

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

UNITED STATES OF AMERICA	:	1:21-CR-618-ABJ
	:	
v.	:	
	:	
RILEY JUNE WILLIAMS	:	

**DEFENDANT’S MEMORANDUM OF LAW CONCERNING
18 U.S.C. §§ 231(a)(3) AND 18 U.S.C. § 111(a)(1)**

Defendant Riley June Williams, by and through her attorneys, submits the within memorandum of law in conformity with this Honorable Court’s Minute Order dated November 1, 2022.

I. 18 U.S.C. § 231(a)(3) CONTAINS A JURISDICTIONAL ELEMENT THAT REQUIRES UNANIMITY

18 U.S.C. § 231(a)(3) provides that:

Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce **or** the conduct or performance of any federally protected function – shall be fined under this title or imprisoned not more than five years or both.

(emphasis supplied). It is Ms. Williams’ position that whether the civil disorder impacts commerce or impacts a federally protected function are two alternatives of the jurisdictional element of the offense. They are not, as the defense anticipates the government will argue,

differing means to satisfy the same element.¹ As such, the jury must be unanimous as to its finding on the jurisdictional element.

Because Congress lacks general constitutional authority to punish crimes, most federal offenses include a jurisdictional element. *See Torres v. Lynch*, 578 U.S. 452, 457 (2016). The jurisdictional element “ties the substantive offense . . . to one of Congress’s constitutional powers, thus spelling out the warrant for Congress to legislate,” *id.*, and “address[es] the reach of [Congress’s] legislative authority.” *United States v. Munoz Miranda*, 780 F.3d 1185, 1195 (D.C. Cir. 2015). In *Munoz Miranda*, the D.C. Circuit observed that:

Statutes that establish ‘jurisdictional elements’ not only contain no use of the term ‘jurisdiction’, but consistent with the description ‘jurisdictional *element*,’ treat the relevant condition as an element of the offense to be found by a jury. In that sense, ‘proof of [a jurisdictional element] is no different from proof of any other element of a federal crime.’

Id. (quoting *Hugi v. United States*, 164 F.3d 378, 381 (7th Cir. 1999)(emphasis and brackets in original). The jurisprudence is clear that “a ‘jurisdictional element’ requires a factual finding justifying the exercise of federal jurisdiction in connection with any individual application of the statute.” *United States v. Harrington*, 108 F.3d 1460, 1464 n.2 (D.C. Cir. 1997).

To be clear, Ms. Williams is not arguing that the government must proceed upon only one of the two alternatives of the jurisdictional element. The government may argue both alternatives, but to sustain a verdict of guilty on the 18 U.S.C. § 231(a)(3) charge, the jury must unanimously find that the government proved at least one alternative beyond a reasonable

¹ The defense notes that in at least one other January 6th prosecution, the government has acknowledged that the element at issue in 18 U.S.C. §231(a)(3) is jurisdictional. *See United States v. Nordean*, 1:21-cr-175-TJK, Docket Entry 106 at 2 (discussing §231(a)(3), the government states that “[F]ederal jurisdiction is established by Congress’s power to regulate the conduct or performance of a federally protected function, *i.e.*, proceedings at the Capitol, the very seat of the U.S. Government.”).

doubt.² See *United States v. Williams*, 299 F.3d 250, 254 (3d Cir. 2002) (“Like all elements of criminal offenses, the Government must prove the jurisdictional element beyond a reasonable doubt.”) Otherwise, Ms. Williams could conceivably be found guilty without jury unanimity as to the jurisdictional basis upon which she is being charged by the United States government, resulting in a conviction outside of the bounds of the federal government’s jurisdiction over her, offensive to the Sixth Amendment to the United States Constitution and due process in general.

Finally, Ms. Williams anticipates that the government will argue that in previously tried January 6th prosecutions, no such unanimity requirement has been imposed, nor have special interrogatories been submitted to the jury. This may be so, but it is because in the prior cases, either this issue was not raised, or the parties have stipulated that **both** alternative elements were satisfied. See *United States v. Robertson*, No. 1:21-cr-34-CRC, Docket Entries 81 and 83 (stipulating that the civil disorder impacted commerce and federally protected function).³

II. 18 U.S.C. § 111(a)(1) SETS FORTH SEPARATE CRIMES AND COUNT THREE IS DUPLICITOUS

18 U.S.C. § 111(a)(1), which prohibits certain conduct towards government officials, contains three separate crimes, one misdemeanor and two felonies. The statute identifies several potential actus reus: “forcibly assault[ing], resist[ing], oppos[ing], imped[ing], intimidate[ing], or interfere[ing] with” a government official. The subsection then proceeds to define penalties for each separate crime:

- *Simple Assault*. Where “the acts in violation of the section constitute only simple assault,” the offender may be “imprisoned not more than one year.”

² Ms. Williams submits that the verdict slip relative to Count One must contain special interrogatories to make the jury’s finding clear, and has attached a proposal concerning Count 1 hereto, as Exhibit A.

³ The government proposed, and Ms. Williams rejected, the same stipulations in this matter.

- *Physical Contact*. Where “such acts involve physical contact with the victim of that assault,” the offender may be “imprisoned not more than eight years.”
- *Other Felony*. Where “such acts involve . . . the intent to commit another felony,” the offender may be “imprisoned not more than eight years.”

18 U.S.C. § 111(a)(1). Similarly, 18 U.S.C. § 111(b) contains two separate crimes: (1) assault on a federal officer with a deadly or dangerous weapon; and (2) assault that inflicts bodily injury. Each of §111(b)’s aggravated assault crimes carry a 20-year statutory maximum. *See* 18 U.S.C. § 111(b); *see United States v. Briley*, 770 F.3d 267, 273 (4th Cir. 2014) (“§111 proscribes five types of offenses: a misdemeanor (constituting only simple assault), two less serious felonies (involving either physical contact or felonious intent), and two more serious felonies (involving either a weapon or bodily injury)); *see also United States v. Arrington*, 309 F.3d 40, 44 n.7 (D.C. Cir. 2002) (treating § 111(b) as containing offense elements rather than sentencing factors).

Here, the government has charged Ms. Williams with two separate assault crimes in a single count of the indictment, Count Three, which raises obvious duplicity concerns. *See United States v. Hood*, 210 F.3d 660, 662 (6th Cir. 2000) (quoting *United States v. Robinson*, 651 F.2d 1188, 1194 (6th Cir. 1981)(An indictment is duplicitous if "it joins in a single count two or more distinct and separate offenses."). "The vice of duplicity is that a jury may find a defendant guilty on the count without having reached a unanimous verdict on the commission of any particular offense." *Hood*, 210 F.3d at 662-63 (citation omitted). “By collapsing separate offenses into a single count, duplicitous indictments thereby prevent the jury from convicting on one offense and acquitting on another.” *Id.*

It is Ms. Williams' position that, because Count Three is duplicitous, the government must "elect . . . charge within the count upon which it will rely." *Id.* (quoting *Robinson*, 651 F.2d at 1194).⁴

Date: November 7, 2022

Respectfully submitted:

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⁴ Alternatively, should the Court permit the government to proceed on both offenses, then the verdict slip must reflect special interrogatories so that the jury can identify its verdict as to each separate offense charged in Count Three.

CERTIFICATE OF SERVICE

I, Lori J. Ulrich, Esquire, of the Federal Public Defender's Office, do hereby certify that I served a copy of the foregoing **Defendant's Memorandum of Law Concerning 18 U.S.C. §§ 231(a)(3) and 18 § 111(a)(1)** via Electronic Case Filing, and/or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, and/or by hand delivery, addressed to the following:

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