

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

Crim. Action No. 21-377 (BAH)

v.

ANTHONY WILLIAMS,

Defendant.

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**REPLY REGARDING MOTION IN LIMINE
OPPOSING ADMISSION OF YOUTUBE VIDEO**

The government fails to demonstrate that there is sufficient evidence that the YouTube video it seeks to admit accurately depicts what it claims to depict, and therefore the video should be excluded under Fed. R. Evid. 901. As the government correctly observes, authentication is a specialized aspect of relevancy. (ECF No. 71, Resp, at 10.) The government argues that this video is relevant and authentic because Mr. Williams’s route, as depicted in other authenticated video footage, “match[es] the path shown in the video.” (*Id.* at 2.) The government also notes that the burden of proving authenticity—which it bears as proponent of this evidence—is not high. (*Id.* at 10–11.) But the government has not met its burden: The video does not depict Mr. Williams and is obviously edited. The creator of the video is unknown, and there is no witness proffered who can say exactly how it is edited.

The government never claims Mr. Williams is seen in the YouTube video. The first six images in the government’s response, as well as images nine and ten—all of which do depict Mr. Williams—are not from the contested YouTube video. The images are from CCTV footage

and video recorded by Mr. Williams himself. Mr. Williams has stipulated to the authenticity and foundation for these videos.

The government relies on *United States v. Blackwell*, 694 F.2d 1325 (D.C. Cir. 1982), in which the prosecution produced photographs depicting the defendant holding a firearm in a room where officers found the firearm, and the detective who conducted the search testified that the details of the weapon and room matched the weapon and room in question. (ECF No. 71, Resp., at 11.) *Blackwell* is easily distinguishable from this situation. First, the defendant is not present in the exhibit in this case. And more importantly, there was no evidence in *Blackwell* that the exhibit was edited. Here, there is a text overlay on the video, and as the government concedes, “[t]he video skips in recording.” (*See id.* at 2.)

The same is true of *United States v. Rembert*, 863 F.2d 1023 (D.C. Cir. 1988). There a supervisor of a bank authenticated photographs taken by the bank’s ATM. The D.C. Circuit affirmed admittance of the evidence, emphasizing the supervisor’s testimony about “the loading of the cameras and the security of the film, coupled with the internal indicia of date, place, and event depicted in the evidence itself.” *Id.* at 1028. The ATM footage did not have indications that it had been edited like the video here. And there is no anticipated testimony about the Youtube video in this case being taken through some automated process—with internal indicia of date, place, and event—as with the ATM in *Rembert*. Rather, the video on its face purports to be taken by an independent journalist and posted to the YouTube channel of a local news station.

It also is notable that the government relies primarily on decisions from 1982 and 1988. “Technologies for altering images, video, or audio (or even creating them from scratch) in ways that are highly-realistic and difficult to detect are maturing rapidly.” Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107

Cal. L. Rev. 1753, 1757 (2019). In the 1980s, average citizens did not have access to the type of technology that today allows for easy and low-cost editing of video images and audio, and for the rapid dissemination of those edited videos on social-media websites like YouTube. Moreover, because of the power of video media, “[c]redible yet fraudulent audio and video will have a much-magnified impact.” *Id.* at 1819. “Many people value visual perception above other indicators of truth.” Agnieszka McPeak, *The Threat of Deepfakes in Litigation: Raising the Authentication Bar to Combat Falsehood*, 23 Vand. J. Ent. & Tech. L. 433, 439 (2021). That fact is all the more reason to demand more to authenticate this video than what the government proffers.

The government also cites *Penn v. Detweiler*, No. 1:18-CV-00912, 2020 WL 1016203 (E.D. Pa., Jan. 22, 2020), *Vazquez v. City of Allentown*, 689 F. App’x 695, 700 (3d Cir. 2017), and *United States v. Taylor*, 688 F. App’x 638, 642 (11th Cir. 2017). (See ECF No. 71, Resp., at 14–15.) But none of those decisions involved video that was clearly edited, much less edited by an unknown source. *Vazquez* in fact upheld the exclusion of a video when the proponent of the video did not produce a witness who could say the video was what it claimed to be. 689 F. App’x at 700.

That a witness may recognize herself or himself in a portion of the video here does not mean the video is an accurate depiction of events on January 6, 2021. The witness the government proffers to authenticate the video is not seen in the entirety of the video, so the person is unable to authenticate exactly how the video is altered and edited. The witness cannot say exactly how long the “skip” in the video is, or if the audio is modified. Nor can the witness say whether the images (which are from a different perspective than the officers) are an accurate depiction, especially given that the creator of the video had the ability to add some visual changes shown by the text written over the video. Without more, this Court should exclude this YouTube video.

Conclusion

Mr. Williams respectfully asks the Court to exclude the Youtube video at issue under Federal Rule of Evidence 901

Respectfully submitted,

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