

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

UNITED STATES OF AMERICA

v.

ANTHONY ROBERT WILLIAMS,

Defendant.

Criminal Action No. 21-377 (BAH)

Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

Defendant Anthony Robert Williams faces trial on June 27, 2022, on a five-count indictment arising from his alleged conduct at the U.S. Capitol on January 6, 2021. Pending before the Court is the government’s opposed Motion in Limine to Exclude Assembly or Demonstration Reportable Force Report (“Gov’t’s Mot.”), ECF No. 45 (sealed), seeking “to exclude defense evidence or argument related to an Assembly or Demonstration Reportable Force Report involving” an officer of the Washington, D.C. Metropolitan Police Department (“MPD”) named in the motion (“Subject MPD Officer”), Gov’t’s Mot. at 1. The Subject MPD Officer is anticipated to “testify in [the government’s] case-in-chief regarding illegal conduct that took place in the Rotunda,” where defendant allegedly engaged in offense conduct on January 6, 2021, *id.* at 2. This motion is denied to the extent that defendant is permitted to use the MPD Assembly or Demonstration Reportable Force Report (“Report”), Gov’t’s Mot., Exh., ECF No. 45-2 (sealed), for the limited purpose of impeachment on cross-examination of the Subject MPD officer, but otherwise granted.

I. DISCUSSION

The Report consists of six pages, with a cursory narrative regarding three “Use of Force Events” that occurred in various parts of the U.S. Capitol Building and grounds on January 6, 2021, including the Rotunda at the time defendant was allegedly present. *See* Report at 2. The Report also lists, for each event, MPD officers’ names, assigned units and supervisory officers and, for each officer listed under each event, whether that officer used “Mechanical Force,” “OC Spray,” both, or neither. *Id.* at 2–6. The government acknowledges that the Subject MPD Officer “was listed” in the Report, along with other MPD officers, as among those who used “mechanical force” in certain locations on January 6, 2021, but the Report does not specifically identify any individuals against whom such force was used. Gov’t’s Mot. at 2; *see also* Report.

In the government’s view, the Report should be excluded, under Rules 401 and 403 of the Federal Rules of Evidence, as an “attempt to shift the jury’s attention to questions about the propriety of the officers’ conduct rather than the charged offenses” that “risks confusing the issues, wasting time, and unfairly prejudicing the jury.” *Id.* at 3. Defendant counters that the Report is potentially relevant insofar as it may contradict the Subject MPD Officer’s testimony regarding “how police responded to people in the Rotunda on January 6, 2021.” Def.’s Resp. Gov’t Mot. Exclude Assembly or Demonstration Reportable Force Report (“Def.’s Opp’n”) at 1-2, ECF No. 55 (sealed). Defendant also suggests that “bias cross-examination regarding an ongoing internal investigation against a testifying officer” may be appropriate pursuant to *United States v. Wilson*, 605 F.3d 985, 1006 (D.C. Cir. 2010). Def.’s Opp’n at 2.

In a supplemental filing requested by the Court, the government explained that the Report “was triggered by,” as relevant here, “the use of force” entailing “any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer,” and that the

Subject MPD Officer was one of 29 officers from a particular MPD unit identified as having used force in at least one of three separate incidents on January 6, 2021, including in the Rotunda. Gov't's Notice to the Court ("Gov't's Notice") at 1, ECF No. 85 (sealed); *see also* Min. Order (May 31, 2022). By MPD policy, a Report of this kind must be filed by "[o]fficials who direct the use of force (e.g., for a squad, platoon)." MPD Standard Operating Procedures SOP-16-01, attach. L, ¶ II.A.2.a.3 (2016), https://go.mpdconline.com/GO/SOP_16_01.pdf. "When a serious use of force occurs," MPD's Internal Affairs Division as a matter of course "conduct[s] a full investigation." *Id.* ¶ II.B.1.a. Accordingly, neither the Report nor the subsequent investigation signifies the existence of any allegations of officer misconduct brought by a third party or internally.

The government has also provided an MPD Internal Affairs Division report, dated May 11, 2021, following an internal review, concluding that all of these officers' use of force, including in the Rotunda on January 6, 2021, was "Justified Within Departmental Policy." *Id.*, Exh. 1, Final Investigative Report at 109–11, ECF No. 85-1 (sealed). Given the conclusion of this investigation and its outcome, defendant's concern regarding "bias" due to an "ongoing internal investigation" is unfounded, *see* Def.'s Opp'n at 2, and therefore defendant's reliance on *Wilson*, 605 F.3d at 1006, which recognized the propriety of bias cross-examination regarding an ongoing internal investigation against a testifying officer, is misplaced. *See* Gov't's Reply Supp. Mot. in Limine Exclude Assembly or Demonstration Reportable Force Report at 3, ECF No. 69 (sealed) ("The foundation of this argument is flawed because there is no ongoing internal investigation of the officer, and this use of force incident report did not trigger an investigation into any wrongdoing by the officer, much less any conclusion that he engaged in any misconduct."); *cf.* Def.'s Notice to the Court in Resp. Order Dated June 3, 2022 at 2, ECF No. 86

(sealed) (acknowledging, in the context of a similar report involving U.S. Capitol Police officers, that “[b]ecause the officers were cleared of wrongdoing, and it does not appear the U.S. Attorney’s Office is pursuing any investigation into them, this evidence of bias is admittedly limited”).

The government is correct that “the jury’s assessment of [defendant’s] conduct depends on evidence concerning his knowledge and intent, not whether officers complied with a particular procedure,” Gov’t’s Mot. at 4, nor does MPD’s internal investigation regarding the MPD officers’ use of force “bear on the criminal charges in this case,” *id.* The evidentiary value of the Report is further limited since the contents have insufficient information to determine if defendant was involved in or able to perceive the use of force cataloged in the Report. The risk of confusion to the jury from the Report, moreover, is substantial given that, standing alone, it does not explain whether an internal investigation ensued nor the results of such investigation.

Simply put, all the Report has to offer is the fact already well documented in CCTV and body-worn camera footage that various officers used mechanical force in various locations in the Capitol, including the Rotunda. Nevertheless, given that the Subject MPD Officer may testify about his use of mechanical force in the Rotunda and elsewhere, as well as the use of such force by fellow law enforcement officers, the Report is relevant impeachment material to the extent his answers are inconsistent with the Report’s contents. Accordingly, the government’s motion is denied to the extent the Report may have limited use for impeachment of the Subject MPD Officer.

II. ORDER

For the foregoing reasons, it is hereby

ORDERED that the government's Motion in Limine to Exclude Assembly or Demonstration Reportable Force Report, ECF No. 45, is **DENIED IN PART** to the extent that defendant shall permitted to use the MPD Assembly or Demonstration Reportable Force Report, ECF No. 45-2, for the limited purpose of impeachment on cross-examination of the Subject MPD Officer; and it is further

ORDERED that the government's motion is **GRANTED** in all other respects.

SO ORDERED.

Date: June 8, 2022

BERYL A. HOWELL
Chief Judge