UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	**Case No. 21-CR-312 (JEB)**
v.	
BRADLEY BENNETT,	
Defendant.	

RESPONSE TO DEFENDANT'S MOTION
***IN LIMINE* TO PRECLUDE CERTAIN EVIDENCE AT TRIAL**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits its Response to Defendant's Motion *in Limine* to Preclude Certain Evidence at Trial (ECF No. 99). As set out in greater detail below, defendant's motions should be denied.

FACTUAL BACKGROUND

For the purposes of providing the Court with context as to the charges in the Indictment, the following facts are based on those alleged in the Statement of Facts filed with the underlying criminal complaint on March 19, 2021 (ECF No. 1), and additional information learned during the course of the investigation.

These charges in the indictment stem from Bennett's unlawful conduct at the U.S. Capitol on January 6, 2021. On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate convened to certify the vote of the Electoral College of the 2020 U.S. Presidential Election. While the certification process was proceeding, a large crowd, including Bennett, gathered outside the United States Capitol, entered the restricted grounds, and forced entry into the Capitol building. As a result, the Joint Session and the entire

official proceeding of the Congress were halted until law enforcement was able to clear the Capitol and its grounds of the thousands of unlawful occupants and ensure the safety of elected officials.

In the months leading up to January 2021, Bennett sent messages and posted on Facebook about the certification proceeding. For example, on November 17, 2020, Bennett posted on Facebook that he was "in the loop of information" and knew about the upcoming "Constitutional process" involving "an electoral college, Congress and SENATE certification by Vice President Pence" that would officially decide who would be the "President-elect. On December 14, 2020, the day the electoral college met in each of the states, Bennett sent a message to his then-girlfriend Elizabeth Rose Williams identifying "January 6" as the "official…vote day" in Congress:

> Couple pointers today as electors vote. 1. Pa Nevada GA voted Trump Pence 2. Those for example on the Michigan vote session in Congress illegally selecting Biden, are knowingly defrauding the American voters and literally signing their TREASON evidence on these documents and are about pay dearly. 3. January 6 is the official UNITED STATES CONGRESS vote day and 1/20 is the true day that matters. Stay cool & watch how awesome the next scene is for FREEDOM!!

A few days later, Bennett posted on Facebook about making "EPIC HUGE noise" at the Capitol on January 6, 2021.

On January 6, 2021, Bennett attended the former President's rally. Following the former President's rhetoric about a stolen election, Bennett and Williams began walking towards the Capitol.

Once Bennett and Williams reached the restricted Capitol grounds, they joined a large crowd by the scaffolding for the inaugural stage. They made their way up to the North West Terrace of the Capitol, and went into the Capitol through a broken-out doorway known as the Senate Wing Door. Once inside, Bennett and Williams walked south through the Crypt and went upstairs to the Rotunda. From the Rotunda, they went up the Gallery Stairs, and went into the

Senate Gallery. Bennett and Williams spent approximately 25 minutes inside the Capitol—from approximately 2:23 p.m. to 2:49 p.m. –before leaving through the Senate Carriage Door.

That evening, at approximately 6:00 p.m. est, Bennett posted on Facebook about his experience, leading with "CAPITOL WAS STORMED" and recalling that he was "hardcore tear gassed by cap[itol] police" before the building was breached. Approximately two hours later, Bennett admitted that he "stormed" the Capitol and that he went "in that senate room."

As a result of his conduct, Bennett was charged with: Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. §§ 1512(c)(2), and 2 (Count One); Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count Two); Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count Three); Entering and Remaining in the Gallery of Congress, in violation of 40 U.S.C. § 5104(e)(2)(B) (Count Four); Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Five); and Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Six). *See* ECF No. 15.

ARGUMENT

Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Fed. R. Evid. 401. "The general rule is that relevant evidence is admissible," *United States v. Foster*, 986 F.2d 541, 545 (D.C. Cir. 1993), a "liberal" standard, *United States v. Moore*, No. 18-cr-198, 2022 WL 715238, at *2 (D.D.C. Mar. 10, 2022). Additionally, Rule 403 does not require the government "to sanitize its case, to deflate its witnesses' testimony or to tell its story in a monotone." *United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C. Cir. 1998). Neither Rule 401 nor 403 supports the defendant's requested relief.

Bennett moves to preclude evidence at trial on the basis that it is irrelevant or unduly prejudicial. As set out below, Bennett's Motion in Limine should be denied because: (1) photographs and video evidence of the events that occurred around the United States Capitol on January 6 is relevant to prove elements of multiple Counts in the Indictment; (2) Bennett's messages on his social media accounts, blogs, and other public postings after January 6 is relevant to prove elements of multiple Counts in the Indictment; (3) Bennett's conduct prior to his self-surrender is relevant to prove consciousness of guilt; and (4) the government does not plan on introducing any evidence of Bennett's financial status, gun ownership, or any categorization of Bennett as a domestic terrorist in its case in chief.

I. General Evidence of the Events of January 6 and the Actions of Other Rioters at the Capitol is Relevant.

In his Motion *in Limine*, Bennett asks the Court to preclude the government from introducing photographs or video evidence of the events that occurred in and around the United States Capitol on January 6, claiming that the video is only marginally relevant to Bennett's actions on January 6. *See* ECF no. 99 at 4-5. To convict Bennett, the jury must find that the defendant committed each offense with which he is specifically charged. It is not enough for the government to show that the defendant was simply present near others who committed crimes across the Capitol building and grounds. Bennett's argument ignores the nature of these crimes as a collective action. It was the mob's collective action that disrupted Congress, and the defendant's knowledge of the collective riot bears on his *mens rea* for each of the charged offenses.

The government does not anticipate making areas of the Capitol Bennett did not go a focus of the trial. However, in order to show the overall riot, its effects, and why the certification of the Electoral College vote was suspended, the government will show the actions of other rioters in other areas of the Capitol building and grounds. Like Bennett, none of the rioters were authorized

to enter the Capitol. Like Bennett, none of them submitted to screening by the U.S. Capitol Police. But for the defendant's actions alongside so many others, the riot likely would have failed to delay the certification vote. *See United States v. Mazzocco*, No. 21-cr-54, Tr. 10/4/2021 at 25 ("A mob isn't a mob without the numbers. The people who were committing those violent acts did so because they had the safety of numbers.") (statement of Judge Chutkan). While a jury will judge Bennett based on his own actions, the context of his actions will necessarily be placed before them—that context was a riot.

In its opinion to a similar motion, this Court stated, "the Government must be given leeway to place a defendant's action into context." *United States v. Carpenter*, No. 21-CR-305. 2023 WL 1860978, at *9 (D.D.C. Feb. 9, 2023). For example, to prove a violation of 1512(c)(2), the government must prove beyond a reasonable doubt that: (1) there was an official proceeding and (2) such proceeding was disrupted. ECF No. 15 at 1. Evidence of the larger riot – even events that did not involve Bennett – is therefore clearly relevant, and in fact, is a part of the government's burden in this case. "[G]eneral evidence of the event on January 6 would be highly relevant" in proving a violation of Section 1512(c)(2). *Id.* Showing the jury what the defendant saw and observed during the time he was on the Capitol grounds is extremely relevant to prove his overall knowledge.[1] For similar reasons, it is also relevant to proving the disorderly and disruptive nature of Bennett's conduct in context; his knowledge of the restricted nature of the Capitol building and grounds; and his presence inside the Capitol Building and certain rooms on January 6. Under these circumstances, the Court should deny Bennett's motion to preclude evidence of the riot.

[1] *See United States v. Gunby*, 21-cr-626 (PLF) (ECF No. 57 at 7 (holding, in a January 6 case charging offenses under 18 U.S.C. § 1752 and 40 U.S.C. § 5104, that "what [the defendant] witnessed is directly relevant to his knowledge and intent") (citing *United States v. Griffith*, 21-cr-244, 2023 WL 2043223, at *3 (D.D.C. Feb. 16, 2023) and *United States v. Rhine*, 21-cr-687, 2023 WL 2072450, at *7 (D.D.C. Feb. 17, 2023)).

II. The Defendant's Social Media, Blogs, and Public Postings after January 6 is Highly Relevant to Proving His Knowledge and Intent

Bennett asks the Court to preclude the government from introducing evidence of his social media, blog, and other public postings after January 6. *See* ECF No. 99 at 5. This request should be denied because it would prohibit the Government from meeting its burden at trial with respect to the defendant's *mens rea*. It also would violate Rule 801 which permits the government to introduce statements by a party opponent. *See* Fed. R. Evid. 801(d)(2). Among other elements, to prove a violation of Section 1512, the government must show beyond a reasonable doubt that the defendant acted knowingly and corruptly on or about January 6. *See* ECF No. 15 at 1. Bennett posted on his social media on multiple occasions regarding the 2020 Presidential election and the events on January 6. *See* ECF No. 1. For example, that evening after leaving the Capitol, Bennett posted on his Facebook stating, "TODAY WAS A REVOLUTIONARY MESSAGE." *See* ECF 111 at 6. The words that Bennett used, whether said in person, messaged to someone, or posted online, are extremely relevant to determine his intentions before, during, and after the events on January 6. In similar January 6 trials, this Court and other courts have routinely permitted the jury to consider defendants' statements to prove their knowledge and intent. *See Carpenter*, 21-cr-305 (JEB) (ECF No. 97 at 11) (permitting the jury to consider evidence of "what [the defendant] did, said, or perceived"); *United States v. Kelly*, 21-cr-708 (RCL) (ECF No. 101 at 9) (same).[2] We see no difference in our use of his messages and posts here. Therefore, Bennett's request should be denied.

[2] *See also* The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit §§ 1512 & 1515(a)(1); *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005).

III. The Defendant's Conduct Prior to His Arrest is Relevant to Establish Consciousness of Guilt

Bennett asks the Court to preclude the government from introducing any "evidence of the attempts by the Government to locate Defendant prior to his self-surrender and circumstances of his self-surrender." See ECF No. 99 at 2. The defendant does not specifically identify what evidence he seeks to exclude. However, the government may seek to introduce limited evidence about the defendant's flight including: (1) a recorded message from March 29, 2021, where the defendant acknowledges that the FBI is "probably looking for" him and states that he is "laying low"; (2) testimony that on March 31, 2021 an FBI agent left the defendant a voicemail and sent the defendant a text message advising him of the arrest warrant and his need to surrender; (3) the fact that the defendant did not surrender for 12 days; and (4) that the defendant admitted to throwing out his phone before he surrendered. Taken together, this evidence shows that, before the FBI informed Bennett that there was an arrest warrant pending, he believed the FBI was looking was him, and he took steps to evade arrest and destroy evidence. In this district, "flight has traditionally been considered probative of consciousness of guilt." *United States v. Morrow*, 2005 WL 3159572, at *28 (D.D.C. April 7, 2005) (Kollar-Kotelly, J.). If this evidence is presented to the jury, the government has no objection to a jury instruction explaining that flight may be motivated by factors consistent with innocence and will include a proposed instruction with its jury instructions.

IV. The Government Does Not Intend to Introduce Evidence of Bennett's Financial Status, Gun Ownership, or Whether He Is Labeled as a Domestic Terrorist in its Case.

Finally, Bennett asks the Court to preclude the government from introducing evidence pertaining to Bennett's financial status, gun ownership, or whether he is labeled as a domestic terrorist. ECF No. 99 at 4-5. The government does not seek to introduce any evidence regarding

these matters in its case in chief and therefore this aspect of Bennett's motion should be denied as moot. [3]

CONCLUSION

For the foregoing reasons, the Government respectfully requests that Bennett's Motion *In Limine* be denied.

Respectfully submitted,

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[3] The government reserves the right to use this material for the limited purposes of impeachment under Rule 608 of the Federal Rules of Evidence, as appropriate and in the event Bennett testifies.