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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	Case Number 21-cr-32
Plaintiff,	.	
	.	
vs.	.	
	.	
GUY WESLEY REFFITT,	.	March 8, 2022
	.	9:30 a.m.
Defendant.	.	
- - - - -		

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE DABNEY L. FRIEDRICH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States:	JEFFREY NESTLER, AUSA
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	U.S. Courthouse, Room 4704-B
	Washington, D.C. 20001
	202-354-3284

Proceedings recorded by stenotype shorthand.
Transcript produced by computer-aided transcription.

1 set the sentencing date. Why don't I, while he's out, go ahead
2 and address the pending motion under Rule 29.

3 Mr. Welch, now that the jury has spoken, did you wish to
4 make any argument on this?

5 MR. WELCH: I do, Your Honor, but in view of the
6 Court's, not Your Honor's but another judge's ruling on a 1512
7 motion as well, I would like to consider that and see if there's
8 anything that's appropriate for me to include in my written
9 papers.

10 THE COURT: Absolutely.

11 MR. WELCH: I don't want to add any oral comments
12 now --

13 THE COURT: Okay.

14 MR. WELCH: -- because that would just complicate
15 that.

16 THE COURT: That's fine. So I'm going to give you a
17 brief ruling now. And I am familiar with that decision, and
18 I've taken a look at it. But I do welcome your briefing.

19 But considering -- this is defendant's motion, Rule 29
20 motion for judgment of acquittal on all counts that was made at
21 the close of the government's case that I reserved ruling on
22 until now.

23 Considering the evidence in the light most favorable to the
24 government, as the Court must, the Court finds that a rational
25 jury could find the essential elements of the crimes charged

1 beyond a reasonable doubt. See *U.S. v. Wahl*, 290 F.3d at 375.

2 With respect to Count One, the jury could credit
3 Mr. Reffitt's own statements captured on tape and in text
4 messages, along with Rocky Hardie and Jackson Reffitt's
5 testimony, Mr. Reffitt's cell phone records and photographs that
6 show that Mr. Reffitt transported guns in commerce from Texas to
7 D.C. in 2021.

8 The testimony of Capitol police officers and videos show
9 that the January 6 riot qualifies as a civil disorder, a public
10 disturbance that caused an immediate danger to persons and
11 property.

12 Although some testimony shows that Mr. Reffitt intended to
13 use his firearms for self-defense or to protect others, other
14 evidence, including Mr. Reffitt's own taped statements, show
15 that he was prepared, if necessary, to use at least his handgun
16 at the Capitol.

17 Thus, a jury could well find beyond a reasonable doubt that
18 Mr. Reffitt knew or intended that the guns would be used in
19 furtherance of the civil disorder in violation of Title 18
20 United States Code Section 231(a)(2).

21 For these same reasons, a rational jury could find beyond a
22 reasonable doubt that Mr. Reffitt entered or remained in a
23 restricted area with a firearm in violation of Title 18 United
24 States Code Section 1752(a)(1) and (b)(2).

25 The testimony of Capitol police officers shows that

1 Mr. Reffitt knew he was on restricted grounds and did not have
2 the lawful authority to be there, as he ignored police
3 barricades, signs, and officers' commands to retreat.

4 A rational jury could also find beyond a reasonable doubt
5 that Mr. Reffitt obstructed officers during a civil disorder in
6 violation of Title 18 United States Code Section 231(a)(3). Not
7 only did the evidence demonstrate that the January 6 riot
8 constituted a civil disorder, the parties stipulated that the
9 riot adversely affected commerce, and the riot adversely
10 affected the Secret Service's plans to protect Vice President
11 Pence and his family, thus interfering with the performance of a
12 federally protected function.

13 A jury could also reasonably credit the Capitol police
14 officers' testimony, along with video evidence of Mr. Reffitt
15 charging up the stairs to the Senate chamber, as establishing
16 his intent to obstruct, impede, or interfere with those
17 officers.

18 And separately, a jury could certainly find that
19 Mr. Reffitt took a substantial step toward obstructing,
20 impeding, or interfering with those officers.

21 A rational jury could also find that Mr. Reffitt obstructed
22 justice by threatening physical force in violation of Title 18
23 United States Code Section 1512(a)(2)(C) or that he took a
24 substantial step toward obstructing justice.

25 A jury could credit Jackson Reffitt's testimony that

1 Mr. Reffitt threatened to shoot his children or put a bullet
2 through his daughter's phone if they informed the FBI about his
3 actions on January 6, and the information that they would have
4 provided, and indeed Jackson had already provided, related to
5 federal offenses.

6 Finally, a rational jury could find beyond a reasonable
7 doubt that Mr. Reffitt obstructed an official proceeding in
8 violation of Title 18 United States Code Section 1512(c)(2) or
9 that he attempted the offense or aided and abetted others in
10 committing the offense.

11 Witness testimony revealed that because of the Capitol
12 breach Congress was forced to halt its joint session to certify
13 the electoral results. Mr. Reffitt's own taped statements and
14 video footage of his ascent on the west stairs show that he led
15 a throng of people who first breached the Capitol.

16 As he admitted to another Three Percenter, he knew that
17 Congress was in the joint session, and at a minimum, he knew of
18 and intended the natural consequence of that action that
19 Congress would be unable to continue with the joint session.

20 Plus, substantial evidence supports the charge that
21 Mr. Reffitt acted corruptly. The officers' testimony and video
22 footage shows that he assisted and encouraged others who used
23 unlawful means, namely assaults of federal officers, to forcibly
24 breach the Capitol. He led the mob and encouraged it to charge
25 toward federal officers, pushing them aside to break into the

1 Capitol.

2 He also acted with an unlawful purpose to physically over-
3 throw Congress, and he expressed this clear purpose on numerous
4 occasions before, during, and after January 6. Mr. Reffitt
5 repeatedly said that the government would be destroyed in the
6 fight and that he wanted to drag lawmakers out of the Capitol by
7 their heels with their heads hitting every step.

8 Lastly, a reasonable jury could find that Mr. Reffitt acted
9 with consciousness of wrongdoing. Despite his stated view that
10 his actions were justified and protected by the Constitution, he
11 knew, as he acknowledged, that the Capitol police officers were
12 faithfully doing their jobs when they ordered them to retreat.
13 Yet, he continually refused their orders. He also acknowledged
14 many times his violation of D.C. gun laws.

15 A jury could reasonably interpret all of his statements as
16 demonstrating his awareness that his actions were wrong.

17 For those reasons, the Court finds that a rational jury
18 could find that the government has proven all the elements of
19 the charged offenses beyond a reasonable doubt.

20 As Mr. Welch mentioned, last night, another judge in this
21 district issued an opinion dismissing the Section 1512(c)(2)
22 charge in another case, *United States v. Miller*, 21-cr-119.

23 Again, I do anticipate briefs being filed on this issue
24 with respect to the upcoming motion or motions, and I look
25 forward to reviewing them. But based on what I've read so far,

1 I'm not inclined to reconsider my earlier ruling.

2 Once the issue has been fully briefed, I will provide my
3 reasons in greater detail, but for now, let me state that I'm
4 not inclined to follow *Miller*, because as I explained in
5 *Sandlin*, the plain meaning of the words "obstruct," "impede,"
6 and "influence" are broad and encompass all sorts of actions
7 that affect or interfere with official proceedings, including
8 interfering with the evidence that may be considered in an
9 official proceeding or halting the occurrence of the proceeding
10 altogether.

11 And in my view, the plain meaning of the word "otherwise,"
12 which is defined as "any different way or manner, differently,
13 in different circumstances, under other conditions, in other
14 respects." See *Miller* opinion at 11, quoting Webster's Third
15 New International Dictionary of the English Language Unabridged
16 2002.

17 That definition does nothing to limit the expansive meaning
18 of Section 1512(c)(2)'s verbs. Rather, the word "otherwise"
19 simply indicates that a defendant violates Section 1512(c)(2) by
20 corruptly obstructing or impeding a proceeding in a manner or
21 respect that is different than altering or concealing documents.

22 Moreover, I don't believe that the Supreme Court's decision
23 in *Begay* alters this conclusion. The *Begay* Court expressly
24 indicated that its interpretation of the word "otherwise" was
25 not the only permissible one. See *Begay v. United States*,

1 553 U.S. at 144.

2 The Court held that a violent felony that otherwise
3 involves conduct that presents a serious physical risk of injury
4 to another must be similar in kind to the example crimes listed
5 before that catchall clause. That's *Begay* at 142.

6 But the *Begay* Court also recognized that "otherwise" in
7 other contexts could instead be interpreted as a link to what
8 follows the word as opposed to what comes before. *Begay* at 144.

9 And Section 1512(c) presents a sufficiently different
10 context such that I don't believe *Begay* controls here.

11 First, the two statutes are structured differently, with
12 Section 1512(c)(2) housed in a separate subsection as opposed to
13 the same sentence. Second, *Begay* found that the examples listed
14 in the Armed Career Criminal Act were insufficiently similar
15 with respect to the serious physical risk of injury that they
16 pose, such that the other violent felonies must be similar to
17 those examples beyond their degree of risk. *Begay* at 142
18 through 143.

19 By contrast, the actions covered by Section 1512(c)(1) can
20 each obstruct, impede, or influence a proceeding. So Section
21 1512(c)(2)'s residual clause can simply cover any different
22 manner of obstructing, impeding, or influencing.

23 Plus, the *Begay* Court relied on the particular statutory
24 history of ACCA, which is not replicated here. *Begay* at 143
25 through 144.

1 The Court's interpretation admittedly creates
2 superfluties, but as I explained in *Sandlin*, the same is true
3 for a narrowing construction that covers only acts affecting
4 evidence. See *Sandlin* opinion at 14 through 15.

5 Finally, the rule of lenity is inapplicable here. The rule
6 applies only when a statute is ambiguous after seizing
7 everything from which aid can be derived. *Ocasio v. United*
8 *States*, 578 U.S. at 295, Note 8, quoting *Muscarello v. United*
9 *States*, 524 U.S. at 138 through 139.

10 The Supreme Court has underscored that point through its
11 repeated use of the phrase "grievous ambiguity." See
12 *e.g.*, *Shaw v. United States*, 580 U.S. at 71, *Salman v. United*
13 *States*, 580 U.S. at 51.

14 As Justice Kavanaugh summarized current Supreme Court
15 precedent in an opinion released just yesterday, a Court must
16 first exhaust all the tools of statutory interpretation and
17 determine the best reading of the statute before the rule of
18 lenity comes into play and only then when the Court has
19 identified a grievous ambiguity. See *Wooden v. United States*,
20 Slip Opinion at 2, Kavanaugh concurring.

21 That is not the case here. So this is not one of those
22 rare situations where lenity comes into play.

23 All right. So for all those reasons, I will deny for now
24 the defense Rule 29 motion.

25 In terms of sentencing, we're looking roughly 90 days out,