

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	No. 21 CR 536
v.)	
)	
KAROL J. CHWIESIUK &)	Hon. Kollar-Kotelly
AGNIESZKA CHWIESIUK)	

**DEFENDANT’S RESPONSE TO GOVERNMENT’S MOTION *IN LIMINE* TO
EXCLUDE IMPROPER CHARACTER EVIDENCE**

The defendant, Karol J. Chwiesiuk, through his counsel, responds in opposition to the government’s motion *in limine* to preclude character evidence. Dkt. 73. Defendant respectfully requests that this Court deny the motion. In support, Mr. Chwiesiuk states:

I. The Motion to Preclude Evidence Relating to Mr. Chwiesiuk’s Career as a Police Officer Should be Denied

The government moves to preclude Karol Chwiesiuk from introducing evidence related to his service with the Chicago Police Department (CPD). Dkt. 73. Specifically, the government moves to exclude “accolades, awards, medals, commendations, certificates, letters, performance reviews, and other records from his service in the CPD.” *Id.* at 1. The motion should be denied.

In a criminal case, evidence of a pertinent trait of character may be offered by an accused. Fed. R. Evid. 404(a)(1). If a character trait is relevant, a defendant may offer evidence through reputation or opinion testimony. Fed. R. Evid. 405(a). Further, if the case is one “in which character or a trait of character of a person is an essential element of a charge, claim, or defense,” the defendant may provide proof of specific instances of conduct. Fed. R. Evid. 405(b). The government argues that any evidence relating to Mr. Chwiesiuk’s career is inadmissible character evidence because it does not relate to a pertinent character trait nor does it relate to a character trait that is an essential element of a charge, claim or defense. Dkt. 73 at 3-4. However, the traits demonstrated by the evidence are relevant to the charges and do relate to an essential element.

Mr. Chwiesiuk is charged with multiple counts that require the government to prove he knowingly engaged in disorderly or disruptive conduct with the intent to impede or disrupt the orderly conduct of government business or official functions. *See* Dkt. 54 at 2-3; 18 U.S.C. § 1752(a)(2); 40 U.S.C. § 5104(e)(2)(C)(i); 40 U.S.C. § 5104(e)(2)(D). “[D]isorderly’ conduct is that which “tends to disturb the public peace, offend public morals, or undermine public safety.’ *United States v. Grider*, No. 21 CR 2022 U.S. Dist. LEXIS 230569 (D. D. C. 2022) (quoting “Disorderly,” Black’s Law Dictionary (9th ed. 2009)). Because there is video footage of Mr. Chwiesiuk at the Capitol, whether he possessed this intent will be a primary issue at trial. The admissibility of commendations and other records from police officer’s careers depends on the connection between the traits revealed and the conduct at the heart of the charges. *See e.g., United States v. Brown*, 503 F. Supp. 2d 239, 241-44 (D.D.C. 2007) (comparing the connection between traits revealed in officer commendations to the charges in the present case to the lack of a connection between the traits and charges in *United States v. Washington*, 323 U.S. App. D.C. 175 (D.C. Cir. 1997) and *United States v. Nazareno*, 889 F.2d 1158, 1168 (1st Cir. 1989)).

Here, the government argues that the evidence it seeks to exclude would demonstrate good character such as “attention to duty,” and “commitment to public service,” which it claims are not relevant traits to the charges. Dkt. 73 at 4. However, these traits are directly relevant to whether Mr. Chwiesiuk would intentionally engage in conduct to “offend public morals” and “undermine public safety” to impede the orderly functioning of government. *See* 18 U.S.C. § 1752(a)(2); 40 U.S.C. § 5104(e)(2)(C)(i); 40 U.S.C. § 5104(e)(2)(D); *See also* “Disorderly,” Black’s Law Dictionary (9th ed. 2009). Character evidence that demonstrates a particular dedication to upholding public peace and preserving the official functions of government is connected to the heart of the charges in this case. Further, as the government acknowledges, “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)(internal citations

omitted). Mr. Chwiesiuk's career as a police officer demonstrates his prior adherence to the law. Thus, evidence from the defendant's police career should not be excluded.

In addition, if Mr. Chwiesiuk chooses to testify, it will be necessary for the jury to weigh his credibility. Evidence of his career that could be excluded under the government's motion may generally be admissible as relevant background information. *See, e.g., Brown*, 503 F. Supp. at 242 n.4. (describing the fact and length of police department employment as 'properly background information.'). Further, some records which the government wishes to exclude may demonstrate the defendant's character traits for truthfulness and honesty, which are admissible when the defendant testifies. *See In Re Sealed Case*, 352 F.3d at 412. It is further possible that the government's evidence at trial may attack the defendant's credibility or may otherwise open the door for the introduction of evidence concerning his law-abidingness or dedication to preserving public peace. *Id.* Thus, the Court should deny the motion or "defer ruling until trial [when] decisions can be better informed by the context foundation, and relevance of the contested evidence within the framework of the trial as a whole." *Barnes v. District of Columbia*, 924 F. Supp. 2d 74, 79 (D.C. Cir. 2013)(internal citations omitted).

For these reasons, the defendant, Karol J. Chwiesiuk, respectfully requests that this Court deny the government's Motion *in Limine* to Exclude Character Evidence.

Respectfully submitted,

/s/ Nishay K. Sanan
nsanan@aol.com

/s/ Cece White
cece@sananlaw.com

Nishay K. Sanan, Esq.
53 W. Jackson Blvd., Suite 1424
Chicago, Illinois 60604
Tel: 312-692-0360
Fax: 312-957-0111