

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
	:	
<b>v.</b>	:	<b>No. 21-CR-453 (JDB)</b>
	:	
<b>SEAN MICHAEL MCHUGH,</b>	:	
	:	
<b>Defendant.</b>	:	

**STATEMENT OF FACTS FOR STIPULATED TRIAL**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Sean McHugh, with the concurrence of his attorney, hereby submit the Elements and Statement of Facts for Stipulated Trial as to Counts 4 and 5 of the Superseding Indictment. ECF No. 39.

**I. Elements**

The essential elements of Assaulting, Resisting, or Impeding Certain Officers with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. § 111(b), each of which the government must prove the following beyond a reasonable doubt are:

1. That the defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with any officer or employee of the United States or of any agency in any branch of the United States Government;
2. That the defendant did so with some use of force;
3. That the defendant did such acts voluntarily and intentionally, not by mistake or accident;
4. That the defendant did so while the officer was engaged in the performance of his/her official duties; and
5. In doing such acts, the defendant used a deadly or dangerous weapon or inflicted bodily

injury.

The essential elements of the offense of obstruction of an official proceeding and aiding and abetting, in violation of 18 U.S.C. § 1512(c)(2), each of which the government must prove the following beyond a reasonable doubt:

1. The defendant attempted to or did obstruct or impede an official proceeding;
2. The defendant intended to obstruct or impede the official proceeding;
3. The defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding; and
4. The defendant acted corruptly.

The government further alleges that the defendant aided and abetted others in committing obstruction of an official proceeding. To satisfy its burden of proof in proving that the defendant aided and abetted others in committing this offense, the government must prove the following beyond a reasonable doubt:

1. Others committed obstruction of an official proceeding by committing each of the elements of the offense charged;
2. The defendant knew that obstruction of an official proceeding was going to be committed or was being committed by others;
3. The defendant performed an act or acts in furtherance of the offense;
4. The defendant knowingly performed that act or acts for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense of obstruction of an official proceeding; and
5. The defendant did that act or acts with the intent that others commit the offense of an obstruction of an official proceeding.

## II. Statement of Offense

### *The Attack at the U.S. Capitol on January 6, 2021*

1. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured twenty-four hours a day by U.S. Capitol Police (USCP). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by USCP. Only authorized people with appropriate identification are allowed access inside the Capitol.

2. On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in the Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020. The joint session is set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.. The joint session began at approximately 1:00 PM. Shortly thereafter, by approximately 1:30 PM, the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the Capitol. Temporary and permanent barricades, as noted above, were in place around the exterior of the Capitol, and USCP officers were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside.

5. At approximately 2:00 PM, certain individuals in the crowd forced their way through, up, and over the barricades. Officers of the USCP were forced to retreat and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks as required by USCP officers or other authorized security officials.

6. At such time, the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the USCP attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 PM, individuals in the crowd forced entry into the Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the Capitol, requiring the expenditure of more than \$2.8 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 PM, members of the House of Representatives and of the Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 PM on January 6, 2021. In light of the dangerous circumstances caused by the unlawful entry to the Capitol—including the danger posed by individuals who had entered the Capitol without any security screening or weapons check—Congressional proceedings could not resume until after every unauthorized occupant had been removed from or left the Capitol, and USCP confirmed that the building was secured. The proceedings resumed at approximately 8:00 PM after the building

had been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

8. As a result of the civil disorder in Washington, D.C. on January 6, 2021, the United States Secret Service, who had multiple protectees inside the Capitol at the time, was forced to change its normal course of business and deploy additional personnel.

9. As a result of the civil disorder in Washington, D.C. on January 6, 2021, Safeway, a grocery store chain, was forced to close its stores in the District of Columbia earlier than planned on January 6, 2021. As a result, Safeway reported significantly lower sales on January 6, 2021, both as projected and compared to the same date in prior years. Additionally, Safeway delivery shipments from Pennsylvania to the District of Columbia were unable to be completed on January 6, 2021.

*Sean McHugh's Participation in the January 6, 2021, Capitol Riot*

10. The defendant, Sean McHugh, lived in Auburn, California, in January 2021. On January 5, 2021, the defendant flew from Sacramento, California to Washington, D.C. The purpose of the defendant's trip to Washington, D.C., was to protest Congress' certification of the Electoral College.

11. Records from defendant McHugh's Facebook account confirm McHugh travelled to protest Congress' certification of the Electoral College. In a December 21, 2020 Facebook post, McHugh wrote: "Going to D.C. Jan 5 6 7 to fight. HMU if you wanna join. Reservations made!" In a December 22, 2020 Facebook post, McHugh wrote: "If this doesn't make you want to get up in storm Congress and rip people out of office then you need to move to China."

12. On January 6, 2021, McHugh first went to the "Stop the Steal" rally at the National Mall. McHugh was wearing a distinctive plaid shirt and gray ball cap. McHugh also carried with

him an olive green backpack, a red and white megaphone, and a can of bear spray in a holster on his hip.

13. While on the National Mall, McHugh spoke to the crowd through his megaphone and urged them to go to the United States Capitol, including stating: “We have the power in numbers, march on Congress directly after Trump’s speech.” This statement was recorded in a publicly available video from the New York Times entitled “Day of Rage: How Trump Supporters Took the U.S. Capitol”, and a portion of this video is Exhibit 1, that the parties agree is authentic.

14. McHugh left the National Mall and joined a crowd heading toward the United States Capitol. McHugh took videos on his mobile device while walking to the Capitol, including one where he stated: “We’re storming the Capitol ... going to Congress, let them know we don’t want them to accept Electoral College votes” and another where he stated: “This is our country, we are not gonna let this happen.” The parties agree the enclosed videos are from McHugh’s phone and are authentic. *See* Exhibits 2 and 3.

15. McHugh reached the exterior of the Western Front of the Capitol Grounds by 12:50 PM and was at the site of the first breach of the restricted area of the Capitol Grounds at approximately 12:52 PM, near the Peace Monument. McHugh then followed the crowd up the Pennsylvania walkway towards the West Plaza Barricade.

16. At the North side of the West Plaza Barricade McHugh led other rioters in chants of “whose house, our house” through his megaphone, waved other rioters up towards the barricade, and shouted: “Come on! Let’s go!”; “Come on you guys, come on you guys! Bring it in!” to the rioters. McHugh was also one of the first rioters to push past the police line at the West Plaza Barricade when it collapsed under the weight of the numbers of rioters at approximately 12:58 PM. McHugh’s conduct was recorded on two publicly available videos: “Police under attack at

the US Capitol” (a portion of this video is Exhibit 4) and “Patriots STORM U.S. Capitol” (a portion of this video is Exhibit 5), that the parties agree are authentic.

17. Following the breach of the West Plaza Barricade, McHugh ran across the West Plaza towards the South side of the Capitol and around scaffolding that had been built for the inauguration.

18. At approximately 1:00 PM, McHugh and another rioter pulled on barrier manned by United States Capitol Police (USCP) Officer M.E. that protected access to a staircase under the scaffolding. That staircase went around a defensive police line established in the West Plaza and provided access to both the Lower West Terrace and Upper West Terrace of the Capitol. After a brief back and forth, Officer M.E. reclaimed control of the barrier, and McHugh returned to the West Plaza. This encounter with law enforcement was recorded on a publicly available video entitled “January 6 DC RAW Video”, and a portion of this video is Exhibit 6, that the parties agree is authentic.

19. From approximately 1:00 PM until approximately 1:11 PM, McHugh was at or near the front where rioters faced off with law enforcement officers at the Southern side of the West Plaza. McHugh can be seen in video shouting through his megaphone as rioters clash with law enforcement officers. During this time rioters attempted to push through the defensive line, including attacking officers with their hands, throwing objects and deploying various kinds of pepper spray. Law enforcement officers on the West Plaza held the line as officers positioned on the Lower West Terrace above shot projectiles down at the rioters.

20. At approximately 1:11 PM, McHugh pulled a can of bear spray out of the holster on his belt and fired two long, continuous bursts towards the line of law enforcement officers. This

encounter was recorded by a USCP officer in a video entitled “DSC\_0006”, and a portion of this video is Exhibit 7, that the parties agree is authentic.

21. McHugh struck multiple officers with the bear spray, including USCP Officer D.K., who was forced from the line for a few minutes. Specifically, the spray used by McHugh affected Officer D.K.’s eyes, temporarily blinding him and preventing him from performing his official duties. Officer D.K. directly attributed his injury to McHugh, recalling McHugh’s distinctive shirt as well as the distinctive cloud of spray used by McHugh. Officer D.K. was eventually able to return to the line following decontamination.

22. The type of spray used by McHugh against officers on January 6, 2021 was SABRE Frontiersman Bear Attack Deterrent spray, which is hazardous to use on humans and is capable of causing irreversible eye damage. The label also notes that the spray contains 2.0 percent capsaicinoids. Capsaicinoids are lachrymators (mucous membrane irritants) found in the extracts of oleoresin capsicum (OC). OC is a naturally occurring resin found in various peppers. Two percent capsaicinoids is the strongest formula allowed by the Environmental Protection Agency (EPA) in a bear spray, and it is more than 50 percent stronger than police pepper spray.

23. In January 2021, the Metropolitan Police Department (“MPD”) used OC defense sprays with a potency between 0.2 percent and 1.3 percent major capsaicinoids.

24. Frontiersman Bear Attack Deterrent spray is a registered pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act. The EPA has approved labels for this specific product. A copy of the July 3, 2019, EPA Labeling Notification for Frontiersman Bear Attack Deterrent is included as Exhibit 8.



25. Following the riot, McHugh posted on his Facebook account that “I unloaded a whole can of bear spray on a line of cops I got three of them down really really good.” McHugh agrees that his use of bear spray on the officers constituted a deadly or dangerous weapon.

26. From approximately 1:11 PM until approximately 1:40 PM, McHugh remained on the West Plaza, moving back and forth along a defensive perimeter established by law enforcement officers. As rioters repeatedly attempted to breach the law enforcement line, McHugh shouted encouragement to the rioters and vitriol towards law enforcement officers through his megaphone. For example, the following statements by McHugh were captured on law enforcement body-worn cameras:

- a. You are fucking cowards!
- b. I have a job to do and it's to defend the Constitution!
- c. You are protecting communists!
- d. We're coming, you can't stop us forever, you can't stop us forever, we are coming!
- e. You're fucking p[\*\*\*\*\*]!
- f. You are protecting pedophiles ... crooks ... communists!
- g. I'd be shaking in your little shit boots too!
- h. You guys like protecting pedophiles ... protecting fucking h[\*\*\*\*] ... protecting ANTIFA!
- i. Nazis followed orders!
- j. You are gonna hear the lion roar!
- k. You know what's behind us? The Second Amendment, the Second Amendment is behind us!
- l. Imagine if we protect our country with our Second Amendment – you guys wouldn't be standing there right now... this is a good warning to you...you better heed our warning...cause when we do protect our country, you're not going to like it, you're gonna get the fuck out of our way.....we will be exercising our second amendment rights!
- m. What are you gonna do when we protect the Constitution with the Second Amendment, what are you gonna do then? You ain't gonna hold the line!
- n. We're coming, you can't stop us forever!

27. Law enforcement recorded these actions, and the parties agree the videos are authentic. Portions of the law enforcement body-worn camera videos are attached hereto as Exhibits 9, 10, 11.

28. At approximately 1:40 PM a group of rioters carried or passed a billboard (a large sign supported by a metal frame) towards a line of law enforcement officers. McHugh twice grabbed onto the billboard and helped other rioters push it into the officers, using the billboard as a kind of battering ram. McHugh also provided directions to other rioters, shouting "Yeah b[\*\*\*\*]!! Put it up there! Put it up there!" Although law enforcement officers initially attempted to repel the billboard, the officers ultimately decided to pull the billboard behind their line to remove it from the crowd. Law enforcement recorded these actions, and the parties agree the video is authentic, a portion of this video is Exhibit 12.

29. The billboard was approximately 10 to 15 feet wide and two or more feet high. The entire frame was metal, had sharp edges, and had large wheels that stuck out toward the line of law enforcement officers. It took fifteen to twenty law enforcement officers to lift and move the billboard behind their line. Given the weight and size of the billboard, a law enforcement officer could have been knocked unconscious or suffered lacerations if hit in the head when rammed by the billboard.

30. McHugh did not enter the Capitol Building on January 6, 2021.

31. After the riot, McHugh posted on or sent messages via Facebook admitting his participation, including:

- a. I got pepper sprayed shot with mace bullets billy clubed but no major injuries. I'm just at a loss for words... I hope Trump has a rabbit in his hat.
- b. Yeah we made it in I watched some guy get shot in the face with a rubber bullet his face exploded blood everywhere on the steps of Congress a girl got shot in the neck with the live round they were shooting mace out as they were f\*\*\*\*\* throwing tear gas out of us they were shooting baseballs at us but we stormed them and we took Congress
- c. I was there at the front I was there at the f\*\*\*\*\* front
- d. I got f\*\*\*\*\* up and sprayed three times right in the face directly my contacts melted to my f\*\*\*\*\* eyeballs

32. On May 27, 2021, a search warrant was executed at McHugh's residence. Multiple items were recovered, including a plaid shirt, olive green backpack, gray baseball cap, and a red and white megaphone. Officers also recovered two cans of Frontiersman Bear Attack Deterrent spray and a spray holster. *See* Exhibits 13, 14 and 15 (photos of the bear spray recovered at McHugh's residence).

33. One of the recovered cans of Frontiersman Bear Attack Deterrent spray had been opened while the other still had a safety clip attached. The contents of the open can were analyzed at the FBI Laboratory in Quantico, Virginia on February 9, 2023. The FBI examination and analysis confirmed that the open can contained capsaicinoids, specifically capsaicin and dihydrocapsaicin.

If the Court finds the existence of these facts beyond a reasonable doubt, the defendant stipulates that this evidence would establish each and every element of Counts 4 and 5 of the Superseding Indictment.

Respectfully submitted,

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**DEFENDANT'S ACKNOWLEDGMENT**

I, Sean McHugh, have read this Statement of the Facts and have discussed it with my attorney. I fully understand this Statement of the Facts. I agree and acknowledge by my signature that this Statement of the Facts is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Facts fully.

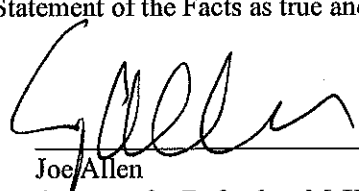
Date: 04/07/2023

  
Sean McHugh  
Defendant

**ATTORNEY'S ACKNOWLEDGMENT**

I have read this Statement of the Facts and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Facts as true and accurate.

Date: 4/14/2023

  
Joe Allen  
Attorney for Defendant McHugh