

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 : No. 21-CR-383 (BAH)
 :
 v. :
 :
 :
 PATRICK STEDMAN :
 :

**DEFENDANT STEDMAN'S REPLY TO GOVERNMENT'S RESPONSE (DDE 55) TO
DEFENSE MOTION TO PRECLUDE CERTAIN EVIDENCE (DDE 46)**

On the Brief:

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This Brief is defendant Stedman's reply to the government's response to defendant's motion in limine regarding preclusion of evidence (docket document 55, hereinafter "DDE"). The government opposes the defendant's motion (DDE 46) to preclude the government from presenting any evidence regarding events of January 6, 2021 for which it cannot demonstrate Mr. Stedman was present and observed. In inconsistent contrast, the government also argues (DDE 44, government motion in limine) that Mr. Stedman should be precluded from arguing or presenting evidence of alleged inaction by law enforcement unless Mr. Stedman specifically observed or was otherwise aware of the alleged inaction.

In contrast to the government's inconsistent position on the related motions and issues, Mr. Stedman's response to the government's motion (DDE 44) and his position in his motion DDE 46 are consistent. Mr. Stedman has acknowledged (DDE 52) that he will not seek to introduce any evidence of law enforcement officers of which he was unaware either by observation or otherwise and has argued (DDE 46) that similarly the government should not be permitted to introduce evidence of events of January 6, 2021 for which the government cannot demonstrate Mr. Stedman was present and observed. That is the correct position. The government's inconsistent positions are irreconcilable. The correctness of Mr. Stedman's position is apparent even from the government's response (DDE 55) to which this document replies. While the government reiterates its position that Mr. Stedman should be precluded from presenting events of which he was unaware, in support of its argument that it should be permitted to show conduct of "the mob's collective action" of which Mr. Stedman was unaware, it contends that Mr. Stedman's "**knowledge** of the collection riot bears on his *mens rea* for each of the charged offenses." DDE 55 (GT Brief at 2)(bold added). The defendant agrees that his knowledge of such would be relevant, but -- as the government's statement quoted *supra*

recognizes by the use of the word “knowledge” -- something of which Mr. Stedman has no knowledge cannot bear on his *mens rea* and would be irrelevant.

The government contends Mr. Stedman is charged with “collective action”. DDE 55 (GT Brief at 2). Mr. Stedman is not charged with collective action such as conspiracy. He is charged with aiding and abetting (18 U.S.C. § 2) in Count 1, but of course aiding and abetting is not collective action: it still requires that the actor (here Mr. Stedman) knew (1) whose action he was aiding and abetting, and (2) which particular acts he was aiding and abetting:

The elements of aiding or abetting an offense are (1) the specific intent to facilitate the commission of a crime by another, ... (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of the offense. ... What is required on the part of the aider is sufficient knowledge and participation to indicate that he knowingly and wilfully participated in the offense in a manner that indicated he intended to make it succeed.

U.S. v. Raper, 676 F.2d 841, 849 (D.C. Cir. 1982)(internal citation omitted). Mr. Stedman cannot aid and abet conduct of which he is unaware. As such it is distinct from co-conspirator liability.

Further, the government contends (DDE 55, GT Brief at 3) that evidence of conduct of others of which Mr. Stedman was not aware is relevant to establish an “official proceeding” was in progress and disrupted. How does the conduct of other persons, or even Mr. Stedman, establish whether an official proceeding was in progress? It does not. The fact issue whether an official proceeding was in progress (which may well be the subject of a stipulation anyway) is made no more or less likely by the conduct of alleged other persons (those the government refers to as “rioters” in its brief). Either there was an official Congressional proceeding that had started or there was not: the

crowd had no impact on whether one was “official” or had begun. As to the actions of the crowd disrupting such proceeding, again Mr. Stedman cannot aid and abet that of which he was unaware.

As to the government’s argument that Mr. Stedman’s conduct aided and abetted the disruption of an official proceeding, if the government can demonstrate that Mr. Stedman was aware of or participated in particular conduct of others, then that could be relevant to his state of mind, but if he was not then it cannot. Therefore, the government should be precluded from introducing evidence (video, photos, testimony) of the conduct of others of which Mr. Stedman was unaware.

Also, it is not expected that there will be any evidence that Mr. Stedman committed or urged any physically violent conduct by others toward others including toward law enforcement or government officials, or that he was aware of any such conduct. The undue prejudicial impact of any evidence of such conduct by others would substantially outweigh any probative effect. FED. R. EVID. 403.

If the Court nonetheless allows the type of evidence suggested by the government it may seek to introduce -- conduct of others for which Mr. Stedman was not present and regarding which it cannot demonstrate that Mr. Stedman was otherwise aware -- then a limiting instruction as to its purposes is requested. Indeed, the government suggests the propriety of such in its brief as well. DDE 55 (GT Brief at 3-4). Such evidence cannot, as discussed *supra* and in Mr. Stedman’s prior filings, influence his state of mind and the jury should not be permitted to consider it for such, so a limiting instruction is needed to tell the jury the only purposes for which it may consider that evidence. As the government acknowledges discussing the propriety

of a limiting instruction here, the “jury [must]... judge the Defendant based on his own actions....” DDE 55 (GT Brief at 3).

Finally, of course to the extent that the government is permitted to introduce conduct of “rioters” that engaged in violent conduct for which Mr. Stedman was not present and of which it cannot show he was otherwise aware, Mr. Stedman also should be permitted to show evidence of peaceful protestors – that is those not engaging in violent or threatening conduct – at the Capitol Building on January 6, 2021 as relevant contextually. If the former could be relevant to his state of mind and aiding and abetting, or to the proof of other elements, then *a fortiori* the latter also must.

Finally of course, Mr. Stedman must be permitted the opportunity to present other relevant contextual evidence to whatever such videos for example the government is (if it is) permitted to introduce, under the rule of completeness. FED. R. EVID. 106. Presently the defense has not been provided with a government exhibit list or video exhibits and cannot forecast what footage of the conservatively stated hundreds of hours of Capitol Building footage the government will seek to use for which Mr. Stedman was not present, so particular examples cannot be provided here.

Respectfully submitted,

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BY: /s/Rocco C. Cipparone Jr.
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Date: April 26, 2023

CERTIFICATE OF SERVICE

The undersigned certifies that on April 26, 2023, I caused a copy of the within document to be served on all parties listed on the Electronic Case Filing (ECF) System, by means of filing those documents on the ECF system.

/s/Rocco C. Cipparone Jr.
Rocco C. Cipparone, Jr., Esquire

Dated: April 26, 2023