

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

UNITED STATES OF AMERICA)	
)	Criminal No. 21-204 (BAH)
v.)	Chief Judge Howell
)	Trial: July 18, 2022
MATTHEW BLEDSOE)	

**REPLY TO GOVERNMENT’S OPPOSITION
TO DEFENDANT’S OBJECTIONS
TO GOVERNMENT’S PROPOSED EXHIBITS**

COMES NOW the defendant, Matthew Bledsoe, by and through undersigned counsel, and respectfully replies to the Government’s Opposition to Defendant’s Objections to Government’s Proposed Exhibits. Towards this end, Mr. Bledsoe would show:

1. On July 7, 2022, Mr. Bledsoe filed a Notice Regarding Objections to Government’s Proposed Exhibits (Notice) (ECF #207). In this filing, Mr. Bledsoe notifies the Court and the government that he intends to object to the admission of many of the exhibits that government will seek to introduce into evidence at trial both on relevancy grounds and also on the grounds that their admission should be precluded under Fed. R. Evid. 403. Notice at 2. Though Mr. Bledsoe notes that he is not specifically aware of the government’s theories of relevancy for the exhibits, many of which do not pertain directly to the conduct that he is charged with (and thus would seem to constitute 404(b) evidence), he nevertheless spells out his objections to certain exhibits and addresses what he imagines would be the government’s theories of relevancy for the exhibits. Id. at 2-9.

2. On July 11, 2022, the government filed a Government’s Opposition to Defendant’s Objections to Government’s Proposed Exhibits (Opposition) (ECF #208). In this filing, the government seeks to explain why the exhibits that Mr. Bledsoe specifically addresses in his Notice would be admissible at trial. Opposition at 5-24. It also includes copies of the exhibits in question. Id. at 25-40.

3. Mr. Bledsoe now replies to the Government's Opposition to address arguments that the government makes in that filing regarding the relevancy of the exhibits that he did not anticipate when he filed his Notice. For the reasons started here and in his Notice, Mr. Bledsoe continues to maintain that the exhibits discussed in his Notice would not be relevant at his trial. Moreover, for the reasons stated in his Notice, Mr. Bledsoe continues to maintain that, even if any of the exhibits are deemed to be relevant, they should nevertheless still be excluded under Fed. R. Evid. 403.

A. Social media posts that Mr. Bledsoe made in November 2020 about the presidential election having been stolen

In his Notice Mr. Bledsoe indicates that he is objecting to the government introducing into evidence at trial exhibits that consist of posts he allegedly made to Facebook/Instagram in early November 2020 that relate to his belief that the election had been stolen. Notice at 2-5 (referencing Exhibits 2, 3, 4, 5, 6, 7, 8, 9, and 18 (see Opposition at 25-28)). In its Opposition, the government argues that the exhibits at issue are relevant to show Mr. Bledsoe's motive and intent in connection with the Obstruction of an Official Proceeding charge against him (18 U.S.C. § 1512(c)(2)) and the Disorderly Conduct in a Capitol Building charge against him (18 U.S.C. § 1752(a)(2)). Opposition at 5-13.

It should be noted here that, at trial, Mr. Bledsoe will not be contesting that he engaged in the conduct he is charged with and that, in connection with the above-referenced obstruction and disorderly-conduct charges, he will only be challenging the government's assertion that, when he engaged in the conduct that he is charged with, he intended to obstruct the congressional hearing being held at the Capitol on January 6. Thus, to the extent that the government would seek to use the exhibits at issue to show motive as a means of proving identity, the exhibits will not be

relevant.¹ Beyond this, to the extent the government would seek to use the exhibits to show that Mr. Bledsoe intended to obstruct or interfere with the congressional hearing at the Capitol on January 6, it should be noted that, while, “[a] jury is entitled to draw a vast range of reasonable inferences from evidence, [] it may not base a verdict on mere speculation.” United States v. Long, 905 F.2d 1572, 1576 (D.C. Cir. 1990); see also United States v. Gaskins, 690 F.3d 569, 578 and n.3 (D.C. Cir. 2012); United States v. Teferra, 985 F.2d 1082, 1088 (D.C. Cir. 1998). The posts that the above-referenced exhibits pertain to were all made in the immediate aftermath of the presidential election and two months to seven weeks before January 6. Thus, given their remoteness in time, it would be speculation to say that they represent Mr. Bledsoe’s intent on that day. This is especially so to the extent that the posts at issue only indicate Mr. Bledsoe’s belief that the election was stolen. The mere fact that Mr. Bledsoe had such a belief does not mean that he actually ever intended to obstruct or interfere with the congressional hearing on January 6.

In two of the posts that Mr. Bledsoe made in November 2020 about the election having been stolen, Mr. Bledsoe predicts that people will riot because of the fact that the elections were stolen. See Exhibits 2 and 3 (Opposition at 25). In its Opposition, the government says that these references to riots are relevant for showing that, when Mr. Bledsoe went to the Capitol on January 6, he would have had a reason to give credence to reports that he was getting about riotous behavior occurring at the Capitol. Opposition at 11 n.4. But this is weak theory of relevancy. The posts that Mr. Bledsoe made in which he predicted that people would riot were both made on November 8, 2020—that is, in the immediate aftermath of the presidential election

¹ If identity should become a contested issue at trial, then at that point the exhibits might be become relevant to show motive as a means of proving identity. However, it is genuinely not expected that identity is going to be a contested issue at trial.

and two months before January 6. It cannot be credibly claimed that, in those posts, Mr. Bledsoe was predicting riots two months down the road.

B. Social media posts that Mr. Bledsoe made after the events of January 6

In his Notice, Mr. Bledsoe indicates he is objecting to the government introducing into evidence at trial six exhibits that pertain to memes and content created by others that he allegedly posted to Facebook/Instagram after the events of January 6. Notice at 5-6 (referencing Exhibits 23, 24, 25, 26, 27, and 28 (see Opposition at 29-32)). One of these posts was made late in the day on January 6 (Exhibit 23), and the others were all made on January 7. Four of these posts appear to portray what happened at the Capitol on January 6 in either a positive light or at least downplay its egregiousness (Exhibits 23, 24, 25 and 27); one post appears to underscore the need for an election recount (Exhibit 26); and one posts contains a message from Donald Trump that bears a caption someone has added indicating that Donald Trump is not conceding the election (Exhibit 28). In his Notice, Mr. Bledsoe also indicates that he is objecting to the government introducing into evidence at trial exhibits that pertain to posts he allegedly made to Facebook/Instagram on January 7, 2021 that seemingly reference future military-like action being taken. Notice at 6 (referencing Exhibits 13 and 22 (see Opposition at 29)). Exhibit 13 pertains to a post in which Mr. Bledsoe responded with the word “military” to the question posed by someone else, “What’s the plan next?” And Exhibit 22 pertains to a meme apparently created by someone else that has a picture of Donald Trump and retired general Michael Flynn standing next to each other. In the meme, Donald Trump is made to say to Michael Flynn, “You ready?,” and Michael Flynn is made to answer, “Just set me loose Sir.” Beneath the image of Donald Trump and Michael Flynn is the caption, “Here comes the good part.” In his Notice, Mr. Bledsoe additionally indicates that he is objecting to the government introducing into evidence at trial an exhibit that pertains to a post he allegedly made on January 10, 2021 in which he stated, “They are will all be executed.” Notice at 8 (referencing Exhibit 85 (see Opposition at 33)).

In its Opposition the government asserts that the above-referenced posts are relevant “for establishing that Defendant Bledsoe had the requisite intent for his various charges.” Opposition at 13 (emphasis in original). The government also asserts that the posts are relevant because they are “directly related to motive and intent.” Id. at 14. For all but two of the above-referenced exhibits, the government does not explain how the posts would be evidence of motive or intent even as a general matter—that alone how they would be evidence of any motive and intent that Mr. Bledsoe might have had before he made the posts. See id. at 13-17. However, for Exhibits 24 and 25, which appear to be memes that approvingly show congresspersons hiding, presumably while the events of January 6 are unfolding, the government notes that these memes “provide direct insight into how the Defendant felt about the unlawful means used to delay the certification (intimidation by Congress).” The government then argues that the “Defendant’s callous attitude the day after the Capitol riot makes it more likely that he had the requisite knowledge and intent the day of the actual riot.” Id. at 15.

At this point, it must be noted that evidence showing that, after the fact, Mr. Bledsoe had a “callous attitude” about what happened at the Capitol on January 6 or even thought it was justified is not evidence that he knew what was happening at the Capitol on January 6 at the time it was occurring. Beyond this, to the extent that the government is claiming that the above-referenced exhibits show that Mr. Bledsoe had some sinister intent in connection with those earlier happenings at the Capitol, the government appears to be saying that, because the exhibits would permit the jury to speculate that he had such intent, they are therefore relevant. But engaging in speculation is not the same thing as making a reasonable inference. See Gaskins, 690 F.3d at 578 and n.3 (evidence that defendant was a drug dealer was not relevant for showing that he “knowingly joined [a drug-dealing conspiracy] with the specific intent to achieve its unlawful objective).”

In seeking to support its position that the above-referenced posts are relevant for showing Mr. Bledsoe’s earlier intent, the government cites to United States v. Latney, 108 F.3d 1446, (D.C. Cir 1997). In Latney, the D.C. Circuit concluded that evidence that the defendant had been

involved in drug-trafficking in May was relevant for showing his knowledge and intent in connection with a specific drug transaction the previous September. 108 F.3d at 1448. But while Latney might support using evidence of a person's later involvement in a certain type of criminal activity to show his intent in connection with an earlier specific instance of such criminal activity, the posts that Mr. Bledsoe made to Facebook/Instagram after the events of January 6 do not show Mr. Bledsoe being involved in any activity at all—that alone illegal activity.

In its Opposition, in discussing the admissibility of Exhibits 24 and 25, the government argues that those exhibits not only provide evidence of Mr. Bledsoe's intent while he was at the Capitol on the day before he posted the memes the exhibits pertain to but also that they provide evidence of what was occurring at the Capitol on January 6. Opposition at 14-15. It should be noted here that, while Mr. Bledsoe has stipulated to the authenticity of his Facebook/Instagram return and thus to the fact that the memes were posted on those accounts, he has not stipulated to the authenticity of the images in the memes themselves. Beyond this, it should be noted that the government has countless images of congresspersons hiding while the events of January 6 were unfolding at the Capitol. It cannot credibly claim that its purpose in seeking to use Exhibits 24 and 25 is to show what was happening at the Capitol on January 6.

C. Text messages and Facebook/Instagram posts that were sent to Mr. Bledsoe on January 6, 2021

In his Notice, Mr. Bledsoe indicates that he is objecting to the government using at trial exhibits that pertain to text messages or Facebook/Instagram posts that were allegedly sent to him on January 6, 2021 about what being reported regarding on-going events at the Capitol. Notice at 7 (referencing Exhibits 38, 39, 40, 41, 43, 47, 48, 52, 61, 69, and 82 (see Opposition at 34-37)). In doing this, Mr. Bledsoe points out that, as an initial matter, for the exhibits to be introduced to show his awareness of what was happening at the Capitol in real time, it must first be shown that Mr. Bledsoe read the text messages and Facebook/Instagram posts that the

exhibits pertain to around the time they were sent to him. Id. In its Opposition, the government indicates that, for some of the text messages, the data from the phone that was used to receive those messages indicates that the messages were “read” around the time that they were sent to Mr. Bledsoe. Opposition at 19 n.9. Also, the government indicates that for the text messages and Facebook/Instagram posts, evidence that Mr. Bledsoe was checking his text messages and his Facebook/Instagram account on January 6, 2021 would support an inference that he read the text messages and Facebook/Instagram posts at issue. Id. Mr. Bledsoe disputes the validity of these arguments. For one thing, it cannot be possible that a phone can tell whether a person has actually read a text message that was sent to him. Thus, it is unclear what data from a phone showing that a message has been “read” actually means. Additionally, just because a person is checking his text messages and Facebook/Instagram account, it does not mean that he is reading everything that is being sent to him.

In its Opposition, the government singles out a text message that was sent to Mr. Bledsoe by his wife in which she informed him that there was a bomb scare near the Capitol. In reply to this text message, Mr. Bledsoe responded, “Good.” Opposition at 19. The government argues that Mr. Bledsoe’s reply “is probative of [his] approval of violent action that might stop, or aid and abet others in stopping, the certification even through unlawful means.” Id. The government also argues that the fact that was Mr. Bledsoe was informed there was a bomb scare near the Capitol shows his awareness of “what was happening in and around the Capitol when he was deciding to join the riot.” Id. As an initial matter, it must be noted that, even if Mr. Bledsoe was informed that there was a report of a bomb scare near the Capitol, it does not follow that he would understand this information to be indicative of what was occurring at the Capitol as a general matter. Beyond this, even if it is assumed for the sake of argument that Mr. Bledsoe’s reply shows his approval for violent action that might affect what was occurring at the Capitol, it

still would be speculation to assume that Mr. Bledsoe therefore wanted to engage in violent action or do something that would affect what was occurring at the Capitol himself.

D. Text messages that Mr. Bledsoe sent regarding the Proud Boys

In his Notice, Mr. Bledsoe indicates that he is objecting to the government using at trial exhibits that pertain to two text messages that he allegedly he sent regarding the Proud Boys, one on January 3, 2021 and the other on January 6, 2021. Notice at 6 and 7 (referencing Exhibits 31 and 35 (see Opposition at 38-39)). In its Opposition, the government argues that the “timing of these text messages indicate that Defendant Bledsoe’s interest in the Proud Boys was related to the events of January 6, 2021, which is highly probative given that segments of the Proud Boys are charged with heavy involvement [in] the Capitol riots.” Id. at 21. The government then goes on to argue that “Defendant Bledsoe’s sudden interest in a group that was very involved in organizing the Capitol riots makes it much less likely that he was ignorant of the certification and other goings-on at the Capitol on January 6, 2021.” Even overlooking the fact that it is speculation to say that, because Mr. Bledsoe was interested in the Proud Boys, he must have therefore known about what they may have been doing at the Capitol on January 6, it must still be noted that, while there have been reports in the news, especially lately, that the Proud Boys were in fact heavily involved in the events of January 6, the government has not indicated that it is going to present any evidence at Mr. Bledsoe’s trial that the Proud Boys were involved in those events, nor has it indicated that it is going to present any evidence that Mr. Bledsoe was aware that they were involved in those events. The government’s entire claim that the above referenced posts about the Proud Boys are relevant is therefore based entirely on facts that will not be in evidence at trial. This shows that the government has no legitimate reason for using the posts at Mr. Bledsoe’s trial and that it is just impermissibly trying to prejudice Mr. Bledsoe in the eyes of the jury by using the publicity about the events of January 6 against him.

CONCLUSION

WHEREFORE, the defendant, Matthew Bledsoe, replies to the Government's Opposition to Defendant's Objections to Government's Proposed Exhibits.

Respectfully submitted,

/s/

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