

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	1:21-cr-00177-CRC
	:	
	:	
DANIEL D. EGTVEDT,	:	
	:	
Defendant.	:	

GOVERNMENT’S REPSONSE TO DEFENDANT’S MEMO ON RELEVANCE OF
CERTAIN EVIDENCE AND MISCELLANY

The United States of America, by and through the United States Attorney for the District of Columbia, hereby responds to defendant’s memo on relevance of certain evidence and miscellany (“Defendant’s Memo”; ECF no. 95), focusing on the specific items of evidence, which the government intends to introduce, to which the defense has indicated it objects on the grounds of relevance and undue prejudice. As set out below, each of the challenged evidence items is relevant and none of them is unduly prejudicial, in the upcoming bench trial in this matter, to the defense.

Legal Principles

The broad principles governing the admission of evidence are well known. As set out in rule 401 of the Federal Rules of Evidence:

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Fed. R. Evid. 401 (emphasis added). In turn rule 402 provides that “[r]elevant evidence is admissible” unless provided otherwise by the Constitution, a federal statute, the federal rules of evidence or rules prescribed by the Supreme Court. *Id.* 402.

The Supreme Court has held that evidence is relevant even if serves merely as “a step on one evidentiary route to [an] ultimate fact.” *Old Chief v. United States*, 519 U.S. 172, 178-79 (1997). *Old Chief* further held that the relevance of evidence “is not affected by the availability of alternative proofs,” and therefore, the Court concluded, relevant evidence cannot be “rendered irrelevant” by other evidence. *Id.* at 179; *see also Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 587 (1993) (holding that rule 401’s “basic standard is a liberal one”).

Of course, other provisions of the Federal Rules of Evidence can bar the admission of relevant evidence, most notably rule 403, which provides:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair

prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Id. 403 (emphasis added). Although not cited in the Defendant's Memo, rule 403 is plainly what the defense is referring to when they state that they object to certain proffered evidence on the grounds of "unfair prejudice." Defendant's Memo at 3 (objecting to "letters [the defendant] wrote soon after his arrest [on February 13, 2021] and jailing in Garrett County[, Maryland]").

The application of rule 403, however, is much different in a case tried to the bench, as this case will be, as opposed to a jury, in particular with respect to the rule's "unfair prejudice" provision. Indeed, Judge Contreras has repeatedly opined that in a bench trial, that provision "has a highly limited application, if any at all." *United States v. Fitzimmons*, ___ F. Supp. 3d ___, ___ n.8 (2022 WL 1658846, at *6 n.8) (D.D.C., May 22, 2022) (involving Capitol riot prosecution); *United States ex rel. Morsell v. NortonLifeLock, Inc.*, 567 F. Supp. 3d 248, 258 (D.D.C. 2021); *Paleteria la Michoacana, Inc. ("PLM") v. Productos Lacteos Tocumbo S.A. De C.V. ("PROLACTO")*, 2015 WL 13680822, at *1 (D.D.C., Jun. 12, 2015); *PLM v. PROLACTO*, 2015 WL 13680818, at *2 (D.D.C., Jun. 12, 2015); *PLM v. PROLACTO*, 2015 WL 13680817, at *1 (D.D.C., Jun. 12, 2015).

The Court of Appeals for the D.C. Circuit has indirectly endorsed Judge Contreras's view of rule 403. In *United States v. Bowie*, 330 U.S. App. D.C. 74, 142 F.3d 1301 (1998), the court considered how to protect a defendant against unfair prejudice in a trial involving charges under 18 U.S.C. § 922(g)(1). *Id.* at 76, 142 F.3d at 1303. Under that statutory provision, an element of the offense is that the defendant was previously convicted of an offense punishable by more than 12 months in prison.¹ The court noted that under its earlier decision in *United States v. Daniels*, 248 U.S. App. D.C. 198, 770 F.2d 1111 (1985), a trial judge is not required to sever 922(g) charges so that they may be tried separately from other charges that do not have such an element. *Bowie*, 330 U.S. App. D.C. at 79-80, 142 F.3d at 1306-07. The court held, however, that the district court (Judge Hogan) "would have been well within its discretion if it had, for instance, forced the prosecution to choose between having a bench trial on the felon-in-possession counts and severing the counts entirely." *Id.* at 80, 142 F.3d at 1307. With this holding the *Bowie* court implicitly recognized what Judge Contreras has directly opined: in a bench trial there is

¹Under 18 U.S.C. § 922(g)(1) it is unlawful for a person with such a prior conviction to possess a firearm or firearm ammunition that has moved in interstate or foreign commerce.

little to no risk of unfair prejudice when the court considers otherwise admissible evidence in determining a verdict.

Judge Contreras's position is also found in holdings in other circuits. *United States v. Preston*, 706 F.3d 1106, 1117 (9th Cir. 2013) ("Rule 403 is inapplicable to bench trials."), *rev'd on reh'g en banc on other grounds*, 751 F.3d 1008 (9th Cir. 2014); *Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994) ("We hold that in the context of a bench trial, evidence should not be excluded under [rule] 403 on the ground that it is unfairly prejudicial."); *Gulf States Utils. Co. v. Ecodyne Corp.*, 635 F.2d 517, 519 (5th Cir. Unit A Jan. 1981) ("The exclusion of . . . evidence under Rule 403's weighing of probative value against prejudice was improper. This portion of Rule 403 has no logical application to bench trials."); *United States v. Kienlen*, 349 Fed. Appx. 349, 351 (unpublished) (10th Cir., Oct. 31, 1999) ("Other circuits have held, and we agree, that excluding evidence in a bench trial under Rule 403's weighing of probative value against prejudice is improper" (internal quotation and alteration marks omitted)).

Accordingly, the government submits that this court should not exclude any evidence in the upcoming trial on the grounds of unfair prejudice.

And as set out in the section that follows all of the evidence the defense challenges as irrelevant, with some exceptions as discussed, is in fact relevant.

The Evidence Challenged by the Defense as Irrelevant

1. Government Exhibit 101.78 (Defense Memo at 4)

This particular item of evidence is a 30-second audio-video recording recovered during the forensic search of the defendant's iPhone 7 plus, which was seized from him incident to his arrest on February 13, 2021. A still image from the beginning of the recording appears directly below.



The entire recording is continuous and is of essentially the same scene, with the various persons depicted above staying in the frame generally the whole time. The defendant's image does not appear on the recording, because, it can be inferred, he is holding and pointing the iphone away from him, in order to record the scene in front of him.

The metadata for the recording, gleaned from the forensic search, show that the defendant made the recording on December 11, 2020, at 10:23 p.m.² The iphone's geo-coordinates at the time of the recording, which are in the metadata, as well as the words "Marriott" and "Washington, D.C." partially visible on an awning visible in the recording itself, show that the recording depicts a scene near the intersection of 14th Street and Pennsylvania Avenue, N.W., Washington, D.C.

During the recording the figure in the white t-shirt is speaking into a microphone and tells the crowd--which includes a person in the foreground wearing a hat bearing the words "Stop the Steal--that it is time that "we fight for him!". The crowd

²The portion of the forensic search of the iphone that the government will use at trial shows that "Daniel Dean Egtvedt" sent a text from that iphone, from a particular phone number, on January 6, 2021. AT&T subscriber records for that phone number show that the number was continuously assigned to "Daniel Egtvedt" from early 2009 to when the records were produced, on February 12, 2021.

then responds, "Fight for Trump! Fight for Trump! Fight for Trump."

The government submits that this exhibit is evidence of the defendant's motive to commit the charged offenses, most directly, with respect to Count Four of the Superseding Indictment in which he is charged with attempting to obstruct a congressional proceeding, in violation of 18 U.S.C. § 1512(c)(2).

Specifically, the challenged exhibit shows that about three weeks before he committed the charged offenses, i.e., three weeks before January 6, 2021, the defendant was among a group of people three of whom (two come into the frame later in the recording) were wearing "Stop the Steal" hats. That phrase is well known now to be a reference to the belief that Joseph Biden was in the process of "stealing" the 2020 presidential election from Mr. Trump. The recording further shows that the defendant was listening as a speaker implored him and the others with him to "fight for Trump."

As this Court well knows, and as the government will present through other evidence at trial, on January 6, 2021, Congress had convened to certify the 2020 Electoral College votes for president and vice-president. The evidence will also show that the defendant, before unlawfully entering the Capitol that day, attended a rally on the Ellipse, where then-President

Donald Trump spoke to the crowd, and that afterward the defendant and others in the crowd walked down to the Capitol.

The evidence will further show, with little to no dispute, that after numerous persons had unlawfully entered the Capitol Congress suspended the certification proceedings. The evidence will also show that the defendant himself forced his way past police onto the upper west terrace of the Capitol building and then, at approximately 2:48 p.m., into the building. The evidence will include numerous recorded statements made by the defendant while inside the Capitol-- captured on social media and police body-worn camera recordings--in which he accuses police officers protecting the Capitol of violating the Constitution, of being "traitors," and of being on the "wrong side," and in one in which he demands that members of Congress "grow a f---ing spine or resign."

All of this evidence, whose admissibility the defense is not challenging, plainly shows that the defendant's motive for unlawfully entering the Capitol, and then resisting efforts by the police to make him leave, was to prevent Congress from certifying the 2020 election. The challenged exhibit, 101.78, is direct and additional proof of that motive and demonstrates that the motive did not suddenly spring into his head on January 6, 2021, but was planted there on, or maybe before, December 11, 2020.

Accordingly, the exhibit is relevant.

2. Exhibit 101.427 (Defense Memo at 4)

This exhibit is an image recovered from the defendant's iPhone 7. The image itself appears below.



The metadata associated with this image show that the defendant sent it from his phone, to an unknown recipient, at 2:18 a.m. on January 6, 2021. Which was, as other undisputed evidence will show, about 10 hours before the defendant attended the rally on the Ellipse and about 12 hours before he unlawfully entered the Capitol.

The fact that the defendant had this image on his phone, and electronically forwarded it on the morning of January 6, 2021, is directly relevant to his motive to commit the charged offenses. As described above, that motive was to prevent Congress from certifying the 2020 presidential and vice-presidential election. This image shows that the defendant preferred, quite obviously, that Mr. Trump remain president of the United States. And of course Congress, when they eventually were able to complete the certification proceedings in the early morning hours of January 7, 2021, declared that Joseph Biden had been elected as the next president of the United States.

Accordingly, this exhibit is relevant.

3. Exhibit 101.424 (Defense Memo at 4)

This is another image recovered from the defendant's iPhone. The image appears directly below.



The metadata associated with this image, which depicts the defendant pointing his iphone at a mirror, reveal that it was taken at 11:50 a.m. on January 7, 2021. The logo on the headboards of each bed is of the Willard International Hotel, located here in the District of Columbia.

In the image the defendant can be seen wearing a shirt that reads, "God gave his archangels weapons because even the almighty knew that you don't fight evil with tolerance & understanding." The shirt also depicts an angel holding a semi-automatic rifle.

The government submits that the image is relevant because of the words and depiction on the shirt that the defendant is quite obviously proud to be wearing. In particular, the image suggests the defendant is willing to engage in violence, and potentially the use of firearms, in order to "fight evil." Given that the image was taken less than 24 hours after the Capitol riot, while the defendant was still in Washington, D.C., it shows his consciousness of guilt with respect to the offenses he committed the day before. More specifically, it shows that the defendant himself knows that he did not act peacefully and non-violently when he was inside the Capitol, and the grin on his face shows that he has no regrets about it.

4. Exhibit 101 - "2 pictures of guns" (Defense Memo at 4)

Exhibit 101 is the "scoped" extract report from the forensic search of the defendant's iphone. That is, it is what the FBI determined to be within the scope of the search warrant's limitations as to what could be lawfully seized from the complete forensic extraction of the iphone's contents. The report is 157 pages in length and includes various images that


appear on the report in thumbnail size, along with the metadata associated with the images. Those images include exhibits 101.424 and 101.427, discussed above.

The thumbnail images on the report also include four (not two) images of a firearm. The sections of the report, from pages 1, 2 and 32, showing those thumbnail images appear below.


File Info		Additional file info		Thumbnail	Deleted	
Name:	2096897C-097F-4FED-8088-67C758BDACD0.medium.MOV	Size (bytes):	1075422			
Path:	44a16fba228f7581bec8f2752acb4f37567834bf_files_full-exte.zip/private/var/mobile/Media/PhotoData/Metadata/PhotoData/CPLAsset/s/group335/2096897C-097F-4FED-8088-67C758BDACD0.medium.MOV	Created:	12/13/2020 1:42:55 AM(UTC-5)			
MD5:	0e1791d302bcd5a8ba1aa3541c3f386c	Modified:	12/13/2020 1:42:57 AM(UTC-5)			
		Accessed:	12/13/2020 1:42:55 AM(UTC-5)			
		Source file	44a16fba228f7581bec8f2752acb4f37567834bf_files_full-exte.zip/private/var/mobile/Media/PhotoData/Metadata/PhotoData/CPLAsset/s/group335/2096897C-097F-4FED-8088-67C758BDACD0.medium.MOV : 0x0 (Size: 1075422 bytes)			
		Meta Data:				
		com.apple.quicktime.container.identifier:	5FF35998-41E6-46FF-A066-C5BC73691326			
		Camera Make:	Apple			
		Device:	iPhone 7 Plus			
		Software Used to Create:	12.3.1			
		Creation Date:	7/22/2019 5:36:15 AM(UTC+0)			
3	Videos		300C68B8-522B-4DF6-8A59-87DE69216E98.medium.MOV	Important	11/23/2021 12:24:05 PM	11/23/2021 12:24:05 PM
File Info		Additional file info		Thumbnail	Deleted	


File Info	Additional file info	Thumbnail	Deleted
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1

Name:	300C68B8-522B-4DF6-8A59-87DE69216E98.medium.MOV	Size (bytes):	1834631		
Path:	44a10fba228f7581bec8f2752acb4f37567834bf_files_full-exte.zip/private/var/mobile/Media/PhotoData/Metadata/PhotoData/CPLAsset s/group148/300C68B8-522B-4DF6-8A59-87DE69216E98.medium.MOV	Created:	12/13/2020 1:42:31 AM(UTC-5)		
MD5:	b2be0f84ead203de51307a59e0cb9ec	Modified:	12/13/2020 1:42:34 AM(UTC-5)		
		Accessed:	12/13/2020 1:42:31 AM(UTC-5)		
		Source file	44a10fba228f7581bec8f2752acb4f37567834bf_files_full-exte.zip/private/var/mobile/Media/PhotoData/Metadata/PhotoData/CPLAsset s/group148/300C68B8-522B-4DF6-8A59-87DE69216E98.medium.MOV : 0x0 (Size: 1834631 bytes)		
		Meta Data:			
		com.apple.quicktime.container.identifier:	4E179998-5AF9-4308-8CE4-E41143E94ADC		
		Camera Make:	Apple		
		Device:	iPhone 7 Plus		
		Software Used to Create:	12.3.1		
		Creation Date:	7/22/2019 5:38:03 AM(UTC+0)		

4	Videos			50B33E0C-7B7B-4529-B02D-8E5D8EC33B66.medium.MOV	Important	11/23/2021 12:25:44 PM	11/23/2021 12:25:44 PM
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File Info	Additional file info	Thumbnail	Deleted		
Name:	50B33E0C-7B7B-4529-B02D-8E5D8EC33B66.medium.MOV	Size (bytes):	1646069		
Path:	44a10fba228f7581bec8f2752acb4f37567834bf_files_full-exte.zip/private/var/mobile/Media/PhotoData/Metadata/PhotoData/CPLAsset s/group395/50B33E0C-7B7B-4529-B02D-8E5D8EC33B66.medium.MOV	Created:	12/13/2020 1:42:38 AM(UTC-5)		
MD5:	2ee4d079c071c0d75709879c8d5abac5	Modified:	12/13/2020 1:42:40 AM(UTC-5)		
		Accessed:	12/13/2020 1:42:38 AM(UTC-5)		
		Source file	44a10fba228f7581bec8f2752acb4f37567834bf_files_full-exte.zip/private/var/mobile/Media/PhotoData/Metadata/PhotoData/CPLAsset s/group395/50B33E0C-7B7B-4529-B02D-8E5D8EC33B66.medium.MOV : 0x0 (Size: 1646069 bytes)		
		Meta Data:			
		com.apple.quicktime.container.identifier:	0E9091A1-0B42-4DD3-86BC-301CC2B5AC4A		
		Camera Make:	Apple		
		Device:	iPhone 7 Plus		
		Software Used to Create:	12.3.1		
		Creation Date:	7/22/2019 5:36:07 AM(UTC+0)		

Name:	222E053B-078B-4024-AC12-1927B2F462A6.medium.MOV	Size (bytes):	916310	
Path:	44a16fba228f7581bec8f2752acb4f37567834bf_files_full-exte.zip/private/var/mobile/Media/PhotoData/Metadata/PhotoData/CPLAssets/group463/222E053B-078B-4024-AC12-1927B2F462A6.medium.MOV	Created:	12/13/2020 1:42:51 AM(UTC-5)	
MD5:	a8bc841a37405ae0f3afdca463c44a56	Modified:	12/13/2020 1:42:54 AM(UTC-5)	
		Accessed:	12/13/2020 1:42:51 AM(UTC-5)	
		Source file	44a16fba228f7581bec8f2752acb4f37567834bf_files_full-exte.zip/private/var/mobile/Media/PhotoData/Metadata/PhotoData/CPLAssets/group463/222E053B-078B-4024-AC12-1927B2F462A6.medium.MOV : 0x0 (Size: 916310 bytes)	
		Meta Data:		
		com.apple.quicktime.container.identifier:	1D107122-E9FD-4247-91A9-ED7C3DE0FB0F	
		Camera Make:	Apple	
		Device:	iPhone 7 Plus	
		Software Used to Create:	12.3.1	
		Creation Date:	7/22/2019 5:38:10 AM(UTC+0)	

The government does not intend to offer the thumbnail images of the firearms into evidence themselves as exhibits, as we intend to do with exhibits 101.424 and 101.427. Accordingly, the government will redact the four thumbnail images showing a firearm from exhibit 101.

5. Exhibit 101 - any pictures before or after January 6, 2021

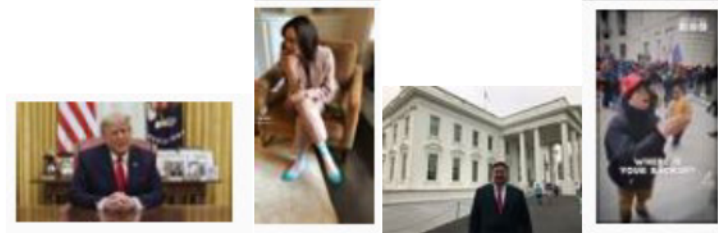
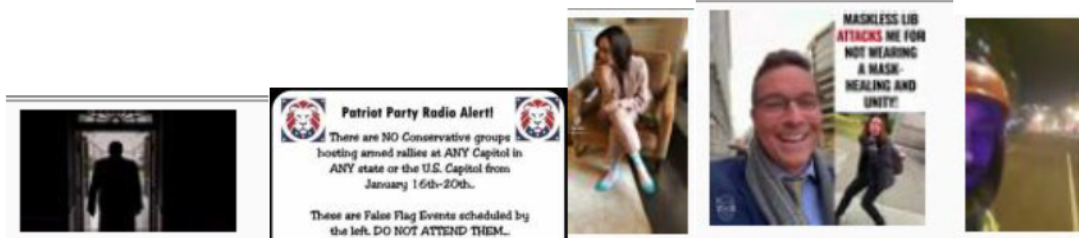
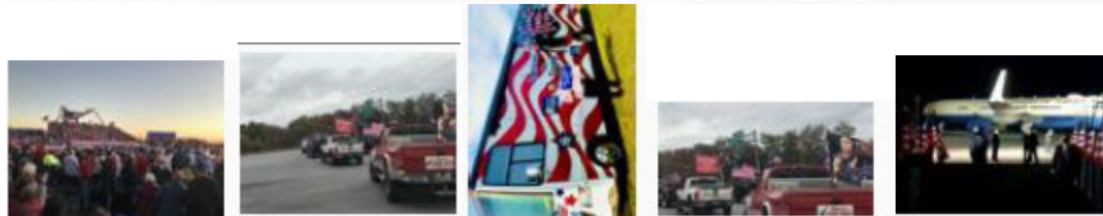
The Defense Memo also objects to “any pictures before or after January 6, 2021,” Defense Memo at 4,” that are in exhibit 101. Although not stated in the Memo, presumably the objection is on relevance grounds.

Two such pictures, exhibits 101.427 and 101.424, are discussed above. Along with those two, there are several other images from the defendant’s iphone that the government will offer as standalone exhibits; they were all taken on January 6, 2021.

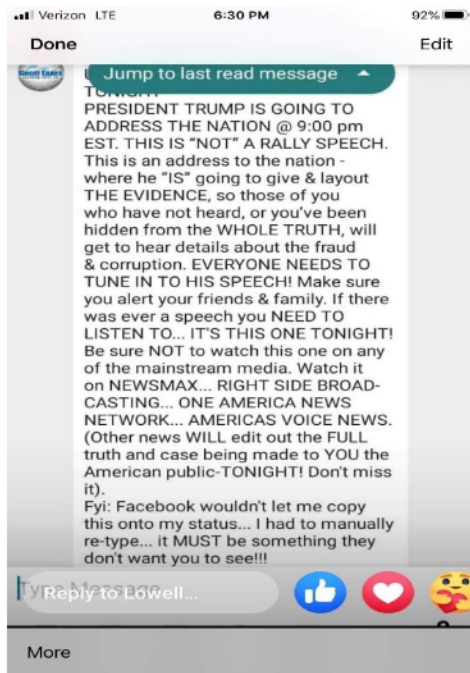
All of the other images/pictures from exhibit 101 will appear only as thumbnail images within the exhibit. Aside from the firearm images, discussed above, there are 48 other thumbnail images where the metadata indicate they were taken (or recorded--some are the first frame of video files) either before or after January 6, 2021. Some of these thumbnail images appear more than once.³

Of those 48, the government has no objection to redacting from exhibit 101 the 39 thumbnail images that appear immediately below:

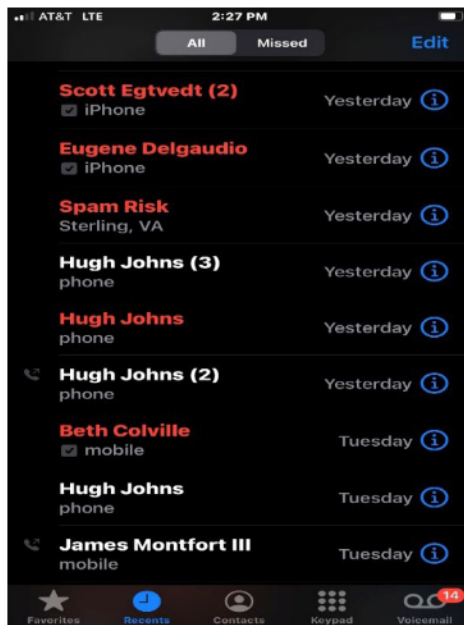
³There are certain other thumbnail images where the metadata indicates they were stored onto the iphone after January 6, 2021, but the images themselves plainly indicate they were taken on that date.



The government maintains that each of the remaining nine images is relevant. Those nine thumbnail images appear immediately below.



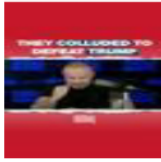
(1)



(2)



(3)



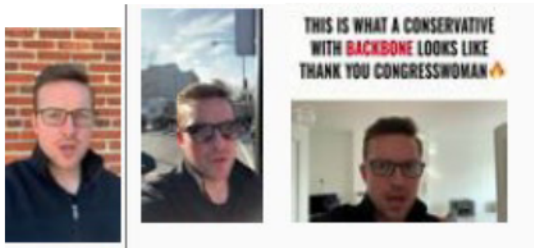
(4)



(5)



(6)



(7), (8) & (9)

Thumbnail (1)

This is an image that the metadata from the forensic phone search show was created on January 7, 2021, at 12:16 p.m., and posted onto the defendant's phone on January 28, 2021. The written content on the image claims that President Trump will be addressing the nation that night (i.e., on January 7) about "fraud and corruption." Given that the image was created one day after the Capitol riot, the writer, it can be inferred, is

claiming that President Trump will be explaining the fraud and corruption surrounding the 2020 presidential election.

The government submits this image is therefore relevant to the defendant's motive, as discussed above.

Thumbnail (2)

This is an apparent screen shot of a cell phone call log. The metadata indicate it was created on January 7, 2021 and posted to the iphone on January 10, 2021.

The last call listed on the image is an outgoing call made on Tuesday, to one James Monfort III. The Tuesday immediately before January 7, 2021, when this image was created, was January 5, 2021, the day before the Capitol riot. In addition, the defense has one "James Monfort" listed as a potential witness for the defense.

Accordingly, this thumbnail is relevant.

Thumbnail (3)

The metadata associated with this thumbnail indicate the image was both created and stored on the iphone on January 11, 2021. It appears to be an image from a news story showing part of a timeline that describes the Capitol riot. The defendant's interest in such a timeline, five days after the riot, is generally relevant to his participation in it. Correspondingly, the image itself is also relevant.

Thumbnail (4)

The metadata associated with this thumbnail indicate it was created and stored on the iphone on February 7, 2021. Although difficult to discern, the writing near the top states: "They colluded to defeat Trump," plainly referring to the fact that in the hours after the riot, Congress declared that Joseph Biden, and not Donald Trump, had won the 2020 presidential election.

The presence of such a writing, on the defendant's iphone albeit a month after the riot, is relevant to proving the defendant's motive to commit the charged offenses.

Thumbnail (5)

This image shows a picture of Representative Alexandria Ocasio-Cortez, a well-known critic of Mr. Trump, with text stating that "Alexandria Ocasio Smollett lies about what happened at Capitol Hill." The metadata indicate the image was stored onto the phone on February 6, 2021. The image substitutes the congresswoman's last name with the last name of a public figure charged in February 2020 with lying to the police about being a victim of a hate crime who was convicted of those charges in December 2021. Inferentially, the text on the image is referring to the Capitol riot.

This presence of this image on the defendant's phone, on February 6, 2021, indicates the defendant is receptive to an account of the riot, which he participated in, that is different

from the purportedly false version put forward by a critic of Mr. Trump. The image is therefore relevant to the defendant's motive to commit the charged offenses, which, of course, occurred during the riot.

Thumbnail (6)

This image shows the beginning of the audio-video recording, recovered from the iPhone, that the government has designated as exhibit 101.78. Exhibit 101 includes the thumbnail as part of the description of the recording. For the reasons that the recording is relevant, discussed *supra*, the thumbnail image is also relevant.

Thumbnails (7), (8) and (9)

These thumbnail images each include a picture of what appears to be the same person, including one with text above the picture stating: "This is what a conservative with backbone looks like[.] Thank you[,] Congresswoman[.]" According to the metadata, all three images were created on January 13, 2021. Two of them were stored to the phone on January 15, 2021. The third one, number (8), was stored to the phone on February 8, 2021.

As mentioned above, one of the social media audio-video recordings that will be offered into evidence shows the defendant, while unlawfully in the Capitol on January 6, 2021, loudly stating that the members of Congress should "grow a f---

ing spine or resign.” The similar and positive reference in thumbnail (9) to a congresswoman with “backbone” essentially expresses the same sentiment and attributes that sentiment to a person whose picture appears below the words and who is also pictured in thumbnails (7) and (8).

Accordingly, the thumbnails are all relevant to the defendant’s motive to commit the charged offenses.

6. Exhibit 405 - “Ruptly video”

This exhibit is an audio-video recording recovered from social media that shows the defendant and other rioters on the Capitol grounds, on January 6, 2021, outside the East Rotunda (“Columbus”) Doors. During the recording the defendant can be seen apparently taking pictures with a smartphone of police officers blocking the doors on the inside.

Images corresponding to the pictures the defendant apparently took were recovered from the defendant’s iphone. The metadata for those images--which the government will offer into evidence as exhibits and whose admissibility is not challenged by the defense--show that the images were taken at 4:30 p.m. on January 6, 2021.

The recording is therefore direct and relevant evidence of the defendant engaging in disorderly conduct, on January 6,

2021, on the Capitol grounds, which is one of the charges against him in the Superseding Indictment.⁴

7. Letters Authored by the Defendant while held at the Garrett County, Maryland Detention Center (February 13 - 16, 2021) (exhibits 505 and 506)

As discussed above, the defendant objects to these exhibits in part on the grounds of unfair prejudice. Defendant's Memo at 3. As the government explained *supra*, that is not a proper basis to challenge the admissibility of evidence in a bench trial.

The defendant also challenges the relevance of these exhibits. In these writings, all written after President Biden's inauguration on January 20, 2021, the defendant expresses his belief that if he is released to "federal agents," he will be imprisoned in a "foreign land." Given that on February 16, 2021, the defendant was indeed transported by the FBI from the detention center to D.C., the defendant is plainly stating that, in light of the inauguration of President Biden, he now considers D.C. to be a foreign country. That expressed belief is directly relevant to the charge in Count Four of

⁴The Defendant's Memo makes a general objection, on relevance grounds, to evidence of "[a]ny conduct after Mr. Egtvedt is tossed out of the Capitol through the Hall of Columns vestibule doors." Defendant's Memo at 3. The government submits that evidence of disorderly conduct by the defendant, at any time while he was on the Capitol grounds on January 6, 2021, is relevant.

obstructing Congress on January 6, 2021, which ended with Congress certifying that Joseph Biden had been elected president.

* * *

Respectfully submitted
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