

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 1:21-cr-00287-TNM
	:	
KEVIN SEEFRIED, and	:	
HUNTER SEEFRIED,	:	
	:	
Defendant.	:	

**MOTION IN LIMINE REGARDING
AUTHENTICATION OF CERTAIN VIDEO EVIDENCE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits the following motion *in limine* regarding the authentication of certain video evidence at trial.

BACKGROUND

The riot at, and attack on, the United States Capitol Building was an event of unparalleled size and scope. Much of the event was recorded on video: on surveillance footage captured by the U.S. Capitol Police (“USCP”) cameras; by Metropolitan Police Department (“MPD”) body-worn cameras; by cameras and cellphones carried by journalists and by rioters. The government’s case at trial will rely in part on USCP camera footage to prove the defendants’ specific conduct and the greater context in which it took place. Should the defense not stipulate to the authenticity of this footage, the government will call an appropriate witness at trial. But the government may also introduce footage from videos taken by other rioters or by journalists; for this set of video evidence, the government seeks a pretrial ruling on authenticity.

Under Federal Rule of Evidence 901(a), “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a

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finding through its attorney, the United States Attorney for the District of Columbia, (hereby submits the following
motion in limine regarding the authentication of certain video evidence at trial. BACKGROUND The riot at, and
attack on, the United States Capitol Building was an event of unparalleled size and scope. Much of the event
was recorded on video: on surveillance footage captured by the U.S. Capitol Police (USCP) cameras, by
Metropolitan Police Department ("MPD") body-worn cameras; by cameras and cellphones carried by journalists
and by rioters. The government's case at trial will rely in part on USCP camera footage to prove the defendants'
specific conduct and the greater context in which it took place. Should the defense not stipulate to the
authenticity of this footage, the government will call an appropriate witness at trial. But the government may also
introduce (3) *Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an
expert witness or the trier of fact. (4) Distinctive Characteristics and the Like. The appearance, contents, substance,
internal patterns, or other distinctive characteristics of the item, taken together with all the
circumstances.* Fed. R. Evid. 901(b)(3), (4). As a general matter, establishing an item's authenticity is not "a
particularly high hurdle." *United States v. Ortiz*, 966 F.2d 707, 716 (1st Cir. 1992); see also *United States v.
Vidacek*, 553 F.3d 344, 349 (4th Cir. 2009) ("The burden to authenticate under Rule 901 is not high"; *Link v.
Mercedes-Benz of N. Am., Inc.*, 788 F.2d 918, 927 (3d Cir. 1986) ("The burden of proof for authentication is
slight."); *United States v. Hassanshahi*, 195 F. Supp. 3d 35, 48 (D.D.C. 2016) ("The threshold for the Court's
determination of authenticity is not high", and the proposed burden of proof for authentication is slight" (citation
and quotation marks omitted)). Rule 901 "requires only a prima facie showing of genuineness and
leaves it to the [finder of fact] to decide the true authenticity and probative value of the evidence." *United States
v. Harvey*, 117 F.3d 1044, 1049 (7th Cir. 1997) (citing cases); see also, e.g., *United States v. Belfast*, 611 F.3d
783, 819 (11th Cir. 2010) ("[A]uthentication itself is 'merely. . . the process of presenting sufficient evidence to
make out a prima facie case that the proffered evidence is what it purports to be." (quoting *United States v.
Caldwell*, 776 F.2d 989, 1002 (11th Cir. 1985)); *Vidacek*, 553 F.3d at 349 ("only a prima facie showing is
required"). Stated differently, "[t]he standard the district court must apply in evaluating a document's authenticity
is what it purports to be." *United States v. 20 Blanchard*, 867 F.3d 1, 6 (1st Cir. 2017) (quoting *United States v.
Paulino*, 13 F.3d 20, 23 (1st Cir. 1994)). Once that showing is made, "[t]he factual determination of whether
evidence is that which the proponent claims is ultimately reserved for the [finder of fact]." *Vidacek*, 553 F.3d at
349; see also, e.g., *Belfast*, 611 F.3d at 819 ("Once that prima facie case is established, the evidence is admitted
and the ultimate question of authenticity is decided by the jury"). To make out a prima facie showing of
authenticity, "circumstantial evidence of authenticity can be sufficient." *United States v. Bruner*, 657 F.2d 1278,
1284 (D.C. Cir. 1981). See, e.g., *United States v. Broomfield*, 591 F. App'x 847, 851 (11th Cir. 2014)
("unpublished") ("Authentication may be established solely through the use of circumstantial evidence." (quoting
United States v. Smith, 918 F.2d 1501, 1510 (11th Cir. 1990)). And, importantly, the party seeking to admit
the evidence need not "rule out all possibilities inconsistent with authenticity, or to prove beyond any doubt that the
evidence is what it purports to be." *United States v. Holmquist*, 36 F.3d 154, 168 (1st Cir. 1994). Rather, "the
government must only 'demonstrate that, as a matter of reasonable probability, possibilities of misidentification
and adulteration have been eliminated.'" *United States v. Collins*, 608 F.3d 818, 842 (D.C. Cir. 2010) (quoting
United States v. Stewart, 104 F.3d 1377, 1383 (D.C. Cir. 1997)); see, e.g., *United States v. Bowens*, 938 F.3d
790, 794-95 (6th Cir. 2019) (explaining that "[a]nyone could have used the defendants' Facebook accounts, just
as the pictures could have depicted the men smoking tobacco cigars, and 'getting high' could have been a
reference to skydiving," but that there was sufficient circumstantial evidence "for the jury to infer that the
accounts belonged to the defendants, and that the defendants were the authors of the posts about using
marijuana"); *Broomfield*, 591 F. App'x at 852 (finding sufficient evidence of authenticity even though "there was
no testimony establishing that the recording equipment was reliable or that the video was not altered or staged").
See, e.g., *United States v. White*, 116 F.3d 903, 914 (D.C. Cir. 1997). Of course, even with a pretrial ruling that
evidence is authentic, and thus admissible, the government must introduce sufficient evidence at trial from which
a reasonable fact finder could reach the same conclusion regarding authenticity. See, e.g., *United States v.
Gammal*, 831 F. App'x 539, 542 n.6 (2d Cir. 2020) (unpublished) ("Insofar as the District Court relied on non-
public information to make its preliminary determination, it did not err because it did not do so in lieu of the
presentation of sufficient authenticating public evidence at trial."); *United States v. Puck*, 288 Fed. App'x
242, 246 (6th Cir. 2008) (unpublished) ("It is permissible for the judge to make a preliminary determination as to
authentication, admit the evidence conditionally under Rule 104(b), and then allow the jurors to be the final
arbiters of whether it was actually authenticated."); *United States v. Branch*, 970 F.2d 1368, 1371 (4th Cir. 1992)
("Thus, even though the district court may have ruled during an in camera proceeding that the proponent had
presented sufficient evidence to support a finding that a tape recording was authentic, evidence that would
support this same ruling must be presented again, to the jury, before the tape recording may be admitted.").
ANALYSIS At trial, the government anticipates offering video clips from the USCP cameras, as well as from
sources other than the USCP. Some of these other sources include reporters who were present in the Capitol on
January 6, 2021, the defendants' fellow rioters, or other members of the crowd. Many of the videos were

obtained through open-source means and are publicly available. 4 0 For any such videos, the government will establish authenticity by asking the jury to compare it with other, authenticated exhibits, in particular, the USCP camera footage. Fed. R. Evid. 901(3). This footage will confirm that such videos are what they purport to be: recordings of the same events, captured from a slightly different perspective, and in some cases depicting events and sounds that were not captured by the USCP camera. In addition, the distinctive features of the interior of the Capitol building and of the other individuals depicted in the footage will help authenticate the videos. Id. at 901(4). For example, the government intends to offer into evidence a video taken by an individual who was present in the crowd at the exterior of the Capitol building at approximately the same time that the defendants entered the Capitol building via a window near the Senate Wing Doors (the "Exterior Video"). The government intends to introduce USCP video – from the vantage point of inside of the Capitol building – depicting rioters breaking both sets of two-paned windows on either side of the Senate Wing Doors and entering the Capitol building through those windows and the Senate Wing Doors, including the defendants climbing through the set of windows to the left (i.e. to the west) of the Senate Wing Doors. Still images of the USCP video are below: 5 0 Figure 1 Figure 2 6 0 Figure 3 Figure 4 Figure 5 Figure 6 Figure 7 Figure 8 Figure 9 Figure 10 Figure 11 Figure 12 Figure 13 Figure 14 Figure 15 Figure 16 Figure 17 Figure 18 Figure 19 Figure 20 Figure 21 Figure 22 Figure 23 Figure 24 Figure 25 Figure 26 Figure 27 Figure 28 Figure 29 Figure 30 Figure 31 Figure 32 Figure 33 Figure 34 Figure 35 Figure 36 Figure 37 Figure 38 Figure 39 Figure 40 Figure 41 Figure 42 Figure 43 Figure 44 Figure 45 Figure 46 Figure 47 Figure 48 Figure 49 Figure 50 Figure 51 Figure 52 Figure 53 Figure 54 Figure 55 Figure 56 Figure 57 Figure 58 Figure 59 Figure 60 Figure 61 Figure 62 Figure 63 Figure 64 Figure 65 Figure 66 Figure 67 Figure 68 Figure 69 Figure 70 Figure 71 Figure 72 Figure 73 Figure 74 Figure 75 Figure 76 Figure 77 Figure 78 Figure 79 Figure 80 Figure 81 Figure 82 Figure 83 Figure 84 Figure 85 Figure 86 Figure 87 Figure 88 Figure 89 Figure 90 Figure 91 Figure 92 Figure 93 Figure 94 Figure 95 Figure 96 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In deciding preliminary questions about the admissibility of these videos, “[t]he court is not bound by evidence rules, except those on privilege.” Fed. R. Evid. 104(a). In other words, the government may rely upon otherwise inadmissible evidence in establishing the authenticity of the video evidence described in this motion. *See, e.g., United States v. White*, 116 F.3d 903, 914 (D.C. Cir. 1997). Of course, even with a pretrial ruling that evidence is authentic, and thus admissible, the government must introduce sufficient evidence at trial from which a reasonable fact-finder could reach the same conclusion regarding authenticity. *See, e.g., United States v. Gammal*, 831 F. App’x 539, 542 n.6 (2d Cir. 2020) (unpublished) (“Insofar as the District Court relied on non-public information to make its preliminary determination, it did not err because it did not do so in lieu of the presentation of sufficient authenticating public evidence later at trial.”); *United States v. Puttick*, 288 Fed. App’x 242, 246 (6th Cir. 2008) (unpublished) (“It is permissible for the judge to make a preliminary determination as to authentication, admit the evidence conditionally under Rule 104(b), and then allow the jurors to be the final arbiters of whether it was actually authenticated.”); *United States v. Branch*, 970 F.2d 1368, 1371 (4th Cir. 1992) (“Thus, even though the district court may have ruled during an in camera proceeding that the proponent had presented sufficient evidence to support a finding that a tape recording was authentic, evidence that would support this same ruling must be presented again, to the jury, before the tape recording may be admitted.”).

ANALYSIS

At trial, the government anticipates offering video clips from the USCP cameras, as well as from sources other than the USCP. Some of these other sources include reporters who were present in the Capitol on January 6, 2021, the defendants’ fellow rioters, or other members of the crowd. Many of the videos were obtained through open-source means and are publicly available.

For any such videos, the government will establish authenticity by asking the jury to compare it with other, authenticated exhibits, in particular, to USCP camera footage. Fed. R. Evid. 901(3). This footage will confirm that such videos are what they purport to be: recordings of the same events, captured from a slightly different perspective, and in some cases depicting events and sounds that were not captured by the USCP camera. In addition, the distinctive features of the interior of the Capitol building and of the other individuals depicted in the footage will help authenticate the videos. *Id.* at 901(4).

For example, the government intends to offer into evidence a video taken by an individual who was present in the crowd at the exterior of the Capitol building at approximately the same time that the defendants entered the Capitol building via a window near the Senate Wing Doors (the “Exterior Video”). The government intends to introduce USCP video – from the vantage point of inside of the Capitol building – depicting rioters breaking both sets of two-paned windows on either side of the Senate Wing Doors and entering the Capitol building through those windows and the Senate Wing Doors, including the defendants climbing through the set of windows to the left (*i.e.* to the west) of the Senate Wing Doors. Still images of the USCP video are below:



Figure 1



Figure 2

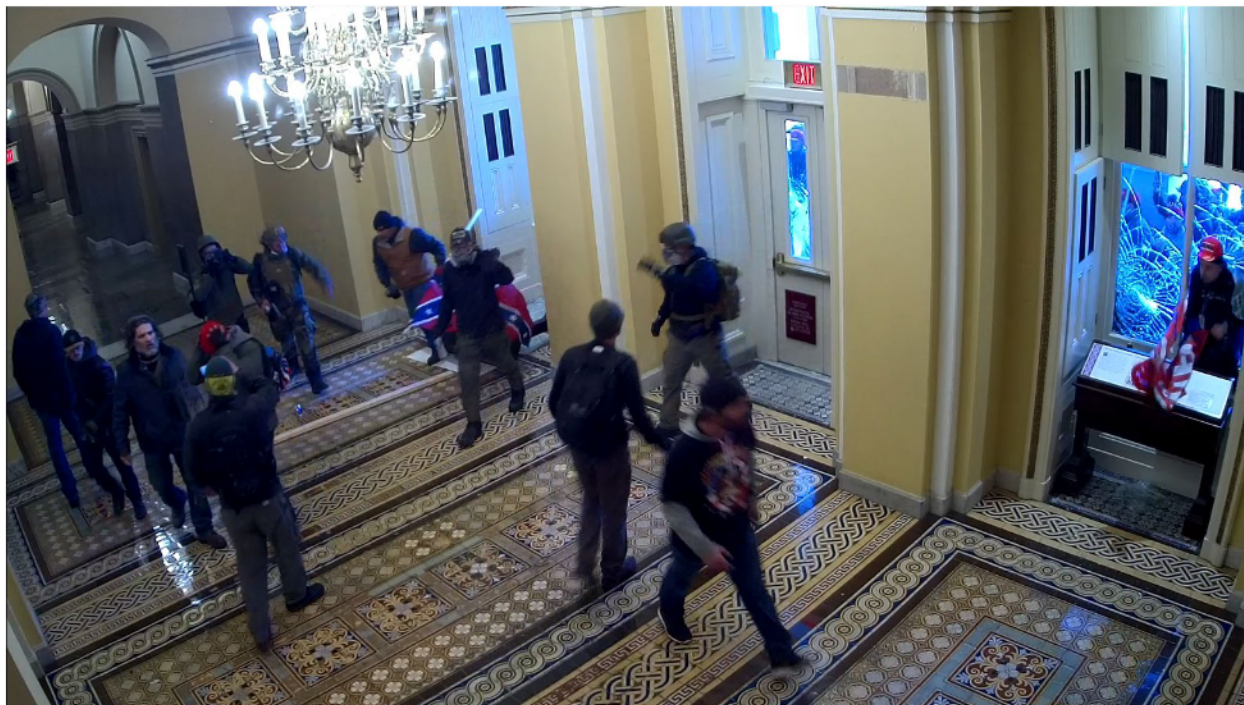


Figure 3

Figure 1 depicts a USCP officer deploying crowd-control spray as rioters – including defendant Hunter Seefried – breached the Capitol building. Figure 2 depicts Hunter Seefried entering the Capitol building through the broken windows to the west of the Senate Wing Doors. Figure 3 depicts defendant Kevin Seefried immediately after climbing through the same window, carrying a flagpole with a large confederate flag.

The Exterior Video, which was filmed by another individual in the crowd outside the Senate Wing Doors, captures precisely the same moments as the USCP video, but taken from the vantage point just outside the building. This video depicts Hunter Seefried, after the window pane has been broken by other rioters, pushing the remaining glass out of the frame with his hand and climbing through the window. It also depicts Kevin Seefried climbing through the same window seconds later, carrying a flagpole with a large confederate flag. This different perspective will be valuable in showing what the defendants themselves were perceiving shortly before, and during

the time that they breached the Capitol building, depicting conduct not captured by the USCP camera, and generally providing context to the defendants' conduct. Still images from the Exterior Video are below:



Figure 4



Figure 5

Figure 4 depicts Hunter Seefried climbing through the two-paned set of windows to the right (*i.e.* to the west) of the Senate Wing Doors. A USCP officer, who has assumed a stance similar to that depicted in Figure 1, is visible through the window frame. Figure 5 depicts Kevin Seefried, after he has climbed through the same window, holding a flagpole with a confederate flag. Kevin Seefried is positioned next another rioter who is wearing a helmet and camouflage attire, similar to an individual depicted in a similar location in Figure 3. The floor tiles depicted in Figure 5 and at other points in the Exterior Video, are also similar in appearance to those in the USCP video. In addition, many of the rioters depicted in the USCP video are distinctive in appearance and are also depicted in the Exterior Video.

Should the government elect to offer other video clips taken by other persons present in the crowd, the government will file a supplement prior to trial detailing the clips to be used and the factors supporting authenticity of those clips.

CONCLUSION

For the reasons stated herein, the government respectfully requests that this Court rule *in limine* that the government's video evidence from non-UCSP sources satisfies the authenticity requirement of Fed. R. Evid. 901.

Respectfully submitted,

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