

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	CASE NO. 21-cr-263 (TSC)
	:	
RUSSELL DEAN ALFORD,	:	
	:	
Defendant.	:	

**RESPONSE TO THE DEFENDANT’S
OBJECTIONS TO CERTAIN GOVERNMENT EXHIBITS**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits the following reply to the response to defendant Russell Dean Alford’s objections to some of its exhibits. (ECF No. 67.) For the reasons stated herein, Alford’s objections should be overruled.

The government’s video and social media evidence is relevant, authentic, and its probative value is not outweighed by any of the dangers articulated in Rule 403. A common theme runs throughout Alford’s objections to that evidence: that contextual information should be seen as unfairly prejudicial or needlessly cumulative. This is, ultimately, why Alford argues that his pre- and post-January 6 statements on Facebook should be excluded. *Id.* at 2-7. It is also the basis for his argument to exclude body-worn camera footage, *id.* at 1-2, and his argument to exclude what he calls “third-party videos of dubious provenance.” *Id.* at 12-14. Alford’s argument asks the Court to restrict the government’s case by precluding evidence about why Alford went to the Capitol, what he said about his time there, and what police officers experienced—even officers near Alford—as they defended the Capitol from a mob. The Court should reject Alford’s arguments.

Argument

I. Alford's Facebook messages are admissible.

Most of the exhibits to which Alford objects are drawn from his Facebook account. He notes (at 2) that the government has provided notice of 37 such exhibits. As discussed below, this modest number of exhibits derived from Alford's Facebook posts represents a small but representative sample of his voluminous account.

On April 12, 2021, the government executed a search warrant on Alford's Facebook account. The warrant sought records from November 3, 2020—the date of the Presidential Election—through the date of service. In response, Facebook provided the government with Alford's account records in a PDF that spanned 39,773 pages. This represents a staggering amount of Facebook activity by Alford, and others engaging with him, across a six-month period. Some of the information is duplicative. But even so, the records reveal voluminous posts and conversations, daily or almost daily, in which Alford discusses the 2020 election and its aftermath. By selecting 37 exhibits, the government is not piling on or attempting to gin up a false perception of Alford's obsession with the election results. It is, rather, presenting a focused account of Alford's reaction to the election, which is central to his intent on January 6, 2021.

Alford claims that all of the Facebook posts are cumulative of statements he made during his FBI interview. Evidence of Alford's after-the-fact statements are no substitute for the statements he made before January 6, 2021. And his words to federal agents, after it was clear that agents were investigating crimes at the Capitol, are no substitute for evidence of the things Alford said privately to his friends.

a. Alford's pre-January 6 statements

Alford's Facebook records make the following facts clear. After former President Trump

lost the 2020 election, Alford began posting about how the former President couldn't lose unless there was fraud—but also began to post messages of resistance to the new administration, including by violence. And even before the former President's now-famous tweet on December 19, inviting his supporters to Washington, D.C. on January 6, 2021, and telling them it “will be wild!”, Alford discussed travel to Washington, D.C. His posts, in the week before January 6, 2021, remained strident: he wrote that “Whey they invalidated my vote, they invalidated my consent to be governed by them” (Exhibit 317) and “When they rigged the elections they declared war on the American people.” (Exhibit 318.) And on January 5, 2021, Alford posted a series of messages including: a photo montage featuring former President Trump, Michael Flynn, Sidney Powell, and the message “The day of reckoning is NOW!” (Exhibit 322), A graphic of a huge crowd of people with the text “WE CONCEDE NOTHING! #RIGGEDELECTION” (Exhibit 323) and a graphic saying “The Constitution actually says you can legally overthrow your government if they are tyrannical.” (Exhibit 324.)¹

Alford argues that these exhibits “are either irrelevant as a whole or are of such negligible probity that they fail the Rule 403 balancing test.” (ECF No. 67 at 3.) He argues, further, that they “appear to have no purpose except to inspire personal animus toward Mr. Alford from jurors who might strongly disagree with, or disdain, his political views.” *Id.* But that's wrong. The attack on the U.S. Capitol on January 6, 2021 was—indisputably—a political event: a crowd of former President Trump's supporters descended on the Capitol for the purpose of stopping the certification of President Biden's electoral college victory. Alford's statements about the election, his intent to resist the new administration, and his travel to Washington, D.C., help explain why he was at the Capitol and what he expected to achieve. Such evidence will be necessary to proving his *mens rea*:

¹ It does not. *See* U.S. Const.

that he *knowingly* entered and remained in a restricted area, *knowingly* engaged in disorderly and disruptive conduct in a restricted area, *knowingly and willfully* engaged in disorderly and disruptive conduct in a Capitol building, and *knowingly and willfully* paraded, demonstrated, and picketed in a Capitol building. 18 U.S.C. § 1752(a)(1) & (a)(2); 40 U.S.C. § 5104(e)(2)(D) and (e)(2)(G). If the posts are incendiary, they are incendiary only because of the words that Alford chose to use, the vitriol he directed at his political opponents, and the depth of his apparent disdain for being governed by them. This does not make them unfairly prejudicial.

Statements made before the commission of a crime, which are probative of motive to commit the crime, generally are not excludable under Rule 403—even where incendiary. *See, e.g., United States v. Khatallah*, 2017 U.S. Dist. LEXIS 227265, at *6-7 (D.D.C. 2017) (evidence of anti-American animus and statements were probative of, and admissible to prove, defendant’s attack on the American embassy in Benghazi); *United States v. Mostafa*, 16 Supp. 3d 236, 258 (S.D.N.Y. 2014) (statements about supporting jihad were “directly relevant to charged conduct” of material support to terrorism and other offenses, were “probative of the defendant’s state of mind with respect to charged conduct,” and thus were not excludable under Rule 403); *United States v. Piekarsky*, 2010 U.S. LEXIS 81360 at *15-16 (M.D. PA 2010) (in prosecution for intentionally intimidating a person from occupying a dwelling because of their race and related offenses, evidence of the defendant’s use of racial slurs and racist music was relevant and not excluded, pretrial, under Rule 403.). Such is the case here. And indeed, courts presiding over other cases arising out of the attack on the U.S. Capitol on January 6, 2021, have allowed the admission of similar evidence. *See, e.g., United States v. Anthony Robert Williams*, 1:21-cr-00377-BAH, Tr. 06/27/2022 at 92, 97, 101-33; *United States v. Jesus D. Rivera*, 1:21-cr-0060-CKK, Tr. 06/14/2022 at 107-110, 154-57.

b. Alford's post-January 6 statements

Alford objects to ten exhibits, Exhibit 319 and 326 to 334, which were posted to his Facebook account after he left the Capitol. (ECF No. 67 at 6-8.) None of these exhibits should be excluded.

Several of these exhibits are plainly evidence of Alford's intent. These include: an apparent joke about political violence against the former President's enemies, posted by Alford shortly after he left the Capitol grounds (Exhibit 319); a photograph Alford took while inside the Capitol, then posted to the group "Donald J Trump vs. the World" (Exhibit 331); comments about putting politicians in fear (Exhibits 317, 332), which was the goal of some of the rioters; and an explicit comparison of the moral rightness of rioting at the Capitol to the (apparent) looting of a Target store (Exhibit 330), which is a tacit admission that Alford and his compatriots *did in fact participate in a riot*.

But beyond this, the totality of these exhibits is relevant for another purpose: they present multiple, inconsistent claims about what happened during the riot. In some posts, as with the Target image (Exhibit 330), Alford acknowledges that a riot happened. In other posts, as with the V for Vendetta post and the "We're done asking" post (Exhibits 327 and 332), Alford suggests putting pressure on politicians, or putting them in fear, which is what many of the rioters were trying to do on January 6. He also mocked U.S. Capitol Police officers and others by comparing them to Paul Blart, Mall Cop (Exhibit 328), which implies that they were incompetent, and running scared of the rioters, on January 6. But elsewhere, he posted that the riots were staged, and fake. (Exhibit 326.) He told the FBI, too, that the riots were staged, and fake. And he also claimed that the riot was a secret sting operation by the former President to expose corrupt members of Congress. (Exhibit 329.) Some of these claims about the riot are inconsistent with the others, and taken

together, they tend to show: first, that Alford understood the nature and purpose of the riot, and intended to participate; second, that Alford was angry that his side “lost,” and likely took some of these positions to make himself feel better about January 6; and third, that the account he gave to the FBI was self-serving, and not entirely credible.

The defense also objects to Exhibits 333 and 334. Exhibit 333 is a post about talking to the FBI, in which he says that he has “personally” shown agents “what a attempted false flag shit show we call our treasonous worthless politicians.” Exhibit 334, in which Alford sought help paying legal fees, stated “I am accused an have been charged in the January 6 riot, I did absolutely nothing but document...”. These posts show a contrast to Alford’s FBI interview, in which he asked up front if the agents were going to take him to jail. As such, they are probative of his state of mind.

c. Groups Alford joined

Alford’s Facebook records include a list of more than 150 Facebook “groups” of which he was a member. (ECF No. 67 at 8-10). The government plans to present this list of groups as a single exhibit and highlight groups that are relevant to his participation in the riot at the U.S. Capitol. Those include groups like: Joe Biden is not my president, Joe Biden IS NOT MY PRESIDENT!, Joe Biden is NOT MY PRESIDENT (Official Backup Group), Trump supporters, Fight for TRUMP, Nationwide Recount & Audit 2020, STOP THE STEAL, Operation take back America, Alabama division, Take American Back – Alabama Chapter, Take American Back (2 different groups with this name), and Donald J Trump vs. the World. To be clear, the government does not suggest, and will not argue, that membership in a group is a crime. But, for the same reasons that Alford’s statements are relevant, Alford’s membership in these groups is relevant to his intent in breaching the Capitol on January 6, 2021.

Alford argues that a person may join a group for multiple reasons, that names may have

multiple meanings, and that people can be added to Facebook groups by their friends. (ECF No. 67 at 9.) In other words, membership in a group does not necessarily mean that a person supports what the group purports to stand for. But here, Alford conflates a necessary inference with a permissible one. It *might* be the case that he joined these groups for reasons unrelated to his decision to join a riot at the Capitol. But, given his other Facebook posts, it is also possible—in fact, likely—that the names of these groups represent proof of his motive. In other words, Alford’s arguments go to weight, not admissibility.²

d. Events to which Alford was added.

Finally, Alford claims that he may object at trial to being invited, via Facebook, to the “Stop the Steal Jan. 6 Capitol Hill” event at 1:00 p.m. on January 6, 2021, and definitely will object to being invited to the “Storm the steps of the government” event at 3:00 p.m. on January 6. The basis of this objection is, apparently, that Alford didn’t reply to this event. But even so, he did travel to Capitol Hill and he did breach the Capitol shortly before 3:00 p.m. Indeed, he admitted to the FBI that he entered the Capitol through a broken door. And even before January 6, he let people know, repeatedly, that he planned to be in Washington, D.C. that day. The fact that other people invited him to these events, and that he took action consistent with the names of these events, is probative of his motive—even if he did not engage in proper party-planning etiquette by submitting an RSVP. It is also relevant to his knowledge that others would also be participating in the activity alongside him.

² Alford argues, too, that many of the groups are hobby-related or attempts at crass humor, and the entire list contains many irrelevant groups. While that is true, the government is entitled to introduce the entire list to foreclose defense arguments, or juror concerns, that it is cherry-picking its evidence and not treating Alford fairly.

e. Screen recordings of Alford’s Facebook page

The defense requests that the Court order the government to redact unrelated Facebook advertisements from exhibits that were created by taking screen recordings of Alford’s Facebook page. The government does not agree that they present a risk of unfair prejudice. If it is explained to the jury that these advertisements relate to the account used to view Alford’s posts, the government trusts that they would accept this explanation and ignore the advertising. At most, the images would be distracting. But to remove a needless point of contention from trial, the government has no issue redacting these advertisements so long as it is technologically feasible to do so.

II. MPD body-worn camera footage is admissible.

Alford also argues that the government should be limited in its presentation of body-worn camera footage, asking that the government “be required to excerpt any relevant portions of body-worn camera footage”. (ECF No. 67 at 2.) To be clear, the government does not intend to admit into evidence or to play the entirety of any officer’s body-worn camera video. Instead, it plans to present excerpts at trial. But in making this argument, Alford notes that “[a]ll three videos capture events and audio statements from others that occurred outside of Mr. Alford’s perception.” This, combined with his arguments about Facebook, suggest an inaccurate view of relevance.

Footage of events that occurred outside of Alford’s immediate presence can be relevant where—for example—it provides necessary context for things that happened in his presence, or where it provides necessary context for what the police experienced. For instance, all three body-worn camera videos contain footage of police officers mustering near the Capitol, marching to the Capitol, and talking with personnel outside or inside about what the Capitol police needed. Portions of these clips may be necessary as scene-setting for the officers’ testimony about what

they faced inside. Similarly, U.S. Capitol Police witnesses, who were not equipped with body-worn cameras, endured about two hours of assaults by the mob before Alford breached the Capitol. The government does not intend to provide blow-by-blow testimony of their experiences. But contextual background information, including video, may be necessary to explain the stress and fatigue that those officers faced. Those officers' earlier experiences will also underscore a core part of the government's case: that otherwise "peaceful" rioters, by lending their presence to the crowd, contributed to a mob that was disorderly and disruptive *collectively*.

III. The third-party videos are admissible without redactions.

Alford also objects to the third-party video the government plans to present. (ECF No. 67 at 12-14). He raises similar arguments, here, as in his response to the government's motion in limine regarding authentication (ECF No. 63); for the reasons articulated in the government's reply, Alford's objection should be overruled.³ But Alford also argues that these videos should be limited to the portions that depict him. (ECF No. 67 at 14.) As with his argument about body-worn cameras, the Court should reject this argument.

The entirety of Exhibit 111 is admissible. The video shows, generally, what conditions were like at the door through which Alford entered the Capitol, at around the time he entered. It is about 7 and a half minutes long. From the time stamps of approximately 4:15 to 6:36, Alford was either visible in the recording or standing feet away from the person who recorded the footage. But even beyond this portion, the government is entitled to argue that the conditions at the door, during the time of the footage, were similar to the conditions at the door when Alford entered. The size of the crowd, noise level, audible alarm, and damage to the door all would have been similar. And

³ At the time of this filing, the government's reply regarding authentication is forthcoming; it does not yet have a docket number.

Alford's argument that the recording contains numerous inflammatory comments are unavailing. Some of these inflammatory comments were said in Alford's presence, and are plainly relevant; others were not, but would have been the types of things that Alford would have heard while at the Capitol on January 6, 2021. And none of them are more incendiary than things Alford posted to Facebook, himself.

The Sullivan video, which the government has disclosed as Exhibit 112, is 90 minutes long. The government does not intend to move the entire 90-minute video into evidence, nor to play it all. Rather, the government will excerpt a portion of the video for use at trial. But portions of the video which do not show Alford are relevant because they provide context to his experience in the Capitol. Alford was inside the Capitol at the time that Ashli Babbitt attempted to climb through a broken window and was shot; he was around the corner when it happened. Sullivan was in the room where Babbitt was shot and captured the shooting on video. He also captured the crowd's reaction to the shooting and the police efforts to move the crowd. As the crowd was moved, people talked about the shooting as they walked past Alford. Alford was aware of this conversation, as demonstrated by his subsequent Facebook posts. Footage from Sullivan's phone, starting while he was in the room where the shooting happened and playing through his expulsion from the Capitol, will be necessary to provide context for Alford's words.

Conclusion

For the reasons stated above, the Court should overrule Alford's objections to the government's exhibits.

Respectfully submitted,

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