

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

V.

LUKE RUSSELL COFFEE

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CAUSE NO. 1:21-CR-327-RC-1

MOTION TO DISMISS COUNTS FOR MULTIPLICITY

TO THE HONORABLE RUDOLPH CONTRERAS, DISTRICT JUDGE OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA:

COMES NOW Defendant, Luke Russell Coffee, by and through his attorney of record,
Anthony J. Colton, and files this Motion to Dismiss Counts for Multiplicity, and would show this
Honorable Court as follows.

On April 28, 2021, the Government indicted Luke Coffee for ten counts alleging obstruction
in restricted areas and violent assault.¹ On December 1, 2021, the Government filed a Superseding
Indictment charging Coffee with the same ten counts alleging obstruction in restricted areas and
violent assault.² This case is set for jury trial on February 27, 2023.³

The ten counts in the indictments are simply rewordings of other counts citing different
statutes. In essence, all ten counts accuse Coffee of two things. They allege on January 6 he (1)
obstructed government functions at the Capital and (2) committed violent assault at the Capital. In
finding ten counts to apply to these allegations, the Government inappropriately charges Coffee
with the same offense multiple times. Such stacking violates the Double Jeopardy Clause, unfairly
prejudices the jury against Coffee, and wrongly coerces him to give up his right to a trial to secure
the benefit of a plea that would dismiss some of the frivolous charges. Therefore, in the interests of

¹ (Dkt. No. 25.)

² (Dkt. No. 44.)

³ (Dkt. No. 59.)

justice, the Court should dismiss some of the charges – or recategorize some of the counts as lesser-included offenses – *pretrial* so that a fair trial can commence in the first place.

Multiplicity arises when “an indictment charges the same offense in more than one count.”⁴ The Double Jeopardy Clause of the United States Constitution protects against “multiple punishments for the same offense.”⁵

Courts have recognized that charging the same offense in multiple counts can “unfairly increas[e] a defendant’s exposure to criminal sanctions” because a jury may conclude that given the number of charges, the defendant *must* be guilty of something.⁶

1. The Counts Allege Two Things But Charge Ten.

A) Counts 1, 6, 7, 8 and 9 allege obstruction in a restricted area.

First, in Count One, Coffee is accused of obstructing, impeding or interfering with official duties of law enforcement officers at the Capital on January 6 in violation of 18 U.S.C. § 231(a)(3).⁷ Then, in Counts Six and Seven, he is charged with obstruction in the Capital building on January 6 in violation of 18 U.S.C. 1752(a)(3) and (4) and (b)(1)(A).⁸ In Count Eight, he is charged with obstructing and impeding an official proceeding at the Capital on January 6 in violation of 40 U.S.C. 5104(e)(2)(E).⁹ In Count Nine, he is charged with obstructing and impeding the passage through and within the Capital on January 6 in violation of 40 U.S.C. 5104(e)(2)(E).¹⁰

⁴ *United States v. Mahdi*, 598 F.3d 883, 887 (D.C. Cir. 2010) (quoting *United States v. Weathers*, 186 F.3d 948, 951 (D.C. Cir. 1999)).

⁵ *Weathers*, 186 F.3d at 951, *cert. denied*, 529 U.S. 1005 (2000); U.S. Const. amend. V, cl. 2.

⁶ *United States v. Clarke*, 24 F.3d 257, 261 (D.C. Cir. 1994) (quoting *United States v. Harris*, 959 F.2d 728 (D.C. Cir. 2001) (abrogated on other grounds)). *See also United States v. Steward*, 246 F.3d 728 (D.C. Cir. 2001); *United States v. Morrow*, 102 F. Supp. 3d 232, 246 (D.C. Cir. 2015) (multiplicitous charges may suggest to a jury “that a defendant has committed not one but several crimes”) (quoting *United States v. Reed*, 639 F. 2d 896, 904 (2nd Cir. 1981)); *United States v. Phillips*, 962 F. Supp. 200, 202 (D.C. Cir. 1997). (Emphasis added.)

⁷ *See* Superseding Indictment (ECF No. 44).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

B) Counts 2, 3, 7 and 10 allege assaultive violence.

In Count Two and Three Coffee allegedly assaulted, impeded or interfered with officers S.S. and L.M. on January 6 during the performance of their official duties with physical violence.¹¹ In Counts Seven and Ten, Coffee allegedly engaged in physical violence on January 6 in violation of 18 U.S.C. 1752(a)(4) and (b)(1)(A) and 40 U.S.C. 5104(e)(2)(F).¹²

2. Some of the Ten Counts Are Lesser-Included-Offenses of Each Other.

Many of the charges are lesser-included-offenses of the other charges. Engaging in physical violence in a restricted area is a lesser-included-offense of 1) engaging in physical violence at the Capital and 2) physically assaulting an officer at the Capital. If Coffee is found guilty of Count Two or Three (assaulting an officer performing official duties at the Capital), he is therefore also guilty of both engaging in violence at the Capital and engaging in violence in a restricted area.

“Disorderly conduct” in a restricted area (Count One) is a lesser-included offense of disorderly conduct in the Capital (Counts Five and Eight).

3. The Overlapping Counts Should Be Dismissed.

The counts in Coffee’s indictment expose him to double and even triple jeopardy for the same alleged acts. The Double Jeopardy Clause protects criminal defendants against both successive punishments and prosecutions for the same criminal offense.¹³ When two different criminal statutes are violated, “the double jeopardy prohibition is implicated when both statutes prohibit the same offense or when one offense is a lesser included offense of the other.”¹⁴ Therefore the conduct as charged in Coffee’s indictment violate the Double Jeopardy Clause and must be re-fashioned to be constitutional.

¹¹ *Id.*

¹² *Id.*

¹³ *United States v. Dixon*, 509 U.S. 688, 696 (1993) (citing *North Carolina v. Pearce*, 395 U.S. 711 (1969)). See also *United States v. Davenport*, 519 F.3d 940, 943 (9th Cir. 2008) and *United States v. Mancuso*, 718 F.3d 780, 791 (9th Cir. 2013).

¹⁴ *Rutledge v. United States*, 517 U.S. 292, 297 (1996).

For all of these reasons, the Defendant prays for an order either dismissing repetitive counts or recategorizing these counts as lesser-included offenses (with the jury so instructed).

Respectfully submitted.

MAUREEN SCOTT FRANCO
Federal Public Defender

/s/ ANTHONY J. COLTON
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Attorney for Defendant

CERTIFICATE OF CONFERENCE

I certify that I conferred with Melanie Alsworth, Assistant United States Attorney, concerning this motion and she has stated the government is opposed to the granting of this motion.

/s/ ANTHONY J. COLTON

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January 2023, I electronically filed the foregoing Motion to Dismiss Counts for Multiplicity with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Melanie Alsworth
Assistant United States Attorney

/s/ ANTHONY J. COLTON
Attorney for Defendant

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ORDER

On this date came on to be considered the Defendant’s Motion to Dismiss Counts for Multiplicity. The Court, having considered the premises, is of the opinion that the same should be and is hereby **GRANTED**.

The Court therefore orders that the following counts be dismissed: Counts Four, Five, Six, Seven, Eight, and Nine (because they allege the same acts of obstruction in restricted areas already included and encompassed by Count One), and Counts Seven and Ten (because they allege the same acts of violent assault already included and encompassed by Counts 2 and 3).

The Ten Counts in the Superseding Indictment are Multiplicitious as charged, violating the Double Jeopardy Clause of the Constitution; unfairly prejudicing the jury against the Defendant; and double-charging the same allegations so as to unjustly induce the Defendant to give up his right to a jury trial, none of which could be cured after the trial commences.

The Court therefore **ORDERS** that this case proceed to trial only on Counts One, Two, and Three.

SO ORDERED on this the _____ day of _____, 20__.

HONORABLE RUDOLPH CONTRERAS
United States District Judge