

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

UNITED STATES OF AMERICA

v.

**PATRICK MONTGOMERY,
BRADY KNOWLTON, and
GARY WILSON**

Defendants

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Case No. 21-CR-00046-RDM

**DEFENDANTS' JOINT MOTION IN LIMINE TO EXCLUDE VIDEO OR
PHOTOGRAPHIC EVIDENCE NOT RELEVANT TO DEFENDANTS**

TO THE HONORABLE RANDOLPH D. MOSS, UNITED STATES DISTRICT
JUDGE FOR THE DISTRICT OF COLUMBIA:

PATRICK MONTGOMERY, BRADY KNOWLTON, and GARY WILSON, the
Defendants in the above styled and numbered cause, by and through their respective,
undersigned counsel, respectfully requests this Court to instruct the Government not
to present any video or photographic evidence of protests or violence not relevant to
the Defendants.

A. Introduction

52 minutes. The first video evidence in this case of Mr. Montgomery, Mr.
Knowlton, and Mr. Wilson show them on the west side of the Capitol at 2:01 p.m. on
January 6, 2021 on a sidewalk north of the scaffolding set up for the inauguration
proceedings. Additional evidence shows that they moved from that position, up the
West Stairs onto the scaffolding, before moving to the Upper West Terrace of the
Capitol building.

At 2:35 p.m., they entered the Capitol building through the Upper West Terrace Doors that had multiple Capitol Police officers standing nearby. There was no violence or use of force by anyone, including the officers themselves, to keep people, Mr. Montgomery, Mr. Knowlton, and Mr. Wilson included, from entering the building.

From there, Mr. Montgomery, Mr. Knowlton, and Mr. Wilson moved up one floor and toward the East Rotunda doors, walked past those doors, up another set of stairs, and eventually moved toward the Senate Gallery.

At 2:42 pm, Mr. Montgomery, Mr. Knowlton, and Mr. Wilson entered the Senate Gallery.

Five minutes later, at 2:47 pm, Mr. Montgomery, Mr. Knowlton, and Mr. Wilson exited the Senate Gallery and began looking for exits from the building.

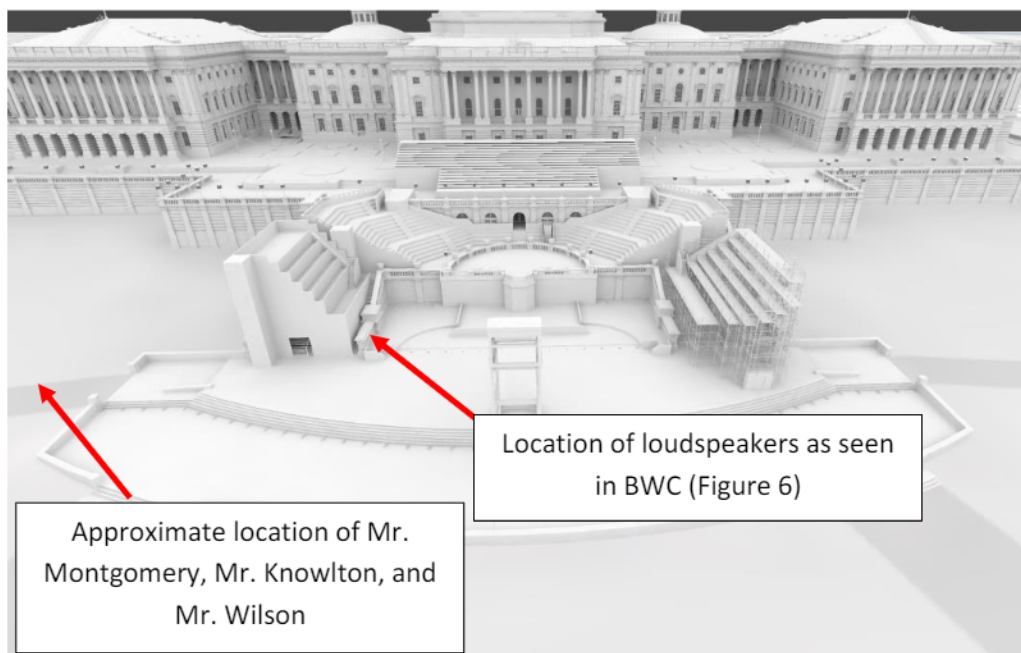
At 2:53 pm, after inquiring and being directed by officers where to exit — and less than 20 minutes after they entered the Capitol — Mr. Montgomery, Mr. Knowlton, and Mr. Wilson exited the Capitol through the Senate Carriage Doors and, soon thereafter, departed from the Capitol grounds.

52 minutes. The video evidence shows that, from the time of their first appearance on Capitol grounds, to the time of their last appearance on Capitol grounds as they departed the Capitol building was 52 minutes.

While Mr. Montgomery, Mr. Knowlton, and Mr. Wilson concede that videos and photographs showing their movements through Capitol grounds and the building is relevant, what Mr. Montgomery, Mr. Knowlton, and Mr. Wilson are concerned

about is that, in an effort to prejudice, confuse, and mislead the jury, the Government intends to offer substantial amounts of videos and photographs from *other areas* of the Capitol building and grounds and from *different times* in and around the Capitol building and grounds.

For instance, in their Motion in Limine to Preclude Entrapment Related Defenses and Arguments and Evidence About Alleged Law Enforcement Inaction, the Government discusses and quotes the loudspeaker announcement heard in a BWC video, a screenshot of which is referenced as Figure 6, ordering individuals to disperse. *See* ECF Dkt. 132 at 7–8. However, a closer look at that figure (and the video itself) shows that the announcement begins at approximately 2:03 pm from speakers set up on the Lower West Terrace. However, as other videos establish, at that same time, Mr. Montgomery, Mr. Knowlton, and Mr. Wilson were over 100 feet away, on the other side of the scaffolding.



More importantly, as BWC video from officers who were interacting with Mr.

Montgomery, Mr. Knowlton, and Mr. Wilson in that separate area demonstrate, even with the most technical audio and video equipment available, the dispersal order cannot be heard.

More concerning are other video and photographic exhibits proposed by the Government which show, for instance, protestors moving up the *east* side of the Capitol building, within the Crypt inside the Capitol, through the Capitol Visitor Center Connector, and through multiple other entrances where — unlike the entrance at the Upper West Terrace doors where Mr. Montgomery, Mr. Knowlton, and Mr. Wilson and hundreds of others entered as Capitol Police officers stood by and used no force, nor had any force used against them by the entrants — Capitol Police officers and other law enforcement personnel fell victim to substantial amounts of force and violence from non-peaceful protestors as they struggled to prevent their entrance. Several of these videos also depict these acts well before and well after Mr. Montgomery, Mr. Knowlton, and Mr. Wilson arrived and departed the Capitol building and grounds around 2:53 pm.

B. Argument

Justice Breyer recognized the impact of video evidence and the problems created when “[t]hose aspects of the film tell the jury little or nothing about the crime’s ‘circumstances.’” *Kelly v. California*, 555 U.S. 1020, 129 S. Ct. 567, 568, 172 L. Ed. 2d 445 (2008) (Breyer, J., dissenting to denial of certiorari). Relevant evidence is admissible if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. *See*

FED. R. EVID. 401, 402. However, this Court may “exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” FED. R. EVID. 403.

There is no dispute that there was protesting and acts of violence at the Capitol on January 6, 2021. Aside from the allegation that Mr. Montgomery assaulted an officer on the west side of the Capitol on a sidewalk north of the scaffolding set up for the inauguration proceedings around 2:02 pm, however, there is no other evidence to show that Mr. Montgomery, Mr. Knowlton, and Mr. Wilson used even the slightest amount of force or violence against anyone, including any law enforcement officers, or anything as they moved up the westside Capitol Steps, across the Upper West Terrace, through the Upper West Terrace door, and throughout their entire 20 minutes inside of the Capitol building.

Videos and photographs of other protestors or other violence, or photographs or videos from other parts of the Capitol building or grounds at different times either before or after Mr. Montgomery, Mr. Knowlton, and Mr. Wilson’s arrival and departure on the Capitol building or grounds establishes no fact of consequence in determining the allegations in their case. Instead, the Defendants anticipate the Government intends to offer those videos and photographs to do nothing more than unfairly prejudice the jury, confuse the issues, and mislead the jury, resulting in undue delay and a waste of this Court’s time.

WHEREFORE, PREMISES CONSIDERED, Mr. Montgomery, Mr. Knowlton,

and Mr. Wilson move this Court to instruct the Government not to present any video or photographic evidence of protests or violence not relevant to defendants or, in the alternative, not allow the publication of such videos or photographs without first allowing this Court to consider that evidence and rule on its admissibility.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this motion was sent to Counsel for the Government, Kelly Moran and Carolina Nevin on August 18, 2023, via CM/ECF and email.

/s/ T. Brent Mayr

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