

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
 v. : Case No. 21-CR-327 (RC)  
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 LUKE RUSSELL COFFEE, :  
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 Defendant. :  
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**GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION IN LIMINE**  
**FILED ON JANUARY 9, 2021**

The United States of America, by and through undersigned counsel, respectfully responds to Defendant’s Motion in Limine (ECF No. 66), which sought to exclude other person’s bad actions, the use of prejudicial terms, and the use of untimely disclosed evidence. The United States will address each of Defendant’s arguments below.

**ARGUMENT**

Evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.” Fed. R. Evid. 401 (cleaned up). “The general rule is that relevant evidence is admissible,” *United States v. Foster*, 986 F.2d 541, 545 (D.C. Cir. 1993), which is a “liberal” standard, *United States v. Moore*, 590 F. Supp. 3d 277, 283 (D.D.C. Mar. 10, 2022). Rule 403 “does not generally require the government to sanitize its case, to deflate its witnesses’ testimony or to tell its story in a monotone.” *United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C. Cir. 1998). It does not prohibit “powerful, or even ‘prejudicial’ evidence”. Instead Rule 403 concerns evidence that is unfairly prejudicial. *Id.* Evidence is unfairly prejudicial if it has “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *United States v.*

*Ring*, 706 F.3d 460, 472 (D.C. Cir. 2013) (quoting Fed. R. Evid. 403, Advisory Committee's note). Rule 403 favors admission in close cases. *Id.*

**I. Evidence Concerning Events and Other Acts is Relevant**

Defendant's request to preclude all other acts committed by other persons on January 6 should be denied. The government intends to focus its evidence on Defendant's conduct and events on the west side of the Capitol. However, some events that occurred in other parts of the Capitol -- e.g. crowd breaches into the building itself -- are relevant to proving the offenses charged, which include civil disorder and disorderly and disruptive conduct on the Capitol grounds.

At trial, the government intends to introduce testimony from a U.S. Capitol Police Officer familiar with Capitol Police activity on January 6, 2021 and with the Capitol's security camera footage. Through Capitol security camera footage from January 6, 2021, the government intends to develop a video exhibit that will display some relevant events of the day. Some of this video may include brief video of: a large crowd gathering outside the U.S. Capitol; a breach of the barriers on the west side before 1:00 p.m.; a breach of the scaffolding on the Western side at around 2:00 p.m.; the overrunning of fencing and police line on the east side at around 2:00 p.m.; an intrusion into the Capitol building on the west side at around 2:13 p.m.; and the evacuation of the representatives, senators and the Vice President at around 2:20 p.m. In addition, video evidence of Defendant's approach to the West tunnel of the Capitol, along with his assaults on officers in the West tunnel, will also depict assaults committed by other persons at or near the time of Defendant's attacks.

Defendant's argument that all events and actions that did not directly involve him are irrelevant is incorrect. As to Count 1 (Civil Disorder), the government must show that the disorder

adversely affected commerce and the conduct and performance of any federally protected function. As to Count 5 (Disorderly or Disruptive Conduct in a Restricted Ground with a Deadly Weapon) and Count 8 (Disorderly Conduct), the government must show that the disorderly conduct impeded and disrupted government business or official functions. Defendant's conduct on the West side of the Capitol, which included assaulting officers, and holding metal crutch above his head towards the crowd prior to charging forward into police, contributed to the disruption of the certification process. In addition, Defendant was part of a collective mob that stormed the U.S. Capitol. This size and actions of the collective mob, that Defendant was a part of, had a direct effect on disrupting government business and official functions, and adversely affected commerce. Thus, evidence of the certain activity on the west side and in the Capitol, and on assaults committed during and around the time of Defendant's attacks, is all relevant to show how government business and official functions were impeded and disrupted.

In any event, the government does not intend to focus its presentation on the actions of others. If video evidence is introduced that depicts the actions of others, that evidence will be short in duration and limited to show the overall riot, its effects, the context of Defendant's actions (i.e. assaults occurring during and immediately preceding Defendant's attacks), and why government business or official function was impeded or disrupted.

Moreover, even if this Court finds the actions of other rioters to be prejudicial, the appropriate remedy would be a limiting instruction to the jury and not exclusion. The D.C. Circuit has consistently upheld the use of limiting instructions as a way of minimizing the residual risk of prejudice. *See, e.g., United States v. Douglas*, 482 F.3d 591, 601 (D.C. Cir. 2007) (emphasizing the significance of the district court's instructions to jury on the permissible and impermissible uses of the evidence).

For all these reasons, Defendant's request should be denied.

**II. Defendant Seeks to Preclude Terms that Fairly Describe Conduct on January 6 and are not Unfairly Prejudicial.**

Defendant moves to prohibit the use of terms such as “victim,” “insurrection,” “mob,” “terrorism,” “riot,” “attack,” “coup,” and related terms. ECF No. 66 at 2-3. Defendant's motion should be denied because the unprecedented attack at the Capitol can be accurately described as a riot, mob, or an attack, and officers were victims of violent assaults. As the Court knows, thousands of people forced their way into the Capitol building during the constitutionally mandated process of certifying the Electoral College votes, threatened the peaceful transfer of power, injured more than one hundred law enforcement officers, disrupted commerce and other government functions, and caused more than two million dollars in damage and loss. This was not peaceful “protest” – it was a riot and an attack by a mob. Thus, individuals who participated in this riotous mob can be accurately characterized as “rioters” and members of a “mob.” Indeed, many members of this Court have recognized the event on January 6 as a riot, mob, attack, etc. *See, e.g., United States v. Vincent Gillespie*, 1:22-cr-00060 (BAH) (ECF 43 at 5) (collecting cases in which the D.C. Circuit and numerous Judges of this Court have used such terms throughout the January 6 proceedings to describe the events at the U.S. Capitol). As in *Gillespie*, with respect to terms like attack, mob, and riot, Defendant here fails to “grapple with the fact that the words also accurately describe the events that occurred on January 6, 2021.” *Id.* at 5. Precluding the government and its witnesses from employing the term “riot,” “mob,” “attack,” or other common-sense terms that accurately describe January 6, is not overly prejudicial under Rule 403.

With respect to terms such as “insurrection,” “terrorist,” “terrorism,” and “coup,” Defendant's argument should be denied as moot. The government does not intend to argue these terms to the jury or directly elicit such terms from witnesses during its direct or cross-examinations.

**III. The United States' Trial Evidence Will be Based on Timely Disclosed Discovery**

Defendant's argument should be denied. The government does not intend to introduce evidence that was not timely disclosed or elicit testimony from an expert witness.

**CONCLUSION**

For the reasons stated above, Defendant's motion should be denied.

Respectfully submitted,

MATTHEW M. GRAVES  
United States Attorney  
D.C. Bar No. 481052

By:

/s/ Raymond K. Woo  
TIGHE R. BEACH  
Co. Bar No. 55328  
RAYMOND K. WOO  
Az. Bar No. 023050  
Assistant United States Attorneys  
601 D Street, N.W.  
Washington, DC 20530  
Phone: (240) 278-4348  
Email: raymond.woo@usdoj.gov