

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, .
Plaintiff, . Case Number 22-cr-60
vs. .
VINCENT GILLESPIE, . Washington, D.C.
Defendant. . December 23, 2022
9:00 a.m.
- - - - -

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE BERYL A. HOWELL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: JACQUELINE SCHESNOL, AUSA
United States Attorney's Office
40 North Central Avenue
Suite 1800
Phoenix, Arizona 85004

CAROLINA NEVIN, AUSA
United States Attorney's Office
601 D Street Northwest
Washington, D.C. 20579

For the Defendant: TIMOTHY WATKINS, AFD
AZIZA HAWTHORNE, AFD
FOREST O'NEILL-GREENBERG, AFD
Federal Public Defender's Office
51 Sleeper Street
Fifth Floor
Boston, Massachusetts 02210

Official Court Reporter: SARA A. WICK, RPR, CRR
333 Constitution Avenue Northwest
Room 4704-B
Washington, D.C. 20001
202-354-3284

Proceedings recorded by stenotype shorthand.
Transcript produced by computer-aided transcription.

P R O C E E D I N G S

(Call to order of the court.)

(Jury not present.)

COURTROOM DEPUTY: Matter before the Court, Criminal Case Number 22-60, United States of America versus Vincent Gillespie.

Counsel, please come forward and state your names for the record, starting with the government.

MS. SCHESNOL: Good rainy morning, Your Honor. Jacqueline Schesnol and Carolina Nevin representing the United States. With us at counsel table, Shirine Rouhi and Ray Adams.

THE COURT: Good morning.

MR. WATKINS: Tim Watkins and Aziza Hawthorne and Forest O'Neill-Greenberg on behalf of Mr. Gillespie, who is with us here in court. Good morning, Your Honor.

THE COURT: All right. Good morning.

All the jurors have arrived, and so I'm going to bring them in. Meanwhile, because the weather is unclear about precisely what's going to be happening today, I'm going to tell the jurors that we're going to be monitoring the weather and they may be required to leave early.

The question for you all is should I remind them that if before they leave they're ready to return verdicts on any of the charges, that they should do so?

I've alerted them to that on page 12 of the jury form given

1 to them where I said, "At any time during your deliberations,
2 you may return your verdict of guilty or not guilty with respect
3 to any count."

4 So I can tell them, you know -- I can remind them about
5 that, that if before I excuse them they are ready to deliver
6 verdicts on some counts, that they should do so.

7 MS. SCHESNOL: I think that's a good reminder, Your
8 Honor. They might not remember that from the instructions.

9 THE COURT: Any objection?

10 MR. WATKINS: I'm sorry. I didn't hear Ms. Schesnol
11 on that.

12 THE COURT: She has no objection.

13 MR. WATKINS: Your Honor, if we could have some time
14 to think about it, and when that -- we're not going to instruct
15 the jury this morning, I assume.

16 THE COURT: Oh, I was going to tell them right now.

17 MR. WATKINS: So what is the --

18 THE COURT: Because we may -- depending upon what
19 happens with snow and sleet and who knows what's going to happen
20 today, I may be excusing them by noon. I don't know.

21 MR. WATKINS: And by excusing them, instructing them
22 to return back on Tuesday?

23 THE COURT: Well, that's another question, of when
24 they're going to come back, which I haven't broached with you
25 all. The Court is in recess next week.

1 MR. WATKINS: I understand.

2 THE COURT: There will be only a skeletal crew here,
3 zero cafeteria. So it will be difficult.

4 MR. WATKINS: May we have some time to think about the
5 different scenarios, and perhaps if the Court --

6 THE COURT: How much time is it going to take you,
7 Mr. Watkins, to remind them about something I've already charged
8 them on?

9 MR. WATKINS: It's an unusual procedure, in my
10 experience, that we would take a partial verdict. I understand
11 that it is permissible, but it's unusual. I just had not
12 thought that that might be something the Court would consider.

13 THE COURT: Well, before Christmas break and, you
14 know, who knows what they're going to be exposed to, because
15 this is a very heavy getting-together kind of thing weekend, I'm
16 afraid we're going to lose jurors. COVID is so rampant right
17 now. We've already lost one juror. I fear that we are not
18 going to get a fully healthy jury back after this weekend.

19 MR. WATKINS: So it sounds like the Court is
20 considering dismissing the jury after it delivers whatever
21 verdict it's come to?

22 THE COURT: Absolutely not. I want them to return any
23 verdict before I lose a jury on any charges they haven't
24 returned. Mr. Watkins, this isn't that complicated.

25 Bring the jury in. I'm going to do this.

1 MR. WATKINS: Judge, at this point we are going to
2 object.

3 THE COURT: To something they've already been charged
4 about? Really? That's an objection?

5 MR. WATKINS: Yes, I will object at this --

6 THE COURT: Why?

7 MR. WATKINS: Judge, if you could just note our
8 objection for the record. The Court is clearly going to do what
9 it's going to do. So I'm not sure that there's anything I can
10 say that is going to convince the Court otherwise.

11 THE COURT: And my reasoning is clear, because they
12 need to be prepared for that, to leave early, if they think
13 they're going to be here until 5:00 or 6:00. And when I do -- I
14 don't want to surprise them by saying, "Do you have a verdict?"
15 I want them to be thinking about that and focused on that.

16 My reasons are clear. You've given me zero reasons.

17 Bring them in.

18 (Jury entered courtroom.)

19 THE COURT: Good morning, ladies and gentlemen. I'm
20 going to send you back to begin your deliberations again.

21 I know, as we are all aware, that the weather is a little
22 iffy today, to say the least. I do not know how long I'm going
23 to be keeping you for your deliberations today. We are
24 monitoring the weather.

25 But let me remind you that if your deliberations are not

1 allowed to go as long as they did yesterday or at least even
2 until 5:00 today because of the weather, I want to remind you of
3 the instruction on page 12 of your jury instructions that says,
4 "At any time during your deliberations, you may return your
5 verdict of guilty or not guilty with respect to any count."

6 So if we break early, and I don't know what the most recent
7 report is of when snow, freezing snow is going to start falling,
8 potentially early this afternoon, I wanted you to be aware of
9 that instruction so that when I call you back, if you're
10 prepared to deliver a verdict on any count, you can do so at
11 that time.

12 All right. You're all excused to return to your
13 deliberations.

14 (Jury exited courtroom.)

15 THE COURT: All right. Stay tuned.

16 (Recess taken from 9:08 a.m. to 11:12 a.m.)

17 (Jury not present.)

18 THE COURT: Have the parties conferred about how they
19 would like to respond to the most current note time-stamped
20 today at 10:47 a.m.?

21 MR. WATKINS: I'm sorry. I didn't hear the last part.

22 THE COURT: Have the parties conferred on whether they
23 agree on how to respond to the note time-stamped 10:47 a.m.?

24 MS. SCHESNOL: The government knows how it would
25 respond. We have not had the chance to talk.

1 THE COURT: I usually like the parties to confer about
2 jury notes, and then if both parties agree, then I don't have to
3 resolve anything --

4 MS. SCHESNOL: Right.

5 THE COURT: -- if I agree. So why don't you confer.

6 (Counsel conferred.)

7 THE COURT: Have the parties conferred?

8 MS. SCHESNOL: We have conferred, Your Honor.

9 With regard to the first two questions, which are really
10 one question where there's a clarification, the government
11 believes that the Court can either answer that -- well, the
12 government believes it can be answered with a no. The defense
13 would like Your Honor to reread to them -- to not say yes or no
14 but to simply reread the definition that's in the jury
15 instruction, "act of physical violence."

16 And then with regard to the question about emotional
17 trauma, the parties agree that the answer to that is no.

18 And with regard to we're unanimous on three charges, should
19 we send in these charges, the government believes that the
20 answer to that is yes, and I believe the defense renews their
21 objection.

22 THE COURT: Because you don't want them to return the
23 partial verdict yet?

24 MR. WATKINS: Once again, Judge, I'm having trouble
25 hearing.

1 THE COURT: You don't want them to return a partial
2 verdict yet?

3 MR. WATKINS: I think at this point it's too early for
4 them to -- there's no indication that they don't want to
5 continue to deliberate at this point.

6 THE COURT: This is not a matter of stopping their
7 deliberations, Mr. Watkins, if that was the predicate for this
8 renewed motion for -- renewal of objection to partial coercive
9 jury re-instruction.

10 Let me restate what I thought I was clear about this
11 morning. We are in a situation where -- you're in Boston; we're
12 in Washington, D.C. It rains too hard in Washington, D.C.,
13 everything stops. OPM has already declared today, so the record
14 is clear, people don't have to come to work today. They're
15 expecting icy conditions, below freezing, with freezing rain.
16 And this is something in Boston -- I cannot even begin to tell
17 you what happens in Washington with snow.

18 MR. WATKINS: I am aware, Your Honor.

19 THE COURT: We are not in Boston. This jury is coming
20 in this morning concerned about the weather. I had to tell them
21 I'm not going to keep you until 6:00 when it's dark, they're
22 expecting below freezing temperatures, high winds. You could
23 get frostbite if you're out more than ten minutes for people who
24 are taking the train. I have to tell them we're not going to go
25 until 6:00 tonight, we're going to end earlier.

1 I checked the record. I did not tell them we were going to
2 stop at noon to rush them. I told them we were going to be
3 monitoring the situation to make it clear to them their safety
4 is paramount.

5 As a side note, I am concerned because I've had a deputy
6 marshal here already get into a car accident.

7 MR. WATKINS: I'm sorry. I didn't hear the last part.

8 THE COURT: I've already had a deputy marshal get in a
9 car accident and have severe injuries from a lot of rain last
10 night. So I gave them that reassurance.

11 I am also concerned, if I release them early without any
12 jury verdict in this case, they're going to leave, they're going
13 to get transmitted COVID over the weekend, and when we resume
14 next week, should we need to, I'm not going to have 12 jurors,
15 having already lost one to COVID. So it might be imminent
16 mistrial. Maybe we'll lose more. Maybe people would agree to
17 continuing with 11 jurors, but what if we lose more. It starts
18 making me very uncomfortable.

19 I want to have at least some results from this jury and
20 this week's work on the record reflected in some decisions on
21 some counts that they could reach without any rushing today but
22 assurance that I was monitoring the weather. I never told them,
23 unlike in your motion, that they were going to leave by noon.

24 There are other judges in the courthouse in the middle of
25 jury proceedings who are terminating at a set time. I am not,

1 so as not to rush them.

2 MR. WATKINS: So I --

3 THE COURT: And I don't think they're feeling rushed.
4 They have already indicated they might want to come back next
5 week. I don't know. We'll see. I'm very concerned about what
6 will happen next week and whether we will get all 12 jurors.

7 So that's where we're at. With respect to -- I agree,
8 actually, that this is a little early for them to be returning a
9 verdict when this is a jury note. This is not me bringing them
10 in to excuse them because it's snowing, the wind is 50 miles an
11 hour, and it's subfreezing wind and wind chill for people who
12 have to walk to the Metro. So I'm going to tell them to keep
13 working on the charges rather than have them return any verdict
14 that they've reached so far.

15 Okay. Now, back to the question in front of us before we
16 bring the jury in.

17 MR. WATKINS: So it sounds like the only dispute is to
18 question 1, whether they -- as the government wants the answer
19 to the question as no or whether the Court rereads its
20 instruction about the term "act of physical violence" and what
21 that means, and we are asking the Court to simply re-instruct,
22 as it did, what an act of physical violence means.

23 THE COURT: What it's indicating to me is that the
24 next time I use this instruction, I'm going to say "the term act
25 of physical violence mean any act involving, one, an assault

1 with intent to harm or injure or, two, other infliction of death
2 or bodily harm on an individual or, three, damage to," because
3 that's how this reads. I think that that's basically what
4 they're confused about.

5 And you object to clarifying that other than by rereading
6 this instruction?

7 MR. WATKINS: Yes. I think the instruction answers
8 the question that the jury is having.

9 THE COURT: Unambiguously?

10 MR. WATKINS: Yes. I mean, the instruction appears
11 clear to me, and perhaps the jury is simply not looking at it
12 carefully enough.

13 THE COURT: And it is as unambiguous to you as it is
14 to me in the way that I've just read it with one, two, three?

15 MR. WATKINS: Yes, it's as unambiguous as it's written
16 now. We have a very educated jury, including, I believe, at
17 least three attorneys on there. It does not seem that there is
18 very much --

19 THE COURT: I think there's only one attorney on
20 there, isn't there?

21 MS. SCHESNOL: I actually think there's two.

22 THE COURT: Okay. I lost count of one of them.

23 MR. WATKINS: There are some very educated jurors on
24 there, and this is, I guess, a question of simple grammar. I
25 think nothing more needs to be said. I think the Court can and

1 should simply instruct, "I'm going to refer you to page 10 of my
2 jury instructions where it talks specifically about what
3 constitutes bodily harm" -- or, I'm sorry, "physical violence."

4 THE COURT: And then "and does bodily harm include
5 emotional trauma," you agree no?

6 THE WITNESS: That's correct.

7 THE COURT: All right. As to question 1, what is your
8 position?

9 You think -- let's divide these questions into question 1,
10 does an act involving intent to harm also apply to infliction of
11 bodily harm? Two, that is, does he need to have intended to
12 commit bodily harm to be found guilty? And then three, and does
13 bodily harm include emotional trauma?

14 And the government is proposing to answer question 1 no,
15 question 2 essentially no, and question 3 no.

16 So what are you -- and you're proposing -- am I
17 understanding that correctly?

18 MS. SCHESNOL: I don't want to speak for Mr. Watkins.
19 I will try, but if I get it wrong, he should correct me. I
20 think we're reading questions 1 and 2 together. Question 2 is
21 almost a clarification of number 1. You're right, they are
22 separate. There are four question marks on this piece of paper.
23 But when they start the sentence "that is, does he need to have
24 intended to commit bodily harm in order to be found guilty?"
25 I'm reading that in conjunction with question 1.

1 The government certainly has no opposition to Your Honor
2 rereading the definition of "act of physical violence" with the
3 one, two, three you proposed, because between commas or lack
4 thereof, the grammar does get a little confusing, clearly,
5 because otherwise they wouldn't have a question.

6 MR. WATKINS: Perhaps the Court will be surprised to
7 learn I concur with Ms. Schesnol that this is one question. But
8 I do disagree. I don't think we need to teach the jury grammar.
9 The jury instruction is the jury instruction, and it is
10 unambiguous, I think as the Court recognizes.

11 THE COURT: Well, if everybody agrees that it's
12 unambiguous, why, then, can't I reread the term -- the
13 definition with inserting the one, two, and three to make it as
14 unambiguous as it --

15 MS. SCHESNOL: I think it is ambiguous, and the one,
16 two, three can help.

17 MR. WATKINS: Judge, we can speculate all that we want
18 about what the jury is thinking about this question, and I don't
19 think that moves the ball forward at all. The instruction is
20 the instruction. The definition is the definition. I think
21 simply directing the jury's attention that that is the
22 instruction that's in the statute --

23 THE COURT: But do you understand that this is the
24 whole purpose of a note?

25 MR. WATKINS: One more time. I'm sorry.

1 THE COURT: This is the whole purpose of a note, when
2 they're confused by some of the grammar or whatever in terms of
3 the definition, and to clarify for the jury that the term "act
4 of physical violence" means any act involving, one, an assault
5 with intent to harm or injure or, two, other infliction of death
6 or bodily harm on an individual or, three, damage to or
7 destruction of real or personal property seems like -- you agree
8 that's an unambiguous reading of the definition. That's the
9 correct understanding of the definition. They are asking for
10 that clarification.

11 And I don't -- other than not answering the jury's question
12 by simply reading the definition to them again without the one,
13 two, or three makes little sense to me, Mr. Watkins, when we all
14 agree that that's the correct reading of the definition, and it
15 would be easy to give them a clarification.

16 So I'm not -- other than you taking the strategic chance
17 that their confusion will lead them to an incorrect reading of
18 the term "act of physical violence," I'm not sure I really
19 understand why I couldn't answer, then, what I've marked as one
20 and two to make sure I'm answering fully what they're asking for
21 but taking one and two together as I've defined them and giving
22 them that clarification in the definition. I'm not sure if it's
23 anything other than a strategic reason.

24 MR. WATKINS: It relies on the language of the
25 statute. The remedy is to call up Congress and say perhaps you

1 should have drafted this differently. But that's not where we
2 are. The definition is the definition in the statute, and I
3 would suggest to add anything just invites mischief here.

4 MS. SCHESNOL: Just to be clear, Your Honor, the
5 statute and the way it's worded in the superseding indictment,
6 document 18 on the docket, is it talks about knowingly engage in
7 any act of physical violence on a person or property. And then
8 the jury instruction goes beyond that by defining what "act of
9 physical violence" means.

10 So I agree with the Court that it would help clarify for
11 the jury, who clearly is confused, by adding the one, two, and
12 three.

13 THE COURT: Mr. Watkins, that's why we were both
14 looking at the statute. I didn't know that there was a
15 definition of "act of physical violence" in the statute, and I
16 don't see one.

17 So were you referring to something I'm missing?

18 MR. WATKINS: I'm trying to look up the statute
19 myself. Standing here now, I don't know how that -- the
20 language that's in the jury instruction came to be. It does not
21 sound like case law related.

22 THE COURT: Probably some wise judges before us.

23 MS. SCHESNOL: Or not so wise, because the lack of
24 commas is what I think is leading to the confusion.

25 THE COURT: Yeah, there is no definition in the

1 statute. So this definition was derived from a pattern jury
2 instruction.

3 In any event, you all are reading the first two questions
4 together, and I actually read the question, "That is, does he
5 need to have intended to commit bodily harm to be found guilty?"
6 to be somewhat different. And I think they're asking about the
7 intent requirement. And so what they're really asking is, when
8 he knowingly -- if he knowingly engaged in the act of physical
9 violence that involved the infliction of death or bodily harm on
10 an individual, does he need to have intended to commit that.
11 And I think the answer to that is no.

12 But that's not how you all are reading that question, as I
13 understand it.

14 MS. SCHESNOL: Well, I agree that the answer to that
15 is no, and it is technically two questions. It almost seems
16 like the second question is to clarify their first question.

17 So perhaps, Your Honor --

18 THE COURT: They're looking for the intent
19 requirement, where you're not -- they're looking as to okay, if
20 there's an assault with intent to harm or injure, does that
21 intent requirement also follow through to infliction of death or
22 bodily harm on an individual.

23 MR. WATKINS: Once again, Judge, I'm having a little
24 trouble hearing you.

25 THE COURT: As I read their question, they're wanting

1 to know whether in the first prong of the definition, which
2 requires an intent to harm or injure in connection with an
3 assault, the crux of their question is whether there needs to be
4 an intent requirement to inflict bodily harm. That's the crux
5 of their question.

6 MS. SCHESNOL: And we believe the answer to that is
7 no, since there are multiple ways that acts of physical violence
8 is defined.

9 THE COURT: And would you agree with that,
10 Mr. Watkins?

11 MR. WATKINS: And I think the remedy there is to read
12 the --

13 THE COURT: Yes or no, do you agree with that,
14 Mr. Watkins?

15 MR. WATKINS: Yes.

16 THE COURT: So if they had simply not asked question
17 1, if they had simply asked what I'm viewing as question 2,
18 "Does he need to have intended to commit bodily harm to be found
19 guilty?" I think the answer would be no.

20 MS. SCHESNOL: The government agrees.

21 THE COURT: And I think Mr. Watkins would agree.

22 MR. WATKINS: No. I think the better course, given
23 the totality --

24 THE COURT: No, as a matter of law, the answer is no.
25 As a strategic matter, I understand you want me just to read the

1 definition. But as a matter of law, do you agree that the
2 answer to the question, "Does he need to have intended to commit
3 bodily harm to be found guilty?" the answer is no? I thought
4 you just agreed.

5 MR. WATKINS: The instruction is "assault with intent
6 to harm or injure or other infliction of death or bodily harm on
7 an individual." So that is one way by which a person can be
8 found guilty. How can we say no and not be more confusing about
9 it?

10 THE COURT: Because it's an assault with intent to
11 harm or injure or without the intent to harm or injure other
12 infliction of death or bodily harm on an individual. That is
13 the correct construction, I think, of the definition. I think
14 you would agree with that, that's the unambiguous meaning of the
15 definition.

16 MS. SCHESNOL: And then the third way is damage or
17 destruction of property. So the answer is no, because there's
18 three ways.

19 THE COURT: I appreciate the defense objection to
20 doing anything other than rereading the definition. I am going
21 to provide the clarification that I believe the jury is
22 requesting. And looking at these three questions separately,
23 "Does an act involving intent to harm also apply to infliction
24 of bodily harm?" I could just answer that no and forget
25 the "that is" and then turn to, "Does bodily harm include

1 emotional trauma?" and answer that no and just leave out
2 question number 2.

3 MR. WATKINS: Just leave out what? I'm sorry.

4 THE COURT: Their question number 2 and deal with it
5 all as one question, as you both seem to propose. And perhaps
6 that will clarify the definition for them.

7 MS. SCHESNOL: So in an effort to make it very clear
8 to the jury, if the definition of "act of physical violence" is
9 read to them with the one, two, three clarification, it is
10 appropriate to then say --

11 THE COURT: Well, I was not going to do that. I was
12 just going to say -- they've asked the question, "Does an act
13 involving intent to harm also apply to infliction of bodily
14 harm?" The answer is no. And then their second question is,
15 "Does bodily harm include emotional trauma?" The answer is no.
16 And with respect to the question about submitting their
17 decisions on charges, not yet. And leave it at that.

18 How about that?

19 MS. SCHESNOL: All that being said, the government
20 certainly does not oppose reading the act of physical violence
21 with the one, two, three that hopefully would help clarify for
22 the jury.

23 MR. WATKINS: And if it's not already clear, the
24 defense's position is the Court should simply read that
25 paragraph and instruct the jury that that is the law that

1 applies in the case.

2 May I be heard just briefly on question 3? Would the Court
3 consider telling the jury at this point we have monitored the
4 weather, you're free to continue to deliberate as long as you
5 wish this afternoon?

6 THE COURT: And what if it starts snowing and the
7 temperature drops at 2:00 to below freezing? Will I just -- I
8 think I've told them we're continuing to monitor the weather and
9 so far so good.

10 How about that?

11 MR. WATKINS: Judge, as far as the weather, it is
12 clearing outside. I think when we were walking over here, it's
13 almost completely clear. I will say to the Court, it is
14 bitterly cold and that, indeed, we see --

15 THE COURT: Is it below freezing yet?

16 MR. WATKINS: It is below freezing, and the sidewalks
17 have been treated nearly everywhere that we walked between the
18 Federal Defender Office here and the courthouse. And I think
19 that is what the jurors are going to see when they leave --

20 THE COURT: They have a window in the jury room. They
21 have an idea of what the weather is like.

22 MR. WATKINS: So I think that's something the Court
23 could say, we monitor and perhaps as the jury has out the
24 window --

25 THE COURT: And I think I will just say we're

1 continuing to monitor the weather, so far so good, so continue
2 deliberations. I'll just say that.

3 Okay. Let's bring the jury in.

4 (Pause.)

5 THE COURT: The jurors have asked for two minutes
6 because they're in the middle of a discussion. They also have
7 their -- they have their lunch?

8 COURTROOM DEPUTY: Not yet.

9 THE COURT: And with respect to defendant's renewal of
10 objection to partial coercive jury instruction, is there
11 anything you're asking me to do in this?

12 MR. WATKINS: No. The Court asked for some of the
13 reasons, and I was asking for more time.

14 THE COURT: Oh, I see. So there's nothing to be done
15 about that.

16 (Jury entered courtroom.)

17 THE COURT: All right. Ladies and gentlemen, I've
18 received your note time-stamped 10:47 a.m., which has one
19 question with a little bit of a subpart, but if I answer the
20 main part of the question, I don't think I have to address the
21 second part, and a second question.

22 With respect to your first question, "Does an act involving
23 intent to harm also apply to infliction of bodily harm?" the
24 answer is no. And with respect to your next question, "And does
25 bodily harm include emotional trauma?" the answer is no.

1 With respect to your update about having reached unanimity
2 on some charges, let me just tell you, we're continuing to
3 monitor the weather. It's gotten colder out, but so far, so
4 good. I think everything's looking good outside. So you should
5 just continue your deliberations.

6 JUROR: If you could repeat that first part of the
7 very beginning.

8 THE COURT: Of the very beginning? With respect to
9 the question?

10 JUROR: Right.

11 THE COURT: The question, "Does an act involving
12 intent to harm also apply to infliction of bodily harm?" And
13 the answer is no. And you did have a subpart to your question,
14 but having answered your first question, I don't think I need to
15 address the subpart.

16 All right. So you may return to your deliberations.

17 (Jury exited courtroom.)

18 THE COURT: All right.

19 MR. WATKINS: Just out of an abundance of caution,
20 could you please note our objection to the Court answering the
21 first question "no"?

22 THE COURT: I think you've made your objection.

23 MR. WATKINS: Thank you, Your Honor.

24 (Recess taken from 11:46 a.m. to 2:06 p.m.)

25 THE COURT: All right. Have the parties conferred

1 about how they would like to address this note?

2 MS. SCHESNOL: We have conferred, Your Honor, and we
3 believe that if we put it on the record, ask the jury if they
4 believe that no further deliberation could render a verdict on
5 any of the outstanding four counts and we put that on the
6 record, then that's where we're at.

7 THE COURT: Because the situation is I can either give
8 the *Thomas* anti-deadlock or not. I mean, despite all my best
9 efforts to tell them not to tell me the number, it's clearly one
10 holdout. So it makes it -- well, Mr. Watkins?

11 MR. WATKINS: We concur.

12 THE COURT: Okay. So what I will do is I will -- just
13 so we are all clear so we understand what's going on, I'm going
14 to ask who speaks for the jury, who is the foreperson. I think
15 it's number 8; right? Number 8, and just say we've received
16 your note, is it your view that no further deliberations will
17 reach a resolution, guilty or not guilty, on the open counts.
18 If she says yes, I'm going to ask her then just to proceed to
19 deliver the verdicts.

20 MR. WATKINS: Can you --

21 THE COURT: I said, and if she says yes, no further
22 deliberations will help, I'm just going to ask her to deliver
23 the verdict on the counts that they have reached a unanimous
24 decision on. That's what the parties are requesting, as I
25 understand it.

1 MS. SCHESNOL: I think that's the correct way to
2 proceed.

3 THE COURT: And no anti-deadlock?

4 MR. WATKINS: No.

5 THE COURT: I agree.

6 Let's bring the jury in.

7 And do you want the jury polled?

8 MR. WATKINS: Yes, please.

9 (Jury entered courtroom.)

10 THE COURT: Ladies and gentlemen, I've received your
11 note time-stamped 1:26 p.m. today, which states that "there is
12 an update on our progress, and we have unanimous agreement on
13 four counts."

14 Sorry. I'm going to start over again. Sorry.

15 I've received the note time-stamped 1:26 p.m., stating, "An
16 update on our progress," and the jury indicates that, and I
17 quote, we have unanimous agreement on four counts and that the
18 jury is deadlocked on four other counts and that the jury has
19 deliberated and, I quote, deliberated and redeliberated many
20 times.

21 So let me begin by asking, who speaks as the foreperson of
22 the jury? All right. Could the foreperson stand?

23 And is it the foreperson's view -- give her the
24 microphone -- having participated in the deliberations, that any
25 further deliberations by the jury on the counts for which the

1 jury has been unable to reach a unanimous agreement would be
2 fruitless?

3 JURY FOREPERSON: I believe that any further
4 deliberation on the counts where we're not unanimous would be
5 fruitless.

6 THE COURT: All right. Then could you hand me -- I
7 think you have two verdict forms. Could you hand me one verdict
8 form, and then I will ask you to read aloud the verdict form on
9 the counts to which the jury has reached unanimity.

10 And I'd like all the other jurors to listen carefully,
11 because you will be polled, meaning Ms. Gumel is going to ask
12 each one of you seat by seat whether you agree with the report
13 made by your foreperson about the counts for which the jury has
14 reached unanimity.

15 So please proceed.

16 JURY FOREPERSON: Just start with the counts?

17 THE COURT: Yes.

18 JURY FOREPERSON: Okay. Count 1, assaulting,
19 resisting, or impeding certain officers, 18 U.S.C. Section
20 111(a)(1), with respect to the offense of assaulting, resisting,
21 or impeding certain officers, we, the members of the jury,
22 unanimously find the defendant Vincent Gillespie guilty.

23 Go through all the charges?

24 THE COURT: Not all of them. Just the ones on which
25 you've reached unanimity.

1 JURY FOREPERSON: Count 2, civil disorder. With
2 respect to the offense of civil disorder, we, the members of the
3 jury, unanimously find defendant Vincent Gillespie guilty.

4 Should I do the subparts?

5 THE COURT: Yes.

6 JURY FOREPERSON: On Count 2, we, the members of the
7 jury, unanimously agree that the civil disorder -- oh, I'm
8 sorry.

9 Count 2, we, the members of the jury, unanimously agree
10 that the civil disorder obstructed, delayed, or adversely
11 affected the conduct or performance of a federally protected
12 function.

13 On Count 5, with respect to the offense engaging in
14 physical violence in a restricted building or ground, we, the
15 members of the jury, unanimously find the defendant Vincent
16 Gillespie guilty.

17 On Count 7, act of physical violence in the Capitol grounds
18 or buildings, with respect to the offense of act of physical
19 violence in the Capitol grounds or buildings, we, the members of
20 the jury, unanimously find defendant Vincent Gillespie guilty.

21 THE COURT: Thank you. You may take your seat.

22 Ms. Gumel, I will ask if you could please poll the jury.

23 COURTROOM DEPUTY: Yes, Your Honor.

24 Members of the jury, as each of your number is called,
25 please indicate if your individual verdict is the same as that

1 just announced. If it is, please answer yes. If it is not,
2 please answer no.

3 Juror number 2?

4 JUROR: Yes.

5 COURTROOM DEPUTY: Juror number 4?

6 JUROR: Yes.

7 COURTROOM DEPUTY: Juror number 5?

8 JUROR: Yes.

9 COURTROOM DEPUTY: Juror number 6?

10 JURY: Yes.

11 COURTROOM DEPUTY: Juror number 7?

12 JUROR: Yes.

13 COURTROOM DEPUTY: Juror number 8?

14 JUROR: Yes.

15 COURTROOM DEPUTY: Juror number 9?

16 JUROR: Yes.

17 COURTROOM DEPUTY: Juror number 10?

18 JUROR: Yes.

19 COURTROOM DEPUTY: Juror number 11?

20 JUROR: Yes.

21 COURTROOM DEPUTY: Juror number 12?

22 JUROR: Yes.

23 COURTROOM DEPUTY: Juror number 13?

24 JUROR: Yes.

25 COURTROOM DEPUTY: And juror number 14?

1 JUROR: Yes.

2 COURTROOM DEPUTY: Your Honor, the jury has been
3 polled. The verdict is unanimous.

4 THE COURT: All right, ladies and gentlemen. Just in
5 time for the Christmas weekend.

6 You have rendered good service to the community, and I know
7 this has been a tough week, because a lot of people are already
8 leaving town. A lot of people have been celebrating and having
9 holiday parties, and you have been doing your civic duty by
10 listening to this case, which is of importance to both sides in
11 the case.

12 Since the poll verifies that the verdict is unanimous, I
13 will direct the clerk to file and record the verdict.

14 I'm going to excuse you all now with great appreciation for
15 your service, and I hope you all have safe travels, if you're
16 traveling over the weekend, and are able to enjoy your holidays.

17 Thank you. You are all excused.

18 (Jury exited courtroom.)

19 THE COURT: All right. So I will declare a mistrial
20 on Counts 3, 4, 6, and 8, since the jury was unable to reach a
21 verdict on those.

22 And with respect to the next matters we have to deal with,
23 I guess the government has to decide whether or not it wants to
24 retry Mr. Gillespie on the counts for which a mistrial was
25 declared.

1 And how much time will you need to make that determination?

2 MS. SCHESNOL: Your Honor, may I be given time to
3 confer with supervisors at the U.S. Attorney's Office?

4 THE COURT: Of course.

5 MS. SCHESNOL: And if we do agree to retry on those
6 counts, we're ready. We can literally pick a jury January 3rd,
7 although I suspect we'll need some time to confer, and there
8 might even be some discussion about how a sentence on the
9 convictions, that might be a factor. So we will report back.

10 THE COURT: Right. So the question, are you prepared
11 to set a sentencing date now?

12 MS. SCHESNOL: Yes.

13 THE COURT: Okay. Good. That's of particular
14 importance.

15 COURTROOM DEPUTY: The jury is asking if they can talk
16 about the case now?

17 THE COURT: Yes, they can talk about the case now.

18 COURTROOM DEPUTY: Okay. I will tell them.

19 THE COURT: I would suggest a sentencing date about 90
20 days out. That would give you time --

21 MR. WATKINS: Your Honor --

22 THE COURT: Sorry. I will set a sentencing date about
23 90 days out. That will give the government time to decide
24 whether they want to retry Mr. Gillespie on the counts for which
25 a mistrial was declared, and if you do decide that, we might be

1 able to get that trial done even before a sentencing date 90
2 days out.

3 So I would suggest if counsel could check their calendars
4 for March 17th at 9:30 a.m.

5 MR. WATKINS: That's agreeable for the defendant.

6 MS. SCHESNOL: If we may have one moment.

7 Yes, March 17 works for the government. Thank you.

8 THE COURT: Well, Ms. Gumel is the important person to
9 know about this to put it in the docket. We're going to set the
10 sentencing for this case for March 17th at 9:30 a.m.

11 And I think the other matter to take up, then, is release
12 or detention pending sentencing. Does the government have any
13 objection to continuing the release conditions while
14 Mr. Gillespie is awaiting sentencing on the counts for which he
15 has been convicted?

16 MS. SCHESNOL: Your Honor, he has been convicted for
17 assaulting a federal officer, and for those reasons, we would
18 seek detention pursuant to 18 U.S.C. 3143.

19 THE COURT: Okay.

20 MR. WATKINS: Judge, we would ask that you maintain
21 Mr. Gillespie on pretrial release. As the Court has seen from
22 the Pretrial Services memo, his compliance on pretrial release
23 has been impeccable. There's been no issues whatsoever. And
24 he's been in close contact with his probation officer, because
25 I've spoken with the probation officer as well about various

1 issues.

2 He appeared here under his own power for the pretrial
3 conference at no small expense and no small amount of energy.
4 He drove down from Athol, once again, stayed in Maryland on his
5 own dime again to come down here and appear for that hearing.
6 He's been at all the Zoom hearings that the Court has scheduled.
7 He came down again on his own dime and even early at my request,
8 came down to Maryland to stay and prepare for the trial and has
9 been here every day on time, as the Court has seen.

10 So in addition to that, of course, he is a long-time
11 resident and he owns a home in Athol, Massachusetts. He really
12 has no ties anywhere else. So this is not a case where there's
13 really any kind of issue of risk of flight at this point.

14 I will tell the Court that we have had frank conversations
15 about what the outcome here might be, and in fact, he has taken
16 some steps, substantial steps, many substantial steps to get his
17 affairs in order in the likelihood that he would be going to
18 jail at some point here. That includes selling the house where
19 he is, where he has, I think, put it on the market about a month
20 ago, maybe three weeks, in somewhat of a difficult market right
21 now, and he would like to be able to stay on and complete that
22 so that there are not a lot of loose ends. As the Court has
23 heard, he lives alone. He has very few people he can rely on to
24 do the many tasks that are associated with that.

25 In addition, as the Court heard during his testimony, he is

1 trying to settle an aunt's estate as well in New Jersey, which
2 also requires the sale of a home. So there are a lot of moving
3 parts to his life.

4 But he has heard the sentencing date, and I will reiterate
5 to him that that will be the deadline for him to get all those
6 affairs in order. So I don't think there's any real -- any risk
7 of flight at this point.

8 As far as any kind of danger to community, again, the Court
9 has seen Mr. Gillespie and had some -- and the Pretrial Services
10 report. He's not a man with any kind of criminal history.
11 Since that time, there have been no indications of any kind of
12 criminal activity, let alone something that might indicate a
13 risk of violence were the Court to continue him to the
14 sentencing hearing.

15 With that, Your Honor, I would ask the Court to continue
16 him on the current conditions.

17 THE COURT: All right. Well, I am going to continue
18 Mr. Gillespie on his pretrial release conditions pending
19 sentencing. I'm well aware under 18 U.S.C. 3143 that the
20 standard is higher post-conviction, particularly of a crime
21 involving assault of a police officer. But it did not involve a
22 deadly weapon, and so this is not a 111(a)(1) and (b) crime that
23 would raise the specter of basically almost required detention.

24 And so I look very carefully at a defendant's record from
25 the date of offense conduct to the date of conviction at trial

1 to ascertain the risk to the community of a defendant staying
2 out. And he hasn't engaged or incurred any other criminal
3 justice interactions during that period, not just during the
4 period after his arrest when he is on -- when he has been on
5 pretrial supervision.

6 So I will allow him to remain on pretrial release while
7 awaiting sentencing.

8 I must caution you, as I'm sure you have, Mr. Watkins,
9 Mr. Gillespie, about your behavior while you're on pretrial
10 release. This is a particularly sensitive time for you. You
11 must appear for sentencing on the date scheduled. If you don't,
12 you can incur another criminal offense, and any sentence on that
13 offense for not appearing as required could be piled on
14 consecutive to any term of imprisonment you get for the
15 convictions you've just incurred today.

16 If you don't appear and you don't comply with pretrial
17 release conditions, you could also be subject to contempt of
18 court, revocation of your release, and if you commit any new
19 violations, new offense conduct while on release awaiting
20 sentencing, that, too, can incur new criminal charges and
21 enhanced penalties that are consecutive as opposed to just
22 stand-alone.

23 So this is a sensitive time for you. So you will stay on
24 the straight and narrow and deal with your -- the things that
25 are concerning you on a day-to-day basis and not incur any new

1 offense conduct.

2 Is there anything further from the defense?

3 MR. WATKINS: No, Your Honor. Thank you.

4 THE COURT: Anything further from the government?

5 MS. SCHESNOL: Nothing further. We'll confer and then
6 report back as quickly as possible regarding potential retrial.

7 THE COURT: Okay. Good. Thank you. Should I give
8 you a date for that so we're all not sitting in limbo? I'm sure
9 Mr. Gillespie and the defense team would like to know rather
10 than just waiting around.

11 MS. SCHESNOL: I think that's a very good idea.

12 THE COURT: Yes. And I think it will be helpful for
13 you when you're talking to your supervisors to know that I've
14 set a date. So let's say January 6. And if you need more time,
15 you will ask for more time, but I think January 6 is plenty of
16 time.

17 MS. SCHESNOL: Agreed. Thank you.

18 MR. WATKINS: Sorry. I didn't hear all of that. Is
19 that a court event, or is that just a deadline by which
20 the government --

21 THE COURT: I think the government by January 6 will
22 file a notice with the Court of what their intent is with
23 respect to Counts 3, 4, 6, and 8.

24 MS. SCHESNOL: We will do that. Thank you.

25 THE COURT: All right. Thank you. If there's nothing

1 further, you're all excused.

2 (Proceedings adjourned at 2:19 p.m.)

3
4 - - - - -

5
6 CERTIFICATE OF OFFICIAL COURT REPORTER

7
8 I, Sara A. Wick, certify that the foregoing is a
9 correct transcript from the record of proceedings in the
10 above-entitled matter.

11
12
13 /s/ Sara A. Wick

February 13, 2023

14 SIGNATURE OF COURT REPORTER

DATE