

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

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|--------------------------|---|----------------------------|
| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | Case No.: 21-CR-28-5 (APM) |
| | : | |
| BENNIE PARKER | : | |

**BENNIE PARKER’S MOTION FOR
JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL¹**

Bennie Parker, through undersigned counsel, Stephen F. Brennwald, submits his Motion for Judgment of Acquittal or for New Trial. In support thereof, he states as follows:

Introduction

Defendant Bennie Parker was convicted of Conspiracy to Obstruct an Official Proceeding, and Entering and Remaining on Restricted Building or Grounds. He was acquitted of Obstruction of an Official Proceeding, as well as Conspiracy to Prevent Members of Congress from Discharging their Duties.

He hereby notes his adoption of the motion for judgment of acquittal and new trial filed by co-defendant Kelly Meggs with respect to her argument that evidence was improperly placed before the jury.

He also incorporates by reference herein the related motions filed in *United States v. Rhodes*, 22-CR-15 (ECF Nos. 426 and 434).

Finally, he argues herein that there was not a sufficient factual basis for the jury to convict

¹ The Court ordered the parties to submit any Rule 29 or 33 motions by Monday, May 29, 2023. That day, however, fell on a holiday, and undersigned counsel was overwhelmed on that day, as he was finishing a sentencing memorandum in a January 6 case that he began writing last week and continued to prepare over the weekend. He only finished and filed that memorandum this morning, May 30, 2023, at 4:45 a.m., having worked almost all through the night. If this filing is deemed to be late despite the original deadline falling on a holiday, defendant asks that the Court grant leave to late-file, given the importance of this motion to Mr. Parker.

him of the Conspiracy charge, for the reasons set forth below.

The Law

Defendant adopts, and incorporates by reference herein, the presentation of applicable law found in co-defendant Meggs' motion (ECF No. 933, at 4-6).

Factual Background

Bennie Parker was one of a number of individuals who walked from the area of the Ellipse toward the United States Capitol on January 6, 2021.

During that walk, he and a few others became separated from the main group, which consisted primarily of self-identified Oathkeepers. Mr. Parker did not consider himself an Oathkeeper.

As the group arrived toward the Northwest side of the Capitol, it stopped for a period of time near some fencing (as depicted in video evidence). Some members of that group, not including Bennie Parker, then started to walk up the hill toward the East side of the Capitol. That group then stopped a second time before eventually continuing on and entering the Capitol.

Sometime thereafter, Mr. Parker also walked up the north sidewalk, ending up on the East place of the Capitol.

A young Oathkeeper by the name of Caleb Berry testified for the government at trial. He testified pursuant to a cooperation agreement.

Mr. Berry stated that sometime before some of the members of the Oathkeepers went inside the Capitol, they stopped to huddle, at which point Kelly Meggs informed the group that they were going to go into the Capitol to try and stop the vote count. Tr. 2/17/23, at 2879:4-6.

Mr. Berry later said that the group stopped to huddle twice. One time, the group stopped on the sidewalk mentioned above, and another time, the group stopped somewhere between the

first stopping point and the East steps of the Capitol.

According to Mr. Berry, during one of those huddles, Kelly Meggs informed the group that they were going to go into the Capitol to try to stop the vote count.

Mr. Berry could not recall whether Mr. Meggs discussed the vote count at the first huddle or at the second. When he was asked, on cross-examination, whether he thought that the location of the first huddle was where Mr. Meggs had informed the group that they were going to go inside the Capitol to try to stop the vote count, he replied: “I don’t believe that it was. I think it might have been the one that was further along or it could have been this one. Tr. 2/17/23, at 3008:7-10, 20-22.

This testimony is critical to the determination of defendant Parker’s motion, as he was only present at the location of the first huddle. Even with respect to that first huddle it is not possible to determine whether Mr. Parker heard, or could have heard, anything Mr. Meggs said about stopping the vote count. Video evidence does not prove that Mr. Parker heard Mr. Meggs make this statement – assuming Mr. Meggs ever uttered it.

And no witness ever testified that Mr. Parker was close enough to hear anything Mr. Meggs may have said, or made any subsequent comment indicating that he understood Mr. Meggs and agreed with that course of conduct.

It is also important to note that during the larger group’s walk from the Ellipse to the Capitol, the group splintered to some degree. Id. at 2970:21-25; 2971:1.

Argument

Conspiracy to Obstruct

In order for Mr. Parker to be guilty of conspiracy to obstruct an official proceeding, the evidence would have had to show that Mr. Parker was aware of the Oathkeepers’ plan to stop the

vote count. If he never knew there was a plan, he could not have joined it.

But the plan was only revealed to the other members of the group by Kelly Meggs once they were at the huddle. Thus, if the plan was only revealed at the second huddle, where Mr. Parker clearly was not present, he could not have known of the plan, or joined it.

And there was no basis for the jury to conclude that the plan was revealed at the first stopping point, where Mr. Parker was clearly present. Even if the plan was revealed at the first huddle, which Mr. Berry said was probably not the case, there was no evidence introduced at trial that Mr. Parker heard of it.

The jury would have had to disregard Mr. Berry's testimony that he did not think the plan was discussed at the first huddle, and conclude, through mere speculation, that it was discussed at that first stop.

While a jury is certainly permitted to assess a witness's credibility, when the witness himself, as here, has no idea which of the two huddles produced the critical information, and actually testifies that the information was probably given at the second huddle, where Mr. Parker was not present, the jury would be merely guessing about the location of the big reveal – something it is not permitted to do.

Because of this, the Court should grant Mr. Parker's motion for acquittal on the count of conspiracy to obstruct an official proceeding.

Conclusion

For the foregoing reasons, as well as for any other reasons that may appear to the Court, defendant prays for the relief requested, and for any other relief this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent, by ECF, this 30th day of May, 2023, to all parties of record.

Stephen F. Brennwald

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