

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

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 21-cr-00035-EGS
)	
RONALD COLTON McABEE,)	
)	
Defendant.)	

**SUPPLEMENTAL FILING OF NEW VIDEO EVIDENCE AND ANALYSIS IN
SUPPORT OF MOTION TO RECONSIDER DETENTION.**

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Defendant Ronald McAbee submits four videos not previously seen by this Court with regard to the events taking place outside the LWT tunnel entrance covering a period of roughly 30 seconds. These videos show specific facts which run counter to the proffer made by the Government, and undermine conclusions reached by this Court based on that proffer which were the basis to improperly detain Defendant McAbee as a “danger to the community.”

The tables below are second-by-second narrations of new videos submitted by Defendant McAbee in support of his motion for Reconsideration of Detention Order:

Defendant’s Video Exhibit “A”
:13 seconds – looking up the stairs.

:01	McAbee alone in front of opening to LWT tunnel, with numerous officers looking out at him. The neon yellow clothing worn by of Off. AW is at his feet.
:02	Freeze-frame – McAbee’s left foot is one step down from landing where his right foot is. His foot is not yet between Off. AW’s legs.
:03	As McAbee reaches down, Off. AW extends his right leg forward and you can see the bottom of his shoe. That allows individual Person No. 1 -- no hat, dark gloves, and dark gray jacket -- to bend over the railing on the left of the stairs and grab Off. AW’s right foot.
:04-:10	Persons in the crowd obscure the camera view for several seconds.
:11	Person No. 1 is bending forward at the waist and reaching out with both hands holding Off. AW’s right foot. McAbee’s left foot is now between Off. AW’s legs as he is standing up engaging with the Officers to his front.
:12-:13	McAbee left foot can be seen clearly between Off. AW’s legs when Off. CM comes forward and strikes McAbee. McAbee’s left foot remains between Off. AW’s legs, and he does not take a step forward towards the tunnel.

Defendant’s Video Exhibit “B”
:14 seconds – looking up the stairs (later in time)

:00	McAbee is seen standing alone in the tunnel entrance, back to the camera. Between his two feet is Off. AW’s left leg bent at the knee, with his foot on the step. No one is to McAbee’s right and no one behind him on the steps.
:02	Officer CM strikes McAbee across the ribs and McAbee responds by pushing him back but does not strike him in an offensive fashion.
:04	Freeze-frame – Off. AW’s left leg is still between McAbee’s feet. McAbee does not step forward with his left leg in reaction to Off. CM’s strike.
:05	Freeze-frame – McAbee’s left foot is between the legs of Off. AW. Person No.1 has hold of Off. AW’s right foot and is pulling.

:07	Lopatic comes from behind on McAbee's right side and moves in front of him to confront Off. CM. McAbee does not move forward – still has not taken any steps forward.
:08	Freeze-frame – McAbee's left foot is still between Off. AW's legs.
:09	Someone moves in front of camera and view is obscured
:10	Full view returns looking directly up the stairs. Person No.2 in blue jeans, gray top, and a black backpack moves up the stairs. With his right hand on the railing, No.2 leans forward and reaches out with his left hand. McAbee looks down at Off AW and bends over at the waist. Almost immediately McAbee looks to be losing his balance. Person No.1 on the left side of the screen is bending forward at the waist. At that moment Person No.2 begins pulling backwards with his left arm as he straightens up.
:11	Person No.1 begins to straighten up and brings right arm toward him. McAbee can only be seen from his mid-back up – red hat and black top – as he's bent over.
:12-:14	McAbee loses his balance as legs are sliding backwards – not stepping backwards. Almost parallel to the ground and not in control of his body movement.

Defendant's Video Exhibit "C"

:38 seconds Slow Motion View

:00	Begins with Lopatic already coming past McAbee on his right side. McAbee's attention is directed forward. Person No. 1 has both hands on Off. AW's right foot.
:19	Person No. 2 (light gray top, black backpack) comes into view from the right side by climbing over the hand railing on that side of the staircase.
:33	Person No. 2 holds on to the railing with his right hand, bends forward and reaches out with his left hand. Person No. 1 to left side of screen begins to pull backwards with Off. AW's right foot in his hands.
:35	McAbee takes hand off the back of Lopatic and turns attention back to Off. AW at his feet.
:36	McAbee is standing but almost immediately bends forward at the waist and puts his hands on the ground as he loses his balance.
:37	McAbee attempts to regain his balance to stand back up, but his feet are swept out from underneath him by Off. AW's sliding body.

Defendant's Video Exhibit "D"

:09 seconds from elevated view to the tight of tunnel

:00	McAbee is in the middle on right side of the screen. Red hat and dark/black top. Blue arrow pointing at his head.
:02	Lopatic comes from behind on his right, red hat and light/white top.
:03-05	McAbee never moves forward towards the entrance to the tunnel. Remains in same place the entire time – tunnel entrance serves as point of reference.

:05	McAbee suddenly looks down as he loses his balance. Persons No.1 and No.2 behind him are pulling on Off. OW's legs. They succeed in pulling Off. AW down the stairs causing McAbee to fall face forward.
:06-:09	McAbee slides down the stairs with Off. A.W. underneath him. At no point is McAbee in control of his movement.

Below are tables that narrate on a second-by-second basis the videos submitted by the Government during the earlier detention proceedings in this case which the Government had the opportunity to narrate as they were played as part of its Proffer, followed by the Court taking the videos for further review in camera.

Exhibit 1: Officer CM's Body Worn Camera Video

:40	Bodies can be seen on the ground at the top of the screen, Officer AW at the bottom of the screen on his back. Another Officer attempts to help Off. AW, but a protester grabs that Officer's helmet under the back edge and pulls.
:43	McAbee first appears, standing to the left side of the tunnel from the perspective of the Officers facing out.
:45	McAbee steps into the opening, but not towards line of officers. McAbee yells to Officers "You have a man down out here." McAbee's hands are empty.
:47	Off. AW is on his back laying at McAbee's feet. Another Officer grabs Off. AW by the upper collar on his vest and attempts to pulls him towards tunnel but fails. McAbee does not have hold of Off. AW at this point. He's made no effort to prevent other Officers from dragging Off AW into the tunnel – no others tried.
:48	McAbee bends over Off. AW, places both hands on Off. AW and spins Off. AW's body 8-12 inches in a counter-clockwise rotation. McAbee then releases his hold on Off. AW.
:51	A unidentified Officer bends down in front of Off. C.M. and is face-to-face with McAbee. No blows are attempted by either. The Officer attempts to pull Off. AW back towards the tunnel. McAbee does not interfere – he does not have his hands on Off. AW. There is no "tug-of-war" between McAbee and anyone else as claimed by the Government.
:54	McAbee stands up and points in the direction of Officers to McAbee's left and yells at them to stop hitting him and other protesters who are on the ground. He extends his right arm/hand signaling for them to stop.
:55	McAbee is standing upright when Officer CM exits the tunnel from McAbee's right side. There are no protesters to McAbee's right or immediately behind him.
:58	Officer CM uses his baton, gripping it at both ends, to "cross-check" McAbee under his extended right arm and into his ribs on his right side. McAbee was NOT advancing on or "interfering" with any effort by CM to aid Off. AW. He was not looking at Off. CM at the time he was struck by Off. CM.
:59	McAbee <u>reacts</u> to Off. CM's blow by pushing him away with both hands. But he does not advance towards Off. CM or any other officer inside the tunnel.

1:00	Co-Defendant Lopatic comes from behind McAbee on his right side and intervenes between McAbee and Off. CM.
1:05	McAbee's attention shifts back to Off. AW at his feet while he is standing upright.
1:08	Officer CM's BWC becomes compromised.

Exhibit 2: **Off. DP's** Body Worn Camera Video

:29	McAbee enters camera view from the left. McAbee has nothing in either hand.
:31	There are no other protesters in the immediate vicinity of McAbee. McAbee bends over and has his right hand is on the pants of Off. AW at the left thigh area. His left hand his hidden from the camera's view but in the area of Off. AW's left ankle/foot.
:32	McAbee pulls on Off. AW, moving him 8-12 inches, rotating him counter-clockwise. He does not drag Off. AW towards the crowd. There was no one behind McAbee. McAbee is significantly bigger and heavier than Off. AW. He could have stepped backwards while maintaining his grip and easily have pulled AW down the stairs -- but he did not do that. Instead, he released his grip after Off. AW's torso shifted. Neither Off. CM nor any other Officer was approaching McAbee when he released his grip on Off. AW. This was a volitional act by McAbee and contradicts the Government's claim he was trying to drag Off. AW into the crowd.
:39	McAbee stands up. The video shows McAbee's right foot on the ground next to Off. AW's chest (left side), and McAbee's left foot is on the ground <u>between Off. AW's legs.</u>
:42	While standing up, McAbee's attention is to his front and his left as he yells at Officers who are swinging batons at protesters on right side of tunnel (facing out). He extends his right arm signaling the Officers to stop striking protesters who are down on the ground. Off. CM moves towards McAbee from McAbee's right side, and strikes McAbee under his extended right arm and across the ribs with his baton in "cross-check" manner. McAbee pushed Off. CM back with both hands – open hands, not closed fists -- to prevent a second blow from being delivered. This was a reaction – not an act of aggression.
:44	McAbee did not advance on Off. CM – he increases the space between them. Off. CM retreats back to the tunnel. McAbee remains in the same place as Lopatic comes from behind and gets between them. The video shows <u>McAbee's feet are still in the same place</u> – one next to AW's left side and one between AW's legs. McAbee did not take any steps forward toward the police in the tunnel in reaction to Off. CM.
:49	The video is obscured starting from this point to the end.

Exhibit 3: Storyful Video from YouTube.

:13	McAbee is first visible to right side of entrance (looking in the direction of the tunnel). Red hat, black gloves, white sunglasses, and dark top.
:16	McAbee bends down and picks up a baton off the ground.

:17	McAbee is hit by a crutch thrown from behind him that bounces off the wall next to the entrance, hitting him in the face and knocking his hat and glasses almost off.
:21	McAbee moves from the right of the tunnel entrance to being directly in front of the tunnel and takes up his position standing over Off. AW who is on the ground. BWC video shows McAbee no longer has the baton at this point – so less than 4 seconds after picking up the baton he discarded it.
:24	McAbee bends over the first time, grabbed Off. AW's pants, and rotated AW's legs and body counterclockwise as can be seen in the BWC video.
:26	McAbee releases his grip on Off. AW and stands up.
:29	While still standing over Off. AW, McAbee puts his right arm and hand up in a "Stop" gesture to the police who were hitting others to his left.
:34	Off. CM approaches from McAbee's right and hits him under the arm and across the ribs with a baton in a "cross-check" manner.
:36	McAbee's attention shifts to Off. CM, but he never moves forward. His feet are still in the same position at :41 – 5 seconds later. Lopatic comes from behind and gets between McAbee and Off. CM who has begun to retreat into tunnel. The video confirms McAbee's feet remained in the same place.
:41	McAbee's attention returns to Off. AW at his feet. Almost immediately protesters behind McAbee pull on both of Off. AW's legs. McAbee's right foot is caught under Off. AW's left armpit, and McAbee's right left foot is caught between Off. AW's legs. McAbee's feet and legs are swept out from underneath him as Off. AW is pulled down the stairs by others, causing McAbee to fall on top of Off. AW. For 20 seconds McAbee and Off. AW are obscured by the crowd in this video.
1:03	McAbee is seen again as the crowd shifts. He is face down on top of Off. AW. McAbee does not assault Off. AW while he is in this vulnerable position – the Gov't admits Off. AW's BWC shows no assault by McAbee while they are in this position. McAbee tells Off. AW he's going to stay on top until Off. AW is ready to stand, and they'll stand up together. Off. AW confirms he understands.
1:21	As Off. AW stands up he is separated from McAbee in the chaos of the crowd. Off. AW makes his way back to the police line in the tunnel.

Exh. 4 – Off. AW's Body Worn Camera Video

:03	Roseanne Boyland's body is seen at the bottom of the video. Blue jeans, dark top pulled up resulting in a bare mid-rift. To the right in the frame is man in a blue shirt who was her traveling companion. African American male in blue jeans and a dark shirt also pulled up to expose his stomach also appears to be in distress.
:07	A protester in a Michigan sweatshirt and a jacket comes from the outside the tunnel and grabs an Asp baton being held by Off. AW. Off. AW and other Officers push the protester away for several seconds. At some point Off. AW loses his footing and ends up on the ground on his back where he remains.
:32	McAbee is seen with his left hand on a railing while bending down to pick up a baton off the ground with his right hand.
:34	McAbee is standing up with his left hand on his hat and the baton in his right hand. This is after the crutch hit the wall and then hit him in the head.

:37	McAbee moves forward from his position off to the side of the tunnel entrance and to a position directly in front of the entrance. His right hand is visible and it is empty -- he discarded the baton less than 5 seconds after picking it up.
:40	McAbee bends over Off. AW, grabbing him by the pants at the thigh with one hand and in the area of his lower leg/foot with the other, and spins Off. AW's torso in a counterclockwise direction. This moved Off. AW slightly closer to McAbee, but not in the direction of the stairs behind McAbee. The archway overhead is in full view the entire time and serves as a frame of reference. Off. AW was not pulled towards the crowd by McAbee's action. The spin did allow McAbee to reach both sides of Off. AW's vest with his hands. At this point McAbee stands up and yells at the officers who were continuing to strike protesters next to him.
:50	McAbee has not done anything aggressive towards Off. AW who is down and vulnerable during the 10+ seconds since he moved into the middle of the opening. Off. CM steps forward and "cross checks" McAbee under the right arm and across the ribs with a baton.
:52	McAbee pushes back causing Off. CM to back away. McAbee's feet never moved and he did not advance on Off. CM or any other Officers.
:55	Lopatic came forward from behind on McAbee's right, put himself between McAbee and Off. CM, and then engaged with Off. CM. McAbee did not further engage with Off CM.
:59	McAbee bends over Off. AW again to attempt to get a grip on AW's vest. At the same moment Off. AW is pulled down the stairs by people behind McAbee, causing McAbee to fall on top of Off. AW. McAbee remained in this position for approximately 25 seconds. As the government admits, the video shows McAbee did not make any attempt to assault Off. AW while in he was in this vulnerable position. At 1:22 McAbee can be heard yelling "NO!" at another protester who is attempting to assault Off. AW. McAbee tells Off. AW that he's going to stay on top of him until Off. AW is ready to stand, and they will stand up together.
1:30	AW is no longer on his back and is beginning to regain his feet. Off. AW makes his way through the crowd up the stairs and is back inside the police line at 1:54.

Exh. 6a – Officer SS Body Worn Camera Video

:11	McAbee is seen in front of the tunnel as he moves into the middle.
:19	McAbee is bent over Off. AW, his right foot on the ground just to the right of Off. AW's torso. He has his hand up telling Officers to quit striking the people around him.
:21	McAbee stands up and yells at an officer who is continuing to strike protesters.
:24	Off. SS is directly behind Off. CP when Off. CP strikes McAbee under the right arm and across the ribs with his baton. Off. CP's body obscures this video. Off. SS has his hand on Off. CP's back, pushing him forward when Lopatic comes forward and grabs Off. CP. Nothing further can be seen in this video.

Exh. 6b – Officer SS Body Worn Camera Video

02:	The entrance to the tunnel is calm as 4 individuals led by Colt pull Boyland's body towards the police line in an effort to get her medical attention. One person is performing CPR while others are yelling at the Officers to summon more medical attention for her. No violence is taking place.
1:15	The entrance is clear, one protester remains yelling at the Police, while items are thrown into the tunnel from the crowd. McAbee is bent over at the waist and holding onto the railing with his right hand in distress. He is not combative while in close-contact with Officers inside the tunnel. He asks to pass through the police and into the Capitol due to his shoulder which he has reinjured – a condition that is not disputed. There is no evidence this was intended as any form of subterfuge.

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Respectfully submitted,

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¹ All videos can be found out at the link provided below.

<https://www.dropbox.com/s/dsfee6mxemk0g0w/Defendant%E2%80%99s%20Video%20Exhibit%20%E2%80%9CA%E2%80%9D.mp4?dl=0>