UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
v.	:	**CASE NO. 1:22-cr-00265 RC-1**
TIMOTHY WAYNE WILLIAMS,	:	
Defendant.	:	

UNITED STATES' OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS – MULTIPLICITY [ECF No. 47]

The United States of America respectfully submits this opposition to Defendant Timothy Wayne Williams's Motion to Dismiss Multiplicitous Counts (ECF No. 47).

Defendant argues that several counts are multiplicitous and should be dismissed. Defendant's arguments are meritless, and the Court should deny the Motion.

BACKGROUND

Defendant is charged by information with: (1) Entering and Remaining in a Restricted Building, in violation of 18 U.S.C. § 1752(a)(1); (2) Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2); (3) Violent Entry and Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and (4) Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G). ECF No. 14.

ARGUMENT

Defendant argues generally that the counts of the information allege precisely the same conduct and therefore violates Double Jeopardy. ECF No. 47. Defendant is incorrect.

As an initial matter, the government notes that Count One alleges that "TIMOTHY WAYNE WILLIAMS did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, without lawful authority to do so" and Count Four alleges that "TIMOTHY WAYNE WILLIAMS willfully and knowingly paraded, demonstrated, and picketed in any United States Capitol Building." *See* ECF No. 42. In fact, other pleadings attacking, on multiplicity grounds, an information alleging the same violations omit claims against the Title 18, United States Code, Section 1752(a)(1) and Title 40, United States Code, Section 5104(e)(2)(G) offenses. *See United States v. Gunby*, Criminal No. 21-cr-626 (ECF. No. 37). Nevertheless, the defendant is also factually and legally incorrect.[1]

A defendant may be convicted of and sentenced under different statutory provisions for multiple offenses arising out of the same single act or course of conduct so long as Congress authorized the imposition of such multiple punishments. *See United States v. McLaughlin*, 164 F.3d 1, 8 (D.C. Cir. 1998) ("If the legislature intends to impose multiple punishment, imposition of such sentences does not violate Double Jeopardy."). "To determine multiplicity vel non, courts generally apply the *Blockburger* test: '[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not,' i.e., whether either is a lesser included offense of the other." *United States v. Mahdi*, 598 F.3d 883, 888 (D.C. Cir. 2010) (quoting *United States v. Weathers*, 186 F.3d 948, 951 (D.C. Cir. 1999),

[1] The government also notes that the case is scheduled for a bench trial, rendering moot the defendant's objection that "the unnecessary multiplication of counts will prejudice a jury against [him]." ECF No. 47.

and *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). If the two offenses each require proof of a fact the other does not, then the charges are not multiplicitous. *Mahdi*, 598 F.3d at 890.

The *Blockburger* "test focuses on the statutory elements of the offense, not on the proof offered in a given case." *United States v. McLaughlin*, 164 F.3d 1, 8 (D.C. Cir. 1998). Thus, it is irrelevant whether there is significant overlap in the factual proof of each count at trial, or even whether two counts "are based upon the exact same set of facts and circumstances," as long as each count's elements require proof of a fact that the others do not. *United States v. Manafort*, 313 F. Supp. 3d 311, 314 (D.D.C. 2018); *see id.* ("[T]he test for multiplicity is not whether two counts are based on the same set of facts; rather, it is whether the statutory elements of the two offenses are the same.").

Here, the defendant's multiplicity arguments fail because each of the offenses charged in the information "requires proof of a fact which the other does not." *Blockburger*, 284 U.S. at 304.

Count Two charges a violation of 18 U.S.C. § 1752(a)(2), which applies to a defendant who "knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions." 18 U.S.C. § 1752(a)(2). The elements of that offense are:

1) The defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds;

2) The defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions;

3) The defendant's conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

Count Three charges a violation of 40 U.S.C. § 5104(e)(2)(D), which applies to a defendant who "utter[s] loud, threatening, or abusive language, or engage[s] in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress[.]" 40 U.S.C. § 5104(e)(2)(D). The elements of that offense are:

1) The defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings;

2) The defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress;

3) The defendant acted willfully and knowingly.

Based on the foregoing elements, Counts Two and Three are not multiplicitous, because each requires proof of a fact that the other does not. Plainly, Count Three requires proof that the defendant engaged in disorderly or disruptive conduct "in any of the United States Capitol Buildings" (element 1 of Count Three). But Count Two does not require proof of that fact. Similarly, Count Three requires proof that the defendant engaged in such conduct "with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress" (element 2 of Count Three). Again, Count Two does not require proof of this fact. Likewise, Count Two requires proof that the defendant engaged in disorderly or disruptive conduct "in, or in proximity to, any restricted building" (element 1 of Count Two). As relevant here, the term "restricted building or grounds" means any posted, cordoned off, or otherwise restricted area of a building or grounds where a person protected by the Secret Service is or will be temporarily visiting. 18 U.S.C. § 1752(a)(2)(C)(1)(B). Count Three does not require any such proof.[2]

[2] Given each count requires proof of at least one fact the others do not, a full accounting of potential distinctions between the statutes charged in Counts Two and Three is unnecessary.

The defendant argues that the government is improperly prosecuting him for multiple statutory violations "for the same criminal offense." ECF No. 47, at 2. However, as discussed above, when assessing a claim of multiplicity, *Blockburger* requires a court to analyze the elements of the offenses, not whether a single act could violate multiple statutes. The very premise of *Blockburger* and its progeny is that the "same act or transaction"—here, Defendant's presence inside the Capitol Building and on its Grounds—could form the basis for multiple criminal charges so long as each count requires proof of a fact that the others do not. *Mahdi*, 598 F.3d at 888. That Counts Two and Three each relate to defendant's presence at the Capitol, and his conduct therein, is unsurprising and ordinary. Several defendants involved in the attack on the Capitol have been convicted of and sentenced on both counts among others. *See, e.g.*, *United States v. Thomas Robertson*, 1:21-CR-00034-CRC; *United States v. Rubenacker*, 1:21-CR-00193-BAH. Whatever the functional similarity Defendant sees in the statutes, charging both neither implicates Double Jeopardy nor results in a multiplicitous information.

Therefore, Counts Two and Three are not multiplicitous. A single criminal act frequently results in multiple punishments under multiple criminal statutes, and that is entirely permissible so long as application of the *Blockburger* test (or other indicia of congressional intent) make clear Congress's intent to permit such multiple punishment.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the defendant's Motion to Dismiss due to Multiplicity be denied.

Respectfully submitted,

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