

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,) Criminal Action
) No.: 21-cr-0679
Plaintiff,)
vs.) Washington, D.C.
) January 13th, 2023
ROBERT WAYNE DENNIS,)
) 10:09 a.m.
Defendant.)
_____)

Transcript of Bench Trial - Day 4
Before the Honorable James E. Boasberg
United States District Judge

For the Government: Jason Manning
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P R O C E E D I N G S

THE COURT: Good morning, everyone.

THE CLERK: Good morning, everyone. We're here today for a verdict reading in 21-679, United States of America versus Robert Wayne Dennis.

THE COURT: Okay. Welcome everybody. Thank you for being back. So I just want to ask a few more questions on a couple of the counts, Mr. Manning. So I think we talked about it briefly, but you know, on Counts 6 and 8 -- well, what's really more concerned on 6. So the element is that the defendant engaged in disorderly or disruptive conduct, and I understand that element, but with the intent to impede or disrupt the orderly conduct of government business or official functions. And so my question is, are the orderly conduct of government business and official functions the certification of the vote or are you're arguing that it's broader than that?

MR. MANNING: Glad to address that, Your Honor. We're arguing that it's broader than that in that it doesn't have the same degree of specificity as the obstruction of an official proceeding that could be charged under 1512(c)(2). That said, we're not arguing, for the purposes of this case at least, that it's so broad to encompass, you know, any activity of any police officer. That in this case we believe the evidence shows, and will rise or fall on whether the evidence shows, that the defendant intended to disrupt what was

1 happening in Congress that day. He was at the Capitol for a
2 reason. He approached that police line for a reason. The
3 reason was his anger at what he knew to be happening in the
4 Capitol that day, where he went following the speech he heard
5 on the Ellipse.

6 THE COURT: I think this is an interesting issue and
7 I appreciate the fact that you're taking a, what I think is a
8 more defensible position, as opposed to saying, well,
9 government business and official functions can include any
10 actions by the police, which I just -- I think that's probably
11 a stretch. And I just wanted to -- so you would then agree
12 that there's no daylight between Count 6 and Count 8 here,
13 that he's either guilty of both or guilty of neither, but
14 there's not, given the way you're defining government
15 business, there's no real distinction then between those two
16 counts; fair?

17 MR. MANNING: I think that's right. I mean, the
18 only distinction is one is the restricted area and one is the
19 Capitol building or grounds and the two happen to be the
20 same -- they were coterminous on that day for the same
21 reasons.

22 THE COURT: All right. Thank you very much.

23 All right. Again, I appreciate everyone's advocacy
24 here, your civility and your vigorous and effective work as
25 counsel here. And Mr. Dennis, I've known Mr. Orenberg for a

1 long time. In fact, he'll probably remember, I think I had
2 cases against him when I was a prosecutor over 20 years ago.
3 I know he appeared in front of me in superior court for many
4 times. And you're fortunate to have such a good advocate on
5 you behalf. I've seen a lot of lawyers and I can tell you
6 you're lucky to have him next to you.

7 So the facts that I find here that the defendant
8 came up from Texas to attend the stop the steal rally. He was
9 coming because former president Trump called patriots to be
10 there, and he believed he was a patriot and should be there.
11 Now he never mentioned why he was coming beyond that the
12 president asked patriots to come, aside for a vague mention
13 about the election in response to my question. And he never
14 said that he always does whatever a president wants him to do.

15 But in this case there was effectively no
16 cross-examination of the defendant, which again is a tactical
17 decision the government made. I'm not sure why. But there
18 was no cross of him as to his motives or his intent either
19 before or after. And here there were no social media posts or
20 other statements about overturning the election or about
21 Congress or about taking his country back. And so I don't --
22 given the government's decision not to cross, I don't really
23 have any evidence that he was coming to D.C. to impede the
24 vote, as opposed to coming to support president trump.

25 So after the speech he walked down to the Capitol

1 with others at the rally. And his motive again, absent any
2 cross-examination, appeared to be to support the president and
3 be a part of the crowd. There was no specific evidence beyond
4 that. The Capitol grounds were closed to the public that day;
5 and barricades, fences, and signs so proclaimed. Many of
6 these were down by the time the defendant arrived and he
7 proceeded after the Peace Circle up onto the Capitol grounds
8 and under the scaffolding for the inaugural stage. There he
9 heard of tear gassing and a woman being shot, but he decided
10 to keep going forward to see what was going on. There were
11 also people in ballistic gear with gas masks, helmets, et
12 cetera, which the defendant could see was hardly a peaceful
13 group of rally goers but rather plenty of people intent upon
14 confrontation and violent confrontation.

15 The defendant made his way up to the top of the
16 stage and he could see a police line forming at the top of the
17 steps on the lower west terrace. The officers were yelling at
18 people to move back and the defendant could see them pushing
19 people off the higher terrace. Police established a clear
20 line with batons and riot shields making clear that entry to
21 the area was barred, as was entry to the Capitol behind them.
22 People in the crowd were yelling that the officers were going
23 to die and that they were traitors.

24 Upset by what he believed was the striking of the
25 woman in red, the defendant came down from the stage, gestured

1 angrily to members of the crowd to rile them up. And then
2 walked directly up the steps to where Officer =Weible was
3 standing. The defendant had his hands in front of his face,
4 he said he was engaged by what had happened and felt compelled
5 to act. He said he had tunnel vision and was looking at the
6 police line only. He did not stop moving toward the police as
7 he approached them.

8 So a critical dispute in this case was who was the
9 first aggressor here. And I find it was the defendant. That
10 based -- I find this based mainly on the video evidence, which
11 again is undisputed evidence. It is a video account of what
12 occurred. I find that he first put his hands on Officer
13 Wyble's baton and made contact with Officer Wyble's right arm,
14 after which the officer to Officer Wyble's right, Officer
15 Pacheco, struck him in the neck area with her baton.
16 Mr. Dennis fell back from that impact and grabbed Pacheco's
17 baton. Whether that was for support as he was falling or as
18 an aggressive act is not important, because he is no longer
19 charged with assaulting her.

20 In any event, after he was propped up and supported
21 by the man in the blue jean jacket, he then moved forward to
22 strike Officer Stadnik. Once again I find he was the initial
23 aggressor there. Stadnik then admittedly pulls him into a
24 bear hug and the two fall to the ground, after which the
25 defendant is restrained. But based on the video, I find that

1 the defendant was the initial aggressor toward both Wyble and
2 Stadnik. That he could have retreated after falling back down
3 the stairs, but instead continued forward toward Stadnik. But
4 it is not the push by the man in the blue jean jacket that
5 propels the defendant toward Stadnik, but rather it's an
6 independent decision by the defendant to continue his
7 aggressive actions.

8 I find the defendant's account of the interactions
9 with the officers not credible, because the video undermines
10 it. I do find the officer's accounts largely credible but,
11 again, my main reliance is on the video. In addition, in his
12 July 21st interview the defendant admitted it was the dumbest
13 thing he had ever done, which again shows some recognition
14 that he was not merely a victim here.

15 So given those facts, we now look at the legal
16 issues and we dispense with a couple of defenses. The first
17 is the public authority defense, which the defense has raised.
18 A number of courts in our district has explained why this is
19 not available in a case like this, and I agree. For example,
20 Judge Bates in the case of *United States versus Sheppard*, No.
21 21-203, and Judge Howell in *United States versus Chrestman*,
22 C-h-r-e-s-t-m-a-n, 525 F.Supp.3d 14, in 2021. They both talk
23 about the unavailability of the defense for two central
24 reasons.

25 First, the defendant must show that he relied on a

1 conclusion or statement of law by the relevant official, here
2 Mr. Trump. But Trump never said to enter the restricted area
3 of the Capitol in his speech or to overcome police to enter
4 the Capitol or to impede the certification of the vote. And
5 second, even if he implied this, he as the official must have
6 actual authority regarding the statement. In other words, he
7 must have actual authority to instruct people to impede the
8 certification and to enter restricted areas in the Capitol.
9 And clearly he had no authority to instruct any impeding of
10 the electoral certification. And so, therefore, the public
11 authority defense is not a valid defense here.

12 Further, I've already explained why the defense of
13 self-defense is not valid here, given that I find that the
14 defendant was the initial aggressor in relation to both Wyble
15 and Stadnik, the defendant in addition was the one who
16 provoked the incident by approaching the officers in the first
17 place. And again, he's the one who initiated contact. And
18 the defense itself has disclaimed any defense of others
19 defense. So those defenses, I believe, are invalid.

20 So then moving to the specific counts, Count 1, I
21 find that the defendant did knowingly and intentionally commit
22 an act to interfere with Officer Stadnik, namely his assault
23 of that officer. Stadnik was engaged in his official duties
24 which were incident to a civil disorder. The civil disorder
25 did both affect commerce, we heard evidence about safeway

1 stores closing, and in addition it affected the performance of
2 a federally protected function, namely the Secret Service
3 protection of the vice president. Again, we heard evidence
4 that the Secret Service had to move the vice president because
5 of disorder. So I find the defendant guilty of Count 1.

6 Counts 2 and 4 relate to the assault and impeding of
7 officers. And I explained in detail in my factual recitation
8 why the defendant did assault and interfere with both Wyble
9 and Stadnik. He acted intentionally and voluntarily. He made
10 contact with both of them intentionally and when he did so
11 they were assisting federal officers, namely the United States
12 Capitol police officers in their official duties, and I
13 therefore find him guilty of Counts 2 and 4, which are the
14 assault counts.

15 Count 5 is entering and remaining in a restricted
16 building or grounds. I find the defendant knew when he was
17 under the scaffolding and heard of people being tear gassed
18 and shot that he wasn't allowed to be at that place on the
19 Capitol grounds, even if he reasonably believed that he could
20 be on the Capitol grounds between the Peace Circle and the
21 stage, which I don't need to find, but I find that he knew
22 that he wasn't allowed to be there under the inaugural stage.
23 And even if he was, at the very least he knew he could not go
24 to the top of the steps where the police line was.

25 Now, the defense at trial and in their brief, which

1 they submitted after the trial, argued that the police line
2 had low visibility and so the defendant did not necessarily
3 know that he could not proceed to the top of the steps there
4 on the lower west terrace, but I don't find that a credible
5 argument. The defendant could see both from the stage and
6 from down the steps that the police had established a strong
7 and serious line. The fact that one man with a cane was
8 behind the line, lying on the ground, doesn't diminish that.
9 And so the officers were telling people to move back. They
10 had shoved people back. And they established a clear line
11 with batons and riot shields. Anyone would know they did not
12 have the authority to be there. And yet the defendant,
13 knowing that, still walked up to the top of those steps. In
14 addition, this was a restricted building because the vice
15 president was there, who is a person protected by the Secret
16 Service. I therefore find the defendant guilty of Count 5.

17 Count 6, again, speaks of disorderly and disruptive
18 conduct in a restricted building or grounds. And clearly this
19 was disorderly and disruptive conduct. But again, the
20 question is was this an intent to impede or disrupt the
21 orderly conduct of government business or official functions,
22 or was his intent simply to assault the police. In other
23 cases there's been some social media posting or other
24 statement by the defendant saying what his intent was, that it
25 was to in fact impede a vote. Now, there's certainly an

1 argument that anybody at the Capitol that day was engaging --
2 that that was the conduct they were engaging in. But again
3 here, I think it's a close call. I must find beyond a
4 reasonable doubt the defendant so acted. As I said, in the
5 absence of any government cross-examination of the defendant,
6 I cannot find that his -- beyond a reasonable doubt that he
7 was intending to impede or disrupt Congress as opposed to
8 simply being on the Capitol grounds to support President Trump
9 and to support other rally goers. And given that the
10 government agrees, at least for purposes here, that police
11 functions are not necessarily government business or official
12 functions, I find -- I cannot find beyond a reasonable doubt
13 in this case that he was intending to impede or disrupt the
14 orderly conduct of government business or official function.
15 So I'll find him not guilty of Count 6.

16 Count 7, relates to engaging in physical violence in
17 a restricted building or grounds. Again, he engaged in
18 physical violence because of the assault. He engaged in so
19 knowingly and he was in a restricted building or grounds,
20 which he knew as I explained in relation to Count 5. So I'll
21 find him guilty of Count 7.

22 Count 8 is disorderly conduct in a Capitol building.
23 And for the reasons he's not guilty of Count 6, he's not
24 guilty on Count 8, because there's no evidence of an intent to
25 disturb the orderly conduct of a session of Congress. And

1 again, you know, it's not -- it's far from frivolous to argue
2 that everybody on the grounds that day had the intent to
3 disrupt, but I think here, beyond a reasonable doubt, I can't
4 find without any statements by the defense -- by the
5 defendant, I mean, before or during the incident that he was
6 there to do that as opposed to simply -- that he was simply
7 angry at the police.

8 And then finally -- so not guilty of Count 8.
9 Finally, Count 9 is physical violence in a Capitol building or
10 grounds. Again, he did engage in the act of physical violence
11 as I've explained it, and he did so in the grounds of the
12 Capitol, and he acted willfully and knowingly. So I find him
13 guilty of Count 9.

14 So once again, guilty of Counts 1, 2, 4, 5, 7 and 9.

15 Any question as to the verdict, Mr. Manning?

16 MR. MANNING: No, Your Honor.

17 THE COURT: Mr. Orenberg?

18 MR. ORENBURG: No, Your Honor.

19 THE COURT: Okay. So we need to set a date for
20 sentencing.

21 THE CLERK: April 13th.

22 THE COURT: What did you say?

23 THE CLERK: 90 days would be April 13th.

24 THE COURT: And what day of the week is that?

25 THE CLERK: That's a Thursday.

1 THE COURT: Okay.

2 THE CLERK: It does not look like we're in trial.

3 THE COURT: Okay. April 13th is a Thursday, 11:00
4 o'clock, Mr. Manning?

5 MR. MANNING: That works for the Government, Your
6 Honor.

7 MR. ORENBERG: What time, Your Honor?

8 THE COURT: 11:00 okay?

9 MR. ORENBERG: That's fine.

10 THE COURT: Again, that will be in person, Mr.
11 Orenberg, because it has to be.

12 MR. ORENBERG: It has to be. I understand.

13 THE COURT: All right. So Mr. Dennis, you will
14 be -- you're going to be interviewed by the probation
15 department in regard to a presentence report. That means that
16 they're going to talk to you about your background, your
17 employment, education, family. If you wanted Mr. Orenberg
18 present during that interview you may do so. In addition, he
19 and the government may submit memoranda regarding a
20 sentencing. Each of them will have a chance to talk at
21 sentencing. You'll have a chance to talk at sentencing. If
22 you want to submit letters on your own, behalf you may also do
23 that. Do you understand all of that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And anything else then for the

1 Government today?

2 MR. MANNING: Just the question under 18, U.S.C.,
3 3143, Your Honor, of the conditions.

4 THE COURT: Okay. And is there -- yes.

5 MR. MANNING: Your Honor, the defendant has been on
6 release up till now. Typically, under these charges of
7 conviction, the government would contend that detention is now
8 warranted under Section 3143. However, the government and
9 defense counsel have been communicating about this. And we do
10 believe that with some heightened conditions that we
11 understand that defense will propose and agree to, that under
12 those heightened conditions, and under the particular
13 circumstance of this case, that could satisfy ongoing
14 remainder under 1343.

15 THE COURT: Thank you very much.

16 Mr. Orenberg.

17 MR. ORENBERG: Good morning, Your Honor. Appreciate
18 the government's recommendation. We have been discussing, I
19 guess, a joint proposal to the Court. He is currently under
20 conditions that include, obviously, no firearms in the home.
21 When he was initially arrested he was reporting once a week to
22 Pretrial Services in the Northern District of Texas. I
23 understand that's been relaxed or modified to monthly. So I
24 think what we'd jointly propose is that the Court, I guess in
25 the way that it can, instruct the Northern District of Texas

1 to ask him to report on a weekly basis. Again, no --

2 THE COURT: In person or phone reporting.

3 MR. ORENBERG: No, by phone. And no travel outside
4 the Northern District of Texas without permission by either
5 the Pretrial Services officer down there, or if necessary by
6 the Court.

7 THE COURT: Okay. That's fine with me. I think
8 what the best thing, if you -- maybe the government and you
9 can just submit a proposed modification of conditions form.
10 Just coordinate with the courtroom deputy to just submit the
11 form that makes those changes in the conditions and I'll sign
12 that.

13 MR. ORENBERG: Okay.

14 THE COURT: Okay.

15 All right. So Mr. Dennis, given the recommendation
16 by both sides, I will not detain you pending sentencing. I
17 believe that given your compliance so far that that's
18 appropriate as a recommendation. And it is what I expect I
19 would have done absent recommendation. And so there are going
20 to be a couple of other restrictions; you need to report
21 weekly and you can't leave the Northern District of Texas
22 without consent of pretrial. If you want to leave and they
23 don't consent, you can ask your lawyer to ask me if there's
24 some special occasion like a funeral or something you need to
25 go to, you can let me know. All right?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Thank you all.

3 MR. ORENBERG: Thank you, Your Honor.

4 THE COURT: We'll see you in April.

5 (The proceedings were concluded at 10:33 a.m.)

6
7 I, Christine Asif, RPR, FCRR, do hereby certify that
8 the foregoing is a correct transcript from the stenographic
9 record of proceedings in the above-entitled matter.

10 /s/
11 Christine T. Asif
12 Official Court Reporter
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