

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CASE NO. 21-cr-263 (TSC)
	:	
RUSSELL DEAN ALFORD,	:	
	:	
Defendant.	:	

**MOTION IN LIMINE REGARDING  
AUTHENTICATION OF VIDEO AND OTHER EVIDENCE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits the following motion *in limine* regarding the authentication of video, photographic, and documentary evidence at trial. The United States of America hereby moves this Court, *in limine*, for a pretrial ruling that the identified photographic, video, and documentary evidence is properly authenticated under Federal Rules of Evidence 104, 901, and 902, and is admissible.

This Motion seeks rulings on two categories of evidence. The government seeks to introduce evidence of the “Stop the Steal” rally which the defendant said he attended, of which the Court can take judicial notice. The government further seeks to admit evidence from third party video which is cross-corroborated by other video evidence, which is independently admissible.

**I. BACKGROUND**

On January 6, 2021, Congress assembled in a Joint Session at the United States Capitol to declare the winner of the 2020 presidential election by reviewing and certifying the Electoral College ballots. The defendant was aware of this proceeding, and he wanted to stop it.

The government has charged the defendant, Mr. Russell Dean Alford, with four crimes relating to Congress’s meeting at the United States Capitol on January 6, 2021, to certify the

Electoral College vote for president. First, he is charged with entering and remaining in a restricted building (18 U.S.C. § 1752(a)(1)). Second, he is charged with disorderly or disruptive conduct in a restricted building (18 U.S.C. § 1752(a)(2)). Third, he is charged with disorderly and disruptive conduct in any of the Capitol Buildings with the intent to impede, disrupt, and disturb the orderly conduct of a session of Congress or either House of Congress (18 U.S.C. § 5104(e)(2)(D)). Fourth, he is charged with parading, demonstrating, and picketing in a Capitol Building (18 U.S.C. § 5104(e)(2)(G)).

The riot at, and attack on, the United States Capitol Building was recorded on video: on surveillance footage captured by the U.S. Capitol Police (“USCP”) cameras; on Metropolitan Police Department (“MPD”) body-worn cameras (“BWC”); and on cameras and phones carried by journalists, members of the mob, and other persons present in the U.S. Capitol Building on January 6, 2021. The government’s case will rely heavily on such evidence to prove and explain the defendant’s conduct, to contextualize it through other contemporaneous events, and to give the jury a sense of this defendant’s crimes in the context of the riot as a whole.<sup>1</sup>

At trial, the government intends to present evidence of videos recorded by third parties: other members of the mob. This video is corroborated by the USCP and MPD video which the government will introduce. It is also corroborated by video footage obtained from the defendant’s own cell phone and materials that he posted to his Facebook account.<sup>2</sup>

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<sup>1</sup> The government understands that the defendant will stipulate to the authenticity of the USCP CCTV video from January 6, 2021. In any event, its admissibility would not be controversial: the government can present a USCP witness to testify to their camera system. Likewise, MPD officers will be able to confirm the accuracy of their own BWC footage as well as BWC footage from other, nearby officers.

<sup>2</sup> Corresponding Business Record certifications are attached for the Facebook account and have previously been produced in discovery. *See* Exhibit 1. By inclusion herein, the government gives notice pursuant to Federal Rule of Evidence 902 of “of the intent to offer the record — and must make the record and certification available for inspection

## II. ARGUMENT

Under Federal Rule of Evidence 901(a), “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Rule 901(b) provides a non-exhaustive list of examples of evidence that satisfies this requirement. As relevant here, those examples include:

(1) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be.

...

(3) Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

...

(9) Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.

Fed. R. Evid. 901(b)(1), (3), (4), (9).

As a general matter, establishing an item’s authenticity is not “a particularly high hurdle.” *United States v. Ortiz*, 966 F.2d 707, 716 (1st Cir. 1992); *see also United States v. Vidacak*, 553 F.3d 344, 349 (4th Cir. 2009) (“The burden to authenticate under Rule 901 is not high”); *Link v. Mercedes-Benz of N. Am., Inc.*, 788 F.2d 918, 927 (3d Cir. 1986) (“The burden of proof for authentication is slight.”); *United States v. Hassanshahi*, 195 F. Supp. 3d 35, 48 (D.D.C. 2016) (“The threshold for the Court’s determination of authenticity is not high, . . . and the proponent’s

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— so that the party has a fair opportunity to challenge them.”

burden of proof for authentication is slight[.]” (citation and quotation marks omitted). Rule 901 “requires only a prima facie showing of genuineness and leaves it to the jury to decide the true authenticity and probative value of the evidence.” *United States v. Harvey*, 117 F.3d 1044, 1049 (7th Cir. 1997) (citing cases). *See also, e.g., United States v. Belfast*, 611 F.3d 783, 819 (11th Cir. 2010) (“[A]uthentication itself is ‘merely . . . the process of presenting sufficient evidence to make out a prima facie case that the proffered evidence is what it purports to be.’”) (quoting *United States v. Caldwell*, 776 F.2d 989, 1002 (11th Cir. 1985)); *Vidacek*, 553 F.3d at 349 (“only a prima facie showing is required”). Stated differently, “[t]he standard the district court must apply in evaluating a document’s authenticity is whether there is enough support in the record to warrant a reasonable person in determining that the evidence is what it purports to be.” *United States v. Blanchard*, 867 F.3d 1, 6 (1st Cir. 2017) (quoting *United States v. Paulino*, 13 F.3d 20, 23 (1st Cir. 1994)). Once that showing is made, “[t]he factual determination of whether evidence is that which the proponent claims is ultimately reserved for the jury.” *Vidacek*, 553 F.3d at 349. *See also, e.g., Belfast*, 611 F.3d at 819 (“Once that prima facie case is established, the evidence is admitted and the ultimate question of authenticity is decided by the jury.”).

To make out a prima facie showing of authenticity, “circumstantial evidence of authenticity can be sufficient.” *United States v. Bruner*, 657 F.2d 1278, 1284 (D.C. Cir. 1981). *See, e.g., United States v. Broomfield*, 591 F. App’x 847, 851 (11th Cir. 2014) (unpublished) (“Authentication may be established ‘solely through the use of circumstantial evidence.’”) (quoting *United States v. Smith*, 918 F.2d 1501, 1510 (11th Cir. 1990)). And, importantly, the party seeking to admit evidence need not “rule out all possibilities inconsistent with authenticity, or to prove beyond any doubt that the evidence is what it purports to be.” *United States v. Holmquist*, 36 F.3d 154, 168

(1st Cir. 1994). Rather, “the government must only ‘demonstrate that, as a matter of reasonable probability, possibilities of misidentification and adulteration have been eliminated.’” *United States v. Celis*, 608 F.3d 818, 842 (D.C. Cir. 2010) (quoting *United States v. Stewart*, 104 F.3d 1377, 1383 (D.C. Cir. 1997)). See, e.g., *United States v. Bowens*, 938 F.3d 790, 794-95 (6th Cir. 2019) (explaining that “[a]nyone could have used the defendants’ Facebook accounts, just as the pictures could have depicted the men smoking tobacco cigars, and ‘getting high’ could have been a reference to skydiving,” but that there was sufficient circumstantial evidence “for the jury to infer that the accounts belonged to the defendants, and that the defendants were the authors of the posts about using marijuana”); *Broomfield*, 591 F. App’x at 852 (finding sufficient evidence of authenticity even though “there was no testimony establishing that the recording equipment was reliable or that the video was not altered or staged”).

In deciding preliminary questions about the admissibility of these videos, “[t]he court is not bound by evidence rules, except those on privilege.” Fed. R. Evid. 104(a). In other words, the government may rely upon otherwise inadmissible evidence in establishing the authenticity of the video evidence described in this motion. See, e.g., *United States v. White*, 116 F.3d 903, 914 (D.C. Cir. 1997). Of course, even with a pretrial ruling that evidence is authentic, and thus admissible, the government must introduce sufficient evidence at trial from which a reasonable juror could reach the same conclusion regarding authenticity. See, e.g., *United States v. Gammal*, 831 F. App’x 539, 542 n.6 (2d Cir. 2020) (unpublished) (“Insofar as the District Court relied on non-public information to make its preliminary determination, it did not err because it did not do so in lieu of the presentation of sufficient authenticating public evidence later at trial.”); *United States v. Puttick*, 288 F. App’x 242, 246 (6th Cir. 2008) (unpublished) (“It is permissible for the judge to

make a preliminary determination as to authentication, admit the evidence conditionally under Rule 104(b), and then allow the jurors to be the final arbiters of whether it was actually authenticated.”); *United States v. Branch*, 970 F.2d 1368, 1371 (4th Cir. 1992) (“Thus, even though the district court may have ruled during an in camera proceeding that the proponent had presented sufficient evidence to support a finding that a tape recording was authentic, evidence that would support this same ruling must be presented again, to the jury, before the tape recording may be admitted.”).

**A. Judicial Notice of the Stop the Steal Rally**

The government requests that the Court take judicial notice of, and admit into evidence, the factual conclusions of the United States Court of Appeals for the District of Columbia Circuit in *Trump v. Thompson*, 20 F.4th 10, 17-18 (2021). See *United States v. Rivera*, Criminal Action No. 21-060 (CKK) (D.D.C., Jun. 17, 2022), ECF No. 62, fn. 14. In his statement to the FBI on January 20, 2021, the defendant stated that he attended the Trump Rally on January 6, 2021. He further acknowledged that he followed the crowd to the Capitol, and indeed into the Capitol. On his way to the Capitol, the defendant took a photograph of a sign which read “Off With Their Heads – Stop the Steal.”



The United States Court of Appeals for the District of Columbia Circuit's ruling in *Trump v. Thompson* accurately described the rally the defendant admitted attending and helps to contextualize his subsequent conduct. On December 9, 2021, the United States Court of Appeals for the District of Columbia Circuit in *Trump v. Thompson* made the following factual findings:

Shortly before noon on January 6th, President Trump took the stage at a rally of his supporters on the Ellipse, just south of the White House. J.A. 180. During his more than hour-long speech, President Trump reiterated his claims that the election was "rigged" and "stolen," and urged then-Vice President Pence, who would preside over the certification, to "do the right thing" by rejecting various States' electoral votes and refusing to certify the election in favor of Mr. Biden. See Donald J. Trump, Rally on Electoral College Vote Certification at 3:33:05-3:33:10, 3:33:32-3:33:54, 3:37:19-3:37:29, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification> (last accessed Dec. 7, 2021) ("January 6th Rally Speech"). Toward the end of the speech, President Trump announced to his supporters that "we're going to walk down Pennsylvania Avenue \* \* \* to the Capitol and \* \* \* we're going to try and give our Republicans \* \* \* the kind of pride and boldness that they need to take back our country." *Id.* at 4:42:00-4:42:32. Urging the crowd to "demand that Congress do the right thing and only count the electors who have been lawfully slated[,]" he warned that "you'll never take back our country with weakness" and declared "[w]e fight like hell and if you don't fight like hell, you're not going to have a country anymore." *Id.* at 3:47:20-3:47:42, 4:41:17-4:41:33..

This Court can take Judicial Notice of the findings made by the United States Court of Appeals for the District of Columbia Circuit. *Rivera*, Criminal Action No. 21-060 (CKK) (D.D.C., Jun. 17, 2022), ECF No. 62, fn. 14 ("As to what occurred at the "Stop the Steal" rally, the Court takes judicial notice of the United States Court of Appeals for the District of Columbia Circuit's factual conclusions. *See, e.g., Trump v. Thompson*, 20 F.4th 10, 17-18 (2021)").

**B. The Defendant's Own Cell Phone Video Cross-Authenticates Other Video**

The government intends to offer evidence of videos recorded by two third parties: a segment of video recorded by John Sullivan, a charged defendant who recorded and posted videos

using the moniker JaydenX,<sup>3</sup> and a video recorded by an unknown person and posted to the website Rumble.com.<sup>4</sup>

Sullivan was present among the mob of people that gained access to a hallway outside the “Speaker’s Lobby” while the USCP was evacuating Members of Congress from the House Chamber. As seen on Sullivan’s video, members of the mob observed Members of Congress evacuating and screamed at the officers who stood in defense of the doors to the Speaker’s Lobby. At some point, those officers stepped aside, and members of the mob immediately began attacking the doors’ glass windowpanes in an effort to break them. Ashli Babbitt, a member of the mob, tried to climb through the panel in apparent pursuit of the Members of Congress and was shot by a USCP officer on the other side of the door. Sullivan captured the shooting of Ms. Babbitt and the crowd’s reaction to it.

Several minutes later, police ordered Sullivan and other members of the mob out of this hallway and toward the Upper House Door, an exit from the Capitol on the east side of the building. This was the door through which the defendant entered and left the Capitol. As Sullivan queued up to leave, he continued to record the crowd, and he captured the defendant near the exit. Rather than leaving the Capitol building, the defendant had stepped to the side of the crowd, positioned himself next to the Upper House Door (half of the door remained closed; he stood next to the closed half) and turned back to record the crowd. As Sullivan’s cell phone captured footage of the defendant, the defendant captured footage of Sullivan.

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<sup>3</sup> Sullivan is charged with offenses arising out of the riot in case no. 1:21-cr-00078-EGS-1.

<sup>4</sup> The video can be accessed at <https://rumble.com/vcydy7-nemos-news-network-exclusive-storming-dc-capitol-jan-6-2021.html>.



Sullivan filming Alford filming Sullivan



Alford filming Sullivan filming Alford

Moreover, U.S. Capitol Police CCTV video simultaneously captures both Sullivan and the defendant filming.



CCTV capturing both Alford and Sullivan filming

The Rumble video was recorded by a member of the mob who stood just outside, or at the threshold of, the Upper House Door and recorded other rioters as they left the Capitol building. It clearly captures the damage to the door's windowpanes and the continuous sound of an alarm. It also shows many of the same rioters and police officers depicted in USCP CCTV videos, the MPD BWC videos, the defendant's videos, and Sullivan's video, as they left the building. Many of these people are readily identifiable by their distinctive physical characteristics, their clothing, and the sounds of their voices. The Rumble video shows the defendant standing in the same corner of the Upper House Door, behind the half of the door that remained shut.



U.S. Capitol CCTV shows the same scene from a different angle.



In other words, it clearly shows that while police officers were directing rioters to leave, and other rioters were leaving, the defendant chose to disobey their commands. The Rumble video also shows that, before he took his position at the door, the defendant walked through a metal detector on his way to the door frame.



U.S. Capitol CCTV video shows the exact same moment from a different angle.



Both of these videos can be authenticated by the distinctive characteristics they share in common with the other video. Fed. R. Evid. 901(a)(4). USCP CCTV footage and MPD BWC shows the crowd, from various angles, as police officers struggled to eject them from the building; it depicts the defendant, Sullivan, and other members of the mob who are identifiable by their distinctive appearance and clothing. A comparison of the Sullivan video and the other third-party video to these videos make clear they are authentic: they capture the same people, in the same location, at the same time, from slightly different angles that help to contextualize the defendant's conduct.

WHEREFORE, the government respectfully requests that this Court grant the motion for a pre-trial determination that the aforementioned exhibits are authentic under the Federal Rules of Evidence and admissible at trial.

Respectfully submitted,

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