

In the United States District Court
For the District of Columbia

United States)
)
v.) Case no. 1:21-CR-00263-TSC
)
Russell D. Alford)

Mr. Alford’s Objections to Certain Government Exhibits

Mr. Russell D. Alford, by and through counsel and in accordance with this Honorable Court’s Pretrial Scheduling Order (Doc. 48), objects as follows to certain exhibits that the government has timely noticed its intent to offer at trial. He asks this Court to preclude the government from admitting the challenged exhibits.

I. Mr. Alford expressly reserves his right to assert any and all pertinent objections to the admissibility of any government exhibit at trial.

As a preliminary matter, Mr. Alford notes that the specific objections raised herein pertain to exhibits whose inadmissibility he maintains is readily apparent. By not raising a pretrial objection to any remaining exhibits noticed by the government, Mr. Alford does not waive his right to object at trial, depending on how and on what basis the government attempts to admit such exhibits. To the contrary, he expressly reserves this right.

II. Law enforcement officers’ body-worn camera videos noticed as exhibits by the government are overly broad.

The government has listed as exhibits (nos. 108, 109, and 110) the body-worn cameras of three law enforcement officers present at the Capitol on January 6, 2021. All three videos capture events and audio statements from others that

occurred outside of Mr. Alford's perception, although Mr. Alford does appear on each recording. One officer's footage is more than 90 minutes in length.

As currently presented, the exhibits are overly broad and contain irrelevant images and audio, and the nature of some footage is such that it risks unfair prejudice to Mr. Alford. *See* Fed. R. Evid. 401, 403. They are also cumulative with one another, and with other evidence.

To the extent that the government seeks to introduce the body camera footage in total, Mr. Alford objects and requests that the government be required to excerpt any relevant portions of body-worn camera footage for which it may seek to admit into evidence.

III. Numerous exhibits purportedly drawn from Mr. Alford's Facebook account are due to be excluded.

The government has given notice of 37 exhibits it has picked out from the fruits of a subpoena served on Facebook, Inc. for the contents of a Facebook account apparently associated with Mr. Alford. Even assuming, without conceding, that the government will be able to authenticate this material pursuant to Federal Rules of Evidence 901 and 902,¹ a number of the proffered exhibits are inadmissible. Many are irrelevant, constitute improper character evidence, may contain inadmissible hearsay, and are so lacking in context that their admission would mislead and confuse the jury. *See* Fed. R. Evid. 401, 403, 404, and 802. Mr. Alford addresses

¹ For the purposes of this motion, and in the interest of clarity, Mr. Alford assumes, without conceding, that the government could prove that he is the individual who wrote, uploaded, or shared the material at issue in the challenged exhibits. Any exceptions, such as where material was sent unsolicited to Mr. Alford by another Facebook user, are specifically noted herein.

more exhibit-specific objections in turn, along with a brief summary of each objectionable exhibit. To the extent possible, Mr. Alford has grouped together the facially inadmissible exhibits into general categories.

A. Material posted prior to the events of January 6, 2021

Virtually all of the exhibits containing material that predate the events of January 6, 2021, concern Mr. Alford's political views, including his staunch support for then-President Trump. These exhibits are either irrelevant as a whole or are of such negligible probity that they fail the Rule 403 balancing test. Indeed, some appear to have no purpose except to inspire personal animus toward Mr. Alford from jurors who might strongly disagree with, or even disdain, his political views. And, to the extent the government might assert a need for evidence of Mr. Alford's political views, it will be able to do so through other, less inflammatory means at trial, including but not limited to Mr. Alford's own post-*Miranda* statements to law enforcement. *See Old Chief v. United States*, 519 U.S. 172, 184 (1997) ("what counts as the Rule 403 'probative value' of an item of evidence, as distinct from Rule 401 'relevance,' may be calculated by comparing evidentiary alternatives"); *United States v. Beechum*, 582 F.2d 898, 914 (5th Cir. 1978) ("[p]robity in this context is not an absolute; its value must be determined with regard to the extent to which the [fact] is established by other evidence, stipulation, or inference. It is the incremental probity of the evidence that is to be balanced against the potential for undue prejudice.").

Mr. Alford therefore objects as to the following exhibits on the aforementioned grounds, and others as noted.

- Government's Ex. 302 is a "Status Update," apparently posted by Mr. Alford, that is dated November 8, 2020. It contains an extended post, attributed to a "Robert DeVore," opining why and how Congress and/or the U.S. Supreme Court would ultimately determine the winner of the 2020 Presidential Election.
- Government's Ex. 303 is an image, evidently "shared" by Mr. Alford on November 14, 2020, nearly 60 days prior to the events of January 6, 2021. It contains the following statement: "Anyone who thinks I Am going to Comply with Communism, just because you Voted for it Is in For a Rude Awakening."
- Government's Ex. 304 contains Facebook Messages and photographs exchanged between Mr. Alford and another individual, J.M.,² on November 20, 2020. In these messages, Mr. Alford and J.M. discuss their shared disagreement with "liberals." J.M. indicates that he does not want to say too much because "these democrats get so nasty." Mr. Alford responds with "I got bullets, [expletive deleted] them" and sends two photos of his firearms and ammunition.

This exhibit is irrelevant, as it does not pertain to the events of Jan. 6, 2021. Indeed, then-President Trump's rally on the Ellipse that Mr. Alford would ultimately attend would not even be announced and planned until more than one month later. It is not even clear from the messages that the two parties were specifically discussing the outcome of the presidential election. There will be no evidence at trial that Mr. Alford was armed when he was in Washington, D.C. on January 6, 2021, or that he assaulted a law enforcement officer or anyone else. No element of any offense with which Mr. Alford is charged concerns the threat or use of firearms. Moreover, the risk of unfair prejudice from this exhibit is obvious and considerable. Any suggestion that Mr. Alford would use his lawfully-possessed firearms if necessary—even, as the messages appear to suggest, in self-defense—invites comparison to other Jan. 6 defendants who, unlike Mr. Alford, *did* carry firearms and/or engage in physical violence on that day.

- Government's Ex. 305 is a comment that Mr. Alford evidently left on another Facebook user's post on November 21, 2020. In the comment, Mr. Alford expresses frustration with government, taxes, and a perceived failure to prosecute "people that are responsible for the treason that has been

² Name redacted.

committed[.]” In addition to being irrelevant, and remote in time to the events of January 6, 2021, this exhibit would be presented without any information about the post on which Mr. Alford was commenting, or even whose post it was, making this out-of-context statement ripe for jury confusion and unfair prejudice.

- Government’s Ex. 306 is a “Shared Image,” posted on November 22, 2020, depicting an American flag emanating from a bullet and the words “By Ballot or Bullet.”
- Government’s Ex. 307 contains Facebook Messages and photographs sent by Mr. Alford to another individual, S.S.,³ over the course of November 21-24, 2020; December 1, 8, 10-11, and 13, 2020. While conversing with S.S., a woman he was just getting to know, Mr. Alford and S.S. discussed current events. During the conversation, Mr. Alford sent a photo of firearms to S.S. In response, S.S. asked Mr. Alford “[w]hat do you think will go down?” He responded, “I hope nothing but I’m not playing[.]” For the same reasons noted above in objecting to similar evidence, government’s Exhibit 304, this exhibit is irrelevant and prejudicial.
- Government’s Ex. 308 is a screenshot Mr. Alford shared with another individual, M.C., via a private Facebook message on November 28, 2020. The screenshot was of another person’s post speculating that then-President Trump was preparing for a civil war.
- Government’s Ex. 309 is a comment Mr. Alford posted in reply to another, unidentified person’s unidentified post. The comment, dated November 29, 2020, was: “Yes sir it may come down to a visit to our countries [sic] capitol !”
- Government’s Ex. 315 is a Facebook “check in,” dated December 30, 2020, for Washington D.C. Mr. Alford objects to this exhibit because it suggests, incorrectly, that he was actually in the city of Washington, D.C., on that date, one week prior to Jan. 6, 2021. The exhibit is further objectionable because it contains the following hashtags, all of which are irrelevant and prejudicial: #F***YouIfYouVotedForHim #BIDENNOTMYPRESIDENT #Treason#SaveOurChildren.
- Government’s Ex. 316 is an image sent to Mr. Alford by another Facebook user, P.M.,⁴ on December 30, 2020. It is a photoshopped image of comedian Kathy Griffin holding President Biden’s severed, blood-spattered head. There

³ Name redacted.

⁴ Name redacted.

is no indication that Mr. Alford requested such an image, adopted it in any way, or responded approvingly to receiving it. As such, it lacks any probative value, in addition to being irrelevant and prejudicial.

- Government's Ex. 317 is a Facebook "Status Update" posted on December 31, 2020. It is an image shared by Mr. Alford with the following text: "When they invalidated my vote, they invalidated my consent to be governed by them"
- Government's Ex. 318 is a Facebook "Status Update" posted on January 3, 2020. The text is: "When they rigged the elections they declared war on the American people."
- Government's Ex. 322 is Facebook "Status Update" posted on January 5, 2021. It depicts then-President Trump, Sydney Powell, and Michael Flynn, and includes the text: "We tried to play fair. We gave you all the chance to correct your misdeeds, but you continued to play dirty. You have no respect for the people and our Constitution. We are going to use the full extent of our Constitutional Power to demolished [sic] your stronghold. We KNOW everything. We SAW everything. We HEARD everything. You can run, but you cannot hide. The day of the reckoning is NOW. We're coming at you Constitutionally strong and mighty!!!!"

B. Material posted subsequent to the events of January 6, 2021

The government also wants to admit into evidence material posted to Mr. Alford's account *after* the events of January 6, 2021. All are inadmissible because, at a minimum, none are probative or relevant to any element of any charged offense. *See* Fed. R. Evid. 401, 403. Many, as discussed in the preceding category of pre-January 6 exhibits, concern Mr. Alford's political views that are not at issue in the case and the dissemination of which raises the specter of undue prejudice and impermissible character evidence. *See* Fed. R. Evid. 403, 404. And, as above, to the extent the government can establish the relevancy of such evidence, it would be cumulative to other evidence, including Mr. Alford's statements to law enforcement.

Additional, exhibit-specific objections are articulated below alongside non-exhaustive summary of each challenged exhibit.

- Government's Ex. 319 is an image uploaded by Mr. Alford on January 6, 2021, time-stamped to a time after he left the Capitol Hill area. It is a photograph of a caricature of then-President Trump with the text, "Off with their heads, stop the steal."
- Government's Ex. 326 is a series of comments, posted by Mr. Alford on January 7, 2021, in which he expresses, among other opinions, his view that certain events of the prior day were "staged" as part of a "production."
- Government's Ex. 327 is an image posted by Mr. Alford on January 7, 2021, depicting a Guy Fawkes mask and a quote from the film "V for Vendetta": "People should not be afraid of their governments. Governments should be afraid of their people." Mr. Alford captioned this image "Truth." In addition to the general objection above, this exhibit is also irrelevant and invites unfair prejudice by unduly highlighting Mr. Alford's political views.
- Government's Ex. 328 is an image posted by Mr. Alford on January 7, 2021 as a "Status Update." It depicts two side-by-side images: a photograph of military personnel guarding the Capitol "during BLM protests" and a photograph of the actor Kevin James, in his role as the titular character from the film "Paul Blart: Mall Cop," running, apparently scared, and captioned "Capitol today." In addition to the general objection above, it invites unfair prejudice through its apparent mocking of law enforcement present at Capitol Hill on January 6, 2021.
- Government's Ex. 329 is an image posted by Mr. Alford on January 8, 2021. The image is of a post from an individual using the name "Buzzcheeze" that was posted on another, unidentified internet set. The "Buzzcheeze" post, among other things, speculates that the events of January 6 were a "sting operation" planned by then-President Trump to expose corrupt members of Congress.
- Government's Ex. 330 is an image posted by Mr. Alford as a "Status Update" on January 10, 2021. The image's text is "We stormed the capitol looking for justice. You stormed a Target looking for a big screen TV. We are not the same." There is no evidence that Mr. Alford generated this image, or that he intended to associate himself with the "We" referenced therein. To the extent that it is relevant, its prejudice outweighs its probity.

- Government's Ex. 331 is a January 15, 2021, post by Mr. Alford in the Facebook group "Donald J. Trump vs The World." The image posted depicts a photograph Mr. Alford took of the Capitol interior on January 6 and is captioned with the hashtag "#SaveOurChildren." In addition to the general objections, this is a cumulative exhibit, as Mr. Alford's photograph is separately included on the government's exhibit list.
- Government's Ex. 332 is a post drawn from Mr. Alford's Facebook "Minifeed" and dated February 16, 2021. The text is: "All politicians need to be careful we are done asking you to do the right thing, we are telling you!" There is no context offered for this statement, and its authorship is not inherently clear. This is notable because the definition disclosed by Facebook, Inc. for "Minifeed" is "Actions taken by account holder *or by others* to the account" (emphasis added),⁵ raising potential authentication and hearsay issues if someone other than Mr. Alford posted these words.
- Government's Ex. 333 is another post drawn from Mr. Alford's Facebook "Minifeed" and is dated February 23, 2021. In it, Mr. Alford posts about his recent contact with the FBI, and offers commentary about his political beliefs and general suspicions of the government.
- Government's Ex. 334 is a link shared by Mr. Alford. The link is a "Go Fund Me" solicitation for donations to assist Mr. Alford to pay his legal fees in relation to the instant case.

C. List of more than 150 Facebook "groups" of which Mr. Alford either joined or was added by another as a member

Government's Ex. 300 is a listing of all Facebook "groups" in which Mr. Alford was listed as a member. More than 150 such groups are listed, spanning multiple single-spaced pages. The groups listed run the gamut, including political groups (e.g., "Conservative Politics") hobby groups (e.g., "Alabama classic cars and trucks for sale or trade," "Funny Dogs") community groups (e.g., "What's happening in Hokes Bluff, AL"), groups apparently grounded in crass attempts at humor, (e.g.,

⁵ The quoted information here defining a "Minifeed" was included in Facebook Inc.'s response to the government's subpoena.

“Austin Forman’s A**holes”), and groups related to controversial social views (e.g., “In Defense of the Confederacy”).

To the extent the government seeks to introduce this entire list of groups, it is irrelevant and presents a serious risk of misleading the jury. As a threshold matter, the title of a Facebook group alone is insufficient to judge what sort of group it is. For example, while a group called “Yankee fans in Boise” might actually be for devoted New York Yankees fans far from their team, it might also be a satirical group for Boston Red Sox fans to post anti-Yankee jokes and commentary. Or, it could be something else entirely; the name of any individual Facebook group may reveal practically nothing about the group’s purpose. And even if it did, membership in a Facebook group does not necessarily indicate the group member’s agreement with other group members, or even with the purpose of the group. For example, a Red Sox fan may well join an actual pro-Yankees Facebook group to pester or “troll” Yankee fans.

Moreover, membership in a group does not necessarily indicate that the Facebook user personally or intentionally joined it. Until fairly recently, a feature of some Facebook groups was that a person’s Facebook friend could add another to a group even without that person’s consent.⁶ For example, prior to Facebook changing its policies in this respect, if Mary Anne wanted to add her Facebook friend

⁶ See Susan Gunelius, “Learn Why You Should Be Wary of Friends Adding You to Facebook Groups: Here’s why you are suddenly a member of Facebook groups,” Lifewire (Dec. 2, 2020), available at <https://www.lifewire.com/beware-friends-adding-you-to-facebook-groups-without-permission-3476690> (last viewed on Aug. 17, 2022) (“Facebook groups used to allow anyone with a Facebook account who is a member of the group to arbitrarily add any other Facebook user to a group. There was no need for that user to ask first, so long as that user was on his or her friends list.”).

Fernando to the “Yankee fans in Boise” group, she could have done so, even without Fernando’s consent.

All of this underscores the unfair prejudice to Mr. Alford of allowing the government to just introduce the titles of Facebook groups. Even though, as shown, group titles alone are not inherently reliable indicators of what the group is or why the person is in it, that reality is not necessarily intuitive. Here, some of the group titles in the government’s exhibit concern political and social viewpoints that invite of unfair prejudice in violation of Rule 403 and implicate the sort of character evidence precluded by Rule 404.

D. “Events” to which Mr. Alford was invited via Facebook

Government’s Ex. 301 is a listing of “Events” from Mr. Alford’s Facebook account, with the government specifically noting two: an event scheduled for 1:00 p.m. eastern on January 6, 2021 called “Stop The Steal Jan 6 Capitol Hill” and another at 3:00 p.m. eastern on January 6, 2021, called “Storm the steps of government.”

Mr. Alford reserves the right to object at trial to this exhibit to the extent it contains the “Stop the Steal” event information, depending on what ground the government relies on to attempt its admittance at trial. He objects now, however, to any mention of the “Storm the steps of government” event. The Facebook material itself indicates that Mr. Alford was *invited* to this event, but clearly notes “noreply” on the RSVP. There is no evidence that Mr. Alford even saw the event invitation.

Generally speaking, any Facebook friend may invite another Facebook friend⁷ (and, in some cases, non-Facebook friends) to any event. The apparent fact that another Facebook user invited Mr. Alford to such an “event” is not at all probative of his intent, or any other element of the charged offenses, and is inherently prejudicial.

E. Screen recordings of Mr. Alford’s Facebook page, if admitted at trial, should be redacted

Government’s exhibits 335 and 336 are screen recordings of Mr. Alford’s Facebook page. In the videos, the person making the screen recording accesses Mr. Alford’s Facebook page and plays two videos that Mr. Alford recorded from inside the Capitol and later posted to his Facebook page.

Mr. Alford does not object per se at this juncture to these proposed exhibits, although as noted in Part I he reserves the right to later do so at trial. But to the extent these exhibits are admitted they should be redacted to screen out the Facebook advertisements (for videos unrelated to Mr. Alford) visible in the recordings. One advertised video features a thumbnail image of a scantily clad woman with the title “I WORE A SCANDALOUS OUTFIT,” while the other is entitled “Husband Catches His Wife Cheating With a Rich Man.” Mr. Alford had no role in the depiction of those advertisements, which most likely were targeted by Facebook’s algorithms to the person who logged into his or her Facebook account to make the screen recording. Their inclusion in these recordings risks unfair

⁷ See Facebook Help Center, “How do I invite people to my Facebook event?,” available at https://www.facebook.com/help/213851145302199/?helpref=uf_share (last viewed on Aug. 17, 2022).

prejudice because one or more jurors may find the images or text offensive and may attribute them to Mr. Alford.

IV. The Court should preclude the government from offering third-party videos of dubious provenance, or direct they be limited and redacted.

Government's Exhibits 111 and 112 are third-party videos the government found on the internet and now wishes to admit into evidence at trial. Mr. Alford objects to both.⁸ Each is overly broad, because although Mr. Alford appears on parts of both videos, both capture events outside Mr. Alford's perception, many of which are irrelevant and/or unfairly prejudicial. The two videos are obviously edited, and include superimposed graphics. As currently constituted, both are of limited relevance, with the prejudice to Mr. Alford far outstripping any minimal probative value. And the probity of each is quite limited, as they are cumulative of other stipulated evidence—closed circuit footage from the Capitol's recording system itself—that does not suffer from the same concerns.

With specific respect to Exhibit 111: the government has labeled it “Nemo News Network – False Flag Rumble.” It is a more than seven-minute video, produced by an unknown individual, comprised of spliced footage of the events of January 6 filmed by at least one other individual on the Upper House steps of the Capitol that day, along with graphics (including but not limited to a faux “FBI warning” and an image of individuals in riot gear below a logo labeled “Antifacist

⁸ The government has moved in limine for a pretrial ruling on the authenticity of these videos. (Doc. 52.) Mr. Alford addresses that issue in his response and incorporates those arguments by reference here. (Doc. 63.)

Action”) and other indicia of selective editing and the filmmaker’s personal political views and biases. It also contains images bearing the name “Nemo News Network,” creating the potential for the false impression that this video was produced by a legitimate media organization. The recording’s audio contains numerous political and other inflammatory comments (including but not limited to “f**k the police!” and an accusation that Capitol police officers are murderers and/or President Biden’s “boyfriend”), uttered and shouted by other individuals outside Mr. Alford’s presence, that invite unfair prejudice.

Exhibit 112 is labeled “Frontline Footage of Inside the U.S. Capitol Riot – Sullivan.” According to the government, it was produced by John Sullivan, another individual charged in this Court⁹ in connection with the events of January 6. Its total runtime is approximately 90 minutes long. It is also edited, color-corrected, and compiled from numerous sources of unknown provenance. The title itself, “Frontline,” which is also superimposed over portions of the footage, is misleading because it is the same name as a venerable and long-running documentary program on the PBS television network. Permitting the government to play the video with this misleading iconography gives a false imprimatur of reliability and provenance, even more so than the “Nemo News Network” video. Like Exhibit 111, it includes images and audio that are outside Mr. Alford’s perception and contain graphic images and inflammatory language.

⁹ *United States v. Sullivan*, case no. 1:21-cr-00078-EGS.

As noted, any probative value of these exhibits is cumulative of other, stipulated evidence. However, should the Court decline to per se exclude them, Mr. Alford asks that the Court permit the government to admit only excerpted portions that depict Mr. Alford, subject to Mr. Alford's right to object at trial.

V. Conclusion: the above-described exhibits are due to be excluded.

For all of these reasons, Mr. Alford asks this Honorable Court to grant this motion and preclude the government from seeking to admit the aforementioned exhibits at trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2022, I electronically filed the foregoing via this Court's CM/ECF system, which will send notice of such filing to all counsel of record.

Respectfully submitted,

/s/ James T. Gibson

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