

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :
 :
 v. : No. 1:21-cr-00447-CJN-03
 :
 JOSHUA CHRISTOPHER DOOLIN, :
 et al. :

**DEFENDANT'S COMBINED RESPONSE TO GOVERNMENT'S
MOTIONS' IN LIMINE REGARDING CROSS-EXAMINATION OF
SECRET SERVICE AGENCY WITNESSES AND LOCATIONS OF
U.S. CAPITOL POLICE SURVEILLANCE CAMERAS**

The Government has moved in Limine to limit the cross-examination of witnesses with the Secret Service Agency (Doc. 124) and the specific locations of U.S. Capitol Police Surveillance Cameras. (Doc. 123) Specifically, the Government moves to restrict the defense from questioning Secret Service witnesses on protocols related to locations where protectees are taken at the Capitol when emergencies occur and details about Secret Service protective details as well to preclude questioning as to the specific locations of U.S. Capitol Police cameras. The defendant objects to both Government's motions in Limine, based on a need to challenge the Government's case effectively and to the examine the credibility of any testifying Secret Service Agents. For judicial economy purposes, counsel combines this response to the above motions into a single pleading.

ARGUMENT

- 1. Defendant Should be Allowed to Explore the Nature of the Secret Service Protective Detail to Ensure the Government Meets Its Burden.**

Under 18 U.S.C. § 1752(a)(1) and (2), the Government must demonstrate that

the Capitol was a restricted building or ground at the time of defendant's entrance onto the grounds. To establish the Capitol was a "restricted building," the Government indicated in its motion their intent to prove this by demonstrating that a person, protected by the Secret Service, was present. 18 U.S.C. § 1752(c)(1)(B). In its motion, the Government wishes to limit cross-examination by restricting the defense from inquiring about the number of agents present, the nature of Secret Service protective details, and the type of agents present.

Defendant objects to this request on the following limited basis: it is necessary for the defense to be able to challenge that the Agents were actually at the locations they alleged with the protected persons. To challenge the credibility of the Agents' assertions, it may be necessary to ascertain where the parties were and whether there were cameras in the location that could independently corroborate or contradict the veracity of that claim. The defense does not wish to pry into otherwise irrelevant matters that do not directly pertain to the preceding inquiry. The defense certainly agrees the nature of all other Secret Service protective details is irrelevant for this case unless it pertains to credibility issues. However, the defense still needs the ability to challenge the Government's case by questioning the agents as to their locations in conjunction with relevant times on the day in question. Restricting the defense from this line of inquiry would allow the Government to meet the element in question without challenge. As the Government states in their motion, the Confrontation Clause only guarantees "an *opportunity* for effective cross-examination." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). Granting the Government's motion would deprive the defense of this opportunity.

Even when the law categorically limits the scope of cross-examination in some manner (*see e.g.*, Fed. R. Evid. 412) courts must still balance the Government's legitimate interest in enacting such laws against a defendant's right to confront a particular witness with relevant matters concerning the witness' credibility. *See Michigan v. Lucas*, 500 U.S. 145, 149–151 (1991); *see also Clifford S. Fishman, Consent, Credibility, and the Constitution: Evidence Relating to a Sex Offense Complainant's Past Sexual Behavior*, 44 Cath. U. L. Rev. 709 (1995) (discussing constitutional challenges to rape shield laws). Depending on the circumstances, courts have held that applying such a law may violate the Confrontation Clause.¹

Furthermore, questioning the agents about their involvement would allow a competent test of their credibility, which is always at issue. Accordingly, depriving the defendant of the fundamental right to challenge the credibility of the evidence being offered violates the confrontation clause and deprives him of a fundamentally fair trial.

Under a plain reading of Federal Rule of Evidence 611(b), the matters the defense intends to explore are well within the scope of direct examination and may affect the witnesses' credibility. As such, the defense must be able to question where the parties were located and whether cameras existed to corroborate their claims during the events of January 6th.

¹ *United States v. Begay*, 937 F.2d 515, 520–23 (10th Cir. 1991) (finding a constitutional violation); *Davis v. State*, 749 N.E.2d 552 (Ind. Ct. App. 2001); and *State v. Atkinson*, 276 Kan. 920 (2003).

2. Defendant Should Be Allowed to Question Witnesses About the Positions of Capitol Police Cameras in Order to Effectively Assess Witness Credibility.

The Government moves for the restriction of presentation of specific camera locations in the U.S. Capitol pursuant to Federal Rules of Evidence 401, 403, and 611(b). To effectively assess witness credibility and confirm the truthfulness of proposed testimony, the defense requests the ability to question witnesses about proposed camera locations that may have captured the Agents' movement at times in question. As established above, the Government holds the burden of establishing the U.S. Capitol was a "restricted building." To meet this burden, they must show, through testimony or physical evidence, that a person protected by the Secret Service was present in the Capitol during the Defendant's entry. In line with the defense's previous request, the defense wishes to challenge any Agent testimony regarding locations in the Capitol effectively. But for the relevant locations and camera footage, the defense would be forced to take the Agents at their word without any means and methods of effectively challenging their testimony. Not allowing the defense the ability to confirm the Agents' testimony would deprive Defendant of his "*opportunity* for effective cross-examination" under the Confrontation Clause. *Delaware* at 20.

A such, the Defense requests this Court allow the inquiry into the specific locations of camera locations, a map of the camera locations, and the relevant footage to evaluate the Agents' testimony effectively.

CONCLUSION

The Government has the burden to establish that the U.S. Capitol Building was a "restricted building" for purposes of 18 U.S.C. §1752(a)(1) and (2). To maintain Mr. Doolin's right to a fair trial and under the Confrontation Clause, this Court should allow the defense to question the Secret Service Agents about their locations, times, and who they were protecting on January 6th. Furthermore, this Court should allow the defense at least the "*opportunity*" of effective cross-examination by releasing the location of specific camera locations, providing a map of cameras, and the relevant footage to either support or undermine the Agents' credibility. Finally, defendant agrees with the Government's request for an in-camera hearing to evaluate the evidence without danger to national security.

Respectfully Submitted.

Allen H. Orenberg (#395519)
The Orenberg Law Firm, P.C.
12505 Park Potomac Avenue, 6th Floor
Potomac, MD 20854
Tel. No. 301-984-8005
Fax No. 301-984-8008
Cell-Phone: 301-807-3847
aorenberg@orenberglaw.com

Dated: August 5, 2022