

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

**UNITED STATES OF AMERICA**

**v.**

**ZACHARY REHL,  
Defendant**

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**CASE NO: 1:21-cr-0175-3 (TJK)**

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**ZACHARY REHL’S NOTICE OF FILING LEGAL AUTHORITY FOR  
INTRODUCTION OF THIRD PARTY GUILT BASED ON A  
STATEMENT AGAINST PENAL INTEREST**

In denying the admission of a statement against penal interest pursuant to Federal Rule of Evidence 804(b)(3), the Court found that there was insufficient evidence of trustworthiness to admit the statement. Mr. Rehl submits the following legal precedents in support of the admission of the videotaped statement made by Paul Russell Johnson. He submits that the exclusion of this evidence denies him a fair trial under the holding of *Holmes v. South Carolina*, 547 U.S. 319 (2006).

The Constitution guarantees to criminal defendants the right to a “meaningful opportunity to present a complete defense.” *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)). A court is therefore limited in its ability to impose “arbitrary” rules of evidence, including those that exclude “important defense evidence” without serving “any legitimate interests,” or that are otherwise “disproportionate to the purposes they are designed to serve.” *Id.* at 324–25. (internal quotation marks and citation omitted). Thus, defendants “may introduce [at trial] any legal evidence tending to prove” the existence of a third-party perpetrator so long as the evidence is not too “speculative or remote.” *Holmes*, 547 U.S. at 327.

With respect to FRE 804(b)(3), is a “commonsense notion that reasonable people, even reasonable people who are not especially honest, tend not to make self-inculpatory statements unless

they believe them to be true.” *Williamson v. United States*, 512 U.S. 594, 599 (1994) (referring to FED. R. EVID. 804(b)(3)). “Even the confessions of arrested accomplices may be admissible if they are truly self-inculpatory, rather than merely attempts to shift blame or curry favor.” *Id.* at 603.

Moreover, with respect to the Johnson video, US Magistrate Judge Meriweather issued an arrest warrant for Paul Russell Johnson based on the complaint filed in his case. *United States v. Johnson*, No. 1:21-cr-00332-JMC (ECF 5). The criminal complaint “was based” on facts contained in an affidavit signed by FBI S/A Jon Comottor. *Id.* (ECF 1). Among other facts, the affidavit includes a link to the self-inculpatory statement made by Mr. Johnson captured in a video. With respect to the video, the Complaint includes a “summary” of the statements in the video as follows:

Your affiant has reviewed this video and has determined that JOHNSON made the following statements while speaking to another individual outside the Hilton Garden Inn Hotel at 815 14th Street NW, Washington D.C. 20005. JOHNSON’s statements begin at approximately time stamp 1:37:35 of the YouTube video, and end at approximately time stamp 1:38:46.

JOHNSON: *Yeah, we’re like we’re going, we’re going to the fucking Capitol. So we get to the Capitol and when we get to the street, you know where that uh statue is? At the street? Where the circle roundabout is? Way the fuck away from the Capitol. They had gates at that end, alright?*

*Me and this other guy Collins, he’s in here with us. And I didn’t know that he was . . . we didn’t know each other for shit. I looked. I’m sitting at the gate and I’ve got my hands on him and there’s cops. You know there’s five cops standing up the way a little bit. Beyond them is a lot of cops. So me and him look at each other, we already knew what time it was . . . we started pulling the gates apart. And we started bum rushing. Cops start hightailing to the fucking Capitol, right?*

*We get to the next gate. There's three sets of gates before you get to the stairs of the Capitol. Alright? We get to the next gate. There's probably . . . there's a shit load of cops up there then. Second wing, we breached, pulled up, start throwing shit. I mean we're fu-, we're we're fighting cops and shit. I have video where I'm slinging one around . . . .*

*So we get to the third gate, they're all hightailing to the top of the Capitol. We get up on the steps. It's bolted down to the ground, the gate was. A black gate. So we grab it, we start doing this number here. The next thing you know it's bear mace, the whole front row, dude.*

Throughout the YouTube video, a woman wearing a black Harley Davidson hooded sweatshirt can be seen standing near JOHNSON and can be heard interjecting as JOHNSON describes how he personally broke through metal barricades set up outside the Capitol building. (See Figure 12, below.) The black Harley Davidson sweatshirt that the woman is wearing appears to be the same sweatshirt that JOHNSON is seen wearing in Figures 7, 8, and 10, above.

*Johnson, supra*, Complaint at 8-9 (ECF 1, filed 4/12/21).

Respectfully submitted,

/s/

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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served via ECF on all counsel of record this 11<sup>th</sup> day of April, 2023.

/s/ *Carmen D. Hernandez*  
**Carmen D. Hernandez**