



THE MCBRIDE LAW FIRM, PLLC

JOSEPH D. MCBRIDE, ESQ.

Attorney and Counselor at Law

99 PARK AVENUE

8TH FLOOR

NEW YORK, NY 10016

April 29, 2024

VIA EMAIL

Andre Wilson

United States Probation Officer

333 Constitution Avenue, NW

Washington, DC 2001

Re: United States v. Ryan Nichols, Case No. 21-cr-00117 (RCL)
Presentence Investigation Report

Dear Mr. Wilson,

Dear Mr. Wilson, I trust this message finds you in good health. The Defense objects to the inclusion of the Specific Offense Characteristic found in Paragraph 62b on page 16 of the PSR. The Defense objects to including this enhancement because the next paragraph 62c, also enhances Mr. Nichols' Guidelines Calculation by an additional six points for committing an offense for the same exact conduct.

In *United States v. Farrow*, 198 F.3d 179 (6th Cir. 1999), the Sixth Circuit set out the analysis for illegally double counting enhancements under the Guidelines, instructing that "Double counting occurs when precisely the same aspect of a defendant's conduct factors into his sentence in two separate ways." Respectfully, we believe that is precisely what has happened here. The relevant portions of the PSR read as follows:

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NEW YORK, NY 10016

P: 917-757-9537

E: JMCBRIDE@MCBRIDELAWNYC.COM

Paragraph 62b

Specific Offense Characteristics: The defendant used a dangerous weapon [to wit: Defendant Nichols, along with other rioters, pushed into officers in a synchronized manner and the defendant took a large red canister of OC or pepper spray and delivered two streams of spray hitting multiple officers, including MPD Officer I.D]. Therefore, four levels are added. USSG §2A2.2(b)(2).

Paragraph 62c

Victim Related Adjustment: In a manner creating a substantial risk of serious bodily injury, the defendant, knowing or having reasonable cause to believe that a person was a law enforcement officer, assaulted MPD I.D., who assaulted such officer during the course of the offense or immediate flight therefrom. Therefore, six levels are added. USSG §3A1.2(c)(1).

As such, and for the reasons stated above, the Defense respectfully objects to the four-point Specific Offense Characteristic found in Paragraph 62b on page 16 of the PSR.

Dated: Brooklyn, NY
April 29, 2024

Respectfully submitted,

/s/ Joseph D. McBride, Esq.

Bar ID: NY0403

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99 Park Avenue,

8th Floor

New York, NY 10016

p: (917) 757-9537

e: jmcbride@mcbridelawnyc.com

Counsel for the Defendant

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