UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 21-cr-383 (BAH)**
	:	
PATRICK STEDMAN,	:	
	:	
Defendant.	:	

GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTIONS IN LIMINE REGARDING
PRECLUSION OF EVIDENCE AND JURY SELECTION

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this response to the Defendant's Motions In Limine to preclude the United States from presenting evidence regarding any events of January 6, 2021 for which it cannot demonstrate Mr. Stedman was present and observed, and, (2) permitting the Defendant expanded voir dire and additional peremptory challenges. Specifically he seeks that the Court's : (1) permit a questionnaire to be sent to summoned prospective jurors, after review and approval by the Court, (2) allow the parties to be present during any pre-screening questioning the Court conducts before formal voir dire; (3) permit individual questioning during voir dire; and, (4) allow the Defendant ten additional peremptory challenges. (ECF 46)

ARGUMENT

A. General Evidence of the Events of January 6, 2021 is Relevant and Admissible

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. "The general rule is that relevant evidence is admissible," *United States v. Foster*, 986 F.2d 541, 545 (D.C. Cir. 1993). Additionally, Rule 403 does not 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). Neither Rule 401 nor 403 supports the Defendant's requested relief.

The Defendant argues that the United States should be from precluded from presenting any evidence regarding any events of January 6, 2021 for which it cannot demonstrate the Defendant was present and observed. (ECF 46 at 38-39.) To convict him, however, the jury must find that the Defendant committed each offense with which he is specifically charged. It is not enough for the government to show that the Defendant was simply present near others who committed crimes across the Capitol building and grounds. The Defendant's argument ignores the nature of these crimes as a collective action. It was the mob's collective action that disrupted Congress, and the Defendant's knowledge of the collective riot bears on his *mens rea* for each of the charged offenses.

The government does not anticipate focusing its evidentiary presentation on areas of the Capitol the Defendant did not go. However, to show the overall riot, its effects, the context of the Defendant's actions, and why the certification of the Electoral College vote was suspended, the government will need present evidence to show the actions of other rioters in other areas of the Capitol building and grounds. Law enforcement officer witnesses will explain that, in expelling rioters, they could not distinguish between those rioters who were overtly violent and those who were not; everyone had to leave. This is because law enforcement could not predict who would act violently; any member of the crowd might be a threat to them. Indeed, throughout the day, individual officers found their attention divided by the need to monitor the whole crowd, rather than focusing on a specific individual. But for the Defendant's actions alongside so many others, the riot likely would have failed to delay the certification vote. See *United States v. Mazzocco*, No. 21-cr-54, Tr. 10/4/2021 at 25 ("A mob isn't a mob without the numbers. The people who were

committing those violent acts did so because they had the safety of numbers.") (statement of Judge Chutkan). While a jury will judge the Defendant based on his own actions, the context of his actions will necessarily be placed before them—that context was a riot.

The actions of other rioters at multiple areas of the Capitol could be relevant to elements of the crimes with which the Defendant is charged. To prove Count One, Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. § 1512(c)(2) and 2, the government must establish that there was an "official proceeding" and the fact that it was disrupted. The official proceeding was the certification of the Electoral College vote, and proving this charge requires presenting evidence involving the actions of other rioters at all locations of the Capitol building and grounds. Moreover, Count One includes the alternative theory of aiding and abetting, pursuant to 18 U.S.C. § 2. Therefore, the conduct of other rioters is extremely relevant.

Furthermore, the government's use of any potential summary witnesses or evidence to this effect would permissibly "help the jury organize and evaluate evidence which is factually complex and fragmentally revealed in the testimony of a multitude of witnesses throughout the trial." *See United States v. Lemire*, 720 F.2d 1327, 1348 (D.C. Cir. 1983). Any such aspects of the government's case would need to be "accurate and nonprejudicial[,]" *United States v. Fahnbulleh*, 752 F.3d 470, 479 (D.C. Cir. 2014), and require "a sufficient foundation[,]" *United States v. Mitchell*, 816 F.3d 865, 877 (D.C. Cir. 2016). Given these parameters, the Defendant cannot substantiate his contention that the government should be precluded from presenting this information.

Additionally, even if this Court found the actions of some rioters were unduly prejudicial, a limiting instruction would be the appropriate remedy. 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); *Pettiford*, 517 F.3d at 590 (same); *Crowder II*, 141 F.3d at 1210 (stating that mitigating instructions to jury enter into the Rule 403 balancing analysis).

Because the actions of other rioters are relevant and not unduly prejudicial and any prejudice can be addressed through an appropriate limiting instruction, its admission is appropriate and the Defendant's motion to preclude its introduction should be denied.

B. The Requested Jury Questionnaire is Unwarranted

In his motion, the Defendant points to the effect of the events he participated in on January 6, 2021, including significant press coverage, the impact of the events on residents of the District of Columbia, and a claimed predisposition of District residents toward guilt in January 6 cases. The Defendant wishes to address his concerns through the use of a questionnaire submitted in advance to all prospective jurors. The United States opposes this motion as the use of a questionnaire would be inappropriate when there presently exists a mechanism for the Defendant to address any relevant concerns in voir di`re, and through the submission of proposed voir dire questions to the Court. It is the government's intention to submit a list of proposed voir dire questions for the Court to pose to the entire panel, which will be consistent with the questions posed to other panels in the January 6, 2021 riot-related cases. The voir dire system as it operates is specifically equipped to address the concerns which the Defendant raises, especially because he does not assert that his individual case was one particularly highlighted in the local press or widely known in the local community, nor that there was any particular animosity in the community directed toward him individually.

C. Individual Questioning By Counsel in Voir Dire is Unnecessary

It is the understanding of undersigned counsel that, consistent with the practice of other judges in this District, the Court conducts voir dire by posing a set of questions to the entire jury panel and then follows up with individualized questions to prospective jurors as necessary, one by one, out of the presence of the entire panel. The government concurs with this process. Regarding the Defendant's request that counsel for the parties be permitted to ask follow-up questions directly to potential jurors, the government defers to the Court, but understands that this Court will allow reasonable follow-up, often conducted by the Court, after consultation with counsel for the Defendant and the government.

A trial court has "broad discretion" in "deciding what questions to ask prospective jurors." *United States v. Tsarnaev*, 142 S. Ct. 1024, 1034 (2022). With limited exceptions, no particular questions are constitutionally required, unless a failure to ask them would "render the trial fundamentally unfair." *See Mu'Min v. Virginia*, 500 U.S. 415, 425-26 (1991) (rejecting any requirement to ask questions about the content of pretrial publicity to which prospective jurors were exposed).

The Supreme Court has repeatedly said that jury selection falls "'particularly within the province of the trial judge.'" *Tsarnaev*, 142 S. Ct. at 1034 (quoting *Skilling v. United States*, 561 U.S. 358, 386 (2010); *see also Mu'Min*, 500 U.S. at 424 ("[T]he trial court retains great latitude in deciding what questions should be asked on voir dire."). A trial court's broad discretion in this area includes deciding what questions to ask prospective jurors. *See Mu'Min*, 500 U.S. at 427.

Attorney-conducted voir dire will take more time and will increase the risk that improper or leading questions are asked to prospective jurors. In this case, it makes more sense to conduct voir dire consistent with district practices – not just in January 6 cases, but generally, all criminal

cases. This process is tried and true and produces fair and neutral panels of juries. Such a process further promotes judicial economy, helping to fairly, but expediently, try the matter before the Court.

D. The Government Opposes the Granting of Additional Peremptory Challenges

The Defendant further requests this Court to grant ten additional defense peremptory challenges to potential jurors without providing any binding legal authority for this action. ECF 46-1 at 43-44. Further, the Defendant makes this request while conceding in his own motion that "the peremptory challenge has never been held to be constitutionally mandated by the Supreme Court…" ECF 46-1 at 44 (quoting *Boone v. United States*, 483 A.2d 1135, 1138 (D.C. Cir. 1984). Rule 24 of the Federal Rules of Criminal Procedure provides that, in noncapital felony cases, "[t]he government has 6 peremptory challenges and the defendant or defendants jointly have 10 peremptory challenges . . . ." Fed. R. Crim. P. 24(b)(2). The Rule also allows that "[t]he court may allow additional peremptory challenges *to multiple defendants*, and may allow the defendants to exercise those challenges separately or jointly." Fed. R. Crim. P. 24(b) (emphasis added). Nowhere does Rule 24 allow for additional peremptory challenges in single defendant cases such as the present one. Even in multi-defendant cases, the granting of additional peremptory challenges has been sparingly used in January 6 cases. For example, recently in *United States v. Nordean, et al*, 21-cr-175-TJK, Judge Kelly had initially elected to grant a total of two additional peremptory strikes to be shared by five defendants, to give total of 12 peremptory strikes for the defense. Judge Kelly also permitted the United States two additional peremptory strikes. However, Judge Kelly subsequently denied a defense request to expand the number of defense peremptory challenges by an additional six strikes. Of note, *Nordean* is a five-defendant conspiracy trial involving members of the national Proud Boys organization, and has received significant pre-trial publicity. Stedman

asks this Court to grant his motion for an additional 10 peremptory strikes for the defense in a single defendant case with no specific articulation of how this case differs from other January 6 cases, and with no citation to specific authority which supports this request. For the reasons stated above, this motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this pleading was served on opposing counsel via ECF.

/s/ Joseph S.Smith, Jr.
JOSEPH S. SMITH, JR.