

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

UNITED STATES OF AMERICA

v.

ANTHONY GRIFFITH, SR.

Defendant.

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No. 21-CR-244-2 (CKK)

**UNITED STATES' OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS COUNTS 2-5 AS MULTIPLICTIOUS**

The United States of America respectfully submits this opposition to Defendant Anthony Griffith, Sr.'s motion to dismiss Counts Two through Five of the Indictment as multiplicitous. Dkt. 89. As other courts in this district have concluded, the defendant's arguments are meritless and this Court should deny the motion.

BACKGROUND

Griffith is charged with: (1) Entering and Remaining in a Restricted Building in violation of 18 U.S.C. § 1752(a)(1) (Count Two); (2) Disorderly and Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2) (Count Three); (3) Violent Entry and Disorderly Conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Four); and (4) Parading, Demonstrating, or Picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Five). Dkt. 12. This case is set for trial on March 13, 2023. Dkt. 85 at 2.

ARGUMENT

I. Counts Two Through Five of the Indictment are not Multiplicitous

Griffith asserts that Counts Two through Five of the Indictment allege precisely the same conduct and therefore violate Double Jeopardy. Dkt. 89 at 3-5. Griffith is incorrect.

A defendant may be convicted of and sentenced under different statutory provisions for multiple offenses arising out of the same single act or course of conduct so long as Congress authorized the imposition of such multiple punishments. *See United States v. McLaughlin*, 164 F.3d 1, 8 (D.C. Cir. 1998) (“If the legislature intends to impose multiple punishment, imposition of such sentences does not violate Double Jeopardy.”). “To determine multiplicity *vel non*, courts generally apply the *Blockburger* test: ‘[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not,’ i.e., whether either is a lesser included offense of the other.” *United States v. Mahdi*, 598 F.3d 883, 888 (D.C. Cir. 2010) (quoting *United States v. Weathers*, 186 F.3d 948, 951 (D.C. Cir. 1999), and *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). If the two offenses each require proof of a fact the other does not, then the charges are not multiplicitous. *Id.* at 890. The *Blockburger* “test focuses on the statutory elements of the offense, not on the proof offered in a given case.” *United States v. McLaughlin*, 164 F.3d 1, 8 (D.C. Cir. 1998). Thus, it is irrelevant whether there is significant overlap in the factual proof of each count at trial, or even whether two counts “are based upon the exact same set of facts and circumstances,” as long as each count’s elements require proof of a fact that the others do not. *United States v. Manafort*, 313 F. Supp. 3d 311, 314 (D.D.C. 2018); *see id.* (“[T]he test for multiplicity is not whether two counts are based on the same set of facts; rather, it is whether the statutory elements of the two offenses are the same.”).

Here, Griffith’s multiplicity arguments fail because each of the offenses charged in the indictment “requires proof of a fact which the other does not.” *Blockburger*, 284 U.S. at 304. Many of the Counts require proof of multiple facts not required by the other Counts, and all require proof of at least one. Thus, the indictment satisfies *Blockburger*.

Count Two charges a violation of 18 U.S.C. § 1752(a)(1), which applies to a defendant who “knowingly enters or remains in any restricted building or grounds without lawful authority to do so.” 18 U.S.C. § 1752(a)(1). The elements of that offense are:

- 1) The defendant entered or remained in a restricted building or grounds without lawful authority to do so;
- 2) The defendant did so knowingly.

Count Three charges a violation of 18 U.S.C. § 1752(a)(2), which applies to a defendant who “knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions.” 18 U.S.C. § 1752(a)(2). The elements of that offense are:

- 1) The defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds;
- 2) The defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions;
- 3) The defendant’s conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

Count Four charges a violation of 40 U.S.C. § 5104(e)(2)(D), which applies to a defendant who “utter[s] loud, threatening, or abusive language, or engage[s] in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress[.]” 40 U.S.C. § 5104(e)(2)(D). The elements of that offense are:

- 1) The defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings;

- 2) The defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress;
- 3) The defendant acted willfully and knowingly.

Count Five charges a violation of 40 U.S.C. § 5104(e)(2)(G), which applies to a defendant who “willfully and knowingly . . . parade[s], demonstrate[s], or picket[s] in any of the Capitol Buildings.” 40 U.S.C. § 5104(e)(2)(G). The elements of that offense are:

- 1) The defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings;
- 2) The defendant acted willfully and knowingly.

Based on the foregoing elements, Counts Two through Five not multiplicitous, because each requires proof of at least one fact that the other does not. Count Two requires proof that the defendant entered or remained in any restricted building or grounds “without lawful authority to do so.” 18 U.S.C. § 1752(a)(1). Counts Three through Five contain no such requirement. Count Three requires defendant engaged in disorderly or disruptive conduct “in, or in proximity to, any restricted building or grounds.” 18 U.S.C. § 1752(a)(2). As relevant here, the term “restricted building or grounds” means any posted, cordoned off, or otherwise restricted area of a building or grounds where a person protected by the Secret Service is or will be temporarily visiting. 18 U.S.C. § 1752(a)(2)(C)(1)(B). The other Counts, and notably Count Four, requires no such proof. Likewise, Count Four requires proof that the defendant engaged in disorderly or disruptive conduct “in any of the United States Capitol Buildings” 40 U.S.C. § 5104(e)(2)(D). But no other Count contains such a requirement. Finally, Count Five requires the defendant to have “paraded,

demonstrated, or picketed in any of the United States Capitol Buildings,” an element not contained in any of the other Counts.¹

Griffith argues that the government is improperly prosecuting him for multiple statutory violations based on the same alleged acts. Dkt. 89 at 3. Griffith misunderstands that the *Blockburger* multiplicity analysis refers to the elements of the offenses, not whether a single act could violate multiple statutes. The very premise of *Blockburger* and its progeny is that the “same act or transaction”—here, Griffith’s presence and violence at the Capitol and on its Grounds—could form the basis for multiple criminal charges so long as each Count requires proof of a fact that the others do not. *Mahdi*, 598 F.3d at 888. That multiple counts each relate to Griffith’s presence at the Capitol, and her conduct therein, is unsurprising and ordinary.

Indeed, a number of defendants involved in the attack on the Capitol have been convicted of and sentenced on most or all of the statutes at issue in this case. *See, e.g., United States v. Robertson*, 1:21-CR-00034-CRC; *United States v. Rubenacker*, 1:21-CR-00193-BAH; *United States v. Hale-Cusanelli*, 1:21-CR-00037-TNM; *United States v. Dropkin*, 1:21-CR-00734-JEB; *United States v. Bledsoe*, 1:21-CR-00204-BAH; *United States v. Hunter Seefried*, 1:21-CR-00287-TNM; *United States v. Rodean*, 1:21-CR-00057-TNM; *United States v. Rivera*, 1:21-CR-00060-CKK; *United States v. Thompson*, 1:21-CR-00161-RBW; *United States v. Wood*, 1:21-CR-00223-APM; *United States v. Council*, 1:21-CR-00207-TNM; *United States v. Broadnax*, 1:21-CR-00350-DLF. In addition, other courts have rejected similar multiplicity challenges in the January 6 context. *See, e.g., Memorandum Opinion, United States v. Ballenger*, 1:21-CR-00719-JEB, Dkt. 72 at 4-5. Whatever similarity Griffith sees in the statutes, charging them neither violates Double Jeopardy nor results in a multiplicitous Indictment.

¹ Given each count requires proof of at least one fact the others do not, a full accounting of potential distinctions between the statutes charged in Counts Two through Five is unnecessary.

Therefore, Counts Two through Five are not multiplicitous and Griffith's motion to dismiss on this ground misunderstands *Blockburger*. A single criminal act frequently results in multiple punishments under multiple criminal statutes, and that is entirely permissible so long as application of the *Blockburger* test (or other indicia of congressional intent) make clear Congress's intent to permit such multiple punishment.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that Griffith's Motion to Dismiss Counts 2-5 as Multiplicitous be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 12th day of January 2023, a copy of the foregoing was served upon all parties listed on the Electronic Case Filing (ECF) System.

/s/ Sonia Mittal

SONIA MITTAL

Assistant United States Attorney