

1 COURT OF APPEALS
2 STATE OF NEW YORK

4 | PEOPLE,

Appellant,

(Papers Sealed)

-against-

No. 134

ALEXIS OCASIO,

Respondent.

20 Eagle Street
Albany, New York 12207
September 07, 2016

12 | Before:

CHIEF JUDGE JANET DIFIORE

ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.

ASSOCIATE JUDGE JENNY RIVERA

ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

ASSOCIATE JUDGE LESLIE E. STEIN

ASSOCIATE JUDGE EUGENE M. FAHEY

ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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1 CHIEF JUDGE DIFIORE: Next matter is appeal
2 number 134, People v. Alexis Ocasio.

3 Counsel.

4 MS. STRACQUADANIO: May it please the
5 court, Marianne Stracquadanio for the People. I'd
6 like to request two minutes of rebuttal time.

7 CHIEF JUDGE DIFIORE: Certainly.

8 MS. STRACQUADANIO: Your Honors, the
9 accusatory instrument in this case was facially
10 sufficient and should not have been dismissed. As
11 the - - - the previous case noted, the same goes for
12 this case, that all that was required here was that
13 the accusatory instrument alleged facts of an
14 evidentiary nature supporting the charges and that
15 those facts provided reasonable cause to believe that
16 the defendant was guilty of the - - - the crime
17 charged and that the nonhearsay allegations establish
18 each element of the crime.

19 JUDGE STEIN: How do you define a billy?

20 MS. STRACQUADANIO: So a billy is a police
21 baton is a billy is a nightstick. All of these terms
22 in common parlance mean the same thing. Looking at
23 the patrol guide, it's clear that, you know, this
24 type of expand - - - expandable baton is given the
25 same - - - is interchangeable with the idea of the

1 wooden baton that - - -

2 JUDGE STEIN: Well, you agree when - - -
3 when this statute was put in place, police batons
4 were wooden?

5 MS. STRACQUADANIO: Correct.

6 JUDGE STEIN: Right?

7 MS. STRACQUADANIO: Yes.

8 JUDGE STEIN: Okay. So - - - so what if -
9 - - so does that - - - so, I guess, what is it that
10 defines it as a polic - - - even if - - - even if we
11 say it's a police baton, what is it that defines it
12 as such? And - - - and how would the average person
13 know? So at one point you had a - - - a baton a
14 certain length and it was made of wood and that was
15 that. Okay. Now we're talking about something that
16 is - - - is extendable, okay, so it starts as one
17 size, it becomes another, and it's not made of wood.
18 How do we know the - - - how does the average person
19 know that that is a police baton or a billy club?

20 MS. STRACQUADANIO: So the concept of the
21 billy club is a plastic, it's a fluid concept. And -
22 - - and we know that, you know, this particular type
23 of expandable baton is - - - is one that only police
24 officers use. It's - - - it's not even for sale, you
25 know, in - - - in common marketplaces. It's mostly

1 for sale in, like, police supply stores or, you know

2 - - -

3 JUDGE STEIN: So would it be a different -
4 - - when I was younger, I used to twirl, you know,
5 batons in the dancing band or whatever. Is that - -
6 - would that qualify? Could that qualify as what
7 we're talking about that's similar to what the police
8 use?

9 MS. STRACQUADANIO: No. I think that the
10 Third Department's decision in Shoemaker could be
11 persuasive here because, certainly, the in - - - the
12 purpose for which this particular type of expandable
13 baton was designed for law enforcement purposes to
14 subdue a suspect in - - - in order to, you know,
15 effectuate an arrest.

16 JUDGE RIVERA: But is - - -

17 CHIEF JUDGE DIFIORE: So counsel, are you
18 suggesting that when the police department determines
19 to update the equipment that is issued to a police
20 officer and instead of using this - - - the old
21 traditional billy, the wooden billy, they move to an
22 extendable baton, that that stretches the definition
23 under 265.01 to accommodate that? Is that what your
24 argument is?

25 MS. STRACQUADANIO: Well, I - - - I don't

1 know if it's precisely the - - - the NYPD itself that
2 stretches the def - - - definition. I just think
3 that the essence of a billy club is a police baton.
4 Nobody says billy - - -

5 CHIEF JUDGE DIFIORE: So who defines police
6 baton? Is it the police department in their
7 determination of what equipment they issue to their
8 members? Is - - - and that - - -

9 MS. STRACQUADANIO: Partially.

10 CHIEF JUDGE DIFIORE: The - - - the
11 interpretation of the statute tracks their
12 determination of what a new billy is?

13 MS. STRACQUADANIO: Partially, but also
14 there is in - - - in the sub - - - the 265.20
15 section, there is - - - the legislature did say that
16 for the billy, that is also known as a police baton,
17 so there - - - that's there in the - - - in the
18 statute itself.

19 JUDGE RIVERA: Did it - - - did it
20 reference to the potential to expand, that it's
21 expandable?

22 MS. STRACQUADANIO: That - - - that section
23 does not say that it's expandable. But - - -

24 JUDGE RIVERA: Then historically, these
25 were not expandable, right?

1 MS. STRACQUADANIO: Over the last twenty
2 years - - -

3 JUDGE RIVERA: We know, but historically -
4 - -

5 MS. STRACQUADANIO: Well, certainly - - -

6 JUDGE RIVERA: - - - going back in time.

7 MS. STRACQUADANIO: Going back in time and
8 at the time that Talbert, which is the - - -

9 JUDGE RIVERA: Um-hum.

10 MS. STRACQUADANIO: - - - the Third
11 Department case that the - - - the appellate term
12 rested its decision in this case, at that time, yes,
13 police batons were wooden. However, the concept of a
14 billy is a malleable concept.

15 JUDGE GARCIA: But, counsel - - -

16 JUDGE RIVERA: But I guess I'm saying, if I
17 may, it - - - when the legislature seeks to clarify a
18 provision, and as you point out, passes 265.20(b),
19 would it not at that point have had the opportunity,
20 if it chose to, to say more than just a police baton
21 which is within a certain length and within a certain
22 thickness? Would they - - - would the legislature
23 not, at that point, have said expandable if it wanted
24 to say that?

25 MS. STRACQUADANIO: It - - -

1 JUDGE RIVERA: Or metal, if it wanted to
2 say that?

3 MS. STRACQUADANIO: It could have.

4 However, it doesn't foreclose - - -

5 JUDGE RIVERA: But doesn't that tell us
6 something that they did not when they had an
7 opportunity to do, I think exactly what you're
8 suggesting, which is to clarify that billy can have
9 many meanings and still fall within the statute?

10 MS. STRACQUADANIO: It cuts the opposite
11 way, as well. I mean the fact that they didn't
12 strictly define - - - you know, amend the - - - the
13 265.00 section in the definition - - -

14 JUDGE FAHEY: So you're - - - you're asking
15 us then to say that billy falls into a generic term
16 like a - - - like a bat, like a baseball bat?

17 MS. STRACQUADANIO: Yes.

18 JUDGE FAHEY: In other words, a baseball
19 bat, when I played baseball, was a wooden bat. Now
20 that I take my nephews, they're aluminum or
21 graphites, but they're still bats.

22 MS. STRACQUADANIO: Correct.

23 JUDGE FAHEY: And they're still called
24 bats, and the - - - the definition hasn't changed.
25 Another similarity would be clubs, like golf clubs.

1 Golf clubs at one time were all made out of wood, and
2 over time they become aluminum and other things. And
3 that you're saying that this term falls, bill - - -
4 billy is a term of art in that sense rather than a
5 definitional term with the exactitude that the - - -
6 the defendant is saying.

7 MS. STRACQUADANIO: Exactly, Your Honor.
8 You know - - -

9 JUDGE GARCIA: But counsel - - -
10 JUDGE FAHEY: As Judge Garcia would say
11 that's a softball there. Yeah.

12 JUDGE GARCIA: Yeah. All this discussion
13 and that that these are fluid, I think you said, and
14 malleable concept, it - - - it comes back to me,
15 though, that this is a strict liability offense,
16 right? So the definition is the crime so-to-speak,
17 right? So in that case, we have to be very careful
18 as to what falls within that definition. So while,
19 you know, this might, in a baseball bat connotation,
20 but in a - - - in a strict liability weapons
21 connotation, you know, a baton, there's really no
22 other legitimate use for it, right, agreed. But that
23 doesn't really answer the question of whether it
24 falls within one of the specific weapons that are
25 listed within this statute. And the fact that it's -

1 - - you know, that it can be fluid or it can be
2 malleable, doesn't that cut against us reading more
3 things - - - reading it that way because, really, for
4 strict liability offense where somebody who possesses
5 it is guilty of a crime, wouldn't we err on the other
6 side?

7 MS. STRACQUADANIO: Well, statutes should
8 be construed to effectuate the legislator's intent as
9 technologies evolve, and this is the type of - - -
10 this expandable baton is - - - is a billy club, for
11 all intents and purposes, because it is what the
12 police are using in their law enforcement purpose.
13 And we know that the legislature doesn't want this in
14 the hands of untrained, ordinary civilians.

15 JUDGE GARCIA: But I think, then, isn't the
16 legislature in the best position, which they have
17 done before, to assess the technological advances and
18 make a specific item on that scale a per se weapon?

19 MS. STRACQUADANIO: It just doesn't - - -
20 it doesn't have to because of this malleable concept.

21 JUDGE RIVERA: Well, doesn't the rule of
22 lenity require an affirmance here? If you've got two
23 possible constructions, don't we have to take the one
24 that is the most narrow in this case?

25 MS. STRACQUADANIO: No, Your Honor. All

1 throughout the legislation - - - the litigation
2 below, you know, we argued that this was a billy
3 under - - - under the statute. It is inclusive of
4 this type of baton because of the - - - the purpose
5 for which it was designed. I see my time is up.

6 CHIEF JUDGE DIFIORE: Thank you, counsel.

7 MS. STRACQUADANIO: Thanks.

8 CHIEF JUDGE DIFIORE: Counsel.

9 JUDGE STEIN: Counsel, when we were just
10 talking about the legislature and what it did or
11 didn't do, when it came to - - - to metal knuckles,
12 it defined them as metal, right. And then when
13 plastic knuckles came along it had to add a new thing
14 because it was very specific. Here, the legislature
15 just called it a billy. It didn't say a wooden
16 billy. It didn't say, you know - - - it didn't
17 describe it at all. So is there a difference there?
18 Can we draw any different inferences there?

19 MR. PATERSON: Good afternoon; may it
20 please the court, Paul Paterson of Paul Weiss for the
21 respondent. And to answer Your Honor's question, I
22 think that is an incredibly good example of how
23 you're dealing with a statute which is very specific
24 and very specifically prescribes position of objects
25 based on their physical characteristics. So to take

1 that example, metal knuckles - - -

2 JUDGE STEIN: This one doesn't, right.

3 This one has no description at all.

4 MR. PATERSON: Well, billies were wooden.

5 Billies were heavy, wooden clubs - - -

6 JUDGE PIGOTT: What - - - what are baseball
7 bats.

8 MR. PATERSON: - - - Your Honor. Baseball
9 bats are wooden as well, Your Honor.

10 JUDGE PIGOTT: Are they? Okay.

11 MR. PATERSON: Yes, Your Honor.

12 JUDGE PIGOTT: So - - - so anything that's
13 - - - you know, looks like a baseball bat that is
14 being used in a baseball game that's not wooden, that
15 batter is using something other than a baseball bat?

16 MR. PATERSON: Well, Your Honor, the way
17 the Third Department dealt with this issue in the
18 Talbert case is to say that a billy is a heavy wooden
19 stick, which, from its appearance - - -

20 JUDGE PIGOTT: So you're saying, yes,
21 that's right. The - - - the batter may think he's
22 got a baseball bat, but he doesn't. He has something
23 else?

24 MR. PATERSON: I'm - - - I'm saying he
25 doesn't have a billy, Your Honor. And the reason - -

1 -

2 JUDGE PIGOTT: I understand your point, but
3 my point is exactly the opposite. And there's a
4 billy, and as your opponent is arguing, billies have
5 moved on. And when you have an officer who says that
6 - - - you know, that he - - - he describes the item.
7 He says that "based on my training and experience,
8 which includes training in the recognition of
9 weapons, that the aforesaid metal baton is a - - - is
10 a bludgeon" and that the deponent says the defendant
11 said I took speed cuff training at a class, and I
12 bought this from the police. How much more
13 information do you need to know that this is a billy
14 club?

15 MR. PATERSON: Your Honor, because it does
16 not have the defining characteristic of being a billy
17 club.

18 JUDGE PIGOTT: You're saying it defines
19 something perfectly but this does not fit within the
20 statute?

21 MR. PATERSON: I'm saying it does not fit
22 within the statute, Your Honor.

23 JUDGE PIGOTT: So any and all defendants
24 who may or may not have one of these things is
25 walking around town and they're perfectly legal and

1 they can beat people over the head with them and
2 that's not a dangerous weapon?

3 MR. PATERSON: No, they cannot, Your Honor.

4 Because - - -

5 JUDGE PIGOTT: Oh.

6 MR. PATERSON: - - - 265.01(2) prohibits
7 possession of any dangerous or deadly instrument
8 provided you have intent to use it unlawfully against
9 another. We're dealing with a very specific statute
10 which only describes specific items, and it does not
11 describe possession of every item that can be a
12 dangerous weapon.

13 JUDGE STEIN: So what - - - what if it was
14 a wooden item, as you say a billy has to be, but it
15 was capable of being folded in half for storage?
16 Would - - - would that be a billy?

17 MR. PATERSON: Well, Your Honor, what
18 several courts have said is because the defining
19 characteristic of a billy - - -

20 JUDGE PIGOTT: Is that a no?

21 MR. PATERSON: Is - - - it would not be a
22 billy because it's not a club. It's not a club, Your
23 Honor. It's a different instrument.

24 JUDGE STEIN: So what do we make of Penal
25 Law Section 265.20 where it - - - it appears that the

1 legislature is - - - is saying that a billy is
2 equivalent to a baton.

3 MR. PATERSON: Your Honor, I think 265.20
4 actually says exactly the opposite. Because what
5 265.20 says is that auxiliary police can possess
6 quote "that type of billy commonly known as a police
7 baton provided it means certain characteristics." So
8 it regards billies and police batons as different
9 items. Under the People's interpretation, that
10 section would read that type of billy - - -

11 JUDGE PIGOTT: Your client - - -

12 MR. PATERSON: - - - i.e. a police
13 department probably knows - - -

14 JUDGE PIGOTT: Your client said that he got
15 it from the police.

16 MR. PATERSON: Your Honor, I'm - - -

17 JUDGE PIGOTT: There is little doubt,
18 unless you tell me something different, that that is
19 a police officer's club. That as your opponent is
20 arguing, is an advance on the - - - on the wooden
21 baton billy clubs. And what you're saying is well,
22 then they should have amended the statute. We admit
23 we've got a - - - we've got what's the equivalent of
24 a billy club here, but because they didn't change the
25 definition in the statute, we - - - we are okay.

1 MR. PATERSON: Your Honor, just to - - -

2 JUDGE PIGOTT: Right?

3 MR. PATERSON: As a preliminary point, I
4 don't know anywhere in the record that references my
5 client as getting that from the police. I think that
6 may be a reference to the Lapriesty (ph.) case, which
7 is a different matter.

8 JUDGE PIGOTT: "Deponent further states the
9 defendant stated in sum and substance I have it for
10 protection. I took ASP and speed cuff training at a
11 class. I bought it at a police store."

12 MR. PATERSON: Your Honor, the defining - -
13 - because the defining characteristic of the billy is
14 not whether or not it's a police baton, it's - - - I
15 respectfully submit it's simply not relevant whether
16 or not it came from the police. And I also submit
17 defining it as a police baton would be both under-
18 inclusive and over-inclusive. It's under-inclusive
19 because not every billy is a police baton. The Third
20 Department in the Talbert case considered an item
21 that was a homemade broom handle with taped wrapped
22 around each end, and the Third Department held that
23 the police had probable cause to - - - to believe
24 that that item was a billy even though it's not a
25 police baton.

1 JUDGE PIGOTT: Do you agree with that
2 decision?

3 MR. PATERSON: Yes, I do, Your Honor.

4 JUDGE PIGOTT: Okay.

5 JUDGE GARCIA: But doesn't that decision
6 cut a little bit against you here because you focus
7 on the fact that it's a heavy wooden stick, which
8 they do say. But it seems to me the real thrust of
9 that Talbert decision is: "With a handle grip, which
10 from its appearance is designed to be used to strike
11 an individual and not for other lawful purposes." So
12 if you take the wooden out of that sentence, the
13 heavy stick with a handle grip used to strike, that's
14 what you have here. I mean that's this.

15 MR. PATERSON: But I think - - -

16 JUDGE GARCIA: So you're saying just
17 because it's metal and not wooden it doesn't meet
18 this definition?

19 MR. PATERSON: It's a two-part definition,
20 Your Honor. It has to be a heavy wooden stick under
21 Talbert and from its appearance.

22 JUDGE GARCIA: Why?

23 MR. PATERSON: Because that's what a billy
24 also has been, Your Honor, and that's what a billy is
25 now. We simply don't see, and the People have not

1 identified, any reference - - -

2 JUDGE FAHEY: You understand the problem
3 with that logic, though, is - - - is the law can't be
4 that static. I think that it was a good point made,
5 I'm not sure which of my colleagues made it, about it
6 being a strict liability offense. I thought that was
7 - - - that was a good point.

8 But the problem is - - - is most weapon
9 offenses that we deal with involve guns, it involves
10 strict definitions, strict liability. And it seems
11 to me that it can't be totally - - - that we're not
12 necessarily stuck with an 1862 picture of what a
13 billy is and that's it because that's impossible.
14 The law has to be more malleable and more flexible
15 than that otherwise you can't enforce it, you can't
16 protect people, you can't protect either their rights
17 or - - - or their responsibilities. It - - - you
18 create an impossible situation for us that way.

19 MR. PATERSON: But, Your Honor, the statute
20 doesn't say police baton. I agree with you that if
21 it said police baton it would be broad enough to
22 capture items that are being used as police batons.
23 It says billy which is an incredibly specific item.

24 JUDGE PIGOTT: But is this - - - I mean
25 your argument is if - - - if these instruments,

1 similar to the one that you got that was bought at
2 the police store, is being used by police officers
3 throughout the city, you can safely say there isn't a
4 single police officer in this city that has a billy?

5 MR. PATERSON: I don't think - - - it may
6 not be, Your Honor, if they're not carrying around
7 heavy wooden clubs.

8 JUDGE PIGOTT: Wouldn't that surprise them?

9 MR. PATERSON: I don't think so, Your
10 Honor.

11 JUDGE PIGOTT: Okay.

12 MR. PATERSON: I mean it may or may not,
13 but they don't have billies. And in fact, if you
14 look at the patrol guide, the People talk about the
15 patrol guide. The patrol guide doesn't talk about
16 billies because no one uses the term billy in
17 ordinary language to talk about an extendable baton.
18 I mean we cite numerous articles in our brief, recent
19 articles, talking about billies as being obsolete
20 items that are hanging in police - - -

21 JUDGE FAHEY: Well, the funny thing is is
22 that the word itself, the etymology of the words are
23 - - - and now these things are called ASPs and that's
24 because that's the name of the manufacturer that
25 makes them now. And I imagine billy has a similar

1 kind of William reference back in its etymology to
2 why it - - - why it became called that particular
3 kind of stick. But there's nothing in that word that
4 connotes a wooden stick.

5 MR. PATERSON: But there's nothing in the
6 word but it's in the meaning, Your Honor. It's
7 always been in the meaning. There was no need to add
8 wooden billy. And to go back to Judge Stein's point
9 from before about metal knuckles, we do have a - - -
10 a section in the statute that specifically prohibits
11 possession of metal knuckles. I think that was
12 because at the time wooden knuckles were also in
13 existence. And actually, that just shows just how
14 specific the statute is because the legislature - - -

15 JUDGE STEIN: But my point is is when the
16 legislature wanted to focus on a specific item, it
17 did. When this legislature wanted to - - - to make
18 it a more broad concept, and when it says in 265.20
19 that it refers to "a type of billy commonly known as
20 a police baton", to me what it's saying is is that a
21 billy - - - that a police baton is a billy but that
22 there are other types of billies that aren't police.
23 And so it was a more flexible concept that the
24 legislature intended to prohibit here.

25 MR. PATERSON: I think 265.20 says both,

1 Your Honor, and that there are types of billies that
2 are not police batons, and there can be types of
3 police batons that are not billies, like extendable
4 batons which are just not referenced in ordinary
5 language as billies. And I don't think - - -

6 JUDGE RIVERA: Well, act - - - actually,
7 265.20(b) describes the police baton. It doesn't
8 just say police baton. It has particular length - -
9 -

10 MR. PATERSON: It does.

11 JUDGE RIVERA: - - - it has particular
12 thickness. So it is not accurate to say that in that
13 section it - - - it's more talking about type of
14 billy is a police baton. It's - - - it's defining
15 and describing a particular police baton.

16 MR. PATERSON: It is, and the type of
17 police baton that it describes, everyone agrees, is
18 the traditional - - - traditional wooden billy that
19 has been in existence - - -

20 JUDGE RIVERA: Well, does it - - - does it
21 say wooden anywhere - - -

22 MR. PATERSON: Well, the - - - the physical
23 characteristics - - -

24 JUDGE RIVERA: - - - in - - - in 265.20?

25 MR. PATERSON: - - - it gives, the 24 to 26

1 inches in length and the thickness, I think the
2 People agree in their brief and we agree as well,
3 that's describing a traditional billy. So all it's
4 regarding in saying when that provision was enacted
5 is that a traditional billy was used as a police
6 baton.

7 And, Judge Stein, to go back to your
8 question, I don't think it's true that in 265.01
9 anytime that a material defined the items, say, for
10 example, metal knuckles the material was listed
11 first. So for example, we have a blackjack that's
12 also listed in that section, also used as a police
13 club, defining characteristic of a blackjack is that
14 it's leather. Likewise, when we have sand club that
15 was added at the same time as billy was in 1866. And
16 the defining characteristic of a sand club is that
17 it's made of sand. There are all sorts of objects
18 that are listed in this incredibly narrow section
19 that are defined based on their physical
20 characteristics just like a billy club is, Your
21 Honor. I see my time is up, so unless the court has
22 any further questions, I rest on our papers.

23 CHIEF JUDGE DIFIORE: Thank you, sir.

24 Counsel.

MS. STRACQUADANIO: I - - - I just wanted

1 to emphasize that ultimately, like the previous case,
2 the question of whether or not this baton constituted
3 a billy was one that the jury could have answered,
4 one that the trier of fact could have found. The
5 allegation that it was a billy because it had a
6 rubber gripped handle and the fact that it was
7 expandable was sufficient for pleading purposes. And
8 unless Your Honors have any - - -

9 JUDGE RIVERA: Well, how - - - I'm sorry.
10 So how - - - how would the judge explain billy to the
11 jury?

12 MS. STRACQUADANIO: Well - - -

13 JUDGE RIVERA: What would - - - what would
14 he or she say?

15 MS. STRACQUADANIO: I think that what would
16 happen is at trial - - -

17 JUDGE RIVERA: Um-hum.

18 MS. STRACQUADANIO: - - - you know, the
19 People would present their witnesses who would say
20 this is the type. You know, I'm a police officer, I
21 have this type of police baton, this is - - - this is
22 a billy and then the defense could have whatever - -

23 -

24 JUDGE RIVERA: The police baton and that's
25 a billy? So - - - so - - -

1 MS. STRACQUADANIO: Yes.

2 JUDGE RIVERA: So all billies - - -

3 MS. STRACQUADANIO: Yes.

4 JUDGE RIVERA: - - - are police batons and
5 all police batons are billies. Is that - - - is that
6 your position?

7 MS. STRACQUADANIO: Yes. I think that
8 billies - - -

9 JUDGE RIVERA: So then why is 265.20(b)
10 written as "there is a type of billy commonly known
11 as", doesn't that suggest that there is not the
12 complete overlap that you - - - you are arguing?

13 MS. STRACQUADANIO: I think perhaps at the
14 time that that section was amended, again, there is
15 question about what was - - - what was the - - - the
16 actual common makeup of specific police batons. But
17 - - -

18 JUDGE RIVERA: Baton or billy? His
19 argument is that's - - - that this is describing some
20 typical characteristic of billy.

21 MS. STRACQUADANIO: I think that a bill - -
22 - okay, but a billy is never used in common parlance
23 outside of the scope of referring to a police baton.
24 So that section does refer to specifically the police
25 baton because it states the length and - - - and the

1 width in that sub-20 section. Also, I mean, that
2 section has to do with auxiliary police officers,
3 there's - - - that's another added - - -

4 JUDGE RIVERA: So - - - so if cops use
5 Spring Whips, that's a billy?

6 MS. STRACQUADANIO: I think certain Spring
7 Whips could be. I - - - I thought about this, Your
8 Honor. I think certain Spring Whips could be billies
9 but - - -

10 JUDGE RIVERA: If the cops used a - - - a
11 Spring Whip that had metal spikes at the end is it a
12 billy?

13 MS. STRACQUADANIO: I - - - I think then we
14 start to - - - we start to - - -

15 JUDGE RIVERA: What is the difference then?
16 What makes the difference?

17 MS. STRACQUADANIO: The difference is
18 whether or not it is a club-like thing that opens
19 right - - - well, in my case, that it opens, it
20 becomes a club-like thing that can be used in order
21 to subdue a suspect when a police officer - - -

22 JUDGE RIVERA: Aren't - - - aren't my
23 examples that, the Spring Whip, the - - - the object
24 that at the end has the spikes? Haven't you just
25 described that?

1 MS. STRACQUADANIO: I feel like a spike is
2 a different - - - I would not purport - - - spikes
3 have a different essence than just a stick that is
4 basically being used as a - - - so - - -

5 CHIEF JUDGE DIFIORE: Thank you, counsel.

6 MS. STRACQUADANIO: Thank you, Your Honors.

7 (Court is adjourned)

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2 C E R T I F I C A T I O N
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I, Sara Winkeljohn, certify that the
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