

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

GRADY DOUGLAS OWENS,
Defendant.

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Case No.: **21-cr-00286-BAH**

**United States' Response to Defendant Grady Owens's
Motion to Dismiss Indictment**

The United States of America respectfully moves this Court to deny Defense's Motion to Dismiss Indictment. The indictment adequately alleges offenses, and a minor misstatement in the grand jury that gives rise to no prejudice does not warrant dismissal.

INTRODUCTION

On January 6, 2021, Officer C.B., and thirty-two fellow MPD officers, were called in to support U.S. Capitol police after a large crowd forced their way past temporary and permanent barricades to the exterior of the Capitol exterior of the Capitol. While cutting through the increasing crowd, officers were met with loud jeers and insults. Defendant, Grady Owens, and his father were in this crowd. As C.B.'s group made their way to the breach, officers began pushing members of the crowd out of their way. Numerous officers had already made it past Defendant when C.B. approached. C.B. pushed someone into Defendant's back and then grabbed Defendant's arm. In response, defendant violently attacked Officer C.B. by specifically raising his skateboard above his head and bringing it down to hit the officer. The following image depicts the defendant's contact with and assault of C.B.:



Defendant and his father then made their way to the east side of the Capitol. Around 3:25 PM the pair attempted to push their way into the East Rotunda doors without success.

Defendants Grady Owens and Jason Owens are charged with multiple crimes in the 14-count indictment related to their actions on January 6, 2021, including 18 U.S.C. § 111(a)(1) and (b). 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), and includes a heightened potential penalty where the defendant uses a deadly or dangerous weapon or inflicts injury, 18 U.S.C. § 111(b.) The grand jury returned an indictment on April 7, 2021 (21-1) and a superseding indictment on November 17, 2021 (21-6). Count Two charges Defendant Grady Owens with violating § 111(a)(1) and (b) by:

“using a deadly or dangerous weapon, that is, a skateboard, did forcibly assault, resist, oppose, impede, intimidate, and interfere with, and inflict bodily injury on, an officer. . . that is C.B., an officer from the Metropolitan Police Department, while such officer. . . was engaged in or on account of the performance of official duties, and where the acts in violation of this section involve physical contact with the victim and the intent to commit another felony.”

During the 21-1 presentment, in relation to violation of § 111(a)(1) and (b), the government admitted photographic evidence as well as testimony from the assigned agent. The still photograph exhibits, taken from Body Worn Camera, depicted Defendant striking Officer C.B. with a skateboard. According to testimony from the agent, Officer C.B. complained of injuries to his right pinky and a concussion. When asked “and with respect to the concussion, did that require this officer to get an MRI to determine the extent of the damage,” the agent answered “yes.” In fact, medical records indicate that Officer C.B. had an MRI performed on his pinky. Neither the MRI results nor any other medical records were presented to the grand jury, which returned a true bill indictment.

The superseding indictment, 21-6, was presented November 17, 2021, after further investigation revealed Defendant Grady Owens traveled to the Capitol with his father, Defendant Jason Owens, and that Jason Owens had also attacked police officers on multiple occasions and had also participated in the attacks on the Capitol. During this superseding presentment, the government incorporated the 21-1 transcript to the grand jury by reading the 21-1 transcript to the jurors. See, Exhibit A (Grand Jury Transcript 21-6 Incorporation Testimony on November 17, 2021, pgs 5-19). Additional evidence and testimony were then presented mainly regarding Jason Owens.

ARGUMENT

I. The United States’ Incorporated Testimony and Evidence from the First Indictment at the Superseding Indictment

The 21-1 grand jury testimony was read back, in full, to the quorum of jurors present during the 21-6 superseding indictment. Therefore, the superseding indictment, returned on November 21, 2021, should not be dismissed. *See*, Exhibit A.

II. The Indictment Adequately Informs Defense of the Charges Alleged and Cannot be Dismissed for Minor Error

An indictment returned by a properly constituted and impartial grand jury “is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence.” *United States v. Calandra*, 414 U.S. 338, 345 (1974); *accord Costello v. United States*, 350 U.S. 359, 363 (1956). A district court may not dismiss an indictment based on errors in grand-jury proceedings absent a showing of prejudice. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 254 (1988). Specifically, “dismissal of the indictment is appropriate only ‘if it is established that the violation substantially influenced the grand jury’s decision to indict,’ or if there is ‘grave doubt’ that the decision to indict was free from the substantial influence of such violations.” *Id.* at 256 (quoting *United States v. Mechanik*, 475 U.S. 66, 78 (1986) (O’Connor, J., concurring in the judgment)). Pretrial dismissal based on the sufficiency of the evidence is unavailable unless “the material facts are undisputed and only an issue of law is presented.” *United States v. Yakou*, 428 F. 3d 241, 247 (D.C. Cir. 2005).

These principles counsel denial of Defendant’s motion. First, to the extent Defendant relies on the misstatement about the MRI as a basis for dismissal, that minor error did not “substantially influence” the grand jury’s return of Count Two. As noted above, a violation of Section 111(b) requires proof that the defendant either used a dangerous weapon or inflicted injury. Here, Count Two relies on both alternatives. The misstatement at most may have influenced the grand jury’s consideration of the type of injury that Defendant inflicted on Officer C.B., not whether Defendant inflicted an injury at all. And even assuming *arguendo*

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2022, I caused a copy of the foregoing motion to be served on counsel of record via electronic filing.

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