

(ECF #194). In this motion, Mr. Bledsoe moves the Court to exclude at his trial all evidence concerning conduct by others that he cannot be shown to have been aware of at the time he allegedly engaged in the conduct that he is charged with. Also, he moves the Court to exclude any references to such conduct. Id. at 2.

3. On June 22, 2022, the government filed a Government's Opposition to Defendant's Motion in Limine Concerning Conduct by Others and References to Such Conduct (Opposition) (ECF #194). In its Opposition, the government identifies exhibits that relate to conduct of others that Mr. Bledsoe may have not been aware of at the time he allegedly engaged in the conduct he is charged with that it believes would nevertheless be admissible against him at trial. These exhibits include Exhibit 24, Exhibit 25, Exhibit 144, Exhibit 145, and Exhibit 146. Opposition at 8. The government claims that Exhibits 144-146 are relevant because they depict obstructive conduct that Mr. Bledsoe can be held accountable for under § 18 U.S.C 1512(c)(2) in connection with count one of the Indictment. Id. at 11, 14-15, 16-18. Also, it argues that the exhibits are relevant for showing Mr. Bledsoe's intent in connection with that obstruction charge, id. at 12-13, and with the charges at issue in counts two through five of the Indictment, id. at 19-21. As to Exhibits 24 and 25, the government argues that they are relevant to show the effects of the obstructive conduct that Mr. Bledsoe is charged with in count one of the Indictment, id. at 11-12, and to show his intent in relation to that conduct, id. at 15-16.

4. Mr. Bledsoe now replies to the government's Opposition to show that the government's theories of relevancy for Exhibits 24, 25, 144, 145, and 146 are not valid. Also, he replies to point out that, in the event that the Court determines that any of the Exhibits are relevant in connection with the charges in this case, the Court should nevertheless exclude those Exhibits pursuant to Fed. R. Rule Crim. P. 403.

I. EXHIBITS 144-146

In its Opposition, the government describes Exhibits 144-146 as exhibits "which were not created by or focused on Defendant Bledsoe and which prominently feature the conduct of

others” that it will seek to make use of trial. Opposition at 7. The government indicates Exhibit 144 contains “a series of radio transmissions by the United States Capitol Police (‘USCP’) during the Capitol riots.” The government indicates that Exhibit 145 contains “a series of radio transmissions by the Washington, D.C. Metropolitan Police Department (‘MPD’) during the Capitol riots.” And the government indicates that Exhibit 146 contains “a video compilation of timestamped USCP closed-circuit television (CCTV’) footage and diagrams of the Capitol building that show the times and locations of major breaches of the Capitol building, and how law enforcement addressed those breaches and divvied up its resources.” Id. at 8.

On June 28, 2022, the government turned over Exhibits 144 and Exhibit 146 to the defense. Exhibit 144 consists of over twelve hours of radio transmissions by the USCP that were made as the events of January 6 were ongoing. Exhibit 146 is a thirteen-minute-long video compilation of events at the Capitol on January 6 that were occurring over a three-and-one-half-hour-long period. On June 29, 2022, the government turned over approximately 700 pages of transcripts for the radio transmissions on the exhibit 145.

In regards to Exhibit 146, undersigned counsel’s review of that exhibit shows that it depicts the huge crowds at the Capitol on January 6 and focuses on showing people who were there without authorization tearing down barriers, forcibly breaking into the building, struggling and fighting with police both inside and outside the building, and pushing past police lines both inside and outside the building. Mr. Bledsoe does not appear in any of the videos in Exhibit 146. In regards to Exhibit 144, based on undersigned counsel’s limited review of that exhibit and on what the government has stated about that exhibit, the exhibit appears to contain USCP radio transmissions for the entire period that events at the Capitol on January 6 were unfolding. It is not believed that any of the radio transmissions contained in the exhibit pertain to Mr. Bledsoe or events directly involving him. In regards to Exhibit 145, based on counsel’s limited review of the transcripts for that exhibit and what the government has stated about that exhibit, the exhibit appears to contain radio transmissions that show MPD’s overall response to events at the Capitol

on January 6. It is not believed that any of the radio transmissions contained in the Exhibit 145 pertain to Mr. Bledsoe or events directly involving him.

At this point, it should be noted that, while the government does have evidence that indicates that Mr. Bledsoe was at the Capitol without authorization on January 6 and demonstrating with others who were there, the videos that the government has that appear to show him at the Capitol on January 6 indicate that he did not tear down barriers, forcibly break into the building, struggle or fight with police, push past police lines, or even disobey any police directive. Moreover, the videos show that he was not present when anyone else may have engaged in such conduct.

A. Exhibits 144-146 do not depict obstructive conduct that Mr. Bledsoe can be held accountable for.

In its Opposition, the government argues that, even though Exhibits 144-146 may show conduct by others that Mr. Bledsoe was unaware of at the time he allegedly engaged in the conduct he is charged with under 18 U.S.C. § 1512(c)(2), the exhibits are nevertheless evidence of that obstructive conduct. This is because they illustrate how the congressional hearing to certify the Electoral College votes was obstructed due to the huge, over-all crowd-management problem that the police were having with the people, including Mr. Bledsoe, who were present without authorization at the Capitol that day. Opposition at 9-11. In regards to the exhibits with the radio runs (Exhibits 144 and 145), the government says, “Even if Defendant Bledsoe did not know specifically about the radio transmissions and exactly where officers were being directed, such evidence speaks directly to how successful Defendant Bledsoe—and the mob—was in diverting police resources and obstructing/impeding an official proceeding (the certification of the electoral votes).” *Id.* at 11. In regards to exhibit with the CCTV video compilation (Exhibit 146), the government says, “Such footage... helps highlight why Defendant Bledsoe moving around certain areas was so harmful and how joining certain crowds played a role in interrupting official proceedings.” *Id.*

It is not clear that, in characterizing what Exhibits 144-146 show as just stated, the government is saying that the exhibits are evidence of obstructive conduct that Mr. Bledsoe caused to happen directly—that is, as a principal actor. And indeed, the government does end up going on at length to argue that the exhibits are evidence of obstructive conduct that Mr. Bledsoe aided and abetted. Id. at 14-15, 16-18. Nevertheless, to the extent the government might be saying that the exhibits are evidence of obstructive conduct that Mr. Bledsoe caused to happen directly, it must be noted that, given the massive scale of the conduct at issue, it cannot be credibly claimed that the actions that Mr. Bledsoe is said have engaged in (“moving around certain areas” and “joining certain crowds”) could have caused that conduct to have happened—either proximately or in-fact. This especially so since Mr. Bledsoe does not appear to have been involved in any of the conduct captured on the exhibits and since there is no evidence that he was even aware of any of it. Given all this, it is not surprising that the government focuses on showing how Exhibits 144-146 are evidence not of obstructive conduct that Mr. Bledsoe caused to happen but rather of obstructive conduct that he aided and abetted. Id. In doing so, the government stresses how the exhibits “reveal how the rioting mob divided up and overwhelmed police resources, with new groups of people coming in refreshing the mob in various areas, with various spots being breached multiple times, making it difficult for law enforcement to secure a spot and move on.” Id. at 14. The government argues that this shows how Mr. Bledsoe “helped to fuel the chaos and crowds that officers fought so hard to get under control that day.” Id. at 14-15.

At this point, it should be stressed that thousands of people were at the Capitol without authorization on January 6, with each person thus contributing to the crowd-management problem there that the police were having there. However, the government has not even charged the majority of people who were actually inside the Capitol without authorization on January 6 with obstruction under § 1512(c)(2).

In regards to the government’s theory that Exhibits 144-146 are evidence of obstructive conduct that Mr. Bledsoe aided and abetted because they “reveal how the rioting mob divided up

and overwhelmed police resources” and thus show how Mr. Bledsoe “helped to fuel the chaos and crowds that officers fought so hard to get under control,” it must be recognized that the government is seeking to hold Mr. Bledsoe accountable as an aider and abettor not for any specific conduct that was engaged in by any particular individual or even group of individuals but for general conduct engaged in by a collective entity—that is, the “rioting mob.” But while a person might be able to aid abet a crime being committed by an individual or even a group of individuals who are in a “rioting mob,” including perhaps even the crime of obstruction under § 1512(c)(2), he cannot aid and abet a “rioting mob” as a collective entity in committing a crime. This is because a “rioting mob” cannot form criminal intent the way persons can so as to be able to commit any crime that someone can aid and abet in the first place. While someone can perhaps be held accountable for using a “rioting mob” as a tool to effect obstruction under § 1512(c)(2) (say by addressing it from a position of authority, stirring it up with inflammatory rhetoric, and sending it out to engage in obstructive conduct), if he does so, he is acting as a principal—not as an aider and abettor. (This would be like a person tricking another person into unknowingly committing a crime for him.) However, given that a “rioting mob” lacks agency, a person cannot aid and abet it in committing a crime.

Beyond this, in seeking to use Exhibits 144-146 against Mr. Bledsoe as evidence of obstructive conduct under § 1512(c)(2) that he aided and abetted, the government is also seeking to hold him accountable for conduct that it cannot show that he was actually aware of. However, a person cannot aid and abet conduct that he does not know is occurring. Even if it is somehow accepted that Mr. Bledsoe could have aided and abetted the “rioting mob” as whole in violating § 1512(c)(2) and even if it could be shown that he was aware of some of the conduct that that “rioting mob” was committing, he can still cannot be held accountable for conduct that the “rioting mob” was committing that he was unaware of. Rosemond v. United States, 572 U.S. 65, 80-81 (2014) (where evidence did not show that drug-trafficking defendant was aware his accomplice was armed at time defendant associated himself with drug-trafficking venture, he could not be held liable on an aiding-and-abetting theory for drug-trafficking while armed under

18 U.S.C. § 924(c) because, while a jury could have found that he intended a drug deal, it could not have found that he intended a “drug deal carried out with a gun”).¹

The government claims that United States v. Slatten 865 F.3d 767 (D.C. Cir. 2017) supports a finding that Exhibits 144-146 are evidence of obstruction under § 1512(c)(2) that Mr. Bledsoe can be held accountable for as an aider and abettor due to the fact that he helped the “rioting mob” supposedly commit that crime. Opposition at 16-17. In Slatten, the D.C. Circuit addressed a situation where a Blackwater guards, including a guard named Evan Liberty, were convicted on various manslaughter counts related to the well-known incident that occurred in Iraq. Slatten, 865 F.3d at 776-77). The evidence showed that defendant Liberty and others in his immediate company were shooting together in the same direction at several people who ended up being killed by their gunfire. Id. at 793. The Circuit concluded that, even if the evidence was insufficient to establish that defendant Liberty killed any of the people being shot at himself, it was nevertheless sufficient to show that he at least aided and abetted their killings by joining in the shooting that the others in his immediate company were engaging in and not “opt[ing] out” as it continued. Id. at 794. This was especially so since, by firing himself, defendant Liberty was at least preventing the people who were being shot at from escaping and thus helping the others to kill them. Id. at 793-94. In finding that the evidence was sufficient to support the manslaughter charges against defendant Liberty, the Circuit expressly noted that the evidence was sufficient for the jury to conclude that, in regards to the others who were shooting

¹ In its Opposition, the government references the fact, while Mr. Bledsoe was allegedly engaging in the conduct that he is charged with, he received text messages from people who were not present at the Capitol that day that contained reports that people were fighting and struggling with the police there. Opposition at 2-4. The government indicates that these reports made Mr. Bledsoe aware of the conduct that the crowds who were present without authorization at the Capitol on January 6 were engaging in. Even ignoring the fact that second-hand reports about what was occurring at the Capitol would mean very little to someone who was actually present at the Capitol and not observing what the reports indicated, the fact remains that these reports were about what individuals at the Capitol were doing—not about what the “rioting mob” as a whole was doing. Moreover, even if the reports could be said to be about what the “rioting mob” as a whole was doing, the fact still remains that there is no reason to think that the reports related to any acts being engaged in by the “rioting mob” that might be captured on Exhibits 144-146 so as to make Mr. Bledsoe aware of those acts.

with him, defendant Liberty saw and/or heard that they were shooting and thus had first-hand knowledge of that fact. Id. at 794.

Slatten does not support the government's position that Exhibits 144-146 are admissible as evidence of obstructive conduct under § 1512(c)(2) that Mr. Bledsoe can be held accountable for as an aider and abettor due to the fact that he helped the "rioting mob" to supposedly commit that conduct. In Slatten, the deaths behind the manslaughter charges that defendant Liberty was held accountable for were the results of discrete acts that can be said to have been committed by individuals—i.e., entities that can form criminal intent. In this, they are unlike the generalized obstruction that the "rioting mob" is said to have caused that the government claims Mr. Bledsoe aided and abetted so as to be liable for that conduct under § 1512(c)(2). Beyond this, in Slatten, there was evidence that defendant Liberty knew that others were shooting at the victims when he joined in the shooting. In Mr. Bledsoe's case, there is no evidence that Mr. Bledsoe had any awareness at all of any of the specific conduct depicted in Exhibits 144-146.

Given the above, Exhibits 144-146 cannot be said to depict any conduct that would be relevant as evidence of any offense under § 1512(c)(2) that Mr. Bledsoe can be said have committed.

B. Exhibits 144-146 are not relevant for showing Mr. Bledsoe's intent in connection with the obstruction count.

In its Opposition, the government says Exhibits 144-146 are relevant for showing Mr. Bledsoe's alleged corrupt intent in connection with the obstruction count he is charged with. Opposition 12-13. In doing so, the government takes note of the fact that it has evidence that, at the time Mr. Bledsoe was allegedly engaging in the conduct he is charged with, people had texted him to inform that people at the Capitol were struggling with the police. Opposition at 13. Thus, in the government's view, evidence regarding how the police were dealing with people at the Capitol could support an inference that Mr. Bledsoe "wanted to be involved in the unlawful mob and either serve as a distraction to the police (and accordingly help other rioters move

further into the Capitol) or reach the heart of the Capitol himself while the police were distracted.” Id.

Even overlooking the fact that the government’s theory that, because Mr. Bledsoe was aware that others at Capitol were struggling with the police, it can be inferred that he therefore wanted to join the “unlawful mob” to make it harder for the police to control it is highly speculative, it must be noted that evidence establishing Mr. Bledsoe’s intent in connection with the obstruction count can only be evidence that pertains to things that he was aware of at the time he was allegedly engaging in the conduct for which he is charged with obstruction—not evidence that just pertains to things that happened to be happening at the relevant time. While it perhaps could be argued that the fact that Mr. Bledsoe was told that people at the Capitol were fighting and struggling with the police might have some bearing on what Mr. Bledsoe’s intent was at the time he was allegedly engaging in conduct he is charged with, the mere fact that other people actually were struggling with the police would not have had any bearing on his intent. Accordingly, Exhibits 144-146 do not appear to capture any conduct that would be relevant for showing Mr. Bledsoe’s intent in connection with the obstruction count.

C. Exhibits 144-146 are not relevant for showing Mr. Bledsoe’s intent in connection with the charges in counts two through five of the Indictment.

In its Opposition, the government argues that the Exhibits 144-146 constitute relevant to evidence in regards to the four misdemeanors that Mr. Bledsoe is charged with in counts two through five of the Indictment. Opposition at 18-21. As to the two charges related to entering a restricted area (counts two and three), the government indicates the exhibits are relevant to show that the “actions by law enforcement and by other rioters (putting up and tearing down security barriers, setting off alarms, screaming, and using tear gas) indicate that Defendant Bledsoe must have known that he had entered and remained in a restrict area without lawful authority.” Id. at 20. In regards to the charge of Disorderly Conduct in a Capitol Building (count 4) and the

charge of Parading, Demonstrating, or Picketing in a Capitol Building (count 5), the government argues the exhibits are relevant to show that “the actions and reactions of law enforcement and other rioters could and should have given the defendant a clue as to unlawful nature of his actions.” *Id.* at 21.

For counts two and three, the conduct captured on Exhibits 144-146 would not be relevant for showing that Mr. Bledsoe “must have known that he had entered and remained in a restricted area without lawful authority” unless it can be demonstrated that he was aware of that conduct. For counts four and five, the conduct captured on Exhibits 144-146 would not be relevant for showing that Mr. Bledsoe must have had “a clue as to unlawful nature of his actions” unless it can be demonstrated that he was aware of that conduct. Given that it appears that the conduct captured in Exhibits 144-146 is conduct that Mr. Bledsoe was not aware of at the time he allegedly committed the crimes he is charged with in counts two through five of the Indictment, they would not be admissible against Mr. Bledsoe in connection with those counts to show his intent.

D. Even if Exhibits 144-146 are found to be relevant in connection with the charges against Mr. Bledsoe, they nevertheless should be excluded under Fed. R. Crim. P. 403.

Under Fed. R. Crim. P. 403, a court should 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.” Here, Exhibits 144-146 capture conduct that involves probably thousands of people who were present without authorization at the Capitol on January 6, and it shows people tearing down barriers, forcibly breaking into the building, struggling and fighting with police both inside and outside the building, and pushing past police lines both inside and outside the building. It does not appear that any of the conduct captured in the exhibits pertains

to Mr. Bledsoe or events that he was directly involved in. Additionally, the government has not provided any reason for thinking that Mr. Bledsoe would have been aware of any of the specific conduct captured in the exhibits. Moreover, the evidence that the government has developed against Mr. Bledsoe, while indicating that Mr. Bledsoe was present at the Capitol on January 6, shows that he did not tear down barriers, forcibly break into the building, struggle or fight with police, push past police lines, or even disobey any police directive. It also shows that he was not present when anyone else engaged in such conduct.

Given the above, it must be recognized that, because Exhibits 144-146 capture conduct that is much more far-ranging and much more egregious and dramatic than is the conduct that directly involves Mr. Bledsoe that the government would present evidence of at trial, there is a very high potential that jurors will be overwhelmed by the conduct captured on the exhibits and convict Mr. Bledsoe based on that conduct instead of any clinical assessment of his culpability. Accordingly, even if the court determines that the exhibits are evidence that would be relevant at Mr. Bledsoe's trial, the Court should nevertheless exclude them because their probative value would be substantially outweighed by the danger of unfair prejudice, confusing the issues, and misleading the jury.

II. EXHIBITS 24 and 25

In its Opposition, the government describes Exhibits 24 and 25 as two photographs that Mr. Bledsoe allegedly posted to Facebook on January 7, 2021. One photograph has been labeled with the comment, "How corrupt politicians should feel" and appears to depict people hiding under chairs (Exhibit 24). The other photograph has been captioned, "Our House" and depicts people hiding behind chairs while other people, who appear to be holding guns, are seemingly taking positions to protect them from someone who might be about to enter the room they are in (Exhibit 25). Opposition at 8. The government recognizes that, to the extent these pictures depict events that were occurring in the Capitol on January 6, they depict conduct by others that Mr. Bledsoe would not have been aware of at the time he was allegedly at the Capitol on January

6. Id. at 8-9 n.3. Nevertheless, the government argues they provide evidence that is relevant in connection with the obstruction count that Mr. Bledsoe is charged with in count one of the Indictment. Id. at 11-12, 13, 15-16.

In its Opposition the government claims that Exhibits 24 and 25 are pictures of “Congressmembers hiding and preparing for attack” during the events of January 6 and that they therefore show that “Defendant Bledsoe and the mob were successful in interrupting the certification of the electoral votes and are consequentially relevant to the Obstruction of an Official Proceeding charge.” Opposition at 11-12. Additionally, the government argues the exhibits are relevant to show Mr. Bledsoe’s intent in connection with the obstruction charge. Id. at 13, 15-16. Specifically, the government alleges that the exhibits show Mr. Bledsoe’s “callous attitude the day after the Capitol riot” and therefore “make[] it more likely that he had the requisite knowledge and criminal intent the day of the actual riot.” Id. at 15.

The government’s claim that the Exhibits 24 and 25 are relevant for establishing that Mr. Bledsoe had the requisite corrupt intent when he allegedly engaged in the obstructive conduct that he is charged with does not bear scrutiny. It does not follow that, just because someone is glad that something happened after the fact, he therefore must have intended it to happen. Thus, the exhibits would not be relevant for showing Mr. Bledsoe intent in connection with the obstruction count. Moreover, even if they were deemed to have some relevancy for showing his intent, it must be recognized that they would still be very weak evidence of that intent. Accordingly, even if the exhibits are found to have some relevance for showing intent, they should nevertheless be excluded because their probative value is substantially outweighed by the unfair prejudice towards Mr. Bledsoe their introduction would cause.

In regards to the government’s claim that it wants to introduce Exhibits 24 and 25 into evidence because they show “Congressmembers hiding and preparing for attack” during the events of January 6, this claim cannot be taken seriously. To the extent the pictures do show “Congressmembers hiding and preparing for attack” during the events of January 6, the government must have hundreds if not thousands of images at hand that show this very thing

