

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

UNITED STATES OF AMERICA

v.

HECTOR VARGAS SANTOS,

Defendant.

Case No. 21-cr-47 (RDM)

**GOVERNMENT OPPOSITION TO DEFENDANT'S
RENEWED MOTION FOR JUDGEMENT OF ACQUITTAL**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits this response to Defendant Hector Vargas Santos' Motion for Judgement of Acquittal. ECF No. 66. The evidence of the defendant's guilt introduced at trial was overwhelming and certainly "permit[s] a rational jury to find [him] guilty beyond a reasonable doubt." *Scott v. United States*, F.2d 362, 364 (D.C. Cir. 1956). The defendant's motion should be denied.

FACTUAL BACKGROUND

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 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 was halted until law enforcement was able to clear the Capitol of hundreds of unlawful occupants and ensure the safety of elected officials.

At approximately 12:51 p.m., Defendant Vargas Santos climbed over the restricted area perimeter fencing and ran across the grass field on the west side of the Capitol. By 12:57 p.m., the defendant was near a gate blocking entry to the west front of the Capitol building. Approximately one minute later, the defendant opened the gate, allowing himself and other rioters to move closer to the building. While his fellow rioters engaged in hand-to-hand violence with a police line, the defendant climbed a wall near the southwest scaffolding and waved a yellow Gadsden flag. After police confronted the defendant on the wall, the defendant rejoined the crowd below, near the police line and the violent clash between rioters and police. Here, the defendant came within close proximity to various less-than-lethal munitions, after which he moved through the crowd to the northwest lawn and went around the building to the east front of the Capitol.

At approximately 3:15 p.m., Defendant Vargas Santos was blocked from entering the East Rotunda doors by U.S. Capitol Police Officers. At approximately 3:20 p.m., the defendant held open one of those same doors as the crowd overpowered the U.S. Capitol Police Officers in the entryway. Defendant entered the U.S. Capitol building at approximately 3:21 p.m. and quickly moved through the crowd toward the police line at the entrance to the Grand Rotunda. By approximately 3:24 p.m., the defendant made his way through the police line and into the Grand Rotunda, where he recorded a video of himself and posted it to social media. A few minutes later, the defendant and other rioters inside the Rotunda were escorted out of the Memorial Doorway.

Based on his actions on January 6, 2021, the defendant was charged with violating Title 18, U.S.C. Section 1752(a)(1) (knowingly entering and remaining in any restricted building or grounds); Title 18, U.S.C. Section 1752(a)(2) (knowingly engaging in disorderly or disruptive conduct in any restricted building or grounds); Title 40, U.S.C. Section 5104(e)(2)(D) (willfully and knowingly engaging in disorderly or disruptive conduct on Capitol grounds or in any of the

Capitol Buildings); and Title 40, U.S.C. Section 5104(e)(2)(G) (parading, demonstrating, or picketing in any of the Capitol Buildings). After a four-day trial, a jury returned a verdict of guilty on all counts on December 12, 2022.

The defendant now moves for a judgement of acquittal. ECF No. 66, (“Def. Mot.”). He contends that there is insufficient evidence for a reasonable jury to find him guilty of these charges beyond a reasonable doubt. (Def. Mot. 1)

ARGUMENT

I. The Evidence is Sufficient to Sustain the Defendant’s Conviction on Count 1

The evidence was sufficient for a reasonable jury to find the defendant guilty of Count 1. Under 18 U.S.C. § 1752(a)(1), a person is guilty of entering or remaining in a restricted building when such person knowingly enters or remains in a restricted building without lawful authority. The defendant argues that the evidence was insufficient to prove that the defendant acted knowingly or that the defendant “remained” in the restricted building.

A. Evidence is Sufficient to Prove the Defendant Acted Knowingly

The evidence is sufficient to prove that the defendant acted knowingly when he entered the Capitol building. The jury was instructed that “[a] person acts ‘knowingly’ if he realizes what he is doing and is aware of the nature of his conduct and does not act through ignorance, mistake, or accident.” ECF No. 53 at 26. The defendant entered the Capitol building with a large crowd of rioters through the East Rotunda doors at approximately 3:21 p.m. (Exhibit 103, 414, 904). The defendant’s arm was extended and on the open door as he entered the building. (Exhibit 103). The defendant argues that this shows him as he attempted to stop himself from entering the building. (Def. Mot. 3) However, the defendant fails to mention that at approximately 3:15 p.m., he tried to enter the building behind another group of rioters, but he was physically prevented from doing so by Capitol Police officers in the entryway. (Exhibits 103, 410, 903).

The government also presented evidence of the defendant's state of mind before, during, and after January 6. (Exhibits 701 and 702). In the days leading up to January 6, 2021, the defendant posted statements about his intent for traveling to Washington D.C. The defendant also sent messages during the events of January 6, 2021, including one in which he informed the recipient shortly before he entered the building "We're about to go in." (Exhibit 702). The surveillance and cell phone recordings of the defendant's conduct combined with the evidence of his stated intent is more than enough for a reasonable jury to conclude that the defendant acted knowingly.

B. Evidence is Sufficient to Prove the Defendant Unlawfully Remained in the Capitol

The evidence is sufficient for a reasonable jury to find that the defendant unlawfully remained in a restricted building. At the outset, the government need only prove that the defendant entered or remained in the restricted building to fulfill this element. However, the evidence noted above is sufficient for a reasonable jury to conclude that the defendant remained in the restricted building by continuing to advance into the rotunda. (Exhibits 103-105, 302-308, 414, 415, 504, 904). While he was in the rotunda, the defendant did not merely stand quietly against a wall, in fact, he recorded a video that he posted to Facebook in which he stated that he "took over" the Capitol building. (Exhibits 303, 701.2).

II. The Evidence is Sufficient to Sustain the Defendant's Conviction on Count 2

The evidence is sufficient for a reasonable jury to find the defendant guilty of 18 U.S.C. § 1752(a)(2) disorderly or disruptive conduct in a restricted building. Under that charge, the evidence must prove that the defendant knowingly engaged in disorderly or disruptive conduct, in or within proximity of a restricted building, with the intent to impede government business or official functions and that his actions did impede or disrupt the government business or official functions. The defendant only disputes that his conduct was disorderly or disruptive. (Def. Mot.

4-5). Conduct is disorderly “when a person is unreasonably loud and disruptive under the circumstances or interferes with another person by jostling against or unnecessarily crowding that person.” ECF No. 53 at 28. Conduct is disruptive when it “is a disturbance that interrupts an event, activity, or the normal course of a process.” *Id.*

A. Defendant’s Conduct Outside the Capitol Building

The evidence at trial was sufficient to prove that the defendant’s conduct was disorderly and disruptive in proximity to the Capitol building. The defendant’s conduct disrupted police activities on the west front. The defendant climbed over a fence with several “Area Closed” signs on it as depicted in Exhibits 401 and 204. As Officer Neyhard testified, the Capitol Police officers retreated to the lower west terrace. The defendant ran across the grassy area on the west front until he came up against a black gate at the bottom of the lower west terrace that was guarded by an outnumbered Capitol Police force. (Exhibits 102, 403, 901) The defendant opened the gate when the officer closest to him looked away and began to run on the lower west terrace, toward the Capitol building, further disrupting the policing activity and security of the Capitol. (Exhibit 102, 403, 901). U.S. Secret Service Inspector Lanelle Hawa testified that as rioters got closer to the building the Joint Session of Congress was suspended due to the security threat. Once on the lower west terrace, the defendant climbed a wall and began waving a “Don’t Tread on Me,” or Gadsden flag, and tried to assist another rioter in climbing the wall, to which a Capitol Police officer responded to get him down. (Exhibits 102, 404, 508, 902). While the defendant was on the wall, he is depicted in the exhibits encouraging the rioters’ chants and cheers while he waived the flag. His presence on the wall was disruptive to the officers’ policing activity, in that an officer had to respond to the wall and could not assist officers engaged in direct fighting with rioters nearby. The defendant’s conduct just outside the East Rotunda doors

was disorderly because he unnecessarily crowded Officer Hallas and other Capitol Police in the entryway of the East Rotunda doors at 2:15 p.m. (See Exhibits 103, 414, 506, 507).

B. Defendant's Conduct Inside the Capitol Building

The defendant's conduct in the Capitol building was disorderly because he unnecessarily crowded and jostled officers in the East Rotunda foyer when he forced his way into the building with a crowd of other rioters and advanced to the Metropolitan Police line guarding the Rotunda entrance, eventually forcing his way into the Grand Rotunda. (Exhibits 104, 105, 302-308, 415, 504). The defendant's conduct was disruptive in the Capitol because it interrupted the Joint Session of Congress which falls within the normal meaning of an "event." The defendant entering the building with several other rioters also disrupted the certification of the 2020 Presidential election which is a "process" undertaken by Congress on the 6th of January following a Presidential election. The "normal course" of that "process" includes the members of Congress certifying the electoral college vote counts for the preceding election. This process could not resume until after 8:00 p.m. on January 6, 2021, due to the presence of rioters and security threat to the elected officials. (See generally Exhibit 1101, testimony of USSS Inspector Lanelle Hawa and testimony of USCP Lieutenant George McCree).

III. The Evidence is Sufficient to Sustain the Defendant's Conviction on Count 3

As noted above in Section II, the evidence at trial is sufficient for a reasonable jury to find that the defendant's conduct was disorderly or disruptive in the Capitol building.

IV. The Evidence is Sufficient to Sustain the Defendant's Conviction on Count 4

The evidence is sufficient for a reasonable jury to find the defendant guilty of Count 4, 40 U.S.C. § 5104(e)(2)(G). Under that charge, the evidence must prove that the defendant willfully

and knowingly paraded, picketed or demonstrated in a Capitol building. The defendant notes that Judge Friedman ruled that a Capitol Police regulation interpreting Section 5104(e)(2)(G)¹ that defined “demonstration activity” to include “holding vigils” and “sit-ins” swept too broadly because it “invited the Capitol Police to restrict behavior that is no way disruptive.” *Bynum v. U.S. Capitol Police Bd.*, 93 F. Supp. 2d at 53, 57. In this case, the defendant’s conduct was disruptive when he stormed into the East Rotunda doors with several other rioters, and further, into the Grand Rotunda. (Exhibits 103-105, 302-308, 504, 506, 507, 414, 415). Many of the rioters chanted and carried flags. The defendant was not merely present as he argues. Once inside, he does not submit to law enforcement’s commands to “get down.” (Exhibit 302). Instead, the defendant proceeds to film a video for his Facebook proclaiming that he “took over” the Capitol. (Exhibit 702.1).

¹ At the time, the provision was Section 193(f)(b)(7).

CONCLUSION

The evidence presented at trial sufficiently proved every element of the charges beyond a reasonable doubt, and therefore, the defendant's Motion for Judgment of Acquittal should be denied.

Respectfully submitted,

MATTHEW M. GRAVES
UNITED STATES ATTORNEY
D.C. Bar No. 481052

BY: /s/ Kyle R. Mirabelli
KIMBERLY L. PASCHALL
Assistant United States Attorney
National Security Section
D.C. Bar No. 1015665
601 D Street, N.W.,
Washington, D.C. 20530
202-252-2650
Kimberly.Paschall@usdoj.gov

KYE R. MIRABELLI
Assistant United States Attorney
Capitol Siege Section
N.Y. Bar No. 5663166
601 D Street, N.W.,
Washington, D.C. 20530
202-252-7882
Kyle.Mirabelli@usdoj.gov