

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

**UNITED STATES OF AMERICA**

v.

**KAROL J. CHWIESIUK,  
AGNIESZKA CHWIESIUK,**

**Defendants.**

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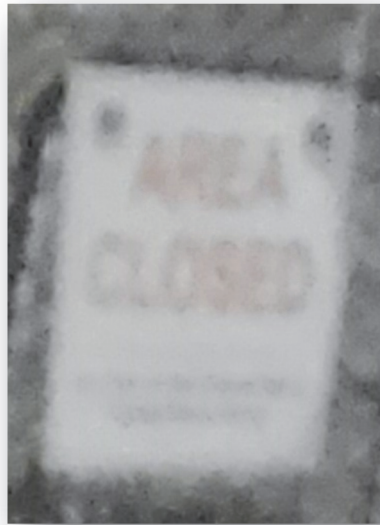
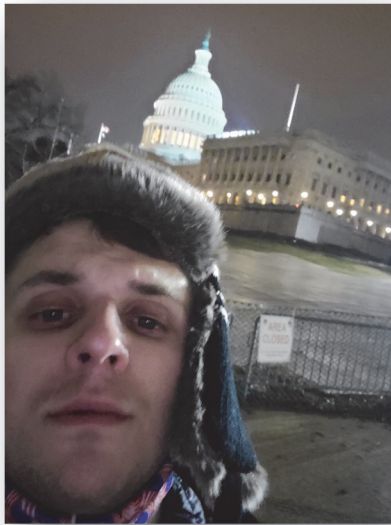
**Case No. 21-CR-536 (CKK)**

**MOTION IN LIMINE TO EXCLUDE IMPROPER CHARACTER EVIDENCE**

Defendant Karol J. Chwiesiuk is a current or former Chicago Police Department (CPD) Officer. The government anticipates that at trial, Karol Chwiesiuk may attempt to introduce accolades, awards, medals, commendations, certificates, letters, performance reviews, and other records from his service in the CPD. The Court should preclude K. Chwiesiuk from offering evidence of specific instances of his prior good conduct, including that derived from his career in law enforcement, because such evidence is improper character evidence under Fed. R. Evid. 404(a)(1) and 405(a).

**I. The Defendant's Participation in the January 6, 2021 Riot and the Pending Charges**

Karol J. Chwiesiuk and Agnieszka Chwiesiuk are siblings that in January 2021 were residing at their family home in Chicago, Illinois. They rented a car and travelled together from Chicago, Illinois, to Washington, D.C., prior to January 6, 2021. In the evening of January 5, 2021, K. Chwiesiuk walked from the Mayflower Hotel, where he and his sister booked a room, to the U.S. Capitol. There, K. Chwiesiuk took a selfie photograph in front of a barricade and a sign stating AREA CLOSED.



*Images 1 and 1a (l to r): A selfie photograph of K. Chwiesiuk in front of the U.S. Capitol the evening of January 5, 2021; and a close-up of the sign in the photo reads AREA CLOSED.*

On January 6, 2021, Karol J. Chwiesiuk put on a Chicago Police Department hooded sweatshirt and together the Chwiesiuks attended the former President’s rally and speech at the Ellipse. After the speech, they marched down Pennsylvania Ave to the U.S. Capitol. Once they reached the restricted Capitol grounds, they walked together up to the NW Terrace of the Capitol, through the dense and raucous crowd gathered outside a breach point known as the Senate Wing Door, through a broken-out doorway, and unlawfully into the Capitol. Once inside, the Chwiesiuks walked south towards the Crypt, with K. Chwiesiuk stopping to step into and take a selfie inside of Senator Merkley’s hideaway office. The Chwiesiuks spent approximately ten minutes inside the Capitol—from approximately 2:58 p.m. to 3:08 p.m.—before leaving through a broken-out window.

Based on their actions on January 6, 2021, the Chwiesiuks are now charged with Entering and Remaining in a Restricted Building, in violation of 18 U.S.C. § 1752(a)(1); Disorderly or Disruptive Conduct in a Restricted Building, in violation of 18 U.S.C. § 1752(a)(2); Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and Parading,

Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G). ECF No. 54. K. Chwiesiuk was additionally charged with Entering or Remaining in a Room Designated for the Use of a Member of Congress, in violation of 40 U.S.C. § 5104(e)(2)(C)(i)). *Id.*

## **II. The Limited Admissibility of Character Evidence**

Fed. R. Evid. 404(a) prohibits either party from offering evidence of character to prove that a person acted in conformity therewith on any particular occasion. The rule applies to prior good acts as well as prior bad acts of the defendant. As the Sixth Circuit has explained, “For the same reason that prior ‘bad acts’ may not be used to show a predisposition to commit crimes, prior ‘good acts’ generally may not be used to show a predisposition not to commit crimes.” *United States v. Dimora*, 750 F.3d 619, 630 (6th Cir. 2014). In other words, “evidence of good conduct is not admissible to negate criminal intent.” *United States v. Ellisor*, 522 F.3d 1255, 1270 (11th Cir. 2008)(internal citation omitted).

The Rule contains three exceptions, one of which governs the admissibility of evidence of a defendant’s character. Fed. R. Evid. 404(a)(2)(A). Such evidence is admissible only if it relates to a “pertinent” or relevant character trait. *Id.* Consistent with Rule 405, “[w]hen evidence of a person’s character or character trait is admissible, it may be proved by testimony about the person’s reputation or by testimony in the form of an opinion.” Fed. R. Evid. 405(a). “When a person’s character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person’s conduct,” Fed. R. Evid. 405(b), but this exception does not apply in this case, as no charges against Webster include such an element.

This Court has authority to grant a motion *in limine*, in advance of trial, which excludes inadmissible evidence, as well as all references by parties, attorneys, and witnesses to the inadmissible evidence. *Luce v. United States*, 469 U.S. 38 (1984).

**III. The Court Should Preclude the Introduction of Character Evidence Relating to the Defendant's Former Public Service.**

This Court should exclude character evidence if offered by the defendant to prove his general good character, including that derived from his prior public service – such as attention to duty, commitment to public service, professionalism, or dedication. Such evidence is not admissible because it is not pertinent to an essential element of the charges pending against him. *See, e.g., United States v. Washington*, 106 F.3d 983, 999-1000 (D.C. Cir. 1997) (holding that a police officer's commendations were not admissible because the defendant's dedication, aggressiveness and assertiveness in investigating drug dealing and carjacking was neither pertinent to, nor an essential element of, bribery, conspiracy, or drug and firearms charges with which he was charged); *United States v. United States v. Irving*, 2008 WL 163653, at \*1 (D.D.C. Jan. 18, 2008) (excluding evidence of Detective's professional awards because the awards do not reflect pertinent character traits and the criminal allegations were plainly unrelated to the Detective's professional competence and integrity).

Courts have held that the general character trait of law-abidingness is pertinent to almost all criminal offenses. *In re Sealed Case*, 352 F.3d 409, 412 (D.C. Cir. 2003). However, even if evidence of the defendant's prior good acts was indicative of a general law-abidingness, the form of that evidence would be governed by Rule 405(a), which limits such evidence to "testimony as to reputation or by testimony in the form of an opinion." Fed. R. Evid. 405(a). Proof of specific instances of conduct is not permitted under the Rule, unless the trait or character of a person is an essential element of the charge, claim, or defense—which, in this case, it is not. *See United States v. Washington*, 106 F.3d 983, 999 (D.C. Cir. 1997). Indeed, there is no character trait derived from the defendant's prior public service that is an essential element of a charge, claim, or defense in this case. None of the elements of the offenses with which the defendant has been charged relate

to his career with CPD or character traits aligned with that service. Moreover, any such specific acts from his service as a Chicago Police Officer is not sufficiently related or proximate in time to the crime charged to be relevant under Rule 403. *See United States v. Barry*, 814 F.2d 1400, 1404 (9th Cir. 1987) (“Evidence of prior acts, whether offered under Rule 404(b) or 405(b) by the prosecution or by the defense, must be sufficiently related and proximate in time to the crime charged to be relevant under Rule 403.”). Finally, any such evidence from his CPD records, including, for example, letters of commendation, would be hearsay. *See United States v. Nazzaro*, 889 F.2d 1158, 1168 (1st Cir. 1989) (affirming the district court’s refusal to admit evidence of the defendant’s awards and commendations from his military service and police service because “the traits they purport to show—bravery, attention to duty, perhaps community spirit—were hardly ‘pertinent’ to the crimes of which [the defendant] stood accused” and because “the evidence, as presented below, seems to us classic hearsay, and inadmissible for that reason as well”). Thus, evidence of the defendant’s specific good acts is inadmissible.

Accordingly, this Court should preclude the defendant from offering character evidence in the form of specific acts, or general reputation or opinion evidence beyond the scope of general law-abidingness, including that relating to his career in law enforcement.

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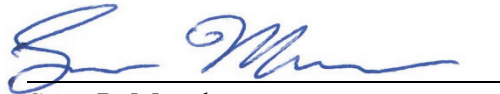
**WHEREFORE**, the government respectfully provides Notice of the above information and moves to preclude the admission of such information at a hearing or trial.

Respectfully submitted,

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United States Attorney

DATED: March 24, 2023

By:



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