **Q.** You're going to have to speak a lot slower for me.

16 **A.** I'm sorry.

17 **Q.** Okay. Thank you.

18 **A.** We were supporting the Metropolitan Transit
19 Authority with supporting the Executive Order of make D.C.
20 safe and beautiful. Our primary purpose that night was for
21 high-visibility crime prevention and enforcement, if
22 necessary.

23 **Q.** When Mr. Dunn approached you and asked you the
24 question?

25 **A.** Yes, ma'am.

1 **Q.** Do you recall you said you were there to make
2 America great again, as opposed to saying you were there to
3 keep D.C. safe or are you pretty sure what you said?

4 **A.** No, ma'am. I'm exactly certain I said I was there
5 to make D.C. safe and beautiful again.

6 **Q.** And when you said that to him, you were literally
7 quoting the title of the Executive Order. Correct?

8 **A.** That is correct, yes, ma'am.

9 **Q.** And as a CBP officer you were aware of the
10 executive orders that were coming down. Correct?

11 **A.** Yes, ma'am.

12 **Q.** And you were aware of another Executive Order that
13 was going to come down later that night. Correct?

14 **A.** Not to my recollection, no, ma'am.

15 **Q.** Had you not heard of the crime emergency order
16 that was coming from the White House?

17 **A.** I don't recall if I had or not at that point, no,
18 ma'am.

19 **Q.** I'm sorry?

20 **A.** I don't recall at that point in the night if I had
21 any knowledge of it.

22 **Q.** Okay. Had you actually read the "make D.C.
23 safe" -- and is it green again or safe again?

24 **A.** Safe and beautiful.

25 **Q.** Safe and beautiful.

1 **A.** Yes, ma'am.

2 **Q.** Had you read the actual Executive Order?

3 **A.** I don't know if I had that night or not, no,
4 ma'am.

5 **Q.** Were your actions that night not directed by the
6 Executive Order?

7 **A.** We were directed to support the Metropolitan
8 Transit Authority and other federal agencies in the city.

9 **Q.** Right. You keep saying that. My question really
10 was whether or not you had read the Executive Order that
11 directed how you helped the Metropolitan Police. Do you
12 recall, sitting here today, if the Executive Order limits
13 you to federal facilities?

14 **A.** I don't recall that, no, ma'am.

15 **Q.** How about federal areas?

16 **A.** I don't recall that either.

17 **Q.** How about territories controlled by federal
18 agencies?

19 **A.** I don't recall.

20 **MS. SHROFF:** May I have a second, Your Honor?

21 **THE COURT:** (No response.)

22 **BY MS. SHROFF:**

23 **Q.** Let me show you what I'm going to, just for you,
24 mark as Defense Exhibit 1.

25 **MS. SHROFF:** Is it 1 or 8?

1 **MR. SILVERMAN:** One.

2 **MS. SHROFF:** One.

3 **MS. SHROFF:** May I approach, Your Honor?

4 **THE COURT:** You may. Thank you.

5 Do you have a copy for me?

6 **MS. SHROFF:** I do not but I think I can get one in
7 just a moment.

8 Do you recognize that document at all?

9 **THE WITNESS:** It appears to be a copy of the
10 Executive Order, yes, ma'am.

11 **MS. SHROFF:** Your Honor, we move the document into
12 evidence.

13 **MR. PARRON:** The government objects, Your Honor.

14 **THE COURT:** Let's get on the phone.

15 **MS. SHROFF:** It's marked as a government exhibit.

16 **THE COURT:** It doesn't matter. Let's get on the
17 phone.

18 Let's get on the phone, I said.

19 **MR. PARRON:** Oh, I'm sorry.

20 (Bench conference.)

21 **THE COURT:** Okay.

22 **MR. PARRON:** This is an Executive Order that was,
23 by its terms, promulgated on August 11th, 2025, the day
24 after this happened. The agent testified that he hadn't
25 read it at the time or he doesn't remember having read it at

1 the time that the incident happened.

2 I don't think it's at all relevant to either his
3 state of mind or to what happened the day before.

4 **THE COURT:** I mean, I'm looking at the last page
5 of this document. It's dated March of 2025. Let me ask
6 this.

7 **MS. SHROFF:** I think the government is confused.

8 **MR. PARRON:** Perhaps I'm looking at the wrong
9 exhibit.

10 **THE COURT:** This is GE-6002 at the bottom. Let me
11 ask the defendant side, how is this relevant?

12 **MS. SHROFF:** That's the Executive Order that
13 guides him. He's testified that's what he was doing. I
14 want to show that he is acting outside of the perimeter of
15 the Executive Order.

16 **THE COURT:** And that is relevant to what issue in
17 dispute here, in the case? What issue does that go to?

18 **MS. SHROFF:** Official duty.

19 **THE COURT:** Okay. So in your view he was acting
20 outside of the performance of his official duties.

21 **MS. SHROFF:** Yep.

22 **THE COURT:** What is the government's answer to
23 that?

24 **MR. PARRON:** I guess I will just start by
25 clarifying, I thought this was Defense Exhibit 1. I guess

1 this is the Executive Order that he referred to. I don't
2 believe we have a --

3 Brief indulgence, Your Honor.

4 (Discussion off the record with government counsel.)

5 **MR. PARRON:** I guess I'd like to see what the
6 witness has.

7 **MS. SHROFF:** I'm happy to get it from the
8 defendant -- I mean, witness, and give it to him, if he
9 wants.

10 **THE COURT:** Yeah. I mean, in general, when we
11 start handing things to witnesses we should be prepared to
12 provide them to the parties. Having said that, if it is, in
13 fact, Government's 6002, the government could pull it up
14 'cause it's its own exhibit, then we could all be on the
15 same page.

16 **MS. SHROFF:** I think the government is saying
17 they're not trusting me that I gave him the same document.
18 I am happy to assuage their concerns. It's not a problem,
19 Your Honor.

20 **MR. PARRON:** That's not what I'm saying. I
21 thought I heard Defense Exhibit 1, which is a different
22 Executive Order. So I was just under the misunderstanding
23 of what it was that was passed to the witness. I think if
24 it is the Executive Order, that is Government's
25 Exhibit 6002, I don't have an objection to that.

1 **THE COURT:** Okay. Very well. So long as it's the
2 document we're talking about, objection is withdrawn.

3 (Bench conference concluded.)

4 **THE COURT:** I'd like to say one thing to be
5 crystal clear for the record. The document you handed to
6 the witness, what are you calling it, exhibit-wise?

7 **MS. SHROFF:** I could refer to it as the
8 government-marked exhibit or I could call it Defense
9 Exhibit 1.

10 **THE COURT:** What is the government's view?

11 **DEPUTY CLERK:** Please speak into the microphone.

12 **MR. DiLORENZO:** It might be better if we use the
13 phone.

14 (Bench conference.)

15 **THE COURT:** Okay.

16 **MR. DiLORENZO:** So part of the reason we have some
17 confusion is the defense had given us copies of their
18 exhibits.

19 **THE COURT:** I understand that.

20 **MR. DiLORENZO:** One of the exhibits they had,
21 which had been marked as Defense Exhibit 1 --

22 **THE COURT:** Was a later Executive Order; I get
23 that too.

24 **MR. DiLORENZO:** Correct. It may be if the defense
25 is going to mark this, they mark it as --

1 **MS. SHROFF:** I will mark it as Defense
2 Exhibit 100.

3 **MR. DiLORENZO:** That's fine.

4 **THE COURT:** Great. Done.

5 (Bench conference concluded.)

6 **THE COURT:** We are going to call what has been
7 provided to the witness Defense Exhibit 100.

8 You may proceed.

9 **MS. SHROFF:** Thank you, Your Honor.

10 **BY MS. SHROFF:**

11 **Q.** Is it fair to say, sir, that you haven't read that
12 Executive Order at all?

13 **A.** I had not at the time, no, ma'am.

14 **THE COURT:** Can we just -- I obviously dealt with
15 an objection on the phone. I believe you had previously
16 moved for the admission of this exhibit. Do you want to
17 renew that?

18 **MS. SHROFF:** I apologize, Your Honor, and thank
19 you.

20 Yes. I renew defense request to admit the
21 document as Defense Exhibit 100.

22 **THE COURT:** Defense Exhibit 100 is admitted.

23 (Defense Exhibit 100 was admitted and published.)

24 **THE COURT:** We don't have it on a screen. We are
25 going to do this the old-fashioned way for now. Okay.

1 **BY MS. SHROFF:**

2 **Q.** Is it fair to say, sir, that you don't know the
3 contours of that Executive Order?

4 **A.** I've read it since that time, yes, ma'am.

5 **Q.** On August 10th, 2025, did you know the contours of
6 the Executive Order?

7 **A.** No, ma'am.

8 **Q.** Did you know if you were permitted by that
9 Executive Order to be at 14th and U?

10 **A.** Yes. Per our legal counsel, we were authorized to
11 enforce laws, along with D.C. Metro Transit, along with U.S.
12 Park Police, under an MOU, and also with U.S. Marshal
13 Service under the deputization with U.S. Marshal Service,
14 yes, ma'am.

15 **Q.** Did you understand my question? My question was
16 whether or not on August 10th, 2025, that Executive Order
17 permitted you to be on 14th and U.

18 **THE COURT:** No. You asked him if he knew.

19 **MS. SHROFF:** About the Executive Order.

20 **THE COURT:** You asked, Did you know if you were
21 permitted, by the Executive Order, to be at 14th and U? And
22 he answered the question.

23 **MS. SHROFF:** Okay.

24 **BY MS. SHROFF:**

25 **Q.** Is it your testimony that your legal counsel

1 reviewed the Executive Order with you and told you the
2 contours of the Executive Order?

3 **A.** It's the execution of the Executive Order. The
4 Executive Order speaks to the intent, and it's the execution
5 of the Executive Order with U.S. Marshal Service, U.S. Park
6 police and D.C. Metro P.D. and how that Executive Order is
7 executed.

8 So with the deputization by the U.S. Marshal
9 Service, with the memorandum of understanding of U.S. Park
10 Police, and with our own organic authority, yes, ma'am, I
11 was absolutely authorized to be at 14th and U that night.

12 **Q.** What part of the Executive Order authorizes you to
13 be at 14th and U?

14 **A.** The deputization of the U.S. Marshal Service.
15 Also, I am an immigration officer. And I am authorized to
16 enforce federal law no matter where I'm at.

17 **Q.** Okay. That really wasn't my question, sir. My
18 question was whether or not the Executive Order itself
19 allows you to be deputized to patrol places that are not
20 federal places, such as a federal courthouse or the federal
21 FBI building or -- I don't know -- a federal Amtrak; that
22 was my question.

23 **A.** I'm not sure I understand the question because
24 there is no restriction on where I am able to be as a
25 federal agent on a normal basis.

1 **Q.** So when you answered Mr. Dunn, you didn't say to
2 him, I'm here because I'm a federal agent, I'm authorized to
3 be anywhere. You said, I'm here to make D.C. safe and
4 beautiful again. Correct?

5 **A.** That is correct, yes, ma'am.

6 **Q.** And that is pursuant to that Executive Order.
7 Correct?

8 **A.** That is pursuant to the execution of the Executive
9 Order, yes.

10 **Q.** Pursuant to that Executive Order. Sitting here
11 today, you testified that you had not read it on August 10,
12 2025. Correct?

13 **A.** That's correct.

14 **Q.** And your only direction was from somebody else who
15 had told you that you were deputized. Correct?

16 **A.** We were sworn in and deputized by the U.S. Marshal
17 Service, yes, ma'am.

18 **Q.** Right. Because somebody else told you that it was
19 okay, you said it was okay. Correct?

20 **A.** I'm not sure I understand the question.

21 **Q.** It's all right.

22 And you also testified right now on cross that
23 that was part of your inherent authority as a CBP officer
24 anyway. Correct?

25 **A.** Part of our organic authority, yes, ma'am.

1 **Q.** Right. And you did not tell him that it is part
2 of your organic authority to be there. Correct? Just yes
3 or no.

4 **A.** No.

5 **Q.** Thank you.

6 May I have that document now?

7 **THE COURT:** You may approach.

8 **MS. SHROFF:** Oh, I'm sorry. Thank you. Did you
9 want me to ask each time? I am happy to.

10 **THE COURT:** No, it's fine.

11 **BY MS. SHROFF:**

12 **Q.** Now, on August 10th, 2025, you saw Mr. Dunn
13 come -- did you see him coming out of the Subway shop?

14 **A.** That's where I initially saw him, yes, ma'am.

15 **Q.** When he came out of the Subway shop he started
16 that initial conversation with you. Correct?

17 **A.** That is correct, yes, ma'am.

18 **Q.** According to you, by that time, was he already
19 cursing at you?

20 **A.** No, ma'am.

21 **Q.** Okay. He asked you a question. You answered him.
22 And then what happened according to you, the next thing that
23 happened?

24 **A.** He asked me another question. He asked, No, what
25 are you doing here, meaning specifically me, what was I

1 doing there.

2 Q. Right. When he asked you, What you are doing
3 here, you understood him to ask you, you, meaning a federal
4 officer. Correct?

5 A. That was my -- my assumption was he was talking to
6 me as a border patrol agent.

7 Q. Right. That's because on your uniform itself it
8 says "Border Patrol." Right?

9 A. That is correct.

10 Q. And it says "Border Patrol" in that bright, kind
11 of, neon yellow that you can see at night. Right?

12 A. Clearly law enforcement designator, yes, ma'am.

13 Q. Right. So his focus is on what is a federal
14 person doing at 14th and U. Correct? That's what you
15 understood.

16 MR. PARRON: Objection, Your Honor.

17 THE COURT: Sustained.

18 MS. SHROFF: What was your understanding of who he
19 was talking to?

20 MR. PARRON: Objection, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: To me as a federal agent.

23 BY MS. SHROFF:

24 Q. Thank you.

25 Now, 14th and U, you were cognizant, were you not,

1 that it's a social area in D.C. Right?

2 A. I'm not familiar with the area, ma'am.

3 Q. Oh, of course you are not familiar. You said that
4 on direct. But you also said you're a seasoned agent.
5 Correct?

6 A. Yes, ma'am.

7 Q. You've been an agent for how many? Twenty years,
8 30 years?

9 A. Twenty-three.

10 Q. Twenty-three years. When you are patrolling an
11 area, you want to make sure you know the general layout of
12 the area. Right?

13 A. There were several establishments in the area,
14 yes, ma'am.

15 Q. Right. And you were cognizant of them. Right?

16 A. Yes, ma'am.

17 Q. You were cognizant that there was Bunker.
18 Correct?

19 A. Say that again. I'm sorry.

20 Q. You were cognizant there were bars around that
21 area. Right?

22 A. Yes, ma'am.

23 Q. You were cognizant that there were LGBTQ+ bars
24 that were widespread around 14th and U. Right?

25 A. I was not aware. No, ma'am.

1 **Q.** Were you aware that there were -- there were
2 people outside interacting socially. Right?

3 **A.** Can you repeat the question? I couldn't
4 understand.

5 **Q.** Sure. I will try a better question. It wasn't a
6 workplace, right, like Judiciary Square? It's not a
7 courthouse, an office building. Right? It's a social
8 setting.

9 **A.** It didn't appear to be at that time of night, no,
10 ma'am.

11 **Q.** Right. And you were aware, were you not, that CBP
12 was not particularly welcome. Right? Fair to say?

13 **MR. PARRON:** Objection, Your Honor.

14 **THE COURT:** Sustained.

15 **BY MS. SHROFF:**

16 **Q.** Well, you were worried that night that people were
17 recording you. Right?

18 **A.** No, ma'am.

19 **Q.** You were not worried that social media would
20 record your interaction with Mr. Dunn or with other people?

21 **A.** No, ma'am.

22 **Q.** Do you recall meeting with the prosecutors in
23 preparing for this testimony here today?

24 **A.** Yes, ma'am.

25 **Q.** Do you recall telling them that, that you were

1 cognizant that people were recording and you had to watch
2 what you said and how you said it?

3 A. I was cognizant that I was being recorded but not
4 worried about it.

5 Q. So you were cognizant that they were recording
6 you. Right?

7 A. Yes, ma'am.

8 Q. And because you were cognizant of that, you were
9 also cognizant of how you interacted with Mr. Dunn.
10 Correct?

11 A. I don't believe it changed my interaction.

12 Q. That wasn't my question.

13 A. What was your question?

14 Q. My question was, you were cognizant that you were
15 being recorded and so you paid attention to the way you
16 interacted with Mr. Dunn or, for that matter, for the
17 public. Correct?

18 A. I don't know whether being recorded changed the
19 way I interacted with Mr. Dunn.

20 Q. Then why mention it to the prosecutor as a
21 concern?

22 A. As a concern that we were being recorded?

23 Q. Yes.

24 A. The concern that we were being recorded doesn't
25 change the interaction with any person, whether you are

1 being recorded or not.

2 Q. Then why bring up recording at all?

3 A. I'm sorry?

4 Q. Then why bring up recording at all?

5 A. Just that we were cognizant of being recorded;
6 that's all.

7 Q. Okay. So you are cognizant of being recorded but
8 you don't pay any attention to being recorded because you're
9 not worried about being recorded?

10 A. That's correct.

11 Q. Okay.

12 When Mr. Dunn approached you, you were with how
13 many other CBP officers?

14 A. There was three others beside myself.

15 Q. All three are in exactly the same uniform.
16 Correct?

17 A. Yes, ma'am.

18 Q. And they are -- all of them have a weapon.
19 Correct?

20 A. Yes, ma'am.

21 Q. And just to be extremely clear, Mr. Dunn has no
22 weapon. Right?

23 A. Not to my knowledge, no, ma'am.

24 Q. And when you see Mr. Dunn first approach you and
25 after, as you called it, he starts to escalate, right, what

1 is the first thing you recall him escalating to?

2 A. The first thing that he did?

3 Q. Yes.

4 A. Is saying "F-U" to me.

5 Q. Okay. He was cursing and then at one point he
6 started talking about how federal police were fascists.
7 Right?

8 A. I believe that was part of his yelling, yes,
9 ma'am.

10 Q. Right. And at that time you had your fellow
11 officers and colleagues right there. Correct?

12 A. That is correct.

13 Q. And you had fellow officers and colleagues across
14 the street. Correct?

15 A. Correct.

16 Q. Were you able to talk to each other through some
17 kind of radio talkie or any other contraption that law
18 enforcement has with each other?

19 A. We had a combined channel but it wasn't for close.
20 It was just to reach back to the main control.

21 Q. Okay. But you had backup. Right?

22 A. Yes, ma'am.

23 Q. Anything happen to you, there were at least three
24 officers with you to back you up. Right?

25 A. Right.

1 Q. There were officers across the street to back you
2 up. Correct?

3 A. Yes, ma'am.

4 Q. And along with you, correct me if I'm wrong, okay,
5 on that day, August 10th, before the Subway sandwich is
6 thrown at you, you were aware that somebody named Daina
7 Henry is there; is that correct? A law enforcement officer.

8 A. What is the name? I'm sorry.

9 Q. Henry?

10 A. Detective Henry, yes, ma'am.

11 Q. She is there. Right?

12 A. Yes.

13 Q. How about Kendrick Anderson? Is he there?

14 A. What is the name?

15 Q. Anderson.

16 A. I'm not sure about Anderson.

17 Q. Okay. Trejo is there. Right?

18 A. What was the name?

19 Q. CPB Officer Trejo is there. Correct?

20 A. Yes, ma'am.

21 Q. Similarly armed as you. Correct?

22 A. Yes, ma'am.

23 Q. Then you have somebody named Jonathan Hanson.
24 He's also with you.

25 A. That's right.

1 Q. And you've all worked together before or is this
2 the first time you've ever worked with each other?

3 A. No. We routinely work together at the office.

4 Q. Then you have Abelino Reyna. He's there with you.
5 Correct?

6 A. He is not there.

7 Q. He is not there with you. He comes in later?

8 A. No, ma'am.

9 Q. Okay. How about Harvey Perez?

10 A. He was not there that night.

11 Q. And the other officers that were with you on the
12 other side of the street, do you know their names by any
13 chance?

14 A. I don't know. They were --

15 Q. I'm sorry?

16 A. They were FBI.

17 Q. They were FBI. I apologize if I cut you off.

18 Okay? If you keep your voice up, I am less likely to cut
19 you off.

20 A. Yes, ma'am.

21 Q. So you have the FBI there too. Correct?

22 A. Yes, ma'am.

23 Q. All of you have met before you go to 14th and U.
24 Right?

25 A. Briefly, yes, ma'am. When we were at our first

1 location near Capital One was where we first interacted.

2 Q. At Capital One, you leave Capital One because
3 according to you nothing is happening at Capital One.
4 Correct?

5 A. There was pedestrian traffic, vehicle traffic but
6 nothing happening.

7 Q. No crime happening, so you moved to another spot.
8 Right?

9 A. Not that we saw, yes.

10 Q. That's because a major part of what you were
11 trying to do is to see if you could catch some crime.
12 Right? There was no action at -- what is it called,
13 Anastasia -- so you moved to the next one.

14 A. We were at Capital One. Anacostia is the Park
15 Police headquarters. Again, we were there supporting Metro
16 Transit Authority. So wherever they would normally patrol,
17 wherever their -- I'm not sure how to phrase it. Wherever
18 their hot spots were is where we were supporting them. They
19 were kind of directing where we would patrol. So we were
20 there in support of them, so we went with them.

21 Q. Okay. But you told the prosecutor you left that
22 area because nothing was happening. Correct?

23 A. That is correct.

24 Q. And when you get to 14th and U, right, you
25 encounter Mr. Dunn the first time. Right? We went over

1 this. And he starts to call you names, according to you.

2 Right?

3 A. Yes, ma'am.

4 Q. And you see that on the video. Right?

5 A. Yes, ma'am.

6 Q. He's getting all bent out of shape. He's talking
7 a lot. Right?

8 A. That's correct, yes, ma'am.

9 Q. And at that point, how close to him are you?

10 A. There's several different times when we interact
11 but anywhere from really close to across the street.

12 Q. Okay. And there's a point when he's across the
13 street. Right?

14 A. Yes, ma'am.

15 Q. So he's -- there is a fair amount of distance
16 between you and him then. Right?

17 A. Yes, ma'am.

18 Q. And at that point, even from a distance, there is
19 no interaction between you and him where you tell Mr. Dunn,
20 hey, take it easy, calm down, go home. Correct?

21 A. No, I never told him to calm down or go home.

22 Q. Okay.

23 You see him on the video, right, and he continues
24 speaking, so to speak. Correct?

25 A. On the video?

1 Q. Yes.

2 A. Yes, ma'am.

3 Q. And on August 10th. Right?

4 A. I'm sorry, say it again.

5 Q. And on August 10th. Not just because it's on the
6 video --

7 A. Yes, ma'am.

8 Q. Okay. So you see there are other people there.
9 Right?

10 A. Yes, ma'am.

11 Q. And you never see Mr. Dunn go up to any of the
12 other people and say, Come join me in my conversation with
13 CBP Officer Lairmore. Correct?

14 A. Not that I recall, no, ma'am.

15 Q. He never recruits anybody else to come and
16 approach you with him. Correct?

17 A. Not directly that I saw, no, ma'am.

18 Q. Nor indirectly. Correct?

19 A. I couldn't speak to his interactions across the
20 street. I couldn't hear them.

21 Q. You couldn't hear him but when you -- I'm only
22 asking you about what you can see and what you can hear. If
23 you can't see something, you can't testify to it. Right?

24 A. Yes, ma'am.

25 Q. When you see him -- and according to you, you have

1 your eye on him. Correct?

2 A. Yes, ma'am.

3 Q. Okay. When you have your eye on him, never once
4 do you see him go up to anybody else on that street and say,
5 Hey, come with me and join in my conversation against CBP
6 officers. Correct?

7 A. Not that I recall, no, ma'am.

8 Q. And in fact, he never, ever comes upon you with
9 anybody else in tow. Correct?

10 A. That's correct.

11 Q. There is a man who is recording what Mr. Dunn is
12 doing. Correct?

13 A. I believe so. Yes, ma'am.

14 Q. And you saw that video. Right?

15 A. That's right.

16 Q. And that man is never recruited by Mr. Dunn to
17 come and approach you either. Correct?

18 A. Correct.

19 Q. Now, you've testified several times that what your
20 goal was was crime -- is it crime prevention?

21 A. High-visibility crime prevention.

22 Q. The high-visibility part you accomplish by just
23 being visible in you uniform, all of you?

24 A. Yes, ma'am.

25 Q. I am jumping around a little bit, but is it fair

1 to say that as August 10th progresses, the night progresses,
2 more and more officers join you? Right?

3 A. No. We started and ended with about the same
4 amount.

5 Q. Really? So the number of officers after Mr. Dunn
6 is arrested is the same amount as the number of officers
7 before?

8 A. There's other patrol groups other than ours. So
9 our group remained the same number. Other patrol groups
10 helped us with the arrest and then went back to their patrol
11 duties.

12 Q. So other patrol groups joined you in larger
13 numbers. Correct?

14 A. There were several, yes, ma'am.

15 Q. So the number increases. The federal officers
16 increase. Correct?

17 A. Yes, ma'am.

18 Q. More presence is shown. Right?

19 A. Yes, ma'am.

20 Q. You are even more visible now?

21 A. I would assume so, yes, ma'am.

22 Q. So the visibility has increased. Correct?

23 A. Correct.

24 Q. Okay.

25 Now, when Mr. Dunn is, as you put it, getting more

1 and more aggressive, right, on that day, do you know or are
2 you aware that there is going to be a new President Trump's
3 declaration of a crime emergency in the District of Columbia
4 coming in two hours?

5 **A.** I did not know that, no, ma'am.

6 **Q.** Nobody has informed you, your legal counsel didn't
7 inform you, that the emergency was going to come in at
8 midnight that night?

9 **A.** No, ma'am, not to my knowledge.

10 **Q.** And when Mr. Dunn is at that spot where he's
11 somewhat away from you, right, you don't talk to him and in
12 any way tell him to leave the area. Correct?

13 **A.** I believe I wished him to have a good night, and
14 that was the extent of my interaction with him.

15 **Q.** Right. But you know when somebody says, Have a
16 good night, you can say it sarcastically. Correct? Go
17 ahead. Have a good night. Whatever. Right? That's one
18 way to say it.

19 **A.** That's the intent, yes, ma'am, to de-escalate the
20 situation, which could --

21 **Q.** Sir, if you could just listen to my question.

22 **A.** Yes, ma'am.

23 **Q.** My question to you was, would you agree with me
24 that you can be flippant and tell somebody "have a good
25 night, whatever," and move on. Correct? Right?

1 **A.** I'm not sure I understand the context of the
2 question.

3 **Q.** Okay. I'll try again.

4 You can say, Have a good night in a genuine way
5 that you really want somebody to have a good night.
6 Correct?

7 **A.** Yes, ma'am.

8 **Q.** And then there's a not-so-nice way of saying, Have
9 a good night.

10 Basically, what you're saying is, Move along,
11 buddy.

12 **A.** Yes, ma'am.

13 **Q.** Now, when you are at August 10th on that same day,
14 you are there to assist, you said, MTP. Right?

15 **A.** Yes, ma'am.

16 **Q.** And in your particular group, there is no MTP
17 officer. Right?

18 **A.** Yes, ma'am, there is.

19 **Q.** When you're standing there just the three of you,
20 there is an MTP officer standing with you?

21 **A.** I'm not sure of how they are separated but
22 Detective --

23 **Q.** I'm only asking whether they are physically
24 there --

25 **A.** Detective Henry was with us, yes, ma'am.

1 **Q.** According to you, one can see Detective Henry when
2 Mr. Dunn is approaching you the first time?

3 **A.** I'd have to look at the video again but I'm pretty
4 sure that I remember Detective Henry being there with us the
5 entire night, and then there's another officer who was with
6 the FBI agent that night.

7 **Q.** Okay.

8 And when you are assisting MTP, you, for some
9 reason, do not have a body-worn camera. Correct?

10 **A.** No, ma'am. We were not issued body-worn camera
11 that night.

12 **Q.** Well, you are a federal law officer. Right?

13 **A.** Yes, ma'am.

14 **Q.** If you wanted a body cam, you could get a body
15 cam. Right? Are you suggesting that if you ask for one,
16 somebody would deny you one?

17 **A.** No, ma'am. We are not in a typically operational
18 posture.

19 **Q.** I'm not asking about typical.

20 **A.** I'm explaining --

21 **Q.** I'm only asking about August 10th. Only
22 August 10th. You were there to assist local police.
23 Correct?

24 **A.** Yes, ma'am.

25 **Q.** Local police has a body-worn camera. Correct?

1 **A.** I believe so, yes, ma'am.

2 **Q.** You want to be part of the local police. Correct?

3 **A.** Yes, ma'am.

4 **Q.** But you don't have a body-worn camera on you?

5 **A.** I do not.

6 **Q.** Okay.

7 On the video, you see Mr. Dunn leave and then,
8 according to you, when he comes back up to you he is
9 standing very close to you. Correct?

10 **A.** Initially, when he came back up he was running
11 down the street. But then, eventually, he comes in and is
12 very close, yes, ma'am.

13 **Q.** According to you, he is literally in your personal
14 space by then. Right?

15 **A.** Yes, ma'am.

16 **Q.** And when he is in your personal space where are
17 the other two or three officers that are with you?

18 **A.** There's one to my immediate left and then several
19 behind me looking-- making sure there is nothing coming in
20 behind us.

21 **Q.** Well, you don't know what they are doing.
22 Correct?

23 **A.** I --

24 **Q.** I mean, you only know what you are doing?

25 **A.** I know what I am doing, yes, ma'am.

1 Q. If somebody is behind you they could be texting
2 their girlfriend for all you know. Right?

3 A. Correct.

4 (Brief pause in proceedings.)

5 **BY MS. SHROFF:**

6 Q. Officer Lairmore, when Mr. Dunn is in your
7 personal space, there is one agent behind you. Right?

8 A. I'd have to look at the video again. I assume so.

9 Q. Okay.

10 Could I ask you this question, when you prepared
11 for trial testimony here, was Government Exhibit 4000 the
12 only video that you looked at?

13 A. I looked at -- there was a shorter version and
14 then a longer version of the same video.

15 Q. Okay. And you looked at both videos. Right?

16 A. Yes, ma'am.

17 Q. How many times did you meet with them to prepare?

18 A. Twice.

19 Q. Twice. And when you -- when you were discussing
20 this issue of Mr. Dunn being in your personal space. Right?

21 A. Yes, ma'am.

22 Q. You have at least two officers to your left or
23 your right. Correct?

24 A. I would have to, again, look at the picture but I
25 assume so, yes, ma'am.

1 Q. And at that point, do they shift at all?

2 A. They could have. Without watching the video
3 again, I wasn't paying attention to what they were doing.

4 Q. Okay. But is it fair to say, sir, that no matter
5 how close Mr. Dunn is, you have backup at that spot; is that
6 right?

7 A. Yes, ma'am.

8 Q. And between you and Mr. Dunn, you are more
9 equipped with actual equipment than Mr. Dunn. Correct?

10 A. I have more equipment than him, yes, ma'am.

11 Q. Right. And even when Mr. Dunn is close to you,
12 he's red faced. Right?

13 A. Yes, ma'am.

14 Q. And he's yelling. Right?

15 A. Yes, ma'am.

16 Q. And the first time he ever gesticulates at you is
17 when he throws the sandwich at you. Right?

18 A. Yes, ma'am.

19 Q. And he throws the sandwich at you, at your chest.
20 Correct?

21 A. The left side of my chest, yes, ma'am.

22 Q. On your chest you have a long-sleeved shirt.
23 Correct?

24 A. Correct.

25 Q. On top of that, a vest. Correct?

1 **A.** Yes, ma'am.

2 **Q.** And it is August. Right? It's not winter or
3 anything like that. It's still sort of fall-y. Right?
4 Fall weather?

5 **A.** Yes. It's warm.

6 **Q.** The moment the sandwich hits you or you feel it on
7 your body, right, he takes off. Right?

8 **A.** Yes, ma'am.

9 **Q.** And you take off right with him. Correct?

10 **A.** That's correct.

11 **Q.** The sandwich, as you see...

12 **MS. SHROFF:** Could we pull that back up?

13 **THE COURT:** Let the record reflect that we are now
14 looking at Government's Exhibit 4000.

15 **BY MS. SHROFF:**

16 **Q.** That's the Subway sandwich. Correct?

17 **A.** I assume so, yes, ma'am.

18 **Q.** And the paper is still on there. Correct?

19 **A.** Yes, ma'am.

20 **Q.** It's fallen in a way that the Subway has fallen on
21 the street. Right?

22 **A.** Yes, ma'am.

23 **Q.** You don't see what kind of Subway sandwich it is.
24 Right?

25 **A.** No, not from the picture, no, ma'am.

1 Q. From the picture you can't even tell which
2 condiments are on the sandwich. Correct?

3 A. Correct.

4 Q. You don't know if there is mustard on it, correct,
5 from the picture.

6 A. From the picture, no, ma'am.

7 Q. You don't see if there is ketchup on it?

8 A. Not from the picture, no, ma'am.

9 Q. You can't tell if there's mayonnaise on it?

10 A. From the picture, no, ma'am.

11 Q. Lettuce. Tomato.

12 A. It doesn't appear so from the picture, no, ma'am.

13 Q. Can't tell if it's a turkey sandwich, ham
14 sandwich, tuna sandwich.

15 A. Not from the picture.

16 Q. In fact, that sandwich hasn't exploded at all.
17 Correct?

18 A. I can't see the entire sandwich.

19 Q. From the photo, that sandwich has not exploded.
20 Correct?

21 A. From the photo, it looks bent and out of shape.

22 Q. I'm sorry, could you --

23 A. One side of the wrapper.

24 **THE COURT:** He said it looks bent and out of
25 shape.

1 **MS. SHROFF:** Okay. Let's go through that.

2 **BY MS. SHROFF:**

3 **Q.** My question was, from looking at the photo, you
4 cannot tell the contents of the photo -- I mean, of the
5 sandwich at all. Correct?

6 **A.** That's correct.

7 **Q.** Nothing that is within the sandwich has come out
8 of the sandwich. Correct?

9 **A.** It looks like a little bit has come out towards
10 the bottom there.

11 **Q.** Okay. What has come -- what is coming out of the
12 bottom that you can see?

13 **A.** It looks like some kind of --

14 **Q.** Looks like? I'm not asking you to guess, sir.

15 **A.** I can't tell.

16 **Q.** Okay. After the sandwich is thrown, the number of
17 people increased. Correct? Agents. I'm sorry. I should
18 be more precise. Agents increase. Right?

19 **A.** Yes, ma'am.

20 **Q.** There was the Metropolitan Police now. Right?

21 **A.** Yes, ma'am.

22 **Q.** There was the FBI. Right?

23 **A.** Yes, ma'am.

24 **Q.** There was CBP. Right?

25 **A.** Correct.

1 **Q.** Correct me if I'm wrong. Every one of those
2 people has an iPhone. Right?

3 **A.** A phone, yes, ma'am, probably.

4 **Q.** Maybe Android, iPhone. Everybody has one. Right?

5 **A.** Yes, ma'am.

6 **Q.** You have one. Right?

7 **A.** Yes, ma'am.

8 **Q.** No one took a picture of the sandwich?

9 **A.** The sandwich was at 14th and U and we were at 15th
10 and U. I don't believe anybody was taking a picture of the
11 sandwich.

12 **Q.** One block away. One block away. Correct?

13 **A.** Correct.

14 **Q.** Not one of the 20-odd officers walked back to take
15 a picture of this exploding sandwich. Correct?

16 **A.** Not to my knowledge, no, ma'am.

17 **Q.** Right.

18 After all of this, you received from your
19 colleagues gag gifts mocking this so-called sandwich.
20 Correct?

21 **A.** That's fair. Yes, ma'am.

22 **Q.** Right. And the gag gifts included, I don't know,
23 a plush sandwich; is that right?

24 **A.** Yes, ma'am.

25 **Q.** Like a stuffed toy?

1 **A.** Yes, ma'am.

2 **Q.** What color was it, by the way?

3 **A.** It looked like a sandwich.

4 **Q.** It looked like a sandwich?

5 **A.** Yes, ma'am.

6 **Q.** What did you do with it?

7 **A.** I put it on top of the shelf in my office.

8 **Q.** Okay. And then did you get a second gag gift?

9 **A.** One of the agents that worked the op later on gave
10 me a patch from one of the vendors.

11 **Q.** What does the patch say?

12 **A.** It says, "Felony Footlong".

13 **Q.** What did you do with the patch?

14 **A.** I put it on my lunch box.

15 **MS. SHROFF:** I have nothing further.

16 **THE COURT:** Thank you, Counsel.

17 After you collect your stuff, I will let the
18 government begin its redirect.

19 You may proceed.

20 **MR. PARRON:** Thank you, Your Honor.

21 **REDIRECT EXAMINATION OF GREGORY LAIRMORE**

22 **MR. PARRON:** Agent Lairmore --

23 **THE COURT:** Just speak up a little bit, if you
24 could. Thank you, Counsel.

25 **[REPORTER'S NOTE: This page intentionally left blank]**

1 **BY MR. PARRON:**

2 **Q.** How long have you been stationed in D.C.?

3 **A.** Just over nine years.

4 **Q.** Defense counsel asked you a little bit about the
5 Executive Order that you referenced earlier. Is that the
6 only basis that you were out there?

7 **A.** That's the only reason we were out on patrol that
8 night, is supporting local law enforcement per the Executive
9 Order.

10 **Q.** Who told you to go?

11 **A.** My superiors.

12 **Q.** Defense counsel also asked you a little bit about
13 your awareness of being recorded. How did your awareness of
14 being recorded affect your interaction with the defendant
15 that night?

16 **A.** Zero.

17 **Q.** Defense counsel asked you a little bit about the
18 different ways you can say "have a good night." Just repeat
19 for us, with the same tone and cadence, the way that you
20 would have told the defendant that night to have a good
21 night.

22 **MS. SHROFF:** [Inaudible]

23 **THE COURT:** Let's just -- can you state how you
24 did say it that night.

25 **THE WITNESS:** Yes, sir.

1 That night I said, "Have a good night."

2 **BY MR. PARRON:**

3 **Q.** Agent Lairmore, is body-worn camera a part of your
4 uniform?

5 **A.** For the field agents it has been for a part. We
6 don't have it as full deployment because they are very, very
7 expensive. So it's not complete. It has now become part of
8 the standard procedure for the operation but that was the
9 first time we didn't have the logistics.

10 **Q.** I guess I should ask to be more clear. Is it part
11 of your uniform?

12 **A.** Not on a daily basis, no, sir.

13 **Q.** Now, when defense counsel asked you about whether
14 or not there was mustard coming out of the sandwich, I think
15 I saw you smile a little bit. Can you explain why?

16 **A.** Because I had mustard and condiments on my
17 uniform, and I had an onion hang on my radio antenna that
18 night.

19 **MR. PARRON:** The Court's brief indulgence.

20 No further questions, Your Honor.

21 **THE COURT:** Thank you, Agent ...

22 **MS. SHROFF:** Your Honor, I had some recross. May
23 I?

24 **THE COURT:** I mean, let's see.

25 **MS. SHROFF:** Okay.

RE CROSS-EXAMINATION OF GREGORY LAIRMORE**BY MS. SHROFF:**

Q. Sir, you said you had mustard on your uniform.

Correct?

A. Yes, ma'am.

Q. Did you take a photo?

A. I did not.

Q. You had condiments on your radio. Correct?

A. Yes, ma'am.

Q. Did you take a photo?

A. I did not.

Q. And you had the mustard and the condiments after
Mr. Dunn was under arrest. Correct?

A. Yes, ma'am.

Q. And you knew that Mr. Dunn was going to be
charged. Correct?

A. Yes, ma'am.

Q. And as a seasoned officer, you know you are going
to have to testify in front of a jury. Correct?

A. At times, yes, ma'am.

Q. Right. And you didn't preserve that evidence.
Correct?

A. I did not consider that evidence, ma'am. There
was plenty of federal agents as witness to the sandwich
striking me in the chest.

1 **Q.** Is it your testimony, sir, that as a seasoned
2 officer, a photograph of the actual stain is not the best
3 evidence?

4 **A.** The arrest was turned over to Metropolitan Police
5 Department.

6 **Q.** Okay.

7 **A.** It was their case to pursue at that point.

8 **Q.** I see. And the Metropolitan Police Department
9 didn't take a photo either?

10 **A.** It would appear not.

11 **MS. SHROFF:** Thank you.

12 **THE COURT:** Agent, thank you for your testimony
13 this morning. You are released and thank you for your
14 service.

15 (Witness steps down.)

16 **MR. DiLORENZO:** Your Honor, we are prepared to
17 call our next witness but we had flagged an issue earlier
18 today, which would impact the way we proceed. Our goal is
19 to streamline things, as the Court has indicated.

20 **THE COURT:** Would you like to get on the phone to
21 discuss that issue or can we --

22 **MR. DiLORENZO:** Yeah, that might be best.

23 **THE COURT:** Okay. Excuse us, everyone. You
24 probably have already gathered this; it's not rocket
25 science. But from time to time, I need to speak with the

1 lawyers, the parties about an issue that we are trying to
2 resolve some issue before, perhaps, something comes to you
3 inappropriately.

4 We do that with the husher on the phone, just the
5 way I talked to you when we did the jury selection.

6 So with that, let's go on the husher.

7 (Bench conference.)

8 **THE COURT:** Proceed.

9 **MR. DiLORENZO:** Thank you, Your Honor. Our
10 intention is to call Detective Henry next. She would be
11 more of an abbreviated version about what occurred on
12 August 10th and then up to the point the defendant was taken
13 into custody.

14 We were then planning on stopping with her and
15 then our last witness, who is McDonald, who has actually
16 indicated -- kind of gave us an update on her medical
17 condition, which is not good, but we would like to speak
18 with her, that she would testify to just a brief video clip.
19 Basically, it was a statement the defendant made while he
20 was in the station.

21 The defense indicated earlier they wouldn't object
22 to the authenticity of that and they did reference it in
23 their opening.

24 So the way we planned on proceeding was having
25 McDonald testify to that piece. In the event we can't, what

1 we would do is introduce it through Henry. The way we would
2 do that is Henry viewed -- she didn't personally witness the
3 statement but she was present with another officer and she
4 has viewed part of his body-worn camera footage.

5 Basically, she is in the garage of the station
6 with Officer Thandi. She is seen on it. And then what we
7 would do is she would authenticate that portion of the
8 video. She can explain how body-worn camera footage is
9 basically continually playing. Then the video shows it is
10 continually playing. Then what we would do is then admit
11 the statement, the admission, which occurred about a minute
12 later.

13 So we would have to build on it. It's a little
14 more time consuming. What we would have to do is we have
15 shown Detective Henry at least parts of Thandi's -- Thandi's
16 not available but part of Thandi's body-worn camera footage,
17 but what we would want to do is narrow it. She can
18 authenticate the one part and it would have a continuing
19 part.

20 There's a couple of options. One, we would ask
21 the Court if we can just sit momentarily with Henry to make
22 sure she can authenticate it; we're confident that she can.
23 And then we can proceed with our direct.

24 The other is we'll also reach out to McDonald too
25 to see if she is available. She has some condition with her

1 eye. We noticed it yesterday. Her eye, I believe, may be
2 swollen shut. We don't want to force her to come in but we
3 can check on her availability.

4 The third is, I don't know that this -- you know,
5 the authenticity does not appear to be in dispute. I would
6 suggest -- but obviously, the defense, it's up to them
7 whether or not they would accept it -- a stipulation that,
8 you know, this statement was made while the defendant, you
9 know, it's clear was in the station.

10 **THE COURT:** Can I just ask a couple questions
11 before I turn it over to the defense?

12 **MR. DiLORENZO:** Yes.

13 **THE COURT:** Whose body-worn camera footage is it?

14 **MR. DiLORENZO:** It's Officer Thandi. He is on the
15 scene. He actually does the transport.

16 **THE COURT:** I take it he is unavailable to
17 testify.

18 **MR. DiLORENZO:** He is.

19 **THE COURT:** We'll start with that.

20 **MR. DiLORENZO:** Yes.

21 **THE COURT:** So with Thandi not available, the plan
22 was to have Officer McDonald testify and lay the foundation
23 and then admit the body-worn camera footage that's Thandi's
24 BWC but through Officer McDonald. Right?

25 **MR. DiLORENZO:** Correct, because it occurred in

1 her presence.

2 **THE COURT:** Right. So then, because
3 Officer McDonald has this medical issue and in the event
4 cannot testify, the plan would be to attempt to get the BWC
5 in through Detective Henry.

6 If it weren't for Officer McDonald's health issue,
7 Detective Henry would still testify, just not as to this
8 question. Yes?

9 **MR. DiLORENZO:** That's correct.

10 **THE COURT:** If it turns out that -- again, let's
11 assume Officer McDonald is, in fact, completely unavailable
12 and let's assume also that I say Detective Henry is going to
13 be permitted to testify not only about what the detective
14 was intending to testify about but this additional video,
15 are those the only topics -- is that the extent of the -- of
16 Officer Henry's expected testimony? You said something
17 about a truncated version earlier.

18 **MR. DiLORENZO:** I did. Henry would start. We
19 would talk about the incident itself. So, you know, she was
20 actually on the corner. We don't plan to show her the CCTV
21 but just very brief clips of the video. We have some
22 photographs.

23 She will identify herself and some of the other
24 individuals that were on the corner. We expect her to
25 testify briefly about the incident and then the chase. And

1 then, you know, where the defendant is taken into custody.

2 **THE COURT:** Okay. All right. What are the
3 defense views on this question?

4 **MS. GATTO:** Well, Your Honor, we don't plan on
5 stipulating to its admissibility. If they want to introduce
6 it, we would ask that they introduce it through a witness
7 who can lay the proper foundation. It was a little
8 confusing to me, the explanation of how they thought that
9 they could do that through Detective Henry.

10 I suppose we could go through that exercise during
11 her testimony. From the way I heard it, they would not lay
12 a proper foundation. They were -- you should know we had
13 noticed Detective Thandi as our own witness. We were told
14 he was out of town and then they were calling McDonald,
15 which, for this clip, I understand how they would lay that
16 foundation, because she appears to be physically in the
17 location when the statement is made, but Detective Henry is
18 not.

19 I think I heard, although I couldn't be sure, that
20 they planned on showing the video to her now. That would
21 not be an appropriate way to lay a foundation.

22 So, Your Honor, all I can say is, again, we
23 appreciate that the witness is sick. We don't wish her to
24 be. But if they want to get this piece of evidence in, as
25 the rules of evidence require, they will have to find a

1 witness who they can get it in through. If there is no
2 witness, then that will be the evidentiary gap for them.

3 **THE COURT:** Yeah. So here is how I want to
4 proceed. I think we should start with Detective Henry.
5 Okay? Let's take Detective Henry through the testimony that
6 she would -- or Detective Henry would do regardless of
7 whether McDonald's available or not.

8 We will get to a point, then, where the government
9 will attempt to lay a foundation through the testimony of
10 Detective Henry about the admissibility of this BWC, and
11 depending on the specifics -- I think I have a general sense
12 but depending on the specifics, and assuming there is still
13 an objection, I will resolve it at that point. Okay?

14 **MR. DiLORENZO:** Your Honor, what the government
15 would ask is if we just have a brief moment to show her the
16 video. I mean, we are confident that she can, but she would
17 be seeing it for the first time --

18 **THE COURT:** Right. All you're really asking is
19 for me to let you have 10 or 15 minutes recess before she
20 starts testifying.

21 **MR. DiLORENZO:** Correct.

22 **THE COURT:** You can do what you want in that
23 recess and, obviously, the defense can cross-examine the
24 detective on this meeting and the like, if it wants to voir
25 dire her about the admissibility of this.

1 So we will take a recess. We'll take 15 minutes.
2 We'll go back on at noon. Okay?

3 (Bench conference concluded.)

4 **THE COURT:** Members of the jury, we are going to
5 take 10, 13 really. We are just going to take a brief
6 recess. We will come back on at noon. We will resume. I
7 get that we're butting up against the lunch hour. My plan
8 is to be on the record a half an hour or less, something
9 like that.

10 I think this is a more efficient use of our time
11 than going into a break right now for lunch. I'd like to
12 get a little bit more work done. Okay? Let's go into
13 recess until noon.

14 (Recess started at 11:47 a.m. to 12:02 p.m.)

15 **THE COURT:** Counsel, you may proceed.

16 **MR. DiLORENZO:** Thank you. The government would
17 call Detective Henry.

18 **THE COURT:** Very well. You may get the detective.

19 **MS. SHROFF:** Your Honor, may we have a very brief
20 sidebar?

21 **THE COURT:** Sure. Go get the witness. We'll do
22 the sidebar. Please put us in the husher.

23 (Bench conference.)

24 **MS. SHROFF:** My colleague is in the bathroom.
25 That was my sidebar.

1 **THE COURT:** Oh.

2 (Bench conference concluded.)

3 (Witness sworn.)

4 **THE COURT:** Good afternoon, Detective. Obviously,
5 there is a microphone there and you see that. Please speak
6 very loudly, very clearly into the microphone.

7 Counsel, you may proceed.

8 **MR. DiLORENZO:** Thank you, Your Honor.

9 **DIRECT EXAMINATION OF DAINA HENRY**

10 **BY MR. DiLORENZO:**

11 **Q.** Good afternoon.

12 **A.** Good afternoon.

13 **Q.** Could you please introduce yourself for the Judge
14 and the jury.

15 **A.** My name is Detective Henry. Daina Henry.

16 **Q.** By whom are you employed?

17 **A.** The Metro Transit Police.

18 **Q.** What do you do for the Metro Transit?

19 **A.** I am a detective.

20 **Q.** How long have you been employed by them?

21 **A.** Over ten years.

22 **Q.** As a detective what are your primary duties?

23 **A.** Investigating the cases assigned to me. Video
24 review, speak with victims, witnesses, material suspects and
25 a whole array of responsibilities.

1 **Q.** Prior to being a detective were you a patrol
2 officer?

3 **A.** That's correct.

4 **Q.** What type of work did you do then?

5 **A.** I was on patrol as a uniformed officer. Also
6 spent time on plain-clothed details, tactical operations as
7 well.

8 **Q.** What areas geographically do you generally cover?

9 **A.** Anywhere where the buses and trains run. So
10 Montgomery County, the District of Columbia, Arlington,
11 Fairfax, Arlington, and also P.G. County, Maryland.

12 **Q.** Where is your office physically located?

13 **A.** Virginia.

14 **Q.** Now, directing your attention to August 10th of
15 2025, were you working that day?

16 **A.** I was.

17 **Q.** And what were you doing?

18 **A.** I actually came in to work overtime as part of a
19 joint task force that I was notified of via email earlier
20 that afternoon.

21 **Q.** And what did that entail?

22 **A.** Our main goal was to police, enforce, any
23 infractions or any illegal activity, to be visible, make
24 sure we showed a presence. Simply to what we do on a daily
25 basis as an officer.

1 **Q.** What do you do in preparation for that and who was
2 with you?

3 **A.** So I met my supervisor for that night at the Park
4 Police headquarters, had to be sworn in and deputized and
5 then spoke directly with him in regard to what the goal
6 would be for the night.

7 **Q.** And what was the goal?

8 **A.** When I spoke with him, he basically stated that we
9 are to enforce any laws that were broken that night, make
10 sure that we were visible, make sure that we were able to
11 just move around the area, walk around the area and make
12 sure that our presence was shown that night.

13 **Q.** And were any other transit police officers
14 participating in this?

15 **A.** Yes. There was a total of four officers that
16 night. Myself, Officer Fields, Officer Thandi and a new
17 officer, whose name I cannot pronounce.

18 **Q.** And what about any other law enforcement agencies?

19 **A.** Yes. There were several different law enforcement
20 agencies with us that night.

21 **Q.** Which ones?

22 **A.** I remember Department of Homeland Security, FBI.
23 We also had border patrol with us. It was those three that
24 I can recall.

25 **Q.** And how were you dressed that evening?

1 **A.** I had on my uniform vest that shows the Metro
2 badge on it. It has "Police" across the back. I also had
3 on my uniform trousers, as well as the footwear I normally
4 wear. It is GO and acceptable for night.

5 **Q.** Were any of you wearing masks that evening?

6 **A.** No.

7 **Q.** And can you please tell the jury what happened.

8 **A.** So we originally met at the Gallery Place Metro
9 station. From there, we took the train to the U Street
10 area. It was a large group of us.

11 Being that the only individuals who actually had
12 radios that would be able to communicate to dispatch if
13 there was anything that occurred were just the Transit
14 officers, we broke up into groups. Each group had a Transit
15 officer with them. That way if anything occurred, we would
16 be able to transmit or speak with dispatch.

17 At one point in time, being that it was maybe 20
18 of us together, myself and Officer Fields, who I was working
19 with, we decided to separate once again. So we had both
20 approximately 10 agents with us.

21 We stayed on U Street and just kind of walked back
22 and forth on that street for several blocks. At some point
23 in time, I think maybe about 15 or 20 minutes after walking,
24 I just told him let's just stay here on this corner. We
25 were at 14th and U Street at that time. Now, during --

1 **Q.** If I could pause you. I would like to show you
2 Government's Exhibit 1000, which has already been admitted.

3 **MR. DiLORENZO:** Please publish that to the jury.

4 (Video played.)

5 **BY MR. DiLORENZO:**

6 **Q.** Before you proceed, do you recognize Government's
7 Exhibit 1000?

8 **A.** I do.

9 **Q.** Can you just explain the locations as they relate
10 to your testimony?

11 **A.** So this appears to be -- in the right-hand corner
12 would be 14th and U Street.

13 **Q.** You can -- we are high-tech here. I think you can
14 circle it.

15 **THE COURT:** You can if you use the finger on the
16 screen.

17 **THE WITNESS:** Not a problem. This intersection
18 right here is 14th and U Street. Right here is where we
19 would be situated. This is 14th across. So, basically,
20 this X is where we were standing that night.

21 **Q.** May the record reflect the witness has circled the
22 intersection to the right with a blue circle and an X
23 appearing at the corner. What is that corner?

24 **A.** 14th and U.

25 **Q.** Northwest?

1 **A.** Yes.

2 **Q.** That is in Washington, D.C.?

3 **A.** Yes, sir.

4 **Q.** Please proceed.

5 **A.** We were standing there several minutes. I did see
6 the defendant or the person who was later identified as
7 Mr. Sean Dunn, speaking with an officer. It seemed cordial.
8 I didn't hear any elevated voices or anything like that. I
9 continued just to try to patrol. People were coming up
10 asking questions and so forth giving direction and really a
11 routine day.

12 At some point in time I did hear yelling. When I
13 turned around, I saw the individual who was identified as
14 Mr. Dunn yelling, being quite loud.

15 **Q.** And before you continue, the individual you are
16 talking about, you said the individual you saw yelling that
17 night, do you see him in this courtroom?

18 **A.** Yes.

19 **Q.** And could you please identify him by an article of
20 clothing and point him out for the record?

21 **A.** Mr. Dunn is going to be to my right. He is
22 wearing a blue sweater and what looks like a blue tie.

23 **Q.** Great.

24 **MR. DiLORENZO:** May the record reflect the
25 identification.

1 **THE COURT:** The record will so reflect.

2 **BY MR. DiLORENZO:**

3 **Q.** You said you noticed a change in the defendant's
4 behavior. Please explain.

5 **A.** Correct. He was being very loud. He started to
6 yell. He started to walk towards me at one point. I walked
7 towards him. He was saying, you know, What are you guys
8 doing in my city, something to the effect, fucking facists.

9 I told him if he wanted to continue to express his
10 First Amendment right, he would be allowed. But he was
11 being disruptive. I said that because there were some
12 people that were asking, What are you doing? Why are you so
13 loud? At that time I asked him to cross the street, which
14 he did.

15 He walked across 14th Street, so he was standing
16 on the other side, which would be right where this red
17 building is, which is the Reeves Building. At that point we
18 continued just to stand on that corner. It seemed to be
19 de-escalated at that point.

20 **Q.** Before he crossed the street, how would you
21 describe his tone?

22 **A.** Prior to crossing the street?

23 **Q.** Yeah.

24 **A.** He was still loud, yelling. As he crossed the
25 street, I didn't hear him as much. If he was yelling, it

1 wasn't something I had noticed.

2 However, when he did get across the street, he did
3 yell "shame" repeatedly. Again, after that, he kind of was
4 more subdued. So we just continued to be in the area and
5 stayed there until he came back across the street.

6 **Q.** And please explain.

7 **A.** When he came back across the street, he approached
8 the agent, Mr. Lairmore. At that point in time he continued
9 to yell and so forth. He definitely was drawing attention
10 to himself. Mr. Lairmore was standing -- they seemed to be
11 standing about a foot or closer to one another.

12 I did see Mr. Dunn put a sandwich -- I believe he
13 moved it from his left hand to his right hand. He then just
14 threw the sandwich at the officer, struck him in the chest.
15 At that point we gave chase. He was stopped and detained, I
16 believe on the corner of 15th and U Street about a block
17 away.

18 **Q.** Now, you testified that the defendant approached
19 Agent Lairmore. Did he approach any other agents or
20 officers who were on the corner there?

21 **A.** Once he returned or came back across the street, I
22 believe Mr. Lairmore was the only agent that he approached.

23 **Q.** And what was he saying, when you recall him
24 returning?

25 **A.** More of the same. You know, You fucking facists.

1 Get out of my city. What are you doing here? I don't want
2 you here.

3 Q. And what were you and the other officers doing
4 when he was, you know, yelling these words at you?

5 A. Just same as last time. All right. That's
6 enough. Calm down. Walk off.

7 Q. And what did he do?

8 A. More of the same.

9 Q. What did he do at that time?

10 A. That's when he threw the sandwich at the officer.
11 At that time he attempted to flee and go across the street.

12 Q. How would you describe the throw that you saw?

13 A. Just a baseball pitch, I guess is the easiest way
14 to say, overhand throw. Again, they were standing within,
15 you know, a foot or so from each other.

16 MR. DiLORENZO: What I'd like to do is show the
17 witness Government's Exhibit 5000.

18 BY MR. DiLORENZO:

19 Q. Do you see Government's Exhibit 5000?

20 A. I do.

21 Q. It's a photograph?

22 A. It is.

23 Q. And is it -- what is it a photograph of?

24 A. It looks --

25 THE COURT: Counsel, you can clear that circle by

1 touching the screen -- there you go. Press that arrow. Hit
2 clear. There you go.

3 **BY MR. DiLORENZO:**

4 **Q.** Just briefly, what does this picture, Government's
5 Exhibit 5000, depict.

6 **A.** So this is prior to the offense. I wouldn't be
7 able to tell if this was the first time or prior to him
8 crossing the street or if this is after, but this is prior
9 to the offense.

10 **Q.** So it's a photograph of the Subway, on the corner,
11 outside of Subway. Is that a fair and accurate depiction?

12 **A.** It is.

13 **MR. DiLORENZO:** The government offers Government's
14 Exhibit 5000 into evidence.

15 **THE COURT:** Any objection of admission of
16 Government's Exhibit 5000?

17 **MS. GATTO:** No, Your Honor.

18 **THE COURT:** Government's Exhibit 5000 is admitted
19 and may be published.

20 (Government's Exhibit 5000 was admitted and published.)

21 **BY MR. DiLORENZO:**

22 **Q.** Can you please identify the location and some of
23 the individuals that are depicted in -- this will be 14th
24 and U Street ,Northwest.

25 **A.** You can see Mr. Dunn, he is standing with one foot

1 on the curb and Mr. Agent Lairmore is going to be directly
2 in front of him. Unless there is someone in between us, I
3 am going to be next to or to the left of Mr. Lairmore.

4 Q. So you can actually see yourself in this
5 photograph?

6 A. Yes. All of the other agents are wearing, like,
7 green. You can see that I am wearing black.

8 Q. Can you make a mark where you see Agent Lairmore?

9 A. I just circled him.

10 MR. DiLORENZO: May the record reflect the witness
11 circled an individual wearing what looks like a baseball cap
12 in the center.

13 BY MR. DiLORENZO:

14 Q. Who is directly in front of Agent Lairmore?

15 A. That's going to be Mr. Dunn standing in front of
16 him.

17 Q. And you where are you?

18 A. I am standing to the left of both of them.

19 Q. Could you circle your location?

20 A. [Complied]

21 MR. DiLORENZO: May the record reflect that the
22 witness has circled the individual.

23 BY MR. DiLORENZO:

24 Q. And you were wearing your police uniform?

25 A. Correct.

1 **Q.** And who is to your right? Do you know who that
2 is?

3 **A.** Yes. I apologize it's going to be Mr. Lairmore's
4 partner. I cannot recall his name at the moment. He is
5 also with the same agency.

6 **THE COURT:** The question is, Who is to your right.
7 I think the question was supposed to be, Who is to your
8 left?

9 **BY MR. DiLORENZO:**

10 **Q.** In the picture -- that's right. Who is to your
11 left in the picture? Who do we see to your right.

12 **A.** Oh, my apologies. To my right is going to be
13 Mr. Lairmore.

14 **Q.** Okay. Then where you are standing, who was to
15 your left?

16 **A.** To my left, again, is going to be another agent.
17 He was Mr. Lairmore's colleague, and I do not recall his
18 name.

19 **Q.** Custom and Border Protection agent?

20 **A.** He is also a Custom and Border Protection agent;
21 that's correct.

22 **Q.** I am going to circle one of the other individuals.
23 Do you see that?

24 **A.** Yes, sir.

25 **Q.** What other law enforcement agencies were with you

1 while you were on the corner of 14th and U Street?

2 A. FBI.

3 Q. And then, what is with this picture at this point
4 in time?

5 A. I know at this point in time there was an attempt
6 to de-escalate the situation. I can't tell if this is from
7 the first time or initial time Mr. Dunn approaches us or if
8 it is after he crosses the street and comes back to the
9 group.

10 Q. And what, if anything, did you notice the
11 defendant doing with his hands when he was interacting with
12 Agent Lairmore and the other officers?

13 A. Just a lot of pointing.

14 MR. DiLORENZO: And then, if I could, if you would
15 remove Government's Exhibit 5000 and put up 5001. And just
16 to show this to the witness.

17 BY MR. DiLORENZO:

18 Q. I am showing you Government's Exhibit 5001. Is
19 this also a photograph?

20 A. Yes, it is.

21 Q. And to move things along, is this a photograph of
22 that same scene in the same time frame?

23 A. It is.

24 Q. And is it a fair and accurate depiction of that?

25 A. Yes, I would say so.

1 **MR. DiLORENZO:** Your Honor, the government would
2 offer Government's Exhibit 5001.

3 **THE COURT:** Any objection?

4 **MS. SHROFF:** No, Your Honor.

5 **THE COURT:** Government's Exhibit 5001 is admitted
6 and may be published.

7 (Government's Exhibit 5001 was admitted and published.)

8 **BY MR. DiLORENZO:**

9 **Q.** Can you identify some of the individuals?

10 **A.** Again, I can't tell where in the timeline we are.
11 Mr. Dunn is speaking with the officers. I am now a little
12 further from Mr. Lairmore in the left or in the photo I'm on
13 the right. From the still image, that's all I can tell.

14 **Q.** Great. If it could help, you can circle.

15 **A.** You can see my little puff right there.

16 **Q.** You can see part of your head; is that right?

17 **A.** That's correct.

18 **Q.** You circled that with a blue circle?

19 **A.** Yes, I did.

20 **Q.** And then where is Agent Lairmore?

21 **A.** Lairmore is going to be middle of the photo, right
22 about there.

23 **THE COURT:** May the record reflect the witness
24 identify Lairmore with a blue arrow.

25 **[REPORTER'S NOTE: This page intentionally left blank]**

1 **BY MR. DiLORENZO:**

2 **Q.** Do you see anything in the defendant's hand?

3 **A.** Yes, he has a sandwich in his left hand.

4 **Q.** All right. Thank you.

5 So did you have occasion to view any social media
6 videos that were posted in connection with this?

7 **A.** Yes.

8 **Q.** Was that part of the preparation for your
9 testimony today?

10 **A.** Yes, it was.

11 **Q.** What I'd like to do is show you Government's
12 Exhibit 4000, which has already been admitted into evidence.
13 Rather than show the entire video, which has already been
14 done today, what I'd like to do is start at about 1:13, if
15 we could. And then before we play -- this is fine. It's
16 1:12, but we will jump to 1:13.

17 What I'd like you to do is stop at a couple points
18 but have you explain what you see, if you see yourself and
19 what you see.

20 **A.** Okay.

21 **MR. DiLORENZO:** Please play.

22 (Video played.)

23 Please stop.

24 **BY MR. DiLORENZO:**

25 **Q.** So do you see the defendant here?

1 **A.** Yes, I do.

2 **Q.** And where is he?

3 **A.** He is going to be standing right there.

4 **Q.** Right. You circled him. He appears to be wearing
5 a pink shirt?

6 **A.** Yes.

7 **THE COURT:** Counsel, I don't think we need to
8 circle people every time. I am guessing the jury has
9 figured it out by now.

10 **BY MR. DiLORENZO:**

11 **Q.** Who is directly in front of -- who is the
12 defendant facing?

13 **A.** He's facing the group. The closest person to him
14 is going to be one of the border patrol agents.

15 **MR. DiLORENZO:** Now hit play.

16 (Video played.)

17 Stop.

18 **BY MR. DiLORENZO:**

19 **Q.** That night were you able to hear him say, Back up
20 mother F-er?

21 **A.** Yes.

22 **MR. DiLORENZO:** Please hit play.

23 (Video played.)

24 Pause please.

25 **[REPORTER'S NOTE: This line intentionally left blank]**

1 BY MR. DiLORENZO:

2 Q. At that moment where the defendant is yelling, you
3 know, Back up, M F-er, what is the reaction of the officers
4 that are on that corner?

5 A. Not much.

6 Q. And what are you as a group doing?

7 A. I'm sorry. Say it again.

8 Q. What are you as a group doing on the corner?

9 A. Watching him. I remember at this point in time
10 telling him he may want to go across the street; that's it.
11 You know, again, our goal is to make sure we are visible
12 and, again, if I had to arrest every person who was
13 disorderly just by, you know, yelling at us or so forth,
14 there would be a lot of arrests. There was no need at this
15 point to do more than telling him to leave the area and
16 continue.

17 Q. You said you warned him. Did you warn him more
18 than once about his conduct?

19 A. I believe he was responsive. So I remember the
20 first time telling him that you may want to go across the
21 street. He starts to walk towards the street.

22 I did tell him repeatedly every time. I did
23 mention to him to leave the area. He did a little bit more.
24 So the de-escalation at that point in time was working. So
25 there was no need to take any further objection.

1 Q. What about here when he told the officer to, Back
2 the F up?

3 A. I do not see or don't know at that point in time
4 what the officer was doing. I know I was telling him, you
5 know, Okay. Time for you to leave the area.

6 MR. DiLORENZO: Please play.

7 (Video played.)

8 Stop

9 BY MR. DiLORENZO:

10 Q. Now we are here about 2:17.

11 A. Uh-huh.

12 Q. What do you see here?

13 A. Again, Mr. Dunn has approached the agent -- excuse
14 me -- Lairmore, yelling, being more animated, pointing again
15 and just yelling directly at him.

16 Q. What do you recall about his body movements or
17 gestures?

18 A. You can see from his gestures he is more animated
19 than he was previously. Definitely more worked up than he
20 was before.

21 Q. And how is Agent Lairmore reacting, if at all?

22 A. Maintaining his calm.

23 MR. DiLORENZO: Please play.

24 (Video played.)

25 [REPORTER'S NOTE: This line intentionally left blank]

1 BY MR. DiLORENZO:

2 Q. We are stopping at 2:30 and that's, like, the
3 chase that you indicated.

4 A. Correct.

5 Q. Were you wearing body-worn camera that evening?

6 A. I was.

7 Q. Can you please explain to the ladies and gentlemen
8 of the jury what body-worn camera footage is.

9 A. Body-worn camera are issued. They have a distinct
10 number. Mine should only be worn by me, that way any time
11 there is video, you know specifically that it's from my
12 camera. It has a buffering time to it. So from the time I
13 actually activate it, which I have to do by pressing a small
14 button in the middle of it twice. Once it's activated, it
15 will show 30 seconds of video. It will be only video that
16 shows. There is no audio to the video. So you get 30
17 seconds of video prior to when I actually activate the
18 button. It records video and audio once it's activated.
19 And according to our GOs, we keep them on until the end of
20 the events.

21 So in this case, because Mr. Dunn was arrested,
22 until I am no longer in contact with him, my body-worn
23 camera would be activated and on.

24 Once he is processed and no longer with me, I can
25 turn my body-worn camera off.

1 Q. Where is the camera physically located on you?

2 A. It is going to be on the center of my chest, right
3 about here.

4 Q. As you described, it's not constantly on. It has
5 to be manually turned on?

6 A. It's not constantly on. We have to activate it to
7 start to receive video.

8 Q. Did you activate it this evening in connection
9 with this event?

10 A. I did.

11 Q. And would you recall where it was where you
12 activated it?

13 A. I believe at some point we were chasing Mr. Dunn.
14 I tapped it on so it should be mid-chase.

15 Q. At that point it's pulls back, how much time?

16 A. Approximately 30 seconds of video.

17 Q. And that doesn't have audio?

18 A. It would not have audio to it.

19 Q. Did you review your body-worn camera footage prior
20 to today?

21 A. Yes, I did.

22 MR. DiLORENZO: What I would like to do is pull up
23 Government's Exhibit 3000-A.

24 BY MR. DiLORENZO:

25 Q. You had an opportunity to look at it prior to

1 today. Right?

2 **A.** Yes, I did.

3 **Q.** Is this from your body-worn camera footage?

4 **A.** Yes. It will show the chase, apprehension and
5 arrest.

6 **MR. DiLORENZO:** I would ask for 3000-A to be
7 admitted and published.

8 **THE COURT:** Any objection?

9 **MS. GATTO:** No Your Honor.

10 **THE COURT:** Government's Exhibit 3000-A is
11 admitted and may be published.

12 (Government's Exhibit 3000-A was admitted and
13 published.)

14 **MR. DiLORENZO:** Please hit play.

15 (Video played.)

16 Now, we hear no sound. Hold for a second.

17 **BY MR. DiLORENZO:**

18 **Q.** So we heard there were two beeps. What were the
19 case of the two beeps?

20 **A.** That's the activation beep. You can see my left
21 hand towards my chest. At that time I have been able to
22 start to play the video.

23 **Q.** That's when you turned it on?

24 **A.** Correct.

25 **Q.** Why was there no sound before that double beep?

1 **A.** That is just the buffering period, generally. And
2 I want to say, for the most part, most BWCs are activated.
3 So you can get access to the video prior to the event. So
4 that's basically what we were seeing until you heard the two
5 beeps.

6 **Q.** And then the arrest itself, it wasn't a hard
7 takedown. Could you describe the arrest?

8 **A.** Yes. So I don't know if you can see me in the
9 video, but there was an unmarked patrol vehicle, an MPD
10 vehicle nearby. I am actually using one hand. I had my
11 flashlight. I am, kind of, flashing it towards Mr. Dunn so
12 they can see who we are running after trying to apprehend.

13 So the vehicle who stops him, they are actually
14 just parked. They have their vehicle parked right out of
15 camera frame, to the left where the intersection is, and the
16 person who was on the left of the camera, the bald gentleman
17 with the glasses, is one of the MPD personnel, who actually
18 came out of the vehicle and stopped and detained Mr. Dunn.

19 **MR. DiLORENZO:** If we could just quickly pull up
20 Government's Exhibit 1000. You saw this at the beginning of
21 your testimony.

22 **BY MR. DiLORENZO:**

23 **Q.** Do you see the location where the arrest took
24 place, where the defendant was stopped.

25 **A.** Yeah. So we are going to be right around this

1 area here, which would be the intersection of 15th and U
2 Street, Northwest.

3 Q. And then, just generally, what happened after the
4 defendant was taken into custody?

5 A. Well, I went over the air or basically
6 communicated with my dispatch, let them know, that there was
7 an arrest or a 1095. At that point in time, we did a
8 "wanted check" on the person; we were given his ID, which we
9 got from him; search incident to arrest.

10 So he is checked or searched at that point in
11 time. He did have a wallet on him that had a government ID
12 on it. I used that information, which would be first/last
13 name, date of birth. We run a person's check to make sure
14 he doesn't have any outstanding warrants or any attempts to
15 locate or anything like that.

16 I let them know that he was going to be placed
17 under arrest for not the APO or assault or police officer
18 assault or federal police officer but disorderly conduct. I
19 called for a transport officer, which would just be an
20 officer that comes with a caged vehicle so we would be able
21 to transport Mr. Dunn from this location to the precinct,
22 which he was going to be processed. From there he's taken
23 to the District and processed for the offense.

24 Q. Who was the officer that assisted with the
25 transport?

1 **A.** It's going to be a transit officer,
2 Officer Thandi.

3 **Q.** Thandi. Can you spell that?

4 **A.** His last name is T, as in tango, h, a, n as in
5 Nancy, d as in Delta, i; Thandi.

6 **Q.** Did you to accompany him to the station?

7 **A.** Yes, I did.

8 **Q.** The station. What station was that?

9 **A.** I believe it was going to be the Fourth District,
10 MPD's Fourth District.

11 **Q.** The station house, have you been there before?

12 **A.** I have.

13 **Q.** Are you familiar with the intake and the
14 processing?

15 **A.** Yes, I am.

16 **Q.** And the defendant was transported. Where was he
17 within the vehicle?

18 **A.** He's going to be sitting directly behind me in the
19 cage or secured area of the vehicle.

20 **Q.** Now, prior to today, did you have occasion to
21 review -- do you know whether or not Officer Thandi was
22 wearing a body-worn camera?

23 **A.** He was.

24 **Q.** Did you have occasion to review that?

25 **A.** Yes.

1 **Q.** And in reviewing it, do you see yourself in some
2 of it?

3 **A.** Yes, I do.

4 **Q.** And what I want to do is --

5 **MR. DiLORENZO:** Your Honor, here's the point. I
6 can continue if the Court would like or I will --

7 **THE COURT:** What's your next question?

8 **MR. DiLORENZO:** So what I'd like to do next is
9 show you some video and --

10 **THE COURT:** You may.

11 **MR. DiLORENZO:** Great. It has some audio, though.

12 **THE COURT:** We can turn the audio off.

13 **MR. DiLORENZO:** That's what we will do.

14 I'd like to show Government's Exhibit 3002. If we
15 could start at 11:50:23.

16 (Video played.)

17 I'd ask if you can put the video, start it at
18 23:50.

19 **THE COURT:** I think this is obvious. The record
20 will be obvious. But when you say that, the 23:50, that's
21 the timestamp of the video, rather than the time of day.
22 Right? In other words, that's -- we are going to 23
23 minutes --

24 **MR. DiLORENZO:** I'm sorry. We are going to the
25 time.

1 **THE COURT:** Oh, okay. That's the time at the
2 bottom.

3 **MR. DiLORENZO:** Yes.

4 **THE COURT:** Okay.

5 **MR. DiLORENZO:** Look at the top right corner.

6 **THE COURT:** The numbers seemed different to me.

7 It's not a big deal because of reasons I will get
8 into in a minute. But for my purposes, let's just go to
9 where you want the video, ask some questions, then we will
10 deal with it.

11 (Brief pause.)

12 **MR. DiLORENZO:** So before we play it, we are at
13 the film timestamp that reflects the time that day, which is
14 23:47:48. And the timestamp in terms of the ticker is at
15 24:00:69. And then if we could play it.

16 (Video played.)

17 Do you recognize this --

18 **THE COURT:** Can you press pause.

19 **MS. GATTO:** Mr. DiLorenzo, I am having a lot of
20 trouble hearing you.

21 **THE COURT:** So let's press pause on the video and
22 then, Mr. DiLorenzo, if you could just make the mic a little
23 bit higher and speak loudly into it, that would be great.

24 **MR. DiLORENZO:** Sure.
25

1 **BY MR. DiLORENZO:**

2 **Q.** Do you recognize Government's Exhibit 3002? This
3 portion where we stopped it, at the native timestamp
4 23:39:09.

5 **A.** Yes, I recognize it.

6 **Q.** What is it?

7 **A.** This is Officer Thandi's body-worn camera.

8 **Q.** Are you in it?

9 **A.** At this point, I am to the right of the screen.

10 **THE COURT:** Well, let's just do authentication
11 first. Anything else you would like to ask on that
12 question?

13 **MR. DiLORENZO:** No.

14 Please continue to play the video.

15 (Video played.)

16 Okay. Pause the video.

17 **BY MR. DiLORENZO:**

18 **Q.** It is marked at native timestamp 23:50:25. Were
19 you present at this point?

20 **A.** Yes.

21 **Q.** And what is happening at this point?

22 **THE COURT:** Hold on.

23 **MS. GATTO:** Your Honor, objection.

24 **THE COURT:** I get it. We are doing authentication
25 still.

1 **MR. DiLORENZO:** Sure.

2 **THE COURT:** Okay? Do you want to move for
3 admission of the video based on what we've seen so far or
4 lay more foundation?

5 **MR. DiLORENZO:** I would move. I was trying to be
6 extra careful.

7 **THE COURT:** Yeah.

8 **MR. DiLORENZO:** I believe we do have a sufficient
9 basis.

10 **THE COURT:** Here's what I would like to do. I
11 promised everyone we would be done for lunch about 12:30.
12 It seems to me the best thing to do is to take a recess to
13 let the jury go, and we can have a discussion with just
14 counsel about any issues that might arise. We will work
15 that out and then we will be most efficient with the jury's
16 time.

17 So let's excuse the jury until 2:00. Okay? We'll
18 start with that.

19 (Jury exited the courtroom.)

20 **THE COURT:** Okay. We can excuse the witness. I
21 don't think it matters one way or the other. Thank you.
22 Why don't you step out of the room. I don't think we will
23 need you back before 2:00. In the off chance we need you
24 just now, you can stand outside. Thank you.

25 I want to hear from the defense on its objection.

1 **MS. GATTO:** Your Honor, I'm a little confused and
2 I might need some clarification from the government. What
3 are the timestamps that, one, they are trying to
4 authenticate with Detective Henry and two that they are
5 seeking to admit. If I could have those -- I'm not
6 sure -- this particular portion was noticed to us so we had
7 a lot of conversation. So I want to make sure that we are
8 all talking about the same thing.

9 **MR. DiLORENZO:** Part of the additional questions
10 the government was going to ask are foundation. I think we
11 established it is what happens here, and we are interested
12 in a statement that takes place in about a minute.

13 **THE COURT:** Right.

14 **MR. DiLORENZO:** What happens is Detective Henry
15 enters the station with the defendant --

16 **THE COURT:** You're trying to authenticate and have
17 admitted the entire BWC footage; there's a portion this
18 witness was present for; so you think, therefore, it's
19 authenticatable.

20 It is the same video, even though this witness
21 wasn't always present. So what is your response to that?

22 **MS. GATTO:** So --

23 **THE COURT:** Do you agree the BWC is authenticated,
24 at least to those portions the witness --

25 **MS. GATTO:** For the timestamp, she can say I was

1 there --

2 **THE COURT:** Okay. What makes it not authenticated
3 after that?

4 **MS. GATTO:** She cannot say -- she has no personal
5 knowledge.

6 **THE COURT:** So that objection is overruled. It is
7 the same video, same BWC, same officer who this person knows
8 was wearing the BWC and observes herself on the video. The
9 rest of it, the entire video, even this next minute she is
10 not present for, is in my view sufficient to authenticate
11 it. So that objection is overruled.

12 **MS. GATTO:** Your Honor, the next portion they are
13 going to show, maybe it would be helpful for the record if
14 you could say the timestamps.

15 **MR. DiLORENZO:** It's Government's Exhibit 3002-C.

16 **MS. SHROFF:** Okay. They can admit it, but they
17 cannot ask this witness any questions, since you've already
18 overruled my objection.

19 **THE COURT:** Right. When the government moves for
20 the admission of this BWC clip, I will admit it over your
21 authentication objection.

22 **MS. GATTO:** Yes. So now we will talk about what
23 the government can do with the video when it is a minute
24 after what we've seen here.

25 **MS. GATTO:** Correct.

1 They can't do anything with this witness who has
2 no personal knowledge of that statement.

3 **THE COURT:** Okay.

4 **MS. GATTO:** That they are attempting to elicit.

5 **THE COURT:** What's the government's response to
6 that?

7 **MR. DiLORENZO:** We are not going to ask this
8 witness about any of the substance, just some transitional
9 questions, you know, what happened. You know --

10 **THE COURT:** Are you intending to play that minute
11 with this witness?

12 **MR. DiLORENZO:** No, we are not.

13 **THE COURT:** Okay. So you are going to try to
14 establish what happened and what you know about what happens
15 in the next minute, but you are not going to play --

16 **MR. DiLORENZO:** That's correct but --

17 **THE COURT:** -- the purported omissions.

18 **MR. DiLORENZO:** I guess I misspoke. This is what
19 we plan to do. They split. We only planned to play that
20 clip. In that clip, our witness is not present but she
21 recognizes the room. She can say -- she sees the defendant
22 walk into that room and that's, you know, where her personal
23 knowledge ends about the defendant.

24 And then we would play the video or show the
25 picture, you know, the first screen. Do you recognize that

1 room? Yes, I'm familiar with that room. I've been to that
2 station; that's the room behind that door. If we play the
3 video, she wouldn't comment on the video she --

4 **MS. GATTO:** I'm sorry. They are playing the video
5 with audio or there is a still shot to identify the inside
6 of the precinct? I missed it.

7 **THE COURT:** No, I think they are going to ask her,
8 at this point, Do you understand where you are going, using
9 something like the still. She says, Yes. My understanding
10 is they are going back to book him or whatever. And they
11 are not asking her any questions about what happens
12 thereafter, but they are going -- they intend to play the
13 video after this, but not ask any questions. To play an
14 exhibit that is admitted.

15 **MS. GATTO:** With a witness who has no personal
16 knowledge of the --

17 **THE COURT:** Yes. Yes. That's what they're
18 planning to do.

19 **MS. GATTO:** I still object to this. It's not the
20 proper witness to play a video which essence the testimony,
21 right, is being admitted as Mr. Dunn's statements, same as
22 party opponent, being brought in through a witness who has
23 no personal knowledge, was not there.

24 I understand the authenticity; that I've lost on.
25 But they still need to lay a foundation with this witness in

1 order to play the exhibit and ask any questions, including,
2 Is this the inside -- during the statement that they are
3 trying to elicit.

4 **THE COURT:** What is your response to that?

5 **MR. DiLORENZO:** So, first -- I mean, we move to
6 have the body-worn camera footage entered into evidence at
7 this point.

8 **THE COURT:** It will be admitted. I will admit it
9 and I will state to the jury that it is admitted.

10 **MR. DiLORENZO:** And then it may be fairer if
11 rather than the full body-worn camera footage comes in, just
12 a clip like the relevant part.

13 **THE COURT:** Fine.

14 **MR. DiLORENZO:** We can clip that. The question is
15 whether you can play a portion of the BWC, including the
16 defendant's statements, an admitted video clip, but with a
17 witness who wasn't present for that.

18 **MR. DiLORENZO:** The evidence is already in and the
19 witness will just testify to what is there, basically
20 identifying the room; that's it. Not testifying to the
21 substance. Not testifying to the statements but, you know,
22 that room is the processing room beyond the door. So it
23 puts, like, a temporal piece on it and, I think, helps
24 explain to the jury --

25 **THE COURT:** Right.

1 **MR. DiLORENZO:** -- the context.

2 **MS. GATTO:** A couple of things. I just want to
3 make clear, they are only seeking to admit this timestamp
4 portion. You are saying body-worn camera. You are saying
5 just that portion. It is just for clarification; mine and
6 the record.

7 **THE COURT:** There's a Government's Exhibit, it has
8 a number.

9 **MS. GATTO:** Yes.

10 **THE COURT:** It has a particular set of minutes
11 covered it's the BWC. It's admitted.

12 The only objection I've heard so far is that it is
13 inauthentic. I've overruled that objection. It is
14 therefore admitted.

15 **MS. GATTO:** Your Honor, I want to make clear the
16 portion we just showed her is not the number. There is the
17 BWC, the whole video.

18 **THE COURT:** Yep. How about this. I get that and
19 I --

20 **MS. GATTO:** I'm sorry. I don't mean to interrupt.
21 This is separate from my objection. I want the record to be
22 clear.

23 **THE COURT:** I understand. I am saying the BWC,
24 whatever this clip is here, 27 to 38 minutes long.

25 **MS. GATTO:** Yes.

1 **THE COURT:** Is admitted.

2 The government -- let's just call it a number
3 that's going to be admitted. The only objection to the BWC
4 is authentication, as I understand it.

5 **MS. GATTO:** That's what I am trying. It's my
6 fault we are not making it clear. We have other objections
7 we --

8 **THE COURT:** To other parts of the BWC.

9 **MS. GATTO:** Exactly.

10 **THE COURT:** Sorry. I get it. The authentication
11 objection is overruled. As to the whole BWC, we now have to
12 think about whatever the specific clip is the government
13 wants to admit. What exact timestamps does the government
14 seek to admit?

15 **MR. DiLORENZO:** We actually have it as a separate
16 exhibit 3002-C.

17 **THE COURT:** Okay.

18 **MR. DiLORENZO:** I anticipated other objections.
19 As the Court said, it is -- we are okay with entering that
20 clip, which is 3002-C.

21 **THE COURT:** What are the timestamps?

22 **MR. PARRON:** It starts at 23:52:18.

23 **THE COURT:** Is everybody writing this down or do
24 you know it?

25 **MS. GATTO:** I have it.

1 **THE COURT:** Okay. So you know what they are
2 talking about.

3 **MS. GATTO:** Well, I don't.

4 **THE COURT:** They keep saying the number of the
5 exhibit.

6 **MS. GATTO:** I know. 3002-C. I know what they
7 want to show.

8 What is happening in the colloquy is, one, we are
9 talking about a longer clip, and we're talking about what we
10 just showed her to authenticate. This is not the exhibit we
11 are talking about.

12 **THE COURT:** I understand that. I understand.

13 **THE COURT:** Now they are saying that we just
14 showed her a portion leading up to the clip that they want.
15 And now they want to admit this clip. Right? Based on the
16 fact that the Court has said that it is authentic. Now they
17 want to show the clip she hasn't seen arguably she hasn't
18 authenticated but I understand I am Overruled to elicit
19 statement that are said not in her presence and they are
20 going to ask some question that somehow ties it relevant to
21 her based on the room, which has no relevance here. And
22 it's prejudicial because the jury is going to be left with
23 the impression that Detective Henry either elicited the
24 statement or took this statement or somehow is adopting this
25 statement.

1 **THE COURT:** Well, we can be clear about that.

2 **MS. GATTO:** I still believe that this
3 witness -- to testify about something she hasn't heard, is
4 improper.

5 **THE COURT:** So okay. I understand. I take it
6 that the problem with admitting just the whole BWC, even
7 though I believe the whole BWC is authentic, is that you
8 have other evidentiary objections to other portions of it.

9 So the government is trying to be responsive to
10 that by eliminating as many as it can of those other
11 evidentiary objections and getting to the portion that it
12 wants to show them. And then we have just the objection as
13 to behavior there is to the snippet.

14 Again, the whole thing is authentic. There are
15 statements, whatever there may be, all sorts of evidentiary
16 objections. Other than the fact that this witness doesn't
17 have personal knowledge of what's stated in this 3002-C
18 clip, do you have any other objections to the government
19 asking questions about, essentially, what leads up to, like,
20 where are they going, establishing she doesn't go in with
21 them and the like. And then beyond that, do you have any
22 other objections?

23 **MS. SHROFF:** I believe it is irrelevant and --

24 **THE COURT:** What is the relevance objection?

25 **MS. GATTO:** That it's not relevant to this

1 witness's testimony.

2 **THE COURT:** It's relevant to the trial. It's
3 admissible in that way. It's also party admission. You're
4 just saying it's not connected enough to this witness's
5 testimony to not satisfy some sort of general requirement
6 that evidence has to be played in the presence of a witness
7 who knows something about it.

8 **MS. GATTO:** The question they are going to ask her
9 in order to get this before the jury is not relevant.

10 **THE COURT:** Right. Right. Right.

11 I'm not sure I agree with that but in any event,
12 the objection is overruled. I think for a lot of reasons.
13 First of all, I believe the whole BWC is authenticated. So
14 the objection generally to authentication is overruled.

15 I think the way I would like to proceed is to have
16 her make crystal clear on direct that she, the moment they
17 pass through the door, isn't there, doesn't follow, it's not
18 her BWC. She is not there for the statements. But you can
19 play the video thereafter.

20 Look, I get it's the government's burden. But I'm
21 quite confident that if we really, really, really had to get
22 there, we could take someone who apparently is having
23 somewhat of a medical emergency and get her on the phone or
24 video or in person to duplicate the testimony about what
25 happens on that video. And I'm just not prepared to do that

1 at this time, but we can do it if we need to.

2 So when the jury comes back at 2:00, when you move
3 for the admission of 3002-C, if I am remembering the numbers
4 correctly, I am going to admit it but we are going to be
5 crystal clear with the jury about what it is and what it is
6 not.

7 See everybody at 2:00.

8 (Recess from 12:58 p.m. to 2:04 p.m.)

9 (Jury entered the courtroom.)

10 **THE COURT:** Thank you. Let's re-call the witness,
11 please.

12 (Witness re-takes the stand.)

13 **THE COURT:** Welcome back, Detective Henry. You
14 may sit.

15 Just a reminder, you remain under oath.

16 **THE WITNESS:** Yes, sir.

17 **MR. DiLORENZO:** Your Honor, Government's Exhibit
18 2003-C. We would --

19 **THE COURT:** You are moving its admission?

20 **MR. DiLORENZO:** Yes. Yes.

21 **THE COURT:** And I am granting that motion for
22 admitting --

23 **MR. DiLORENZO:** Correct.

24 **THE COURT:** Government's Exhibit 3002-C is
25 admitted and may be published to the jury.

1 (Government's Exhibit 3002- was admitted and
2 published.)

3 **BY MR. DiLORENZO:**

4 **Q.** Now, I just have a few questions for you. And
5 I'll orient you.

6 You indicated that you were involved in the
7 transport of the defendant to the local police station.
8 Right?

9 **A.** Correct.

10 **Q.** And you had an occasion to review Officer Thandi's
11 body-worn camera footage. Right?

12 **MS. GATTO:** Objection, Your Honor.

13 **THE COURT:** Is asked and answered the objection?

14 **MS. GATTO:** No. Are we leading her through this
15 or are we --

16 **THE COURT:** You didn't object earlier when he
17 asked that question. It's been established; that's all he
18 asked just now.

19 **MS. GATTO:** Okay.

20 **THE COURT:** If you have an objection to his having
21 asked --

22 **MS. GATTO:** No, I'm not objecting under that. No.

23 **THE COURT:** Okay.

24 **MR. DiLORENZO:** Then what happened from the time
25 you went from the garage to the station?

1 **THE COURT:** Pull that microphone up. There we go.
2 There we go.

3 **THE WITNESS:** There's a report writing room in the
4 precinct. So at that point in time, I went there to begin
5 the report. Officer Thandi took the defendant into the
6 processing room, where he would be fingerprinted and held
7 until the report writing is done. Then he is in the
8 citation release, where he is to report on his own
9 recognizance.

10 **MR. DiLORENZO:** Basically, you went right;
11 Officer Thandi went left with the defendant.

12 **MS. GATTO:** Objection, Your Honor.

13 **THE COURT:** Sustained. Surely there is a question
14 that is appropriate here.

15 **BY MR. DiLORENZO:**

16 **Q.** Where did the defendant and Officer Thandi go?
17 You indicated you went to work on the processing.

18 **A.** So I went to the report writing room. They go to
19 the processing room.

20 **Q.** And showing you Government's Exhibit -- have you
21 been to the processing room before?

22 **A.** Yes, several times.

23 **Q.** Were you in the processing room with them?

24 **A.** No, I was not.

25 **Q.** And if I could show you just the first screen of

1 2003-C. Do you recognize that room?

2 **A.** Yes.

3 **Q.** And what is that?

4 **A.** That is the processing room.

5 **MR. DiLORENZO:** I have no further questions at
6 this time.

7 With the Court's permission, we would like to play
8 the video.

9 **THE COURT:** You may.

10 **MR. DiLORENZO:** With volume.

11 (Video played.)

12 Actually, actual pause it for a second.

13 Sorry. We had an issue with the volume. I think
14 we are good now.

15 Please play.

16 (Video played.)

17 I think the volume was a little low. If we could
18 play it one more time so we -- can you crank it?

19 **THE COURT:** Let's go it only one more time. Let's
20 get the audio so people can actually hear it.

21 (Video played.)

22 **MR. DiLORENZO:** Thank you, Your Honor.

23 **THE COURT:** You're welcome.

24 Cross-examination.

25 **MS. GATTO:** Thank you, Your Honor.

1 **THE COURT:** Good afternoon.

2 **CROSS-EXAMINATION OF DAINA HENRY**

3 **BY MS. GATTO:**

4 **Q.** Detective Henry, I just want to go back to the
5 start of your night on August 10th. You said that you were
6 deputized as a U.S. Marshal. Do I have that right?

7 **A.** Correct.

8 **Q.** And was that the first time you had that process
9 before you went out on patrol?

10 **A.** That is correct.

11 **Q.** And that was pursuant to a Presidential Executive
12 Order?

13 **A.** Yes.

14 **Q.** And you were on a presidential task force as part
15 of that "beat", I'll call it, if that's fair?

16 **A.** The overtime assignment said it was going to be a
17 joint task force with Park Police; that is what we were
18 told.

19 **Q.** Thank you.

20 I'm sorry. I think I just asked this but I missed
21 your answer. Was that the first time you had done a joint
22 task force like that?

23 **A.** Yes.

24 **Q.** And is that the last time you had done a joint
25 task force?

1 **A.** No.

2 **Q.** Let's start with how your night began. What time
3 do you convene to start the evening of law enforcement?

4 **A.** I started about 8 p.m.

5 **Q.** And you described on your direct examination you
6 break up into smaller groups eventually, with you assigned a
7 federal officer. Correct?

8 **A.** Yes.

9 **Q.** And around what time are you breaking off into the
10 small groups?

11 **A.** I'd say that was about 9 p.m.

12 **Q.** And at what time do you end up in the area of 14th
13 and U?

14 **A.** Approximately 10.

15 **MS. GATTO:** And if we could put up Government's
16 Exhibit 5000, please.

17 **BY MS. GATTO:**

18 **Q.** So, you looked at this picture on your direct
19 examination. Do you recall that?

20 **A.** Yes, ma'am.

21 **Q.** And the interaction with Mr. Dunn, do you recall
22 around what time that was?

23 **A.** I'd say closer to 11, roughly.

24 **Q.** So fair to say about an hour you had been
25 patrolling in this area. Correct?

1 **A.** Yes.

2 **Q.** What is this neighborhood called?

3 **A.** This is U Street.

4 **Q.** And you've been here before. Correct?

5 **A.** Yes, ma'am.

6 **Q.** You are familiar with this area?

7 **A.** Yes, ma'am.

8 **Q.** Have you done patrols here?

9 **A.** I have closer to the stations but, yes, I've
10 walked along and drove along this area in my patrol car,
11 yes.

12 **Q.** Before this night, had you ever done patrol with
13 such a large mass of federal law enforcement?

14 **A.** No.

15 **Q.** Is it fair to say it's a fairly low-crime area
16 compared to other parts of D.C.

17 **A.** No.

18 **Q.** It's certainly not a high-crime area of Washington
19 D.C.

20 **A.** That's not fair to say.

21 **Q.** It's a vibrant nightlife?

22 **A.** Yes, ma'am.

23 **Q.** There's lots of bars?

24 **A.** Yes, ma'am.

25 **Q.** There is a bunch of gay bars in this neighborhood?

1 **A.** I don't know for sure, no.

2 **Q.** Well, in the photo you can see there's a pride
3 flag in the back.

4 **A.** I see a flag. I don't know what that
5 establishment is, though.

6 **Q.** Are you familiar with the establishments around
7 there?

8 **A.** Not many of them, no.

9 **Q.** What about Bunker? Do you know Bunker?

10 **A.** I do not.

11 **Q.** The interaction you described with Mr. Dunn, this
12 picture here, is this accurately capturing how many officers
13 were around when that was happening?

14 **A.** Yes.

15 **Q.** You talked about having your body-worn camera on
16 you at the time?

17 **A.** Yes, ma'am.

18 **Q.** It was not activated --

19 **A.** No.

20 **Q.** -- while you were on the street?

21 **A.** No, ma'am.

22 **Q.** I think I heard on the direct you initiated your
23 body-worn camera. Correct?

24 **A.** That's correct.

25 **Q.** I think you used the words you initiate at the

1 start of the event. Correct?

2 A. Yes.

3 Q. An event would be some law enforcement interaction
4 that is worthy of recording. Correct?

5 A. Not necessarily.

6 Q. Well, for example, traffic stops, you would
7 initiate it there. Correct?

8 A. Yes, ma'am.

9 Q. And any time where there's a potential for
10 arrests. Correct?

11 A. Yes, ma'am.

12 Q. And at no time while Mr. Dunn was on the street
13 here, before the sandwich is thrown, did you initiate your
14 body-worn camera.

15 A. No, ma'am.

16 Q. Understood.

17 And I think you described that there were really
18 two interactions that you were a part of, correct, with
19 Mr. Dunn? You spoke with him. There was some exchange.
20 Correct? Right when you first meet him.

21 A. That's correct.

22 Q. And he was compliant when you asked him to cross
23 the street?

24 A. He was.

25 Q. And there was the second interaction, which I

1 think is the picture. Does that sound right?

2 **A.** Yes, ma'am.

3 **Q.** And that was before the sandwich was thrown?

4 **A.** Correct.

5 **Q.** Maybe I will show you again, but there is a chase,
6 following Mr. Dunn.

7 **A.** Yes, ma'am.

8 **Q.** You're in the back of the group chasing Mr. Dunn?

9 **A.** I believe there was another agent behind me.

10 **Q.** Let's just look at the video so this way we are
11 all on the same page.

12 **MS. GATTO:** Mr. Shephard, can you pull up
13 Government's Exhibit 3001? It's 3000.

14 (Video played.)

15 **MS. GATTO:** This is the body cam footage; is that
16 correct?

17 **THE WITNESS:** Yes.

18 **MS. GATTO:** If you could play, Mr. Shephard, to
19 22:59:50.

20 (Video played.)

21 I'm sorry, Mr. Shephard. Could you play it again,
22 just about 10 seconds back, with the sound?

23 While we're waiting for that, the officers up
24 ahead, those are the CBP officers. Am I right?

25 **THE WITNESS:** Yes, ma'am.

1 (Video played.)

2 **THE COURT:** Can we pause for one second?

3 So what was admitted was 3000-A.

4 **MS. GATTO:** I really am sorry, but I am pretty
5 sure this is the video.

6 **THE COURT:** That's the reason the jury is not
7 seeing it. It's not being published to the jury because you
8 asked to pull up 3000 --

9 **MS. GATTO:** It's totally my fault. You looked at
10 me as if --

11 **THE COURT:** No, no. I wasn't expecting to hear
12 audio.

13 **MS. GATTO:** I'm sorry. I don't understand.

14 **THE COURT:** There's two things to make sure of.

15 **MS. GATTO:** Oh, fair enough.

16 **THE COURT:** 3000-75, there is a period at the
17 beginning of the audio; that's where the BWC happens.

18 **MS. GATTO:** I knew we were at a point there should
19 be audio.

20 **THE COURT:** I don't think so we hadn't gotten --

21 **MS. GATTO:** This is the portion of 3000 and A. I
22 will identify it as 3000-A.

23 **THE COURT:** Great.

24 **MS. GATTO:** It's just --

25 **MR. SILVERMAN:** Court's indulgence for one moment.

1 (Brief pause.)

2 **MS. GATTO:** Okay. I think there is a little
3 confusion with the identification. They haven't produced
4 3000-A, but we identified it as this snippet.

5 **THE COURT:** Very well. Let's just assume this is
6 3000-A. It may be published to the jury. The only thing
7 that's been admitted is 3000-A. So assuming this is
8 identical to 3000-A, then we don't have a problem.

9 (Discussion off the record between defense and
10 government counsel.)

11 **MS. GATTO:** Okay.

12 If we can start 3000-A from the beginning with
13 sound and end it at 22:59:50.

14 I'm sorry, Your Honor, that the exhibits are
15 messy.

16 **THE COURT:** Just to be -- is everyone on the jury
17 seeing the video at this time?

18 **JURORS:** [Nodded]

19 **THE COURT:** This is 3000-A. For all intents and
20 purposes, we will play from the beginning of 3000-A through
21 the time that counsel said.

22 **MS. GATTO:** Yes.

23 So, Mr. Shephard, if you could play with sound,
24 Government's Exhibit 3000-A, and stop at 22:59:50.

25 **THE COURT:** And just so the jury isn't confused,

1 when we are talking about the time that they are going to
2 stop this, they are referring to the upper, right-hand
3 timestamp, which is the time of day, rather than the time of
4 the video. If you understand the difference. Thank you.

5 **BY MS. GATTO:**

6 **BY MS. GATTO:**

7 **Q.** And just to set it up, Detective Henry, it is your
8 body-worn camera footage?

9 **A.** It is.

10 **Q.** This was engaged, for the first time, after you
11 starting running.

12 **A.** You can see my left hand go up to my chest. This
13 is the buffering period I spoke of before, where it's going
14 to capture some time before the event.

15 **Q.** So maybe I asked it the wrong way.
16 The moment you press the button --

17 **THE COURT:** I'm sorry.

18 **MS. GATTO:** Yeah, maybe there is a better word to
19 use.

20 **BY MS. GATTO:**

21 **Q.** When you press the button; that's when you began
22 running; is that right?

23 **A.** No.

24 **Q.** It's before you start running?

25 **A.** No.

1 **Q.** It's capturing the 30 seconds before you press the
2 button?

3 **A.** No.

4 **Q.** Okay. Maybe I am missing how the body cam works.
5 When do you press the button in relation to the
6 events?

7 **A.** You will see my left hand go up to my chest when I
8 get a little closer to Mr. Dunn and the agent out in front
9 with him. And I've stopped running at that point in time.

10 **Q.** Okay.

11 **THE COURT:** Let me give it a whirl. We watched
12 this video and about the 30-second mark of the video, I
13 don't mean 30 seconds on the time, but 30 seconds into the
14 video, is approximately when you tap it.

15 **THE WITNESS:** That's correct.

16 **THE COURT:** What the BWC does for you is it then
17 captures 30 seconds before your tap but without audio.

18 **THE WITNESS:** That's correct.

19 **THE COURT:** Then it has audio.

20 **THE WITNESS:** That's correct.

21 **BY MS. GATTO:**

22 **Q.** Detective Henry, this is when we have audio?

23 **A.** Yes, ma'am.

24 **Q.** Thank you.

25 **MS. GATTO:** And thank you, Your Honor.

1 Okay. Mr. Shephard, if you could continue playing
2 it.

3 (Video played.)

4 Can you stop, Mr. Shephard?

5 **BY MS. GATTO:**

6 **Q.** So this bald gentleman states, We are MPD and we
7 have jurisdiction too. Who is that?

8 **A.** He said, We are MPD. He is an MPD detective.

9 **Q.** That is a local law enforcement police officer?

10 **A.** That is correct.

11 **Q.** What is his name?

12 **A.** I don't have his name.

13 **Q.** Did you see him stop Mr. Dunn?

14 **A.** No.

15 **Q.** But by the time you got there, Mr. Dunn is already
16 being restrained?

17 **A.** That is correct.

18 **Q.** And you stay on this corner with Mr. Dunn for the
19 entirety of the time he is there, before he is transported
20 to the next location. Correct?

21 **A.** Yes, ma'am.

22 **Q.** You are what is called the arresting officer?

23 **A.** Yes, ma'am.

24 **Q.** So you have a lot of responsibilities as arresting
25 officer; is that fair to say?

1 **A.** Yes, ma'am.

2 **Q.** You're responsible for all the paperwork that is
3 going to be around this particular arrest as a police
4 officer?

5 **A.** Not necessarily.

6 **Q.** Well, you'll be in charge of the inventory.
7 Right?

8 **A.** Yes.

9 **Q.** And the initial processing involves running a
10 license check. Right?

11 **A.** No.

12 **Q.** Taking Mr. Dunn's license and verifying his ID?

13 **A.** Correct.

14 **Q.** Running a warrant check?

15 **A.** Yes.

16 **Q.** And are you responsible for getting what is called
17 a CCN number?

18 **A.** That's correct.

19 **Q.** And what is a CCN number?

20 **A.** It's a number that MPD uses, or any agency within
21 D.C. who is making arrests would have to get from the
22 dispatch in order to be able to identify that specific
23 arrest.

24 **Q.** And is that one of the first things you are doing
25 at the scene?

1 **A.** That happens after making sure he is secured and I
2 have his information. After that, I then would get the
3 CCNs.

4 **Q.** And do you remember how long it took to get the
5 CCN here?

6 **A.** Several minutes.

7 **Q.** And do you know how long it took to -- let me
8 withdraw that and let me talk about a transport. This would
9 also be another responsibility of yours, correct, to find
10 transportation for Mr. Dunn to the next location he is going
11 to?

12 **A.** That's correct.

13 **Q.** And the next location he is going to will be a
14 police precinct?

15 **A.** Yes, ma'am.

16 **Q.** He is going to a local police precinct?

17 **A.** Yes, ma'am.

18 **Q.** And in the last video you saw the police precinct
19 he was taken to. Is that the third District?

20 **A.** I believe the Third or Fourth District. I don't
21 recall.

22 **Q.** It is a local police district?

23 **A.** It is.

24 **Q.** And you arranged the transportation. Correct?

25 **A.** I do. Uh-huh.

1 **Q.** And that local police precinct is only about three
2 minutes away from that location?

3 **A.** Yes, ma'am.

4 **Q.** It took a while to get transport for Mr. Dunn?

5 **A.** Correct.

6 **Q.** And is that unusual?

7 **A.** No.

8 **Q.** And it took a while to get the CCN number.

9 Correct?

10 **A.** Correct.

11 **Q.** Is that unusual?

12 **A.** At times, yes.

13 **Q.** For this case?

14 **A.** Not this time of night, no.

15 **Q.** If I say to you that all in all, the entire time
16 you were with Mr. Dunn on this street corner, after the
17 arrest, it was over 30 minutes; is that correct?

18 **A.** Yes.

19 **Q.** When you start, when we are looking at this image
20 here, am I right there is only about four or five officers
21 at the original arrest?

22 **A.** Right. Correct.

23 **Q.** And nearly immediately when you arrive, you start
24 the work of the things we are discussing; transport, CCN,
25 et cetera; is that correct?

1 **A.** That's correct.

2 **Q.** And the other officers, they secure Mr. Dunn?

3 **A.** That's correct.

4 **Q.** Mr. Dunn is restrained in handcuffs?

5 **A.** He is.

6 **Q.** And he eventually is sat down on the ground?

7 **A.** Yes.

8 **Q.** He is speaking. Correct?

9 **A.** Yes.

10 **Q.** But he is otherwise not physically non-compliant
11 with the officers.

12 **A.** That's correct.

13 **Q.** You would even describe him as compliant. Right?

14 **A.** At this point, yes.

15 **Q.** Throughout the time, for the 21 minutes he's
16 there?

17 **A.** At this corner?

18 **Q.** Yes.

19 **A.** Yes.

20 **Q.** At some point the number of officers that arrive
21 at the scene swells to a very large number?

22 **A.** Correct.

23 **Q.** If I could show you a photograph, which has been
24 marked as Defendant's Exhibit 3.

25 **MS. GATTO:** Ms. Moore, I think we have that, if I

1 could show it to the witness.

2 **BY MS. GATTO:**

3 Q. At a high level, what are we looking at?

4 A. You are looking at Officer fields who is my
5 partner for the night she is with her group.

6 Q. Let me take a step back. This is the corner of
7 the location where Mr. Dunn was arrested?

8 A. That's correct. So this is 15th and U Street
9 northwest.

10 Q. And this fairly and accurately depicts that corner
11 at that moment?

12 A. Correct.

13 MS. GATTO: Your Honor, I move Defendant's Exhibit
14 3 into evidence.

15 THE COURT: Any objection?

16 MR. DiLORENZO: No objection, Your Honor.

17 THE COURT: Defense 3 is admitted and may be
18 published.

19 (Defendant's Exhibit 3 was admitted and published.)

20 Q. So now, Detective Henry, what are we looking at
21 here?

22 A. Am I able to -- yeah. Perfect. So Officer Fields
23 is my backup partner. Early in the night we had decided,
24 and I believe I stated before, to separate because there
25 were so many of us. And we, basically, do not serve our

1 purpose of being visible and being able to stop any crime or
2 anything we see in the area, if we are all walking or
3 working together.

4 So once I call out that we have a foot pursuit and
5 one stopped and arrest, she does as I expect her to do, as
6 my backup officer, because other officers are with her and
7 don't have radios, they come with her as well. Now the
8 original group is there.

9 Q. So Detective Fields comes; you call out to her?

10 THE COURT: Officer fields.

11 THE WITNESS: Once I put out the transmission on
12 my radio, every officer within my department can hear it.
13 So every officer knows we have APO. We have an arrest.
14 Officer Fields, being closest to the scene, as I would
15 expect her to, she comes to check if I am okay, if there is
16 anything needed. She ask assist with it.

17 BY MS. GATTO:

18 Q. You said APO; that is assaulting police officer.

19 A. Yes, ma'am.

20 Q. But it was not APO, it was a disorderly conduct.

21 A. That's correct, yes.

22 Q. Those charges were lodged locally?

23 A. Yes, ma'am.

24 Q. And sent to your local police --

25 MR. DiLORENZO: Objection.

1 **THE COURT:** Let's get on the phone.

2 (Bench conference.)

3 **MR. DiLORENZO:** Your Honor, we are getting into
4 some of the charging areas. First, it is beyond the scope
5 of the government's direct. Second, it's not relevant, you
6 know, some of the charging decisions. The question was
7 going into the local.

8 I can guess, based on the defense response to the
9 government's motion, that they will be attempting to get
10 into, you know, the processing, appearing in Superior Court;
11 and that's entirely not relevant. I would object and would
12 like to nip it in the bud.

13 **MS. GATTO:** Your Honor, first, I think they made
14 this very relevant when they showed a scene to the arresting
15 officer about the arrest and the processing, especially
16 since the processing was elicited on direct examination. It
17 relates to statements that were just elicited about how they
18 came to those statements, where he was at the time. Is
19 here? And then goes there and just elicit statements about
20 a local police precinct. She is arresting officer on the
21 stand. They may not have elicited the swell of officers.

22 **THE COURT:** I will let you ask questions about
23 the, arrest up through the arrest, but not the decisions
24 thereafter about whether to pursue charges, what charges to
25 pursue and what court.

1 **MS. GATTO:** Understood.

2 **THE COURT:** Okay. Thank you.

3 (Bench conference concluded.)

4 **BY MS. GATTO:**

5 **Q.** Do you know how long after Mr. Dunn was restrained
6 that you made that phone call to Officer Fields?

7 **A.** I did not make the phone call to Officer Fields.

8 **Q.** Radio?

9 **A.** I did not make it specifically to her.

10 **Q.** Do you know how long after Mr. Dunn was restrained
11 that Officer Fields got notice that there was an arrest on
12 the corner of 15th and U?

13 **A.** It would have been within two minutes max. It
14 would have been when I go over the air and say that we have
15 an arrest and what it is for.

16 **Q.** So within two minutes of Mr. Dunn's arrest, there
17 are at least another 10 officers who arrive at the scene?

18 **A.** That is incorrect.

19 **Q.** Should we count them?

20 **A.** No. That is incorrect as to what I stated. What
21 I stated was after the arrest or after he is detained, I
22 then go over the air and then make the call. I am not
23 saying it is two minutes until she arrives on scene. It is
24 two minutes, at least, or two minutes max when she is
25 notified that we have an incident and where the address of

1 the incident is.

2 Q. It's probably my fault. I'm not being clear.

3 How long after Mr. Dunn is restrained, did these
4 officers that we are viewing in this picture arrive on the
5 scene?

6 A. I am not sure. I'd say within a matter of five or
7 so minutes they arrive.

8 Q. Thank you. So five or so minutes. There is
9 now -- and maybe I'll count but correct me if I'm wrong,
10 were about 15 or 20 officers on the corner of 15 and U?

11 A. That is correct.

12 Q. You are the arresting officer?

13 A. Yes. Yes, ma'am.

14 Q. You are doing the paperwork?

15 A. Yes, ma'am.

16 Q. You are calling for the transport?

17 A. Yes.

18 Q. Mr. Dunn is compliant. Correct?

19 A. Yes.

20 Q. Sitting on the floor. Correct?

21 A. Yes.

22 Q. So there are 14 officers at the corner of 15th and
23 U, they remain there for the 32 minutes. Am I right?

24 A. Yes.

25 Q. Doing what?

1 **A.** They are on the scene.

2 **Q.** After Mr. Dunn is -- while Mr. Dunn is at the
3 scene, can we talk a little bit more about some of the tasks
4 that you are doing?

5 **A.** Yes.

6 **Q.** Those tasks are unsupported by the federal
7 officers that are there?

8 **A.** That is incorrect.

9 **Q.** You search him?

10 **A.** Yes.

11 **Q.** You search him by yourself?

12 **A.** I do not search him.

13 **Q.** One officer searches Mr. Dunn?

14 **A.** I believe at least one officer searches Mr. Dunn.

15 **Q.** You get his license?

16 **A.** Yes.

17 **Q.** You run his license -- I use that term but you
18 send the information that is in the license to some central
19 place to run it?

20 **A.** Can I correct or clarify?

21 **Q.** Yeah. Sure.

22 **A.** So the information that is from his license, his
23 name, first, last, date of birth is given to our dispatch.
24 Our dispatch then has programs that they run the information
25 through, again, as I stated, to make sure that he doesn't

1 have any warrants or any attempts to locate or if there are
2 other agencies that need to speak with him or be aware that
3 he is being detained. So, yes, I do do that at one point.

4 Q. The searches that you run and the inventory that
5 you take, there are no issues of concern with Mr. Dunn on
6 that street?

7 A. No.

8 Q. You search his body?

9 A. I do not.

10 Q. Someone at the scene who then provides this
11 information to you as the arresting officer conducts a
12 physical search on him?

13 A. Correct.

14 Q. He has no weapons?

15 A. No.

16 Q. He has 14 bucks in his wallet, and he has nasal
17 spray.

18 A. Yes.

19 Q. But nothing else that would raise concerns for law
20 enforcement at a scene.

21 A. Correct.

22 MS. GATTO: I'm sorry. Can I have a moment?

23 (Brief pause in proceedings.)

24 BY MS. GATTO:

25 Q. In addition to having the property, you write it

1 down.

2 A. I do.

3 Q. Okay. And you tell him where, eventually, he can
4 pick up that property when he is released?

5 A. No.

6 Q. You give that information to the next officer who
7 is going to process him?

8 A. No.

9 Q. When the officer comes, who transports him? What
10 was his name?

11 A. Officer Thandi. He arrives at the end of those 32
12 minutes.

13 Q. When Officer Thandi arrives?

14 A. Yes.

15 Q. When Officer Thandi takes Mr. Dunn, he takes him
16 to the third precinct?

17 A. Correct.

18 Q. We saw the video of the inside of the third
19 precinct.

20 A. Yes, ma'am.

21 Q. I think you started to testify about what happens
22 at that third precinct.

23 A. Correct.

24 Q. You go one way, Mr. Dunn goes another way.

25 A. Correct.

1 Q. He will be processed at this third precinct?

2 A. Yes, ma'am.

3 Q. And Mr. Dunn was processed in that third precinct?

4 A. Correct.

5 Q. And then he was taken to a cell. Correct?

6 A. I'm not aware of what happens after that point.

7 Q. Well, when you dropped him off, you knew he was
8 being processed for court. Correct?

9 A. Correct.

10 Q. You knew he was being processed for Superior
11 Court. Correct?

12 MR. DiLORENZO: Objection.

13 THE COURT: I will allow this one question.

14 BY MS. GATTO:

15 Q. You can answer. You knew he was being processed
16 for D.C. Superior Court.

17 A. Correct.

18 Q. And you knew that he would be held in custody at
19 the precinct until he went to D.C. Superior Court.

20 A. I did not know that.

21 Q. Well, you've been inside that police precinct.

22 A. Correct.

23 Q. You know that there are cells there for people who
24 are brought into that precinct in custody?

25 A. Correct.

1 **Q.** And you knew that he had been charged in D.C.
2 Superior Court.

3 **A.** Correct.

4 (No discernible objection.)

5 **THE COURT:** Overruled.

6 **BY MS. SHROFF:**

7 **Q.** You knew after he was processed, he would then go
8 to D.C. Superior Court?

9 **A.** That's correct.

10 **Q.** And in between the time processing and going to
11 D.C. Superior Court, he would be held in custody in one of
12 the cells.

13 **A.** No.

14 **Q.** He's held in a cell before he goes to D.C.
15 Superior Court, yes or no?

16 **A.** That's not a yes or no answer.

17 **Q.** That police precinct, you've been in, I'm sure, a
18 thousand times.

19 **A.** Uh-huh.

20 **Q.** You've processed arrests there yourself.

21 **A.** Yes, ma'am.

22 **Q.** You've taken individuals there yourself.

23 **A.** Yes, ma'am.

24 **Q.** And they're in custody. Meaning they are in
25 custody; they are not free to leave.

1 **A.** Correct.

2 **Q.** Okay. And is it your testimony sometimes they are
3 held in a cell, sometimes they sit on a bench?

4 **A.** No.

5 **Q.** Is it your testimony that sometimes they go
6 straight to D.C. Superior Court?

7 **A.** No.

8 **Q.** Okay. Either way, when an individual is brought
9 into custody to the police precinct, they are in the control
10 of the police.

11 **MR. DiLORENZO:** Your Honor, objection.

12 **THE COURT:** To that question?

13 **MR. DiLORENZO:** To the underlying question. The
14 witness has explained she essentially went one way. She
15 didn't see what happened to the defendant. And these
16 questions are geared at what generally happens. And it's
17 clear there is no "general" treatment. There are a variety
18 of factors and those are not relevant.

19 **THE COURT:** Overruled. But I do think we are
20 spinning in circles here.

21 **MS. GATTO:** I think you are right. Can I have a
22 moment?

23 (Brief pause in proceedings.)

24 **MS. GATTO:** Your Honor, we have no further
25 questions.

1 Thank you, be Detective Henry.

2 **THE COURT:** Redirect?

3 **MR. DiLORENZO:** Just a few questions.

4 **THE COURT:** I won't hold you to it. People always
5 say that.

6 **MR. DiLORENZO:** Right. They do.

7 **THE COURT:** You really mean it this time.

8 **MR. DiLORENZO:** I mean it. I will try to make it
9 quick.

10 **REDIRECT EXAMINATION OF DAINA HENRY**

11 **BY MR. DiLORENZO:**

12 **Q.** You saw the picture of Defense Exhibit 3, the
13 scene where the arrest was, and there were a number of
14 officers in that picture and agents. What were those
15 officers and federal agents doing before the defendant was
16 arrested for striking Agent Lairmore with the sandwich?

17 **A.** So, myself and maybe 10 other agents were on the
18 corner of 14th and U. Officer Fields and the agents, they
19 were in the area but on another side of U Street. So when
20 the call goes out, not only do the agents who arrived on
21 scene before me, are on scene, but those who are catching
22 up, who were originally with us, they are arriving on scene.

23 Again, as I stated, once I put over the air that
24 there is an assault, everyone in the department hears it.
25 Officer Fields heard it on her radio. She comes over. And

1 because she is the only person in that group that has a
2 radio, we all decide to stick together.

3 Because the agents, at this point, have no way of
4 communicating unless she is with them. We do not have
5 radios that are equipped to speak to our dispatch or any
6 other dispatch within D.C.

7 So they are with her, as they have been since we
8 started the assignment; that's the reason why we have quite
9 a few agents congregating at that area.

10 Q. This is 1-A. You just used the word "assignment."
11 What was the assignment that you and the other officers in
12 that photograph were doing --

13 MS. GATTO: Your Honor, objection to the other
14 officers' assignments.

15 MR. DiLORENZO: If you know.

16 THE COURT: Overruled to the extent you know.

17 THE WITNESS: Excuse me.

18 So the assignment for the night was to effect the
19 arrest -- excuse me -- the arrest that needed to be made; to
20 assist us in affecting the arrest; and then also for us to
21 be visible, to keep in mind public safety as well.

22 MR. DiLORENZO: All right. Thank you.

23 No further questions.

24 THE COURT: Thank you.

25 Detective, thank you very much for your time today

1 and thank you also for your service. You are excused.

2 **THE WITNESS:** I appreciate it. Thank you, sir.

3 (Witness steps down.)

4 **MR. DiLORENZO:** Your Honor, I believe that would
5 be the government's case. I know that there is a couple of
6 outstanding legal issues. Maybe before we formally rest,
7 we'd like maybe some certainty on those. But I don't
8 believe the government will introduce any further evidence.

9 **THE COURT:** What do you propose by way of next
10 steps then?

11 **MR. DiLORENZO:** As soon as those legal issues are
12 resolved, we can tell the Court we can rest.

13 **THE COURT:** But do you think I should excuse the
14 jury and we have a conversation outside the presence of the
15 jury?

16 **MR. DiLORENZO:** That's a good idea.

17 **THE COURT:** That's what I was going to say. Okay.
18 So I'm going to excuse the jury for now. I'm not going to
19 tell you exactly when we are going to be back on. It may be
20 very quickly, it may be a little longer than that. I think
21 if you could, sort of, generally stay available near the
22 jury room.

23 As always, I'm very cognizant of your time and
24 being respectful of that. So we will try to do this as
25 quickly as possible. Okay?

1 Thank you-all.

2 (Jury exits the courtroom.)

3 **THE COURT:** Okay. What does the government want
4 to discuss before it decides whether it wants to rest?

5 **MR. DiLORENZO:** It would be
6 helpful -- right -- there were a couple things the Court
7 needed to decide on, like "forcible." It is clear the Court
8 was working late last night. The elements of the offense
9 and definition of assault, that could impact if there is any
10 further evidence. We are leaning toward probably not, but
11 it would be helpful to know if the Court is going to use the
12 common law definition or the Model Penal Code.

13 **THE COURT:** Okay. My plan was to argue that
14 question together, with any lingering final jury questions,
15 at something like a charging conference, after any draft
16 final jury instructions are sent out so that we had a common
17 thing to work off of.

18 I could do that and we could come back here after
19 you've had a chance to cogitate on it and have a discussion
20 about it, or you could tell me what additional proof you
21 would put on, which is dependent on which of those two
22 definitions applies.

23 **MR. DiLORENZO:** The additional evidence, as we
24 have other statements that the defendant made after his
25 arrest that would support, you know, the theory of the

1 defendant impeded and interfered with the
2 government's -- with the officer's official duty.

3 **THE COURT:** I've already held that you can prove a
4 violation of 111 by proving impeding or interference.

5 **MR. DiLORENZO:** Right.

6 **THE COURT:** What difference does it make to that
7 proof whether we use the definition of assault or Model
8 Penal Code assault?

9 **MR. DiLORENZO:** The government is proceeding with
10 two theories, the assault and the other categories. If the
11 Court is inclined to use common law definition, which we are
12 advocating --

13 **THE COURT:** Yes.

14 **MR. DiLORENZO:** -- you know, the government's
15 theory and argument would be that it is stronger and less of
16 a need to bolster the other evidence.

17 However, if the Court were to use the Model Penal
18 Code, there's more of a need to bolster that piece.

19 **THE COURT:** Understood. So, in other words, to
20 the extent that the Model Penal Code definition of simple
21 assault or assault is applied here, that's a higher burden.
22 The government might want to introduce evidence that tends
23 to prove one of the other verbs of 111.

24 **MR. DiLORENZO:** Right.

25 **THE COURT:** Okay. So just in terms of process,

1 how would you propose I proceed from now to what you need to
2 know?

3 **MR. DiLORENZO:** I guess the quickest way to get an
4 answer -- I mean, I believe yesterday morning the parties
5 were prepared to argue on that, and we are prepared to do
6 that now, if the Court could hear argument. And then, you
7 know, we would ask for a ruling and whether the Court needs
8 to take a break or not. It's the Court's perspective.

9 **THE COURT:** Okay. Fair enough. I want to hear
10 from the defendant. Who wants to address this question?

11 **MS. SHROFF:** Your Honor, just procedurally, my
12 suggestion is -- and of course feel free to reject it -- I
13 think -- it is about -- it is a quarter to 3. Right?

14 **THE COURT:** Yes; that is accurate.

15 **MS. SHROFF:** Assuming, even with all of your
16 January 6 and all of your other knowledge, we get to
17 discussing this issue in the next 30 minutes, then that
18 would take us to 3:15. I'm assuming as loquacious as all
19 counsel have been, we would get to 4 by the time the issue
20 is resolved.

21 My suggestion is this. I think it is a nice fall
22 day. We should let the jury go home. We are going to have
23 argument. We are going to have a charge conference. You
24 will have Rule 29s and it would be -- it would be prudent to
25 let them go. I think a jury is happier just coming back

1 tomorrow morning. If the Court disagrees, we are happy to
2 do as you request, but that is my thought.

3 **THE COURT:** Do you propose to have me release the
4 jury do the, I guess, consequentially what we would need to
5 do is to at least have a conversation around the jury
6 instructions, to allow the government to then decide whether
7 it's going to rest. If the government is going to rest, we
8 need the jury here for that. Then we do Rule 29 after that.
9 So the jury has to be around to make that pivot.

10 **MS. SHROFF:** I've had judges say, I will let you,
11 Ms. Schoff, make the Rule 29.

12 **THE COURT:** So long as the government says --

13 **MS. SHROFF:** Right.

14 **THE COURT:** -- we are planning to rest, we can do
15 that later. Okay.

16 **MS. SHROFF:** Just hypothetically, say the
17 government decides not to rest, I am assuming at 3:00 they
18 are not going to have the next witness here. I have no idea
19 how they would put in this additional proof. I don't have a
20 clue about a lot of things, but that particular thing --
21 well, I really don't know. I'm not sure if the government
22 would even -- should they decide not to rest -- have their
23 next witness here for anything productive to be done with
24 the jury.

25 **THE COURT:** Right.

1 **MS. SHROFF:** That's my thought.

2 **THE COURT:** So I get that point. Let's just then
3 talk about -- let's imagine we do the final instructions'
4 discussion. Ideally, all of them, but let's imagine,
5 hypothetically, enough for the government to decide it feels
6 comfortable resting. And then we say, Okay. Well, the
7 government is going to rest. So we can do the Rule 29 stuff
8 then too, before we bring the jury back.

9 Would you propose that we have those discussions
10 this afternoon, having released the jury, or are you looking
11 to go enjoy the weather too, such that we come back
12 tomorrow, lawyers only, having the lawyers having had the
13 opportunity to see my version of the draft instructions this
14 afternoon for a while, and then we come back and argue
15 tomorrow.

16 **MS. SHROFF:** The second option.

17 **THE COURT:** Tomorrow morning.

18 **MS. SHROFF:** Yes.

19 **THE COURT:** Right.

20 **MS. SHROFF:** I think that gives the Court time to
21 do what the Court needs to do and us time to think.

22 **THE COURT:** Yeah.

23 Without binding you to anything, just 'cause I
24 want to be respectful of the jury's time and understand the
25 arc of this case, if the government otherwise says we are

1 good, we rest, does the defense anticipate putting on a
2 significant defense case?

3 **MR. DiLORENZO:** No. The one witness we wanted to
4 put on is out of the country. The other witness we would
5 have possibly put on is out sick. So we do not have, I
6 believe, a substantive case.

7 I would be uncomfortable promising -- I don't know
8 what Mr. Dunn will do about exercising his right.

9 **THE COURT:** Yes. Sure.

10 **MS. SHROFF:** I need an hour or so to answer that
11 question.

12 **THE COURT:** All of which is to mean, we can spend
13 some time getting things right, not overburdening the jury
14 also by them sticking around when not needed and we are not,
15 by doing that, burning into, obviously, next week or even
16 substantially past the end of the day tomorrow or something
17 like that.

18 So here is what we are going to do, I am going to
19 bring the jury back. I'm going to excuse them for the
20 evening and I'm going to likely tell them I would like them
21 here at 10:30 tomorrow morning. Obviously, if they are here
22 at 10:30, we are still working. They may need to wait a
23 little time. So we will do that with the jury.

24 What I am going to do tonight, since we don't have
25 to talk after the jury has been excused is, I am going to

1 email the parties, as I have been doing, my take on all of
2 the final instructions that I would intend to give whenever
3 we get to the right point. And we can then use that draft,
4 which I have been working on, so you'll get it relatively
5 soon, but you can see it this evening.

6 I know you are looking over at someone at your
7 team. Are you ready for this?

8 **MS. SHROFF:** I don't want to do the jury
9 instructions.

10 **THE COURT:** I know, just kidding around.

11 You will have enough time to think through where I
12 am. We are not going to do this, you know, in a overly
13 truncated way, and then we will just be back tomorrow at 9.

14 The first thing we are going to do is we are going
15 to walk through the draft instructions. I will hear from
16 the parties on any of the instructions they have problems
17 with. Obviously, a significant amount of that discussion
18 will center around how we are defining what are and how we
19 are defining the elements of the offense.

20 You will have my take tonight so you can have a
21 target and we can have a discussion focused on that very
22 specific piece of paper.

23 Obviously, if the parties want to file something
24 tonight, you are free to do so. I know you said yesterday,
25 Counsel, that you didn't know if I wanted to keep getting

1 papers. I'm fine with it but no one is required to file
2 anything. We can just walk through the draft in the
3 morning. And then, assuming we land in a reasonable place,
4 I will hear the Rule 29 stuff before we bring the jury back.
5 Okay?

6 So, Ms. Moore, could you get the jury?

7 (Jury enters the courtroom.)

8 **THE COURT:** Members of the jury, thank you. We
9 just had a very productive discussion with the parties about
10 the most efficient way forward. I have determined that the
11 most efficient way forward is to release you for the rest of
12 the day, that will allow us to let you go about your lives,
13 not stick around while we resolve some things both, perhaps,
14 tonight and tomorrow morning.

15 So you are released for the evening tonight, and
16 you don't have to be back until 10:30 tomorrow. Okay? At
17 10:30 tomorrow, in an ideal world at least, we will pick up
18 with, maybe more evidence, but with you in the courtroom.
19 Taking this time will allow us to, I think, be substantially
20 more efficient without you guys having to wait around the
21 courthouse.

22 So just a short reminder to not research the case,
23 not talk to anyone about the case, all of those things. I
24 will not repeat the instructions that I already gave you,
25 but you must follow all of them.

1 With that, I hope you enjoy the evening, and I
2 will see you all in the morning, again, at 10:30. Okay?

3 Thank you, all.

4 (Jury exits the courtroom.)

5 **THE COURT:** So I think we have a game plan. Is
6 there anything else we need to discuss before I see everyone
7 else, I mean other than the jury, of course, before I see
8 everyone at 9 a.m. tomorrow?

9 **MR. DiLORENZO:** Nothing from the government,
10 Your Honor, thank you.

11 **THE COURT:** Anything from the defense side?

12 **MS. GATTO:** Your Honor, earlier during opening I
13 raised an objection about the use of the misdemeanor in the
14 government's opening statement.

15 **THE COURT:** Yes, and you wanted to think about it.

16 **MS. GATTO:** My brain was going to take a long
17 time. I will propose later this evening a curative
18 instruction that we would ask be instructed to the jury
19 during the full instruction.

20 **THE COURT:** I'm happy to...

21 **MS. GATTO:** Do you want a preview?

22 **THE COURT:** Not particularly. I really want you
23 to preview it with the government --

24 **MS. GATTO:** I will.

25 **THE COURT:** -- before bringing it to me. It is a

1 disputed issue that may not be disputed.

2 **MS. SHROFF:** Very well.

3 **THE COURT:** I guess what I would say is on this
4 one, if there's an agreement, please just let me know there
5 is an agreement to say X, and if there is a disagreement, if
6 you could both state your view, of course, and the
7 government's view. It may be that you get my take on that
8 curative instruction after you get the remainder of
9 the -- or I guess not the remainder, but the original set of
10 draft final instructions from me but it will be pretty
11 obvious what you are getting.

12 **MS. GATTO:** Okay thank you, Your Honor.

13 **THE COURT:** Thank you, all.

14 (Proceedings concluded at 2:59 p.m.)

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C E R T I F I C A T E

I, Lorraine T. Herman, Official Court Reporter,
certify that the foregoing is a true and correct transcript
of the record of proceedings in the above-entitled matter.

December 8, 2025

DATE

/s/ Lorraine T. Herman

REPORTED BY

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