UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**CASE NO. 21-cr-244 (CKK)**
v.	:	
	:	
ANTHONY ALFRED GRIFFITH, SR.,	:	
	:	
Defendant.	:	

GOVERNMENT'S SUR-REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS TWO AND THREE

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes the Motion to Dismiss Counts Two and Three of the Indictment (hereinafter, the "Motion" or "Mot.") filed by defendant Anthony Alfred Griffith, Sr. (hereinafter, "Griffith" and the "defendant"). Dkt. 88. Count Two of the Indictment charges Griffith with entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1), and Count Three charges Griffith with disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2). Dkt. 12.

On January 13, 2023, the Government filed its Response to defendant's Motion. Dkt. 105 The defendant filed a Reply on January 20, 2023, in which he raised additional arguments for the first time. Dkt. 107. Accordingly, the Court directed the Government to file a sur-reply to respond to those new arguments. Minute Orders Dated January 22, 2023, and January 27, 2023.

In his Reply, Griffith argues that (1) the United States Secret Service ("USSS") is the only entity authorized to define a restricted perimeter within the meaning of 18 U.S.C. § 1752 and its delegation of that authority to the United States Capitol Police ("USCP") was illegal; (2) that, in any event, rioters breached the established restricted perimeter; and (3) once breached, the area

enclosed by the perimeter was no longer restricted within the meaning of the statute. Defendant's new argument is without merit.

First, for reasons argued in the Government's Response and held by this Court and other judges in this District, the first prong of defendant's argument fails. "Nothing in the statutory text requires 'the Secret Service to be the entity to restrict or cordon off a particular area.'" *United States v. Christopher Grider*, 2022 WL 3016775 *7 (D.D.C. July 29, 2022) (citing and quoting *United States v. Mostofsky*, 579 F.Supp.3d 9, 28 (D.D.C. 2022)); *United States v. McHugh*, 2022 WL 296304, at *18 ("Congress's failure to specify how an area becomes 'restricted' just means that the statute does not require any particular method for restricting a building or grounds.").

Second, Griffith fails to cite to *any* legal authority for his remarkable insistence that an area designated as restricted pursuant to 18 U.S.C. § 1752 stops being a restricted within the meaning of that statute once it is breached by a riotous mob. Nothing in the statutory text supports his claim, and Griffith cannot identify even a single case in support of his argument.

Third, Griffith's claimed interpretation leads to absurd results that are strikingly inconsistent with the purpose of the statute. Under his interpretation, there could be no violation of 18 U.S.C. § 1752(a)(1) or 18 U.S.C. § 1752(a)(2) for entering or remaining in, or engaging in disorderly or disruptive conduct in, a restricted ground; as soon anyone breached a designated restricted area, Griffith's interpretation would mean that it no longer constituted a "restricted area" within the meaning of the statute. By attempting to link the status of a restricted area to a determination of whether or not it has been breached, Griffith's interpretation reduces the statute to a nullity. "This result defies common sense, and there is nothing in the language of the statute to support such an interpretation." *Suburban Transit Corp. v. I.C.C.*, 784 F.2d 1129, 1130 (D.C.

Cri. 1986). Griffith's proposed interpretation likewise defies common sense and finds no support in the statutory text; accordingly, it should be rejected.

Finally, even if there were any merit to Griffith's proposed interpretation of the statute—and there is not—Griffith's argument requires making factual determinations (concerning, among other things, the location and timing of specific breaches of the perimeter around the restricted area) that cannot be resolved in the context of a motion to dismiss. As previously noted, Rule 12 permits a party to raise in a pretrial motion "any defense, objection, or request that the court can determine *without a trial on the merits*." Fed. R. Crim. P. 12(b)(1) (emphasis added). "If contested facts surrounding the commission of the offense would be of *any* assistance in determining the validity of the motion, Rule 12 doesn't authorize its disposition before trial." *United States v. Pope*, 613 F.3d 1255, 1259 (10th Cir. 2010) (Gorsuch, J.). Criminal cases have no mechanism equivalent to the civil rule for summary judgment. *United States v. Bailey*, 444 U.S. 394, 413, n.9 (1980) (motions for summary judgment are creatures of civil, not criminal trials); *United States v. Oseguera Gonzalez*, No. 20-cr-40-BAH at *5, 2020 WL 6342940 (D.D.C. Oct. 29, 2020) (collecting cases explaining that there is no summary judgment procedure in criminal cases or one that permits pretrial determination of the sufficiency of the evidence). Defendant's motion to dismiss should be denied.

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CONCLUSION

For the foregoing reasons, and for all of the reasons set forth in its Response, the government respectfully requests that Griffith's motion to dismiss be denied in its entirety.

Respectfully submitted,

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