

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

UNITED STATES OF AMERICA	:	
	:	CASE NO. 21-CR-247 (TFH)
v.	:	
	:	
BRADLEY WAYNE WEEKS,	:	
	:	
Defendant.	:	

GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION FOR A NEW TRIAL

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits this response to Defendant Bradley Wayne Weeks’s Motion for a New Trial. (ECF No. 90.) The defendant asks this Court to set aside its verdicts of guilty following a trial and presentation of evidence supporting each of the charges beyond a reasonable doubt. The defendant’s arguments lack merit, and his motion should be denied.

FACTUAL BACKGROUND

On January 6, 2021, thousands of people descended on the U.S. Capitol and interrupted the Joint Session of Congress that had convened to certify the votes of the Electoral College for the 2020 Presidential Election. On that day, Vice President Michael R. Pence was serving as the President of the Senate at the Capitol and presiding over the Joint Session and Senate proceedings. Secret Service was present for the protection of the Vice President and his family members, and physical barriers and law enforcement officers surrounded the U.S. Capitol building and grounds. At all relevant times, the United States Capitol building and its grounds—including the northwest lawn by the northwest stairs, the upper northwest terrace, and the entire Capitol building itself—were closed to members of the public.

The government's evidence at trial showed that, over the course of hours, rioters successively breached barriers around the perimeter of and within Capitol grounds. As rioters closed in around police in the Lower West Terrace area of Capitol grounds, police subjected rioters to crowd-suppression ordinance such as tear gas and pepper spray in an effort to disperse them and get them to leave Capitol grounds. Police efforts to hold rioters at bay in the Lower West Terrace failed as rioters broke through lines of police on the Northwest Stairs of the Capitol, giving rioters direct access from the Lower West Terrace to the Upper West Terrace. Ultimately, rioters breached the interior of the Capitol building from the Upper West Terrace at approximately 2:12 p.m., causing both houses of Congress, which had been engaged in the Joint Session, to suspend the proceedings and evacuate their chambers. The threat to lawmakers, police, and the Capitol itself, did not subside until the evening, after every unauthorized person had been removed from Capitol grounds. Congress was only able to resume the Joint Session after the Capitol building and grounds had been secured, around 8:00 p.m. on January 6, 2021. They did not complete the process of certifying the 2020 Presidential Election until nearly 4:00 a.m. the next day.

The defendant, Bradley Weeks—along with his co-defendant, Danny Carlton—was among a group of rioters who illegally entered the U.S. Capitol grounds and then entered the U.S. Capitol building itself.

Prior to January 6, 2021, Weeks also started a “Stop the Steal” Facebook group, which had about 15,000 “patriots who are fed up,” as Weeks reported to a friend via text message on December 16, 2020. Weeks also subscribed to text messages as part of a service called “Stop The Steal – JAN6,” which distributed mass texts to subscribers about efforts to obstruct the certification of the election in Washington, D.C., on January 6. Weeks texted a friend on December 23, 2020:

Danny Carlton and I are going to DC for January 6 protest/revolution. We will be packing. This is it! Would love to have you there if you can make it. They're expecting millions. Trump has asked us for as many people to attend as possible. It's either going to be the biggest victory party the world has ever seen or we're going to burn the whole fucking thing down."

Weeks's phone also contained a photo from January 4, 2021, of two long guns and several boxes of ammunition stacked on top of a bed. Though the government's evidence did not show that Weeks was armed on January 6 or brought weapons into Washington, D.C., the Court found the photo and Weeks's statement that "We will be packing," as evidence that Weeks was preparing for violence ahead of January 6, which was evidence of his corrupt intent to obstruct the Joint Session of Congress.

On January 5, 2021, Weeks and Carlton drove together to Washington, D.C. During the drive, Weeks inquired of his wife via WhatsApp message about the location of his medication in his bags, and Weeks's wife replied directing him to the inside zipper on the same side of the bag "where the shotgun shells are." Weeks also messaged his wife about his plans to use the D.C. Metro to go to the rally and to come back from the Capitol building.

On January 6, 2021, at 1:00 p.m., the Joint Session of Congress, consisting of the House of Representatives and the Senate, convened in the United States Capitol building. The Joint Session assembled to debate and certify the vote of the Electoral College of the 2020 U.S. Presidential Election.

On the morning of January 6, 2021, Weeks and Carlton attended the "Stop the Steal" rally at the Ellipse, then marched to the Capitol Building as planned that afternoon. As they moved from the Washington Monument toward Constitution Avenue, Weeks filmed a video of the crowd and stated, "We are marching to the Capitol building, Ladies and Gentleman, to show these Congressmen who runs America."

Weeks and Carlton arrived on Capitol grounds just before 2:00 p.m. From their position amongst a large group of rioters on the northwest lawn of the Capitol, they observed a crowd that had been violently attacking officers of both the U.S. Capitol Police and the Metropolitan Police Department, climbing the walls of the Capitol, and purloining bike rack fencing to use as ladders.

As portrayed on another defendant's video from around this time, police officers deployed tear gas cannisters into the crowd to try to disperse their attackers. Referring to one of those cannisters, some of the rioters responded by shouting, "Pick it up and throw it!" and "Throw it back at the Capitol!" which one of them did. Rather than leave the area, Weeks advanced, climbing onto a retaining wall and then ascending a bike rack barrier onto a balustrade near the Northwest Stairs. While on the retaining wall, Weeks made several excited gestures with his arm pointing towards the Capitol building, including a "come here" gesture with his arm. encouraging and enticing other rioters to follow his advance on the Capitol.

Weeks then began to ascend the Northwest Stairs towards the Upper West Terrace of the Capitol. Around this time, he sent a WhatsApp message to his wife at 2:14 p.m. in which he says, "breached the Capitol. I'm going in, we're going in." At 2:15 p.m., Weeks is visible in CCTV video climbing the upper portion of the northwest stairs without Carlton. Upon reaching the Upper West Terrace, Weeks wandered around taking video of the expansive crowd of rioters on the northwest lawn as well as the bike rack fencing, police tape, and an AREA CLOSED sign at the top of the steps he had just ascended.

Near the top of the stairs on the Upper West Terrace, Weeks set up his camera in "selfie mode," showing his face and launched into a speech declaring both the actions he had taken and his intentions, which he recorded and later posted to social media. "We've reached the steps. We've had to climb scaffolding. We've had to climb ladders. We've had to break things to get

through, but we've gotten through. We've gotten through, and we are taking back the Capitol! We're taking back our country! This is our 1776! This is where it's gonna happen! This is where Tyranny will fall! This is where America will rise! Look at this, America! Look at this!" The camera is then turned again towards the lawn.

While on the Upper West Terrace, Weeks texted a friend that, "We've breached the capital..." and "Were busting the doors down now." Weeks and Carlton walked together towards the Senate Wing Door, which, together with its adjacent windows, had been busted open by the mob around 2:13 p.m. Around 2:27 p.m., the Capitol Police briefly regained control of the door and barricaded it with furniture from the inside. Weeks and Carlton separated again, with Weeks remaining outside on the Terrace and Carlton joining the line of rioters who broke through the improvised barricade and violently forced their way back into the building.

Beginning at around 2:40 p.m., Weeks exchanged phone calls and text messages. Carlton texted Weeks at 3:04 p.m. that he was inside the Capitol building. Three and a half minutes later, Carlton told Weeks via text to stay out of the building and that Carlton would find him outside. Approximately 70 seconds after receiving that text, Weeks texted Carlton stating that he was inside the building.

Weeks entered the Capitol building through the Senate Wing door at 3:08 p.m. CCTV shows Weeks entering the building holding a phone up to his ear. Weeks reunited with Carlton near the Senate Wing Door at approximately 3:09 p.m. Instead of leaving the Capitol through the door that they had just entered—which was still within view—Carlton and Weeks turned and moved further into the building. They walked through to the Crypt where Weeks joined a crowd of rioters chanting. Then, Weeks and Carlton crossed the length of the building on its first floor, walking all the way to the Hall of Columns on the south side of the Capitol. After reaching the

Hall of Columns and seeing the police officers there, Carlton and Weeks turned back and retraced their steps through the Capitol, walking again through the Crypt before exiting through the Senate Wing Door at around 3:29 p.m. When his mother's texted him expressing concern that his grandmother would die over his actions, Weeks responded, "Our country is dying."

Weeks spent roughly 20 minutes inside the Capitol. After exiting the building, Weeks and Carlton lingered on the Upper West Terrace outside the Capitol until at least 3:52 p.m., where they posed for a grinning photo with the Capitol dome and MPD riot officers in the background. Weeks also took a photo of graffiti on the exterior wall of the Capitol building, which read, "OUR HOUSE!"

PROCEDURAL BACKGROUND

On March 24, 2021, the defendant was charged by Indictment with obstruction of an official proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) and 2 (Count One); entering and remaining in a restricted building or ground, in violation of 18 U.S.C. § 1752(a)(1) (Count Two); disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count Three); disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Four); and parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Five). (ECF No. 17.)

On August 30, 2022, this Court held a hearing on the parties' pretrial motions, including the defendant's motion to dismiss Count 1 – Obstruction of an Official Proceeding in violation of 18 U.S.C. § 1512(c)(2). On October 14, 2022, this Court issued an order denying the defendant's motion to dismiss Count 1, holding that the Indictment did not violate the defendant's Fifth and Sixth Amendment rights.

Trial commenced on December 8, 2022. The government called three witnesses and presented evidence consistent with the summary of factual background provided above. Among the exhibits admitted into evidence was Government's Exhibit 2.21, a montage of Capitol surveillance footage showing how the riot unfolded across the building and grounds on the afternoon of January 6, 2021.¹ The defendant objected to the admission of this exhibit. This Court overruled the defendant's objection and allowed admission of the exhibit.

On December 9, 2022, this Court found the defendant guilty on all five counts and orally gave factual findings supporting the verdicts.² The Court found that prior to the January 6 riot:

- the defendant started a Facebook group called Fraud 2020
- texted a person that his group had 1,000s of people in it now
- sent a text to a person about his Fraud 2020 group
- sent a text joining the Jan 6 Stop the Steal text group
- sent a text re: going to January 6
- sent a text re: going to protest/revolution. We will be packing...biggest victory party...or we're going to burn the whole fucking thing down

The Court further found that on January 6, Weeks went to the Capitol building. On the way, Weeks made a speech about where he was going—the Capitol—and his intent in going there—"to show these Congressmen who runs America." Weeks reached the northwest lawn

¹ This montage, or one like it, has been admitted to provide the jury with context and orientation to the events of the day in more than two dozen contested trials stemming from the events of January 6.

² This section is based on the government's handwritten notes as the government does not yet have a transcript.

where videos showed the rioters/protesters and tear gas in the crowd. He sent a WhatsApp to his wife that he breached the Capitol. Weeks then filmed his 1776 video. He waved his arms encouraging others to climb the bike rack and go up to the Capitol. He texted that we breached the Capitol and are busting the doors down now.

The Court found that after entering the Capitol building, Weeks walked through the building rather than leaving, even though people were exiting through the door and windows at that time. While inside the Capitol, he joined the other chanters repeating “USA, USA.” When his mother sent him a text warning him not to do anything stupid, Weeks texted her back that he was inside the Capitol. When his mother chastised him, saying his grandmother would die over this, Weeks responded, “our country is dying,” demonstrating his purpose for being inside the Capitol. Weeks stayed on Capitol Grounds after leaving, taking a photo of the “Our House” graffiti on the Capitol building and taking a selfie-style photo on the Capitol terrace with police in the background.

The Court found that the defendant was at the Capitol to interfere with Congress’ official proceeding. First, Weeks’s presence in the building disrupted Congress even though he was not part of the first group to breach the building. The Court also found that Weeks’s intent was shown by his statements and actions. Packing the firearm and ammunition to bring with him showed Weeks’s disruptive intent even though there is no evidence that he had the long gun in his possession at the Capitol. Weeks also knowingly encouraged others. Weeks’s own actions—climbing the scaffolding like a ladder and going past 1-2 fences to get there—also showed Weeks’s corrupt intent.

The Court found that “corruptly” included using unlawful means like using the ladder to climb the Capitol building, going into the Capitol without a security screening, entering when he

knew per his text message that he was not supposed to be there, and that Weeks' corrupt intent was also shown by his text to his mother. The Court also found that he aided and abetted those around him in his communications with them. The attack caused Congress to be unable to proceed because they were forced to evacuate the chamber. The defendant could see others around him doing this and still waived those around him to go up the steps.

The defendant remains on release pending sentencing on a date to be determined.

ARGUMENT

A court may grant a defendant's motion to vacate the trial judgment and grant a new trial "if the interest of justice so requires." Fed. R. Crim. P. 33(a). Rule 33 motions are "not favored and are viewed with great caution." *United States v. Borda*, 786 F. Supp. 2d 25, 31 (D.D.C. 2011) (quoting *United States v. Blackthorne*, 378 F.3d 449, 452 (5th Cir. 2004)). Application of the rule "should be ... limited to situations presenting a serious danger that a miscarriage of justice has occurred—that is, that an innocent person has been convicted." *Id.* at 32 (internal quotations and citations omitted); accord *United States v. Wheeler*, 753 F.3d 200, 208 (D.C. Cir. 2014) ("[G]ranting a new trial motion is warranted only in those limited circumstances where a serious miscarriage of justice may have occurred.") (internal quotation marks omitted).

Further, to succeed on a Rule 33 motion, the defendant must show that an alleged error was "substantial, not harmless" and affected the defendant's "substantial rights." *United States v. Williams*, 825 F. Supp. 2d 128, 132 (D.D.C. 2011). To affect "substantial rights," an error must have a "substantial and injurious effect or influence in determining the ... verdict." *United States v. Lawson*, 494 F.3d 1046, 1053 (D.C. Cir. 2007) (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 81 (2004)). This high burden for defendants is required across circuits. *See, e.g., United States v. Mahmood*, 820 F.3d 177, 190 (5th Cir. 2016) ("We have stressed that

motions for new trial are generally disfavored”); *United States v. Chavez*, Case No. 08-cr-746-5, 2011 WL 4852264, at *1 (N.D. Ill. Oct. 6, 2011) (“Granting a Rule 33 motion is nevertheless disfavored except in ‘the most extreme cases.’”) (quoting *United States v. Reed*, 875 F.2d 107, 113 (7th Cir. 1989)); *United States v. Smith*, Case No. 07-cr-146-009, 2008 WL 2002557, at *1 (E.D. Tenn. May 7, 2008) (“Motions for new trial under Rule 33 are generally disfavored and are granted only in extraordinary circumstances”).

I. This Court properly denied the defendant’s motion to dismiss pretrial and the defendant provides no compelling basis for a different result now.

In his current motion for a new trial, the defendant presses nearly identical arguments to those he advanced in his pretrial motion to dismiss Count 1, which charged him with a violation of 18 U.S.C. § 1512(c)(2). (*See* ECF No. 53.) This Court rejected those arguments before trial, (*see* ECF Nos. 81-82) and the defendant provides no sound reason to reach a different result now that the Court has rendered guilty verdicts in his case at trial. This Court should therefore deny his motion for a new trial.

II. Ample evidence supported the Court’s finding that the defendant acted corruptly.

The defendant argues (ECF No. 90 at ¶8) that the evidence did not suffice to establish that he acted “corruptly” for purposes of Section 1512. The Court had a more than adequate basis for its ruling. The defendant made statements that showed he believed the 2020 election was fraudulent and in reaction he would be going to Washington on January 6 for a “protest/revolution.” Weeks expressed that he would “be packing” and that he would “either have the biggest victory party” or would “burn the whole fucking thing down.” Weeks took a photo of firearms and ammunition around the time he packed for the trip and then had a Whatsapp

conversation with his wife that mentioned ammunition in his bag during his trip to D.C., again indicating a plan for violence.

Weeks stated that he was going to the Capitol to “show these Congressman who runs America.” Upon arrival, Weeks passed barriers and experienced tear gas released into the crowd around him. Weeks then cheered the police being overrun, encouraged others around him to climb up & move towards the Capitol, climbed overturned bike rack fencing onto the balustrade of the Northwest stairs, and messaged his wife that he had “breached the Capitol” and was “going in.” Once he reached the upper terrace, Weeks stated amongst other things that, “We’ve had to break things to get through, but we’ve gotten through. We’ve gotten through, and we are taking back the Capitol! We’re taking back our country! This is our 1776!” He texted that he breached the Capitol and that they were “busting the doors down.” He entered without a security screening, engaged in chanting inside the Capitol, and in response to his mother’s concern over the effect of his actions on his grandmother’s health said, “Our country is dying.” After leaving, Weeks photographed the “Our House” graffiti on the Capitol building and proudly posed for a photo with his co-defendant with the Capitol dome and riot police behind him.

The government proved beyond a reasonable doubt that the defendant’s actions caused before, during, and after entry caused Congress to be unable to complete its Official Proceeding until that evening. The Court heard from Capitol Police that they were unable to move around the building due to the continued breach and that it took hours for security to clear the building even after the last rioter was removed. The Court heard that the Crypt has stairwells that give access to the second floor and that Congress has to move from one chamber to the other across the second floor to complete its proceedings. The Court further heard that once a breach has occurred, security procedures require a shutdown to locate the person who breached and to screen for any threats that

resulted from that breach. The defendant's failure to enter through a sanctioned public entrance and undergo a security screening in and of itself was enough to interrupt Congress' proceedings.

The government's evidence proved beyond a reasonable doubt that the defendant's conduct was wrongful and his intent was corrupt. The defendant is not entitled to a new trial on this basis.

III. The Court properly admitted Government's Exhibit 2.21 over the defendant's objection.

Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Fed. R. Evid. 401. "The general rule is that relevant evidence is admissible," *United States v. Foster*, 986 F.2d 541, 545 (D.C. Cir. 1993), a "liberal" standard, *United States v. Moore*, No. 18-cr-198, 2022 WL 715238, at *2 (D.D.C. Mar. 10, 2022). Additionally, Rule 403 does not require the government "to sanitize its case, to deflate its witnesses' testimony or to tell its story in a monotone." *United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C. Cir. 1998). Neither Rule 401 nor 403 supports the defendant's requested relief.

To prove Count One of the Indictment, Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. § 1512(c)(2) and 2, the government was required to establish that there was an "official proceeding" and the fact that it was disrupted. Evidence of how the riot unfolded and the impact of the mob as a collective is relevant. While much of the government's evidence focused on the individual conduct and statements of the defendant, the government also presented evidence—including the testimony of U.S. Capitol Police Captain Tia Summers and U.S. Capitol Police Officer Mark Gazelle—that each participant in the riot, both individually *and* as a member of the collective mob, disrupted the official proceeding. Specifically, the witnesses testified that the size and scope of the mob prevented police from regaining control of the Capitol, and the presence of any unauthorized individual anywhere in the

Capitol building or on the grounds prevented the Joint Session from reconvening. The testimony of these summary witnesses and the exhibits admitted through them, including Exhibit 2.21, was permissibly admitted by the government to assist the Court, as the fact-finder, in organizing the evidence, contextualize the defendant's conduct, and prove the necessary elements of Count 1 as to the defendant. Moreover, Count One includes the alternative theory of aiding and abetting, pursuant to 18 U.S.C. § 2. Therefore, the conduct of other rioters is extremely relevant.

Even if Exhibit 2.21 were prejudicial—which all government evidence against the defendant necessarily is—prejudice, even unfair prejudice, is not sufficient to exclude relevant evidence. *See United States v. Mitchell*, 49 F.3d 769, 777 (D.C. Cir. 1995). Rule 403 “does not bar powerful, or even ‘prejudicial’ evidence.” *Pettiford*, 517 F.3d at 590 (internal quotation marks omitted). To warrant exclusion, prejudice to the defendant must be *unfair*, and the defense must show “compelling or unique” evidence of prejudice, *see id.*, distinct from the probative value of the evidence and distinct from the intrinsic prejudicial potential of any Rule 404(b) evidence. The defendant argues that Government's Exhibit 2.21 “unduly prejudiced” the defendant by “imput[ing]” to him the criminal actions of others in the mob. The defendant's argument both ignores the high probative value of Exhibit 2.21, which demonstrated the nature of the defendant's crimes as part of a collective action, and fails to articulate a compelling or unique basis to conclude that any prejudice to the defendant was “unfair” within the context of the government's theory of the case. Moreover, this Court, as the fact-finder, was more than capable of parsing any residual prejudice to the defendant from the probative value of Exhibit 2.21

Finally, even if this Court erred in admitting Exhibit 2.21, such error was harmless, certainly not substantial. The defendant makes no argument to the contrary.

CONCLUSION

For the reasons discussed herein, the defendant's motion for a new trial should be denied.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
D.C. Bar No. 481052

By: /s/ Kathryn E. Fifield
Kathryn E. Fifield
Trial Attorney
U.S. Department of Justice, Criminal Division
Jamie Carter
Assistant United States Attorney
United States Attorney's Office
601 D Street, N.W.
Washington, D.C. 20530
(202) 320-0048
Kathryn.fifield@usdoj.gov