

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

UNITED STATES OF AMERICA :
 : **Case No.: 21-cr-212 (ABJ)**
 v. :
 :
JARED HUNTER ADAMS, :
 :
 Defendant. :

**GOVERNMENT’S MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION
TO DISMISS MULTIPLICITOUS COUNTS**

The Court should deny Defendant Jared Adams’s Motion to Dismiss Multiplicitous Counts, ECF No. 51, because Adams waived his right based on his failure to offer anything more than perfunctory arguments that the counts in the Superseding Information are multiplicitous and, even if waiver did not occur, each count contains elements not found in the other counts and, thus, the counts are not multiplicitous.

BACKGROUND

On the morning of January 6, 2021, Adams drove from Plain City, Ohio, to Washington, D.C., where he saw President Trump speak and then marched to the Capitol, where he passed through scaffolding on the Capitol’s west side. Encountering a line of police, Adams said, “I hope DHS brought enough bullets.” Adams then entered the Capitol Building through the Senate Wing Door. He was inside for approximately ten minutes. After he left the building, Adams remained on Capitol Grounds, and, after a confrontation with police, yelled, “next time we won’t leave our guns at home.” He drove home to Ohio that evening, leaving Washington, D.C. at approximately 5:30 p.m.

For his participation in the January 6, 2021 attack on the Capitol, Adams was charged by information with violating 18 U.S.C. § 1752(a)(1) (Entering and Remaining in a Restricted

Building or Grounds) (Count One), 18 U.S.C. § 1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds) (Count Two), 40 U.S.C. 5104(e)(2)(D)(Disorderly Conduct in a Capitol Building) (Count Three), 40 U.S.C. 5104(e)(2)(G) (Parading, Demonstrating, or Picketing in a Capitol Building) (Count Four). ECF No. 7. The government later filed a Superseding Information containing the same charges. ECF No. 44. On October 26, 2022, Adams filed the instant motion to dismiss all four counts on multiplicity grounds. ECF No. 50.

ARGUMENT

Adams asserts, without elaboration, that if he was convicted of all the counts in the information, his conviction would violate the Double Jeopardy Clause of the U.S. Constitution and “the unnecessary multiplication of counts will prejudice a jury against Mr. Adams.” ECF No. 51 at 2. Adams is wrong.

I. Adams has failed to support his assertion with supporting argument and thus waived the issue.

Although Adams states “the four counts of the information expose the defendant to double, and even triple jeopardy for the same alleged acts[,]” ECF No. 51 at 2, he includes no argument in support of his motion that demonstrates how each count in the Superseding Information is multiplicitous with any other count. Thus, Adams has waived that argument. *Stoller v. United States*, 216 F. Supp. 3d 171, 176 (D.D.C. 2016) (citing *Johnson v. Panetta*, 953 F. Supp. 2d 244, 250 (D.D.C. 2013) (“In this circuit it is clear that ‘perfunctory and undeveloped arguments . . . are deemed waived.”)). On that basis alone, the Court should deny the motion.

II. Alternatively, even if Adams did not waive the issue, each count in the Superseding Information contains elements that the other counts do not and therefore the counts are not multiplicitous.

A defendant may be convicted under different statutory provisions for offenses arising out of the same single act or course of conduct without violating the Double Jeopardy Clause, 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), 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. *Id.* 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, Adams’s multiplicity arguments fail because each of the offenses charged in the Superseding Information “requires proof of a fact which the other does not.”

Blockburger, 284 U.S. at 304. Adams does not even attempt to evaluate or analyze the statutes' elements and cites nothing to support his claim.

First, Count One charges a violation of Section 1752(a)(1) and (b)(1)(A) of Title 18, which applies to a defendant who “knowingly enters or remains in any restricted building or grounds without lawful authority to do so.” Thus, the elements of that offense are:

- (1) The defendant entered or remained in a restricted building or grounds as defined in 18 U.S.C. § 1752(c) without lawful authority to do so;
- (2) The defendant did so knowingly.

Count Two charges a violation of Sections 1752(a)(2) and (b)(1)(A), 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), (b)(1)(A). 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 as defined in 18 U.S.C. § 1752(c);
- (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 Section 5104(e)(2)(D) of Title 40, which applies to individuals who “willfully and knowingly. . . (D) utter loud, threatening, or abusive language, or engage 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, or the orderly conduct in

that building of a hearing before, or any deliberations of, a committee 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.

Count Four charges a violation of Section 5104(e)(2)(G) of Title 40, which applies to a defendant who “willfully and knowingly. . . (G) parade, demonstrate, or picket in any of the Capitol Buildings.” 40 U.S.C. § 5104(e)(2)(G). The elements of that offense are:

- (1) The defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings;
- (2) The defendant acted willfully and knowingly.

None of the counts are multiplicitous. Count One requires proof that Adams entered or remained in a restricted building or grounds “without lawful authority.” Counts Two through Four do not require proof of that fact.

Count Two requires proof that Adams “engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds” (element one of Count Two) (emphasis added). Counts One, Three, and Four do not require proof of that fact.

Count Three, meanwhile, requires proof that Adams engaged in “disorderly or disruptive conduct,” which Counts One and Four do not require. Although Count Two does include the terms “disorderly or disruptive conduct,” Count Two contains the terms “or in proximity to, any restricted building or grounds,” which Count Three does not include. Count Two also requires proof that Adams’s conduct “in fact impede[d] or disrupt[ed] the orderly conduct of government business or official functions” (element four of Count Four), which Counts One, Three and Four do not.

Finally, Count Four requires that Adams “parade[d], demonstrate[d], or picket[ed] in any of the Capitol Buildings” (element one of Count Five). Counts One through Three do not require this fact.

As such, each count contains at least one element that the other counts do not. Adams misunderstands that the *Blockburger* multiplicity analysis refers to 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, Adams’s presence and conduct at the Capitol—can form the basis of multiple criminal charges, so long as each count requires proof of a fact that the others do not. *Mahdi*, 598 F.3d at 888; *Manafort*, 313 F. Supp. 3d at 314 (counts can be “based upon the exact same set of facts and circumstances,” if *Blockburger* is satisfied). That Adams’s conduct on January 6, 2021 has led to multiple related charges is unsurprising and utterly ordinary in a criminal case.

CONCLUSION

For the foregoing reasons, the Court should deny Adams’s Motion to Dismiss Multiplicitous Counts.

Respectfully submitted,

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