

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

Case No.: 21-cr-34 (CRC)

THOMAS ROBERTSON,

Defendant.

GOVERNMENT’S MOTION TO ADMIT EXHIBITS

On December 17, 2021, this Court ordered the defendant to object to the Government’s Exhibits on or before March 24, 2022. (ECF 54) The defendant lodged no objections, either on March 24, 2022, or at this Court’s pretrial conference on March 29, 2022. This afternoon, a few hours before jury selection in this case, the defendant has raised with the government, for the first time, the following unsubstantiated objections to two exhibits the Government will use in its case-in-chief. The Government hereby asks the Court to find these exhibits admissible for the reasons set forth below:¹

1. Exhibit 100B, attached as Exhibit A.

Exhibit 100B is an excerpt from the defendant’s Facebook account. In it, the defendant states on December 19, 2020:

“Not at all. Civility has left me. Im tired of always taking the high road and being beat by those who cheat, lie, steal to win and then allow their media to paint me as the bad guy. I won’t be disenfranchised. I will follow the path our finders gave us. Redress of grievances (already done). Civil disobedience (here now) and the open armed rebellion. I’ve spent he last 10 years fighting an insurgency in Iraq and then Afghanistan. Im prepared to start one here and know a bunch of like minded and trained individuals.”

¹ The Government notes that the Defendant has no objection to either exhibit’s authenticity.

The defendant has suggested that this quote is inadmissible because it appears in the defendant's Facebook search warrant return on the same page as a comment he made two days earlier, on December 17, 2020, about a rally in Richmond, Virginia. The Government has offered to redact any reference to the Richmond rally the defendant made two days prior. The defendant rejects the Government's proposed redaction and asserts the defendant's December 19, 2020, comment is inadmissible under Fed. R. Evid. 401 and 403.

The defendant is charged with obstructing Congress's certification of the Electoral College vote on January 6, 2021. This charge requires the government to prove the defendant's corrupt intent. The defendant's own words about his mental state concerning the course of action he planned to take in the future to address feeling "disenfranchised" are highly probative of, and directly relevant to, this element of the crime. There is no undue prejudice to the defendant from his own words about his own intentions. The quote is plainly admissible as a statement of the defendant that speaks directly to intent.

2. Exhibit 901

The defendant further objects to Exhibit 901 under Rule 401 and Rule 403. Exhibit 901 is a video that shows the north scaffolding, northwest stairs, and west terrace at the time the defendant is in the same areas. The Government will seek to admit this video from timestamp 1:00 through 17:30. The defendant is depicted in parts of the video, and the witness through whom the Exhibit will be offered is depicted in parts of the video. The video shows the crowd in the exact same path of travel taken by the defendant. Although Exhibit 901 does not have a time stamp, the FBI has been able to match the footage to U.S. Capitol CCTV, and in that way can determine the times depicted in the footage, including that showing the defendant. It also establishes that the defendant was a short distance from the camera man as he mounted the stairs to the Capitol. Attached as Exhibit B is a side-by-side comparison of footage from Exhibit 901 and the CCTV.

This video is highly relevant to the government's case in several ways. First, the defendant is charged with interfering with law enforcement during a civil disorder, in violation of 18 U.S.C. § 231. This requires the Government to prove, as an element of the offense, that there was a civil disorder at the Capitol on January 6. This video, showing the same areas in which the defendant was present at the same times, will help prove the civil disorder.

In addition, the defendant is charged with both obstructing Congress's meeting on January 6, 2021, and with aiding and abetting others in the crowd to do so. However, the Government anticipates that the defense will assert that the crowd around the defendant was merely a peaceful protest, and that the defendant therefore did not aid and abet any other rioters in obstructing Congress, nor do so himself as a principal. This video provides a first-hand view of what was happening in the crowd in the areas immediately around the defendant and helps show the violence of the mob all around him, including up through the time that he himself entered the Capitol building. While the Government also plans to introduce U.S. Capitol CCTV footage showing the defendant in these same areas, those recordings do not have sound, and therefore much of the essential context is lost. By contrast, this video provides clear evidence, both through audio and sound, of what was happening all around the defendant, and will be used both to prove his own intent, his intent in aiding and abetting others, and to disprove any assertion by the defense that the crowd was merely a peaceful group of protestors who lacked the requisite intent to obstruct Congress. Because Exhibit 901 is both highly probative of essential elements of two of the crimes with which the Defendant is charged, and because the exhibit will rebut an anticipated defense, it should be admitted.

Given the untimeliness, and eleventh-hour nature of these objections and in an effort to avoid wasting the jury's time once the presentation of evidence has started, the Government respectfully seeks an order admitting these Exhibits.

Dated April 3, 2022.

Respectfully submitted,

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