

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

UNITED STATES OF AMERICA

v.

**CYNTHIA BALLENGER, and
CHRISTOPHER PRICE,**

Defendants.

Case No. 1:21-cr-00719 (JEB)

**DEFENDANT CYNTHIA BALLENGER’S (PRICE’S) SUPPLEMENTAL
MEMORANDUM RELATED TO THE SENTENCING HEARING**

The instant memorandum describes and challenges several new allegations made in a section of the Government Sentencing Memorandum for Cynthia Ballenger (Price) styled “Ballenger’s Trial Testimony.” [ECF 133 at 9-11]. The effort is to make sure the record is complete and that the Defense had an opportunity to respond to new allegations. As mentioned by the Defense at the Sentencing hearing of September 29, 2023, the Defense did not have an opportunity to address these particular issues. At the sentencing hearing, the Court told the Defense counsel to not continue this area of discussion after Defense had some opportunity to discuss legal standards and a few examples. Presumably, the instruction to stop was because the Court had already determined to rule favorably for the Defense regarding the potential application of USSG § 3C1.1 and did not want the hearing to spend time on such further argument, or further examples.

The Defense, however, believes it is important that the record reflects the Defense concerns over the new government allegations. The Government allegations were made to argue a narrative of misstatement on the part of Cynthia Price and potentially taken into account for

other purposes. This memorandum is only a subset of the Defense concerns on the matter. Several related concerns were addressed in the Memorandum in Aid of Sentencing of Cynthia Ballenger (Price) [ECF 132 at 9 -23] and other documents. This memorandum does not address the points previously addressed in other memoranda.

The first government statement of concern in their Sentencing memorandum [ECF 133 at 9] is the following which has many component parts: Trial Tr., March 21, 2023

After leaving the café, Ballenger testified that she and Price walked to the Capitol and that they did not see any bicycle racks, signs, barricades, or obstructions to the Capitol building. [Citing Trial Tr., March 21, 2023 at 47-48], and that “everybody was very pleasant” at the Capitol and “it was very orderly.” *Id.* at 47-48, 54.

This single sentence mischaracterizes every relevant page of the transcript and Cynthia’s responses.

First, the questions regarding bicycle racks or barricades cited in the relevant page of the transcript were about very specific locations and not “to the Capitol” as claimed by the Government. The statement on Trial Tr., March 21, 2023 at 47 was entirely about a crosswalk on Constitution Avenue and then the walk immediately after crossing Constitution Avenue.

Q: And was that your experience? That is to say, you walked across the sidewalk and like the people in this video, just walked straight through?

A: Yes, there was no obstruction going across the crosswalk onto the sidewalk

Q: Did you observe any bicycle rack or signs as you crossed over into that area

A: There was no signs or bicycle racks obstructing our way in our path (emphasis added)

The Government intentionally left out the specific location of the question and left out the qualifier “obstructing our way in our path”.

Page 48 of Trial Tr., March 21, 2023 is also about a specific location concerning entering the upper Northeast Terrace:

Q: And when you crossed on to that structure, the upper walkway or sometimes called the upper northeast terrace in this trial, were there any barricades or signs you saw?

A: “So, there was no barricades in our path...” (emphasis added).

Cynthia’s statement is accurate and fully consistent with multiple pieces of evidence. Moreover, the Defense had presented video showing the bicycle racks actually restricting the walkway at an earlier time. The racks were moved to the side by other people before the Prices arrived. There are always racks at the Capitol. What matters is which way they are aligned. The bicycle racks off to the side at the entrance were not blocking the path of hundreds of people including dozens of policemen who walk unhindered in video evidence

Second, the government claims Cynthia said “everybody was very pleasant” citing to Trial Tr., March 21, 2023 at 54. Actually, Cynthia said:

- A: You know, in every large crowd, there’s always you know, some disrupters, but for the most part, everybody was very pleasant... (emphasis added)
- Q: Or at least in your experience
- A: In my experience, yes.

The Government also cites Trial Tr., March 21, 2023 at 54 for the claim that Cynthia claimed “at the Capitol” that “it was very orderly” together without explaining the actual question in play. The Government idea would be to get the Court to think Cynthia was denying issues like the citizen person banged on a glass window or the person who shouted traitor, traitor. As is clear, the actual question and answer exchange at Trial Tr., March 21, 2023 at 54 only concerns the line at the Senate Wing Door when the Prices were there:

Q: And can you describe the flow? Was it orderly? Was it fast, slow?...

A: It was very orderly. I mean, people were, like waiting in line to go in

There is no evidence to contradict this and the video evidence pointing at the door fully supports.

Third, the government further misstates the record saying “She testified that she could not hear an alarm when she entered the buildings and referencing Trial Tr., March 21, 2023 at 55. *See* Government Sentencing memorandum at 9. However, the transcript statement at Trial Tr., March 21, 2023 at 55 is about “outside”, including locations not near the Senate Wing Door.

A: So, with the alarm, it was actually hard to hear when you are outside the building.

And I believe in my videos, you can’t hear any alarm that’s actually going on inside the building. (emphasis added)

Cynthia’s videos were not taken near the Senate Wing Door. Cynthia is clear these videos are at a different location

Q: But to be fair your videos are...

A: They are earlier....

Indeed, the presence of the alarm at the door was never in doubt during the trial. Defense counsel had said in the opening statement Trial Tr., March 20, 2023 at 22:

There was a door alarm, a type of sound was going off....So, there was an alarm, but—you'll hear it, but when you hear things in the courtroom you, just have to add the extra imagination that a lot of people are making noise generally

Cynthia specifically testified about the alarm at Trial Tr., March 21, 2023 at 104:

Q. Very loud, weren't they

A. It was an alarm going off, yes.

Q: That's not the question. The question was it was very loud, wasn't it.

A: It was loud,...

The Government raised issues flowing from Trial Tr., March 21, 2023 at 81 and 82. *See* ECF 33 at 10. The issue raised at Trial Tr., March 21, 2023 at 81 is addressed in the Memorandum in Aid of Sentencing of Cynthia Ballenger (Price) [ECF 132 at 19 – 21 and 22-23. However, the statement about Trial Tr., March 21, 2023 at 82 and “treason” lacks reference to any evidence at all.

The Government cites to Trial Tr., March 21, 2023 at 84 and says “Ballenger denied hearing the comment that was in her video.” In fact, here is what the transcript says at that page:

Q: You just heard your husband there say, are we going to kidnap Pence, didn't you?

A: I'm not sure if that's him talking or the people standing behind us. I'm not sure. I don't know.

On the face of the transcript, it is false to say Cynthia denied hearing the comment, only that she was not sure who said it.

Moreover, the government further falsely asserted during the trial that the testimony of Special Agent Belcher identified that Chris said “They are going to kidnap Mike Pence” Trial Tr., March 21, 2023 at 84. In fact, Special Agent Belcher said “I did, it sounded like a male voice saying are we going to kidnap Pence?” Trial Tr., March 20, 2023 at 143. Chris Price was not identified as the speaker, and other Government document, fail to correlate Chris Price as saying these things.

The Government sentencing memorandum [ECF 133] at 10 states: “.... so she ‘didn’t really notice’ the snow fencing, bike racks, police officers, flash bangs, and loud noises despite these signs appearing in her videos”. The government cites to Trial Tr., March 21, 2023 at 90. Again, the government statement is false. First, no flashbangs appeared on any of Cynthia Price’s videos. To our observation, no snow fencing appears on a video of Cynthia’s, although such fencing appears on a picture. Cynthia fully testified about the picture with snow fencing. That picture was taken when leaving. Trial Tr., March 21, 2023 at 95. No police officers appear any of Cynthia’s three videos. A single person says “traitor, traitor” in reference to a lone police officer off camera, to which Cynthia says “he’s just doing his job” expressing sympathy with that officer. Trial Tr., March 20, 2023 at 172-173.

Again, other discussions about the government misstating facts and statements are contained in the Memorandum in Aid of Sentencing for Cynthia Ballenger (Price) [ECF 132] including in regard to missing emojis from alleged statements of Cynthia Price and several other misleading and incorrect statements of the Government.

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Respectfully submitted,

/s/ Nandan Kenkeremath

Nandan Kenkeremath
DC Bar 384732
2707 Fairview Court
Alexandria, Virginia 22311
703-407-9407

Counsel for Defendants