UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	*	
	*	
v.	*	**Case No. 21-cr-028-1 (APM)**
	*	
DONOVAN CROWL	*	

MOTION IN LIMINE TO EXCLUDE/LIMIT/OR MODIFY
GOVERNMENT'S VIDEO EXHIBITS

Donovan Crowl, by his undersigned counsel, respectfully moves for an Order to exclude, limit, or modify the government's trial exhibits.

I. Government Video and Digital Exhibits

A. Evidence That Does Not Depict Mr. Crowl Should Be Excluded

The government is expected to seek to introduce multiple digital files, photographs, and countless hours of videos. It will also likely move to introduce modules which seem to be multiple layers of evidence combined with audio visual presentations. Most of the exhibits and videos contain inadmissible evidence, lack foundation, and are inherently, incurably and substantially unduly prejudicial to the defense. The audio and video exhibits are often laced with profanity, violent and obnoxious behavior of other persons, who are not defendants in the instant case and have little or no probative value other than to inflame the passions of the jury. Often the video compilations depict criminal conduct by other individuals not charged in this alleged criminal conspiracy. There are hundreds of hours of video footage depicting the January 6 incident from every possible vantage point.

The Government may not "parade past the jury a litany of potentially prejudicial similar acts that have been established or connected to the defendant only by unsubstantiated innuendo."

Huddleston v. United States, 485 U.S. 681, 689 (1988). Evidence is admissible under Rule 404(b) only if it is relevant. "Relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case." In the Rule 404(b) context, similar act evidence is relevant only if the jury can reasonably conclude that the act occurred and that the defendant was the actor. *Id.* As to Mr. Crowl, the Government cannot meet the *Huddleston* test with respect to much of the video compilations it will seek to introduce.

B. Unduly Prejudicial Evidence Should Be Excluded

The introduction of inflammatory evidence cannot overcome the fact that on January 6, Mr. Crowl did not destroy any property, did not assault or injure any person, did not force his way into the Capitol and did not otherwise use any force or violence nor conspired with anyone to do any of those things. The D.C. Circuit has made clear that it is error to admit evidence adversely reflecting on a defendant, when he did not commit the prejudicial acts. *See United States v. Shelton,* 628 F.2d 54, 58 (D.C. Cir. 1980) (reversal where government engaged in "conscious effort" to sway the jury by prejudicial innuendo).

> It is settled that evidence of other crimes is inadmissible to show criminal propensity or to demonstrate that the defendant is a bad person. Indeed, such evidence is never admissible unless it is "necessary" to establish a material fact such as "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Even then, where the evidence concerns an alleged crime which has not been reduced to final judgment, the trial court must make a preliminary finding that there is "clear and convincing evidence" to connect the defendant to the other crime. These carefully delineated rules exist because of the enormous danger of prejudice to the defendant that evidence of other crimes creates. We have recognized before that juries are prone to draw illogical and incorrect inferences from such evidence.

Id. at 56 (internal citations omitted).

Even in a case that involved a bona fide terrorist organization that has been found to have murdered its enemies and kidnapped Americans, the DC Circuit has forbidden the use of inflammatory irrelevant evidence. *See United States v. Palmera Pineda*, 592 F.3d 199, 200 (D.C. Cir. 2010) where the D.C. Circuit held that "the district court erred by admitting evidence of crimes in which Pineda was not involved." The case is particularly apt because it involved the prosecution of a high-ranking member of the Colombian guerilla organization, in connection with the kidnapping of several Americans. Even though the terrorist organization was a named defendant in the case, the DC Circuit found that it was error to admit "other crimes" evidence in which the defendant himself had not participated. That is exactly what the government is seeking to do in this case in connection with a number of the video depictions it is expected that it will seek to introduce. Even if minimally relevant, such evidence is cumulative and unduly prejudicial and should be excluded.

Respectfully submitted,

/s/ *Carmen D. Hernandez*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served on all counsel of record via ECF this 16th day of December, 2022.

/s/ *Carmen D. Hernandez*

Carmen D. Hernandez