

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
 v.)
)
 GRADY DOUGLAS OWENS,)
 Defendant.)
 _____)

Case No. 21-cr-00286-BAH

**SUPPLEMENT TO DEFENDANT’S MOTION FOR REVOCATION OF
DETENTION ORDER PURSUANT TO 18 U.S.C. § 3145(b)**

The tragic events of January 6th resulted in deaths, injuries, destruction and the gravest threat to our Republic since the Civil War. Those who advocated and pursued violence that day will be held accountable.

Grady Owens has led a peaceful life serving others. His family and friends give authentic accounts of this gentle young man. The government's evidence shows Grady defending himself, not targeting officers.

I. BRADY INFORMATION

Government counsel kindly provided discovery last night that constitutes exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, FBI Special Agent Erik Potrafka recently interviewed two officers stationed at the East Rotunda door who were in closest proximity to Grady. Neither officer claimed an assault by Grady Owens.

Metropolitan Police Department (MPD) Officer S did not recall anyone attempting to hit him with a skateboard on January 6th. *See* Exhibit A (FBI 302 interviews on May 13 & 14,

2021). He was not hit by a skateboard nor did he receive any injuries at that location. Officer S viewed two still images from surveillance video previously provided to the Court and confirmed he was the MPD officer with a lifted face shield. After reviewing the surveillance video, Officer S did not recall any interaction with Grady.

United States Capitol Police (USCP) Officer B did not recall seeing a skateboard on January 6th. *See* Exhibit B (FBI 302 interview on May 12, 2021). Officer B did not recall any interaction with Grady and was not injured during the events captured by surveillance video. He also confirmed that he did not receive any medical attention on January 6th.

II. DETENTION ORDER BASED ON ERRONEOUS PROFFER

What was the government's essential proffer on dangerousness to Magistrate Judge Irick at Grady's detention hearing on April 2nd in the Middle District of Florida - Orlando?

(T)he defendant took his skateboard and *intentionally* -- and this is on video -- *intentionally* hit Officer B in the face area and the head area causing *serious injuries* to Officer B. He sustained a *concussion*, and he also sustained injuries to a finger. (*See* Government Response, ECF No. 14, Ex. 1 at 5; emphasis added).

The government did not play a video at the hearing so Magistrate Judge Irick had to rely on this bald alarming claim of violence.

As detailed in Defendant's Reply (ECF No. 15 at 1 - 3), this proffered evidence that Grady *intentionally* assaulted a police officer is just wrong. MPD Officer C.B. initiated contact with Grady by forcibly grabbing him from behind with a gloved hand. In this split second moment, Grady instinctively protected himself from this unknown threat. Reply, Ex. A at 13:59:59 (Officer C.B.'s Body Worn Camera (BWC) video from January 6, 2021). Grady did

not *intentionally* target and strike Officer C.B. The video evidence does not even show where the alleged contact occurred. And as the Court noted at the May 10th hearing, there is no discernable sound of a hard object striking Officer C.B.'s helmet.

As to the proffer that Officer C.B. suffered *serious injuries* caused by Grady. First, the officer did not seek medical attention on January 6th and was never diagnosed with a concussion. Second, despite the government's claim that Grady is trying to "hide behind" subsequent assaults by other rioters (Government Supplemental Brief - ECF No. 20 at 9), Officer C.B.'s BWC video shows him expertly handling his baton with all his fingers *and* clearly voicing commands with strong physical activity *before* his next violent event at 14:02:00. *See* Reply, Ex. A.

Officer C.B. first described his injuries in a hand-written report over twenty-four hours later. *See* MPD Injury or Illness Report prepared on January 7th at 3 p.m. (Officer C.B.'s medical records sealed by Court's Minute Order on May 11th). As discussed at the May 10th hearing, he specifically claimed that his head was struck by "bricks" and "baseball bats". He also wrote that his right pinky finger was "smashed and hit many times." In this Report, he did not claim to have lost consciousness or suffered *any* symptoms associated with a concussion.

At his first medical evaluation on January 7th, Officer C.B. was diagnosed with a "Crushing injury of right little finger" and contusions - a minor bruise on his jaw. He confirmed that he had not lost consciousness on January 6th, his exam revealed no signs of concussion and he was *not* diagnosed with a concussion.

The government misinterprets the concussion reference in the January 12th follow up appointment notes. This was not a medical diagnosis. It was an appropriate evaluation of a patient who initially reported being hit in the head by bricks and baseball bats. And fortunately

for Officer C.B., he exhibited no concussion symptoms at any of his medical visits.

According to the FBI 302 interview of Officer C.B. on January 15th, he claimed that an unknown subject struck him in the head with a skateboard causing a concussion and finger injury. *See Exhibit C.* He made this revised assessment after viewing his BWC video - he saved the video and provided the folder and file name to the FBI. This gave Officer C.B. ample opportunity to watch all 53 minutes including multiple violent encounters after his contact with Grady. Given the officer's lucidity and digital dexterity immediately thereafter, it is difficult to fathom how Grady could have played *any* contributing role in causing Officer C.B.s diagnosed injuries.

The seconds and minutes following Officer C.B.'s collision with Grady are illuminating. At 14:00:30, Officer. C.B. can be seen securely gripping his service baton with all five right hand fingers. Reply *supra*, Ex. A. Officer C.B. is not stumbling or exhibiting signs of disorientation. At 14:01:08, he is certainly not concussed when he clearly and forcefully starts yelling "APO" at Grady. *Id.* Having prosecuted dozens of APO (Assault on a Police Officer) cases during the 1990's as an Assistant United States Attorney in Washington, D.C., counsel knows this acronym. But Grady had no clue what that meant or why Officer C.B. was shouting at him. At this point, Grady had lost his tight ski cap and was clearly dazed from the collision with Officer C.B. All of Grady's gestures were a shocked and startled response to Officer C.B.'s physical and verbal actions.

Facts matter. The government's attempt to minimize these material mistakes in their original detention hearing proffer is disturbing. If Magistrate Judge Irick had been given an accurate account - that Officer C.B. initiated contact with Grady Owens by surprising him from

behind and Grady used the skateboard as a shield to protect himself - he would not have been detained for the past two months.

Officer C.B. gave this wrong information to the FBI on January 15th - that Grady intentionally struck him in the head with a skateboard specifically causing a concussion and injured right pinky. Magistrate Judge Irick relied on that wrong claim to detain Grady on April 2nd. And it is still wrong in the Court's *de novo* review of that detention order.

III. COMPARATORS

Unlike those defendants who have been recently held (*e.g. Padilla* and *Fairlamb*) and released (*e.g. Klein*), on 111(b) charges, Grady Owens did not intentionally strike or harm a police officer.¹ At our May 10th hearing, the Court invited counsel to address the three distinct assaults found in *Padilla* and how it applies to our case.

Grady's actions on January 6th were not intentional or willful acts of violence designed to injure a police officer. As detailed above, there is no evidence that Officer C.B. sustained an injury from his contact with Grady. Based on last night's *Brady* disclosure that Grady had no contact with the officers at the East Rotunda door, this record is devoid of *any* act by Grady that harmed a police officer or that Grady engaged in multiple assaults of police officers.

The specific facts of this case do not support a finding that Grady's actions on January 6th constitute an "unmitigable threat to public safety". *Padilla* at 13, fn 4. As Judge Bates noted: "Assaults can take many forms, and although a defendant's *eligibility* for pretrial detention is often determined by a categorical approach, see 18 U.S.C. § 3142(f)(1)(A)-(E), the *propriety* of detention under the BRA is not." *Id.* (emphasis added) The district court should

¹ *United States v. Joseph Lino Padilla*, 21-cr-214-JDB, Memo. Op. (ECF No. 24), filed May 4, 2021; *United States v. Scott Kevin Fairlamb*, 21-cr-120-RCL, Memo. Op. (ECF No. 31), filed April 26, 2021; *United States v. Federico Guillermo Klein*, 21-cr-236-JDB, Memo. Op. (ECF No. 29), filed April 12, 2021.

probe the precise nature of a defendant's actions - including the type of force employed - when assessing 18 U.S.C. § 3142(g) factors. *Id.* (respectfully disagreeing with the *Fairlamb* opinion that the D.C. Circuit “absolve(d) the district court of the need to probe the precise nature of defendant’s actions” in *United States v. Munchel*, 991 F.3d 1273 (D.C. Cir. 2021) . This is not a rebuttable presumption case and the government bears a heavy burden to prove by clear and convincing evidence that Grady Owens presents “an articulable prospective threat to the safety of the community.” *Klein* at 1. And unlike defendants *Padilla*, *Fairlamb* and others detained pretrial, Grady made no inflammatory social media postings before, during or after January 6th and he has never advocated violence against any person, group or government. Grady has no criminal record, not even a speeding ticket.

IV. ADDITIONAL 18 U.S.C. § 3142(g)(3)(A) FACTORS

The following information is respectfully submitted to the Court regarding Grady’s history and characteristics under 18 U.S.C. § 3142(g)(3)(A) to support his release.

- 1) Three sermons by Pastor Larry Williams about the evils of racism, oppression and hate from June 2020. He has been the Lead Pastor at Community Bible Church Bulverde in Spring Branch, Texas since 2006. This is Grady’s church - a loving, inclusive and welcoming community. See <https://vimeo.com/showcase/7220745>
- 2) With her husband’s approval, Shannon Owens describes the challenges Jason Owens faces as a Type 1 Diabetic. (Exhibit D). The letter recounts prior episodes of irrational behavior and temporary memory loss. Grady was concerned about his father’s health on January 6th and stayed by his side to protect him.

FEDERAL BUREAU OF INVESTIGATION

Date of entry 05/17/2021

H [REDACTED] S [REDACTED], phone number of [REDACTED], email address of [REDACTED], employed as a police officer with Washington, D.C. Metropolitan Police Department (MPD) Narcotics and Special Investigation Division (NSID), was interviewed telephonically. After being advised of the identity of the interviewing Agent and the nature of the interview, S [REDACTED] provided the following information:

On January 6, 2021, S [REDACTED] was assigned to the Mass Arrest Detail for the MPD Civil Disturbance Unit (CDU). S [REDACTED] was in his full MPD uniform with black CDU helmet, gas mask, and was not wearing gloves. S [REDACTED] was in a staging area when he heard over the radio a "10-33" call, which is a mutual aid request for officer assistance at the United States Capitol Building.

S [REDACTED] and members of his CDU element responded to the Capitol. Upon arrival, S [REDACTED] responded to the Rotunda area of the Capitol and assisted law enforcement with removing unknown subjects (UNSUBS) from the Rotunda area. Ofc. S [REDACTED] and other members of law enforcement were dispersing UNSUBS to the exterior of the east side of the Capitol building through a set of double doors located near the Rotunda.

S [REDACTED] made his way to the front of the line and was attempting to close the double doors to stop UNSUBS from entering the Capitol building, when UNSUBS tried to stop him from closing the doors. S [REDACTED] stated he pushed UNSUBS outside and was able to close the doors.

S [REDACTED] could not recall if he went outside of the Capitol but stated he could of, while he was pushing UNSUBS out the doors. S [REDACTED] did not recall GRADY OWENS or JASON OWENS, but did recall seeing someone on January 6, 2021, with a skateboard in their hands. S [REDACTED] could not recall if anyone attempted to strike him with a skateboard, and was never hit by a

Investigation on 05/13/2021 at Washington, District Of Columbia, United States (Phone)

File # [REDACTED] Date drafted 05/13/2021

by POTRAFKA ERIK

89B-WF-3368293-109_AFO

Continuation of FD-302 of (U) Interview of MPD Ofc. P [REDACTED] S [REDACTED], On 05/13/2021, Page 2 of 2

skateboard.

S [REDACTED] did not receive any injuries while in the Rotunda, removing USNUBS from the Capitol.

SA Potrafka emailed two still images captured from USCP Surveillance video from camera [REDACTED] capturing events at the East Rotunda door to Ofc. S [REDACTED]. Ofc. S [REDACTED] confirmed the MPD officer with the face shield up was him.



Ofc. S [REDACTED] advised he would respond to the FBI Washington Field Office on May 14, 2021, to review the surveillance video with SA Potrafka, in an attempt to recollect the events.

SA Potrafka placed the original interview notes into a Physical 1A envelope and attached a digital copy to this serial.

4-7502 (REV. 5-8-10)

FEDERAL BUREAU OF INVESTIGATION

Date of entry 05/18/2021

S [REDACTED], phone number of [REDACTED], email address of [REDACTED], employed as a police officer with Washington, D.C. Metropolitan Police Department (MPD) Narcotics and Special Investigation Division (NSID), was interviewed at FBI Washington Field Office. After being advised of the identity of the interviewing Agent and the nature of the interview, S [REDACTED] provided the following information:

S [REDACTED] was shown the USCP surveillance video (camera [REDACTED]) depicting events captured at the Rotunda East side doors on January 6, 2021.

After viewing the surveillance video, S [REDACTED] again advised he was the officer with the face shield up on his riot helmet, and had a gas mask on. S [REDACTED] was able to recall speaking to a white male with a red and white hat, which is captured in the surveillance video.

S [REDACTED] was unable to recall any other events at the Rotunda doors after viewing the surveillance video.

Investigation on 05/14/2021 at Washington, District Of Columbia, United States (In Person)

File # [REDACTED]

Date drafted 05/17/2021

by POTRAFKA ERIK

A 2-202 (REV. 3-8-19)

FEDERAL BUREAU OF INVESTIGATION

Date of entry 05/12/2021

M [REDACTED] E [REDACTED], phone number of [REDACTED], employed as a police officer with United States Capitol Police (USCP) was interviewed at Federal Bureau of Investigation (FBI) Washington Field Office (WFO). After being advised of the identity of the interviewing Agent and the nature of the interview, E [REDACTED] provided the following information:

E [REDACTED] was employed and on duty as a USCP Officer on January 6, 2021. E [REDACTED] had reported for his assigned duty shift at 6:30 AM and was assigned to the Mobile Patrol Unit within the Senate Division. E [REDACTED] was wearing his assigned navy blue USCP uniform with a light blue/dark blue jacket with USCP insignias on the front, side and back (mobile unit uniform jacket).

Between 2:00 PM and 3:00 PM, E [REDACTED] responded to the East side of the Capitol building, specifically responding in the area of the Rotunda entry/exit door to the outside of the Capitol to assist in removing unknown subjects (UNSUBS) from the Capitol and stopping UNSUBS from gaining entry into the Capitol.

E [REDACTED] recalled UNSUBS pushing and shoving against officers who were trying to push and shove the UNSUBS out of the building. At one point, BOZIC stated they attempted to close the door from the Capitol to the outside when UNSUBS stopped them from closing the door.

E [REDACTED] went out the door to the exterior and an unknown subject (later identified as JASON OWENS) grabbed E [REDACTED]'s baton. E [REDACTED] pulled his baton back and shoved OWENS with his baton. E [REDACTED] stated other officers were outside with him, and then they collapsed back into the Capitol to close the door.

E [REDACTED] was unable to describe who tried grabbing his baton, and only stated he was a white male, unknown clothing description.

Investigation on 05/12/2021 at Washington, District Of Columbia, United States (In Person)

89B-WF-3368293-JASON OWENS, 89B-WF-3368293-109_AFO, 266T-
File # SA-3419175, 2660-TP-3402480

by POTRAFKA ERIK

Date drafted 05/12/2021

[REDACTED]

(U) Interview of USCP Officer M [REDACTED]
Continuation of FD-302 of B [REDACTED], On 05/12/2021, Page 2 of 2

[Agent's Note: The first part of the B [REDACTED] interview was from B [REDACTED]'s memory. SA Potrafka then showed B [REDACTED] USCP surveillance video from camera [REDACTED] capturing JASON OWENS and GRADY OWENS at the East side Rotunda entrance door.]

After viewing the video, B [REDACTED] identified himself as the USCP Officer, with the baton, engaging with JASON OWENS.

B [REDACTED] could not recall if JASON OWENS made any further physical contact with him.

B [REDACTED] did not recall seeing GRADY OWENS, or any subject with a skateboard outside the Rotunda entrance, but stated he had "tunnel vision" and was only concerned with the person trying to take his baton at the time.

B [REDACTED] was not injured during this incident and did not receive any medical attention reference any event he was involved in on January 6, 2021.

B [REDACTED] stated he had received blow back from OC and CS gas during the day.

SA Potrafka placed the interview notes of B [REDACTED] into a Physical 1A file and attached a copy of them to this serial.

12-502 (REV. 5-8-10)

FEDERAL BUREAU OF INVESTIGATION

Date of entry 01/19/2021

██████████ B ██████████, employed as a Police Officer with Washington, D.C. Metropolitan Police, stationed at MPD 4th District, phone number of ██████████ ██████████, email address of ██████████, was interviewed telephonically. After being advised of the identity of the interviewing Agent and the nature of the interview, BOYLE provided the following information:

B ██████████ was on duty on January 6, 2021, and started his duty shift at 7:30AM.

At approximately 1:00PM, B ██████████ and approximately 33 other MPD officers and supervisors responded to the West lawn of the U.S. Capitol Building reference United States Capitol Police (USCP) having their line broken by protestors/rioters. B ██████████ and his fellow MPD officers were all wearing their issued MPD uniforms with markings, to include their Civil Disturbance Unit (CDU) protective clothing, and helmet with face shield.

As they were making their way through a group of unknown subjects (UNSUBS) an unknown subject (UNSUB 109) struck B ██████████ in the head with a skateboard. B ██████████ remembered pointing at UNSUB 109 saying APO, which means assault on police officer. B ██████████ advised they were unable to arrest UNSUB 109 due to the numbers of UNSUBS surrounding their location, and UNSUB 109 moving behind the crowd which was engaging the MPD officers.

B ██████████ described UNSUB 109 as follows: white male, medium length long brown hair, mid 20s age, wearing a red jacket, white and black plaid shirt, and dark colored pants.

As a result of the Assault by UNSUB 109, B ██████████ sustained a concussion and an injury to his right pinky finger. B ██████████ had an MRI on the finger, where something was observed in the MRI, but was inconclusive. B ██████████ was to return for a follow up MRI in approximately two (2) weeks.

Investigation on 01/15/2021 at Washington, District Of Columbia, United States (Phone)

File # ██████████

by POTRAFKA ERIK

Date drafted 01/18/2021

[REDACTED]
Continuation of FD-302 of (U) Interview of [REDACTED] E [REDACTED], On 01/15/2021, Page 2 of 2

E [REDACTED] identified his body worn camera (BWC) serial number as [REDACTED], and saved the video of the incident as [REDACTED].

Writer reviewed the MPD BWC E [REDACTED] identified as his and confirmed the video was of E [REDACTED]. In the video SA Potrafka observed UNSUB 109 strike E [REDACTED] with the skateboard, but could not see where the skateboard struck E [REDACTED] from E [REDACTED]'s BWC position.

BWC was located at the following location of videos provided by MPD to the FBI:

Folder:

[REDACTED]

File Name:

[REDACTED]

SA Potrafka placed the notes from the interview of E [REDACTED] into a Physical 1A folder.

The Honorable Beryl A. Howell
Chief Judge
United States District Court
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Dear Chief Judge Howell:

I would like to inform you about my husband Jason Owens. Jason is a Type 1 Diabetic also referred to as Juvenile Diabetes. He was diagnosed in 1986 when he was just 14 years old, he is now 49yrs old and has lived with it most of his life. Having this incurable condition has definitely had its challenges over the years and we will continue to live with those challenges everyday for the rest of our lives. Jason is a kind, gentle and loving husband and father. With that being said the challenges we face with Diabetics is keeping blood sugars constantly within a normal level. Years ago this was basically a death sentence for those who found out that they have Type 1 diabetes (not to be confused with Type 2 which is managed by dietary changes and pills) Type 1 is due to ones own body attacking itself and the result is a non functioning pancreas which is needed to regulate normal bodily function and the release of insulin the body naturally produces to regulate blood sugar fluctuations.

Although technology has improved the lives of diabetics to manage their blood sugars it will never replace the natural ability to regulate ones blood sugars naturally and with 100% accuracy. Jason lives with the constant responsibly of managing all of the challenges of his condition 24hrs a day. There are too many times to count in the years that I've know Jason that he has experienced extreme highs and lows with his blood sugar levels. When this happens it alters not only his blood sugar and internal body function it will and does have notable mental and physical side effects as well. When his blood sugar drops too low he can seem normal one minute then have completely irrational behavior the next that does not make sense and contradicts his normal character when in a safe blood sugar range. He has had different experience with low blood sugars over the years that have included bouts of rage, irrational thinking, inability to control anger, and even physical responses around him all the while not having any remembrance of the incident or having vague memories of said event. This type of behavior can occur with highs and especially with lows concerning diabetics. I have learned to look for the outward signs with Jason when I'm with him and try to help him with the proper treatment necessary. Sometimes this can be tricky because on the outside he can look normal and seem fine but on the inside his body is at war with itself trying to get a response that he's not capable of making on his own. It takes time and care for the body to come out of a low or high. It is not a quick process and can last for a long period of time before he "feels normal". When treating lows and highs treatment has to be done in a gradual way as to not put unnecessary stress on the body. Sometime this process can take hours to bring it into normal range. Being a Type 1 is one of the most difficult conditions to live with and managing it can be very tricky. We will always live with the ups and downs that come with it. I say "we" because those of us who live with him also live with the responsibility of trying to keep the signs in check. We also are having to constantly question and look for signs that he might need help.

I respectfully ask for you to take into account this information and the complexities of this condition when looking at this case.

Sincerely,

Shannon Owens