UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 21-CR-285 (JEB)**
	:	
DAMON MICHAEL BECKLEY	:	
	:	
Defendant.	:	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S SECOND MOTION FOR NEW TRIAL AND MOTION TO COMPEL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in opposition to defendant Damon Michael Beckley's second motion to for a new trial and motion to compel. ECF 79, 80, 82. Beckley, proceeding pro se with standby counsel provided by Assistant Federal Defender Gretchen L. Staft of the Federal Public Defender of the District of Alaska, has not identified any newly discovered exculpatory evidence or any other cognizable basis for a new trial. His second new trial motion, like his first, should be denied accordingly.

Beckley also moves to compel production of grand jury transcripts and discovery materials. Because the Government has produced to Beckley and his standby counsel all the materials that he seeks—and has done so consistently with the protective order governing this case—the motion to compel should be denied as moot.

I. Background

On January 16, 2021, Defendant Damon Beckley was arrested in the Western District of Kentucky on a misdemeanor complaint. ECF 1. On April 7, 2021, a duly empaneled grand jury in the District of Columbia indicted Beckley on five counts, including obstruction of an official proceeding in violation of 18 U.S.C. § 1512(c)(2) and four misdemeanors. ECF 10. On October

12, 2022, the grand jury issued a superseding indictment, charging the same five counts in the indictment as well as Civil Disorder in violation of 18 U.S.C. 231(a)(3). ECF 42.

On October 14, 2022, Beckley requested that his trial date of December 12, 2022, be continued, and the Court granted this request, setting March 20, 2023, as the new trial date. Minute Entry (10/14/2022). On February 16, 2023—more than 20 months after Beckley's initial indictment, and just five weeks before trial would commence—the parties jointly moved to convert the trial to a stipulated bench trial. ECF 52.

The two counts on which the parties agreed to proceed at the stipulated trial were Count One (Civil Disorder) and Count Two (Obstruction of an Official Proceeding). Beckley was represented by Mr. Aaron Dyke, Esq., an Assistant Federal Defender for the Western District of Kentucky. Mr. Dyke had represented Defendant since at least May 12, 2021. ECF 21. Mr. Dyke and Beckley both executed a Statement of Facts for Stipulated Trial before the stipulated trial. ECF 56 (hereinafter, "Stip. SOF"). Mr. Dyke and Beckley also executed an Agreement and Waiver of Jury Trial Rights, in which Beckley acknowledged that he waived several rights by proceeding with a stipulated trial, including his right to a trial by jury. ECF 55.

The Court held the stipulated trial on February 23, 2023. At the outset, the Court engaged in an extensive colloquy that established that it was Beckley's knowing, voluntary choice to have a stipulated trial. After, among other things, reviewing the Stipulated Statement of Facts and the video footage introduced in evidence, the Court found Beckley guilty of both counts: a violation of 18 U.S.C. § 231(a)(3) and a violation of 18 U.S.C. § 1512(c)(2).[1] Minute Entry (02/23/2023).

[1] Further detail related to the stipulated trial proceedings is set forth in the Government's opposition to Beckley's first motion for a new trial. ECF 72 at 2-5.

On March 8, 2023, Beckley timely filed a *pro se* motion for a new trial. ECF 57. The Court appointed Beckley new counsel to assist with the motion but, after months of delay, Beckley decided to once again proceed *pro se*. On June 7, 2023, Beckley submitted an addendum to his previous new trial motion, ECF 69, which, after review, the Court also found to be timely. *See* ECF 75 at 6. Beckley's new trial motion essentially boiled down to three arguments: he allegedly received ineffective assistance of counsel; there allegedly was exculpatory evidence that warranted a new trial; and he allegedly did not make a knowing, intelligent decision to waive his right to a contested trial because at the stipulated trial he was suffering from various health issues and the effects of over-the-counter medications. [2]

On July 14, 2023, the Court denied Beckley's new trial motion. ECF 75. The Court held that Beckley's purported newly discovered evidence "is not exculpatory" and that Beckley's new trial motion was inadequate. *Id.* at 1. The Court denied the motion in its entirety. *Id.* Sentencing is currently scheduled for January 5, 2024.

On November 30, 2023, Beckley filed the second new trial motion and the motion to compel. ECF 79, 80. On December 4, 2023, Beckley completed the filing of the new trial motion by filing an affidavit in support of the motion. ECF 82.

II. Beckley's Second New Trial Motion Does Not Warrant a New Trial

In Beckley's second new trial motion, he contends that a new trial is warranted pursuant to Federal Rule of Criminal Procedure 33 because of "several new items of discovery" that he and his wife found "perusing the website courtreporter.org." ECF 79-1 at 1. Beckley alleges that, through this website, he identified material that had been produced by the Government to his then-

[2] Further detail related to Beckly's first motion for a new trial is set forth in the Government's opposition to defendant's first motion for a new trial. ECF 72 at 5-7.

defense counsel, Mr. Dyke, in discovery. *Id.* Beckley further alleges that he had never received these materials from Mr. Dyke. *Id.* Beckley attaches to his motion a screenshot of himself inside the Capitol Building (ECF 79-2); three other screenshots from publicly available videos that appear to contain footage from Washington, D.C. on January 5, 2021 (ECF 79-3); and location data that appears to show Mr. Beckley's movements in the days surrounding January 6, 2021 (including his location on the Capitol Grounds on January 6, 2021) (ECF 79-4).

Beckley has failed to substantiate his claim that the information he found on a website constitutes "newly discovery evidence" within the meaning of Rule 33. Beckley's self-serving claim that Mr. Dyke did not inform him of the materials produced by the Government in discovery is squarely contradicted by Mr. Dyke's affidavit, which was submitted to the Court in opposition Beckley's first new trial motion. ECF 72-2. In denying the previous motion, the Court relied on Mr. Dyke's affidavit, holding that it was "compelling" and corroborated by other information in the record. ECF 75 at 9, 11. The Court should similarly rely on Mr. Dyke's affidavit here; Beckley's self-serving claims of ineffective assistance have no more merit the second time around. Specifically, Beckley's claim that he did not receive the Government's discovery is contradicted by the record and is not credible, and thus there is no basis to conclude that discovery materials from Beckley's own case are "newly discovered." [3]

[3] Beckley's affidavit in support of his motion also rehashes several of the claims from his first new trial motion, including his allegation that he was coerced by his previous counsel; his allegation that video evidence shows him at times purportedly trying to assist police; his allegation that he only entered the building to find "de facto party leader" Alex Jones; and his allegation that he did not make a knowing, intelligent decision to waive a contested trial by jury because he was suffering from TMJ and various other issues. ECF 82-1, *passim.* Those allegations have already been addressed by the Government and rejected by the Court. ECF 72, 75. The Government will not address them again here. The Government notes, however, that many of Beckley's statements in the affidavit are absurd on their face: as but one example, Beckley now claims that on January 6 he had not noticed that he was part of a large crowd. ECF 82-1 at 7-8. In the affidavit, Beckley also calls for investigation and prosecution of Mr. Dyke. ECF 82-1 at 6. Yet Beckley has not

Further, Beckley's motion fails for the independent reason that he has not provided any information to show that the courtreportor.org website could not have been found by him at the time of his stipulated trial by the exercise of reasonable due diligence. He merely alleges that the existence of the website "was not known by me or my wife until recently," ECF 79-1 at 2, and that he first came across the website "in late September of this year." ECF 82-1. Yet information that is publicly available and that can be discovered with due diligence, such as publicly available information on the internet, is not "newly discovered" for purposes of Rule 33. *See, e.g., United States v Stone*, 613 F. Supp. 3d 1, 47 (D.D.C. 2020) ("Given the defense team's strategic decision not to search the internet for publicly available social media posts . . . the Court finds that the evidence is not 'newly discovered,' and it does not supply a basis for a new trial under Rule 33(b)."). Simply put, Beckley has not identified newly discovered evidence.[4]

Moreover, even if any of this information constituted "newly discovered evidence" within the meaning of Rule 33—and it does not—the motion would nevertheless be meritless because Beckley has not provided any explanation as to how any of this material is exculpatory. In denying Beckley's first motion for a new trial based on purported newly discovered evidence, the Court reviewed the purportedly newly discovered evidence submitted by Beckley and found: "[t]he

provided any evidence, beyond his own self-serving and incredible claims, to refute Mr. Dyke's sworn, detailed affidavit setting forth the competent representation he provided to Beckley in this case. *See* ECF 72, 72-2.

[4] The Government also is highly skeptical of Beckley's claim that a public website contained all the discovery produced by the Government in this case. Discovery here was produced pursuant to a protective order. ECF 16. The Government has no reason to believe that either Mr. Dyke or anyone from the Government violated the protective order and disclosed the information to a public website. The Government is unable to verify or dispute Beckley's purported identification of his discovery material on this website, however, because as of December 15, 2023, the domain name "courtreporter.org" appears to be for sale, and there is no information on the website.

problem for Beckley is that none of this alleged evidence is actually exculpatory." ECF 78 at 7. The Court held:

> The Court cannot conclude that any of this evidence suggests that a "serious miscarriage of justice may have occurred" during Defendant's stipulated trial. . . As a result, it finds such evidence to be an inadequate basis for a new trial.

Id. at 8 (citing *United States v. Wheeler*, 753 F.3d 200, 209 (D.C. Cir. 2014)). Here, Beckley once again has failed to show how any of the "newly discovered evidence" would tend to show that he is not guilty of the offenses of conviction. The motion should be denied accordingly.

Beckley also contends that the screenshots attached to his motion show that the Government incorrectly identified a different individual as Beckley in an item of discovery containing links to videos from January 5, 2021. ECF 79-1; *see also* ECF 80-1. Beckley states that he was not in Washington D.C. on January 5 and thus the videos produced in discovery related to January 5 reflect a case of "mistaken identity." *Id.;* ECF 82-1 at 11. Beckley attaches unverified location data to his motion, which purports to show that Beckley began his drive from Kentucky on January 5, 2021; arrived in Falls Church, Virginia no later than January 6, 2021, at 8:59 am; and arrived on the National Mall in Washington, D.C, no later than January 6, 2021, at 10:16 am. ECF 79-4.

Even assuming *arguendo* that this information correctly describes Beckley's movements, it is not in any way exculpatory. That is because Beckley's charges of conviction arise from Beckley's conduct on January 6, 2021: his obstruction of the official proceeding in Congress on January 6, 2021, and his impeding officers during the civil disorder on January 6, 2021. And, in regard to the evidence actually underlying Beckley's conviction, Beckley has not disputed that he was properly identified in all the stipulated facts related to his conduct on January 6, 2021. Nor has he disputed that he was accurately identified in all the videos shown during the stipulated trial.

Beckley's "mistaken identity" argument thus fails to show that his conviction is flawed in any way, let alone that it constitutes a "miscarriage of justice" warranting a new trial under Rule 33. *See* ECF 75 (holding that "[t]he D.C. Circuit counsels that granting a new trial motion is warranted only in those limited circumstances where a serious miscarriage of justice may have occurred.").[5]

III. Beckley's Motion to Compel Is Moot

Beckley's motion to compel seeks to compel discovery of unspecified material, as well as to compel discovery of "grand jury notes . . . involved in my original indictment." ECF 80-1 at 1. Beckley's motion to compel is moot: he has not specified any materials that he seeks that the Government has not made available either to him directly or to him through his standby counsel.

a. Beckley's Motion to Compel Is Moot

On November 30, 2023, Ms. Staft confirmed that all the case-specific discovery that the Government produced to Beckley's previous counsel, Mr. Aaron Dyke, Esq., was provided to her. Thus, Beckley already has access to all the case specific discovery from the case. Further, the Government has made all of the global discovery from the Capitol Riot cases available to standby counsel. Moreover, on December 10, 2023, the Government produced to Beckley the grand jury transcripts and exhibits in connection with both the indictment and the superseding indictment obtained in this case.[6] Beckley's motion to compel is therefore moot. It should be denied accordingly.

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[5] Beckley also asserts that he is "seeking relief from judgment under Rule 60(1)." ECF 79-1 at 2. Federal Rule of Criminal Procedure 60, "Victim's Rights," is wholly inapplicable to the motion. Beckley thus appears to be referencing Federal Rule of Civil Procedure 60, "Relief from a Judgment or Order." But the Federal Rules of Civil Procedure, including Rule 60, do not apply to criminal cases. *See United States v. Arrington*, 763 F.3d 17, 22 (D.C. Cir. 2014).

[6] This production was not required under Rule 16, *Brady v. Maryland,* 373 U.S. 83 (1963) and its progeny, or any other authority, but the Government produced the material here in its discretion.

b. The Government's Production of Global Discovery to Standby Counsel Is Consistent with the Protective Order

The Government's production of global discovery to standby counsel, rather than directly to Beckley, is consistent with the protective order, and courts in this district have held that this approach is appropriate. As the Supreme Court has held, certain disadvantages inhere in proceeding pro se, and defendants are free to making knowing, intelligent decisions to incur those disadvantages. *Faretta v. California*, 422 U.S. 806, 835 (1975). One particular complication of self-representation in cases arising from the Capitol Riot is that certain materials produced in global discovery cannot be provided directly to pro se defendants. Thus, pro se defendants can access those materials only with the assistance of their standby counsel. *See* ECF 16, Protective Order Governing Discovery, ¶¶ 4-6 (establishing limitations on use, dissemination, reproduction, storage and handling of designated materials); *see also United States v. Pope*, 21-cr-128 (RC), Order Denying Defendant's Motion to Modify Protective Order, ECF 103 (holding that the protective order governing cases arising out of the Capitol Riot appropriately precluded defendant from possessing materials identified as "Highly Sensitive"); *United States v. White*, 21-cr-563 (JDB), Order, ECF No. 45 (appointing standby counsel, over defendant's objection, "solely for the limited purpose of facilitate her access to discovery"). Further, other evidence produced by the Government in global discovery, including voluminous video evidence, is made available through platforms that only defense counsel, but not pro se defendants, can access.[7]

The Government made these limitations clear to the defendant no later than February 10, 2022, when the Government filed a memorandum regarding the status of discovery that specifically addressed the implications of discovery for pro se clients. ECF 33 ("Government's

[7] Case-specific discovery refers to discovery that is particular to Defendant, while global discovery refers to discovery that has been made available to all January 6 defendants.

February 2022 Discovery Memo" or "Disc. Mem."). Specifically, in the Government's February 2022 Discovery Memo, the Government placed Beckley on notice of the following with regard to the sharing of videos on the evidence.com platform:[8]

> **8. *Pro Se* Defendants**
>
> The government and FPD continue to collaborate about a discovery plan for *pro se* defendants. Currently, subject to the terms of the protective order, standby counsel can use their own licenses for the FPD instance of evidence.com to share videos with non-detained *pro se* defendants, and detained *pro se* defendants can view video in the DOC instance. As we have previously made defense counsel aware, we have agreed to waive the requirement that a defendant be supervised while reviewing highly sensitive video in cases where access is provided through evidence.com and:
>
> 1. A protective order has been entered in the relevant case;
> 2. The defendant has executed the written acknowledgement to the protective order (or been subject to an equivalent admonishment by the Court); and
> 3. The ability of the defendant to download or reshare is suppressed by counsel before the video is shared to the defendant.

The Government's February 2022 Discovery Memo also placed Beckley on notice of the following with regard to the sharing of material through the relativity database:

> For the reasons elaborated in part 5 above, the government will not agree to providing *pro se* defendants unfettered access to FPD's Relativity workspace. However, prosecutors assigned to *pro se* case will share production indexes with both defendants and their standby counsel. Standby counsel should discuss the materials on the production index with the *pro se* defendant, and subject to the protective order, s/he can share any materials requested utilizing the same mechanisms available to represented defendants described above. Further, in those instances where a *pro se* defendant wishes to view highly sensitive documents, standby counsel or his/her staff must supervise the defendant unless: (1) the defendant and the assigned prosecutor are able to reach a suitable compromise or (2) the Court orders otherwise.

[8] "FPD" in the text below refers to the Federal Public Defender for the District of Columbia ("FPD"), which is acting as the discovery liaison for counsel in all Capitol Siege cases.

Since February 2022, the Government has provided numerous productions of global discovery to Beckley, originally through his previous counsel, and more recently, through his standby counsel, including most recently last month. Beckley, proceeding pro se, is free to choose which of the materials produced in discovery he would like to review, and he is free to choose whether and how to engage the services of his standby counsel. The Government, however, is not obligated to produce the global discovery materials directly to defendant.[9]

CONCLUSION

Accordingly, for the foregoing reasons, the Government respectfully requests that the Court deny the defendant Damon Beckley's second motion for a new trial and the motion to compel.

Respectfully submitted,

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[9] The Government generally produces global discovery materials to Capitol Riot defendants through the date of sentencing and has done so here. Rule 16, however, does not oblige the Government to produce discovery post-trial and, to the extent Mr. Beckley relies on Rule 16 as the basis for his motion to compel, the motion is also moot because the Government is not obliged to produce Rule 16 discovery post-trial. *United States v. Slough*, 61 F. Supp. 3d 103, 108 (D.D.C. 2014) ("Part of Title IV of the Federal Rules of Criminal Procedure, which is aptly named 'Arraignment and Preparation for Trial,' Rule 16 governs pretrial discovery and inspection.").

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