

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 v. : Case No. 21-CR-327
 :
 LUKE RUSSELL COFFEE, :
 :
 Defendant. :
 :

**MOTION IN LIMINE TO PRECLUDE CLAIMS OF SELF-DEFENSE,
DEFENSE OF OTHERS, NECESSITY, JUSTIFICATION, AND DURESS,
AND TO EXCLUDE EVIDENCE IN SUPPORT THEREOF**

The United States of America respectfully files this motion *in limine* to preclude the defendant, Luke Coffee, from raising the affirmative defenses of self-defense, necessity, justification, and duress at trial. As illustrated by video recordings of Coffee’s assault, the facts, as a matter of law, do not support a claim of self-defense because Coffee responded with greater force than necessary for any alleged self-protection or protection of others.¹ The facts further do not support a claim of necessity, justification, or duress, as a matter of law, because Coffee had a reasonable, legal alternative both to violating the law and to avoid the threatened harm. In the alternative, the government requests that the Court direct Coffee to provide a pre-trial proffer of facts to allow the parties to argue, and the Court to decide, whether he is entitled to assert any of these defenses. If the Court defers its ruling until trial, the United States respectfully moves this Court to preclude Coffee from raising any affirmative defenses in his opening statement and cross-examinations until the Court decides the present motion.

¹ Coffee has not notified the government that he intends to rely on self-defense or defense of others at trial. He has, however, given numerous interviews to media outlets over the last year in which he has discussed a defense of others theory.

BACKGROUND

In Counts Two and Three of the Superseding Indictment, Coffee is charged with assaulting, resisting, or impeding a federal officer using a deadly and dangerous weapon, namely, a crutch, in violation of 18 U.S.C. § 111(a)(1) and (b). ECF No. 44. These charges stem from assaults at the Lower West Terrace doorway to the United States Capitol Building, an area that on January 6, 2021 became known colloquially as “the Tunnel.” This entrance, usually a stairway to a set of double doors restricted to use by members of Congress, has symbolic significance because, once the inaugural stage is built, this central door on the west front becomes the draped, ceremonial entrance through which the president elect arrives on Inauguration Day. On January 6, 2021, however, police officers from the District of Columbia Metropolitan Police Department and the United States Capitol Police retreated to this choke point after several security perimeters and defensive lines they had previously been manning had been overrun by rioters. Starting at approximately 2:41 p.m., they defended this position against waves of attacks from rioters until the officers were relieved by a significant force of additional police officers, including the Virginia State Police, at approximately 5:05 p.m.

Just before 4:28 p.m., Coffee joined in an assault on the police line at that location that had been ongoing for nearly two hours. He initiated a physical altercation with Metropolitan Police Department Officers L.M., S.S. and other officers. U.S. Capitol CCTV cameras, Officer L.M.’s and Officer S.S.’s body worn cameras, and third-party cameras recorded Coffee as he emerged from the crowd and walked towards the line of MPD officers defending the Tunnel against other rioters. *See* Exs. 1, 2, 3, and 4 respectively.² As he walked towards the officers,

² A thumb drive with the exhibits will be provided to the Court. The government will make the exhibits available to defense counsel through USAFx.

Coffee was standing on the partially-constructed inaugural stage, an active construction site that was well within the secure perimeter of the United States Capitol Grounds.

Immediately prior to Coffee's physical altercation with the officers, a period of fierce fighting had occurred. For the second time that day, the mob had succeeded in pushing the police line deep into the tunnel near the double doors, but the police fought back and, as the result of officers' sustained pushing, they recaptured the archway and ejected the rioters from the tunnel. As this occurred, at approximately 4:26 p.m., three police officers were dragged from the police line and into the crowd where they were beaten.³ Additionally, a group of rioters renewed their attack on the police line in the Tunnel at 4:27:14 p.m., in the apparent hope of retaking what they had just lost *See* Exs. 1, 4. The rioters physically assaulted several of the officers. Rioters hit officers with sticks, a flagpole, and a crutch, and threw random objects into the Tunnel. Some of the rioters were in possession of police riot shields which they used against the officers. In response, officers on the front line used police batons and police shields to fend off the rioters, as they had been doing for nearly two hours. Officers deeper in the Tunnel released OC spray in the rioters' general direction.

Coffee approached the Tunnel forty seconds into this renewed attack. *See* Exs. 1, 4. He walked into the chaos and yelled at the officers—not the rioters—"Stop!" *See* Ex. 1, 2. Coffee raised his hands to deflect OC spray coming from inside the Tunnel and a staff that an MPD officer swung two times in Coffee's direction.⁴ *See* Exs. 1, 4. Coffee initially came to the line empty-handed, then picked up a crutch that was laying on the ground. Another round of OC spray was released in his general direction. "Stop," he said to the officers as he raised the crutch

³ *See Sabol et al.* 21-cr-35.

⁴ The government anticipates that Coffee's claim of self-defense will be based on these two events that occurred almost simultaneously.

overhead. Coffee held the crutch overhead for 10 seconds. Officers do not appear to take any action against him during this time.⁵ He turned momentarily to face the crowd, crutch still in the air. Coffee turned back to face the police line then rammed the crutch into the officers. *See* Ex. 2, 3 and 4. Coffee pushed for approximately 20 seconds until he was pulled back by another rioter. *See* Ex. 3. This push forced the front line of officers back, pinning their shields and compressing them into the officers behind. With their shields pinned by Coffee's crutch, the officers were unable to protect themselves from projectiles being thrown by the mob. After pushing for 20 seconds, Coffee did not retreat but tripped and fell. A rioter with a police shield pulled Coffee away from the police line and helped him stand up. Coffee, crutch still in hand, rammed the police line with the crutch a second time. He went in for a third assault but was checked with OC spray.

ARGUMENT

A pretrial ruling on the availability of affirmative defenses is appropriate. "If . . . an affirmative defense consists of several elements and testimony supporting one element is insufficient to sustain it, even if believed, the trial court and jury need not be burdened with testimony supporting other elements of the defense." *United States v. Bailey*, 444 U.S. 394, 416 (1980); *see also United States v. Lebreault-Feliz*, 807 F.3d 1, 4 (1st Cir. 2015) ("[W]hen the proffer in support of an anticipated affirmative defense is insufficient as a matter of law to create a triable issue, a district court may preclude the presentation of that defense entirely." (citation omitted)); *United States v. Portillo-Vega*, 478 F.3d 1194, 1197-98 (10th Cir. 2007) ("A defendant must carry his burden on each of the elements [of the affirmative defense]; if the

⁵ It was during this window of time that an unconscious rioter, Rosanne Boyland, was pulled away from the entry of the Tunnel into the mob.

evidence is insufficient on even one element, the trial court and jury need not be burdened with testimony supporting other elements of the defense.” (internal quotation marks omitted)).

“[W]here the evidence proffered in response to the motion in limine is insufficient as a matter of law to support the affirmative defense a pre-trial ruling precluding the presentation of the defense at trial is appropriate.” *United States v. Tokash*, 282 F.3d 962, 967 (7th Cir. 2002).

I. Coffee cannot, as a matter of law, assert self-defense.

Section 111 makes it a crime to “forcibly assault[], resist[], oppose[], impede[], intimidate[], or interfere[] with” a federal officer in the performance of the officer’s duties. 18 U.S.C. § 111(a)(1). To raise a valid claim of self-defense to a charge of assault under Section 111, the defendant must show (1) that he reasonably believed the use of force was necessary to defend himself or another against an immediate use of excessive force by a federal law enforcement officer; and (2) he used no more force than appeared reasonably necessary in the circumstances. *United States v. Urena*, 659 F.3d 903, 906-07 (9th Cir. 2011) (quoting *United States v. Biggs*, 441 F.3d 1069, 1071 (9th Cir. 2006)); *United States v. Span*, 970 F.2d 573, 576-77 (9th Cir. 1992); *United States v. Weekes*, 517 F. App’x 508, 510-11 (6th Cir. 2013); *United States v. Middleton*, 690 F.2d 820, 826 (11th Cir. 1982) (“[S]elf-defense is a defense which justifies the use of a reasonable amount of force against an adversary when a person reasonably believes that he is in immediate danger of unlawful bodily harm from his adversary and that the use of such force is necessary to avoid this danger.”). *See generally United States v. Waldman*, 835 F.3d 751, 754 n.1 (7th Cir. 2016) (collecting cases).

Apart from these prerequisites, “a defendant cannot claim self-defense if he was the aggressor or if he provoked the conflict upon himself.” *Waters v. Lockett*, 896 F.3d 559, 569 (D.C. Cir. 2018). That principle applies fully to Section 111 prosecutions. *See, e.g., United States v.*

Mumuni Saleh, 946 F.3d 97, 110 (2d Cir. 2019) (“Mumuni was the initial aggressor in the altercation with Agent Coughlin; as such, he could not, as a matter of law, have been acting in self-defense”); *United States v. Acosta-Sierra*, 690 F.3d 1111, 1126 (9th Cir. 2012) (“[A]n individual who is the attacker cannot make out a claim of self-defense as a justification for an assault.”); *Urena*, F.3d at 907 (an individual who is the attacker cannot make out a claim of self-defense as a justification for an assault); *Weekes*, 517 F. App'x at 510–11 (same).

Thus, Coffee would be entitled to a jury instruction on self-defense only if he could establish each of the following: (1) he was not the initial aggressor; (2) he reasonably believed that his use of force was necessary to defend against OC spray or Officer L.M.’s immediate use of excessive force; and (3) he responded with no more force than reasonably necessary under the circumstances. As video footage shows, Coffee fails each of these conditions.

A. Coffee cannot, as the initial aggressor, assert self-defense.

The video evidence demonstrates that Coffee was the initial aggressor. He emerged from the crowd and walked to the front of a group of rioters engaged in a violent attack on law enforcement officers. He yelled at the officers, not the rioters, “Stop!”. He then picked up a crutch and forcefully rammed it into the police line—including MPD Officers L.M. and S.S.—three separate times.

As the video evidence shows, Coffee provoked the conflict with Officer L.M. who was defensively positioned inside the restricted area and protecting the Tunnel from the mob of rioters. He also provoked other officers inside the Tunnel to expel OC spray in his direction when he approached the Tunnel and when he picked up the crutch. As the instigator, Coffee cannot, as a matter of law, defeat the Section 111 charge by asserting self-defense.

B. Coffee's use of force was objectively unreasonable.

The law precludes Coffee from asserting self-defense for a second reason: because no objectively reasonable person in Coffee's position would have believed that the officers under assault and protecting the Tunnel—including Officer L.M.—responded with excessive force. *See United States v. Acosta-Sierra*, 690 F.3d 1111, 1126 (9th Cir. 2012).

The video evidence shows that Coffee entered an area that was being guarded by law enforcement officers and stood amidst a group of rioters attacking the police line. At this point, law enforcement had probable cause to arrest Coffee for violations of federal criminal law. *See Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (“A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer's presence, is consistent with the Fourth Amendment if the arrest is supported by probable cause.”).

Officer L.M. responded to Coffee's conduct with a reasonable display of force. *See United States v. Drapeau*, 644 F.3d 646, 653-654 (8th Cir. 2011) (defining excessive force as “force that was unreasonable or unnecessary under the circumstances, *i.e.*, greater than the amount of force that was objectively reasonable”). The police line was subject to a violent attack by rioters emerging from the crowd. Coffee emerged from this crowd. Officer L.M., who was defending against numerous rioters, struck in Coffee's direction twice as he approached the police line. Officer L.M. then stepped back creating distance from Coffee.

C. Coffee responded with greater force than necessary for self-protection.

Even if it was objectively reasonable for Coffee to respond with some force to the OC spray and Officer L.M.'s strikes, any claim of self-defense still fails because Coffee responded with greater force than necessary to protect himself. *See Waters*, 896 F.3d at 570 (self-defense not applicable “if [the defendant] and his co-conspirators used excessive force to repel

Hargrove's attack"). In fact, as hundreds of members of the mob around him had discovered, retreating into the crowd was the easiest way to disengage with the police officers and avoid the less-than-lethal munitions that were being deployed against them. However, in response to the OC spray and Officer L.M.'s strikes, Coffee picked up a crutch and readied himself to attack the officers. During this time, the mob and police line had separated. After an extended pause and a display of the crutch, Coffee physically charged at the officers and rammed the crutch into the police line. The push forced the front line of officers back, pinning their shields and compressing them into the officers standing behind them. This occurred notwithstanding the fact that Coffee had a reasonable alternative: he could have simply retreated from the Tunnel and the police line back into the mob.

In short, Coffee had a clear pathway to avoid further engagement after he was sprayed with OC spray. Instead, he did the opposite: he continued his advance towards the police line, picked up a dangerous object, then used the object to rush the police line. Coffee's first assault pushed several officers back into others and engaged their shields—exposing them to flying objects. In his second assault, now over one minute removed from L.M.'s strike to his forearm, Coffee more aggressively charged Officer S.S. with the crutch now aimed at S.S.'s head/neck. Given Coffee's aggressive use of a large metal object, these repeated assaults were of greater force than necessary for self-protection, and this disproportionate escalation provides yet another basis to preclude any self-defense invocation to the Section 111 assault charges.

For each of these reasons, any self-defense assertion fails as a matter of law. Coffee therefore should be precluded from presenting evidence or testimony regarding self-defense, and from referencing or suggesting self-defense in statements to the jury.

II. Coffee cannot, as a matter of law, advance any other affirmative defense.

For similar reasons, Coffee will be unable to present a valid defense of necessity, justification, or duress. The affirmative defenses of necessity, justification, and duress are not available where there was a “reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm.” *Bailey*, 444 U.S. at 410. Here, Coffee could have avoided any potential threatened harm by avoiding the restricted area of the U.S. Capitol. He instead deliberately entered that area, made his way to the Lower West Terrace and onto the partially-constructed Inaugural Stage, watched and participated in the unfolding chaos in the Tunnel, then confronted the line of police officers. Moreover, Coffee had a reasonable, legal alternative after he was sprayed with OC spray as he approached the line: he could have retreated. The same reasonable alternative was available after Officer L.M. struck in Coffee’s direction. Coffee instead did the opposite and physically attacked, not once but twice, by ramming a crutch into the MPD officers. Accordingly, Coffee cannot legally invoke these affirmative defenses and should be precluded from arguing them to the jury.

CONCLUSION

For the reasons set forth above, the United States respectfully moves the Court to preclude Coffee from raising the affirmative defenses of self-defense, necessity, justification, and duress at trial. In the alternative, the United States respectfully moves this Court to require Coffee to make a pre-trial proffer of facts that would permit the Court to decide whether he is entitled as a matter of law to assert any of these affirmative defenses. If the Court defers its ruling until the evidence is presented at trial, the United States respectfully moves this Court to preclude Coffee from raising any affirmative defenses in his opening statement.

Dated: January 9, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 9th day of January, 2023, a copy of the foregoing was served on counsel of record for the defendant via the Court's Electronic Filing System.

/s/ Melanie L. Alsworth _____

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