

United States District Court for the District of Columbia

United States of America

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v.

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No. 1:21-CR-00032-DLF-1

Guy Wesley Reffitt

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Supplemental Memorandum in Response to Motion *in Limine* to Preclude Cross-examination of Secret Service Witnesses and Request for Production of Photographs

After filing the Response to the government's Motion in Limine to preclude cross-examination of Secret Service Witnesses (Doc. 69), defendant's counsel learned that Jonathan Karl appeared on The Late Show with Stephen Colbert and said he saw pictures of Vice President Pence waiting in an underground garage on January 6, 2021.

Mr. Karl noted that the pictures should be part of the public record under National Archives' regulations, because official White House photographer took them.

These photographs are relevant to the allegations in Counts Three and Four. The garage appears to be the Senate garage that is actually not part of the Capitol. See [Mike Pence Hid in 'Loading Dock' in Underground Parking Garage During Jan. 6 Riot \(newsweek.com\)](#) (Last accessed Dec. 9, 2021). It lies between the Capitol and the Russell office building under the Senate fountain. [Senate Fountain | Architect of the Capitol \(aoc.gov\)](#) (Last accessed Dec. 9, 2021).

Title 18, United States Code, Section 1752 requires the government to prove that the defendant entered the “restricted building or grounds” where the Secret Service protectee “is or will be temporarily visiting.” The government has said that Vice President Pence evacuated the Capitol at approximately 2:20 p.m. Doc. 10 at 3. Title 40, United States Code, Section 5102 of defines “Capitol Grounds” as:

The United States Capitol Grounds comprises all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled "Map showing areas comprising United States Capitol Grounds", dated June 25, 1946, approved by the Architect of the Capitol, and recorded in the Office of the Surveyor of the District of Columbia in book 127, page 8, including all additions added by law after June 25, 1946.

Section 5101 defines “Capitol Buildings” (plural) as:

The United States Capitol, the Senate and House Office Buildings and garages, the Capitol Power Plant, all buildings on the real property described under section 5102(c) (including the Administrative Building of the United States Botanic Garden) all buildings on the real property described under section 5102(d) , all subways and enclosed passages connecting two or more of those structures, and the real property underlying and enclosed by any of those structures.

40 U.S.C. § 5101.

All of the “grounds” in Section 5102 are above ground. Also, in Section 5101 the Capitol Building is defined separately from the subways/tunnels. They are both “Capitol Buildings” but they are not both the “Capitol Building.”

The “restricted building” in Count Three is the Capitol Building itself. The “grounds” do not include subterranean levels by definition. Accordingly, if Vice

President Pence was in the tunnels after 2:20 pm, and the defendant entered the "restricted area" after that time, there is arguably no violation of Section 1752.

In addition to the relevant issues listed in the Response (Doc. 69):

- i. whether the photographs described by Mr. Karl show the defendant,
- ii. whether these photographs show the witnesses,
- iii. whether these photographs show witnesses speaking with the defendant,
- iv. whether these photographs show how close he was to the Vice President and members of the Vice President's family,
- v. whether these photographs show how the defendant specifically affected the Secret Service's protection of the Vice President and his family members,
- vi. whether these photographs show what the Secret Service did specifically in response to the defendant,

would all be relevant, because the government intends to have Secret Service witnesses testify regarding Counts Three and Four a) that "Secret Service agents were on duty to protect Vice President Mike Pence and his two immediate family members, all of whom were present at the Capitol[;]" and b) "the effect on the Secret Service's protection of Vice President Pence and his family members." Doc. 49 at 1–2.

Mr. Reffitt requests either the disclosure of the photographs described by Mr. Karl, or the alternative dismissal of Counts Three and Four, if they are classified.

See Classified Information Procedures Act (CIPA), Title 18, U.S.C. App III section 6(e)(2)(A).

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Certificate of Service

I hereby certify that on this 9th day of December 2021, a copy of the foregoing Response to Motion in Limine to Preclude Cross-examination of Secret Service Witnesses was delivered electronically to Mr. Jeffrey S. Nestler (jeffrey.nestler@usdoj.gov) and Ms. Risa Berkower (risa.berkower@usdoj.gov), Office of the United States Attorney, 555 Fourth Street, NW, Washington, DC 20530.

/s/ William L. Welch, III

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