

**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)

**DEFENDANTS' OPPOSITION TO THE UNITED STATES' MOTION IN
LIMINE TO LIMIT CROSS-EXAMINATION REGARDING THE
PARTICULARS OF CLOSED-CIRCUIT VIDEO SYSTEM AND CERTAIN
U.S. CAPITOL POLICE MAPS OF THAT SYSTEM**

ARGUMENT

The Government seeks an order limiting the Prices from probing, during cross-examination, the exact locations of Capitol Police surveillance cameras or from using the maps, which show each camera's physical location, as an exhibit at trial. [footnote omitted]. [ECF 52]. Comes now Defendant Cynthia Ballenger (Cynthia Price) and Defendant Christopher Price, (together Defendants or the Prices) by and through undersigned counsel with their response. First, for the reasons stated below the Prices seek clear guidance regarding how to refer to CCV camera footage. The Price's do not object to any workable scheme. Second, the Court should either (1) a reject the motion in limine, in part, regarding the Capitol Police maps of surveillance cameras or (2) provide a statement making any

limitation from an order contingent on an understanding that the Government is only alleging the Prices were in the Capitol near the Senate Wing Door, as described below.

I. The Prices Seek an Overall Set of Guidance That Allow the Prices to Present CCV Footage and To Explain the General Locations of the Cameras Providing Footage

Through sealed motion the Prices have expressed issues under the Protective Order Discovery described in footnote 1 of the Government's Motion in Limine and also designated as ECF. The Prices issues include issues with respect to CCV footage. The Prices believe these related motions should be resolved together. It is important to the Prices to have unambiguous ways of presenting relevant CCV footage in their defense. The suggestion in the instant Motion in Limine on how to refer to footage may be reasonable, or something similar may be reasonable. This may include by saying on January 6, 2021 at the Capitol there was a camera pointed at an area and then to describe that camera by that area. The point is not the specific location of the camera so how to identify the footage, time and location to provide content and avoid confusion. Identifying a camera source provides a validation and explanation of the footage. As an example, the Prices may want to show the approximate path they took on the Capitol Terrace to and from the Senate Wing Door. The Prices may want to show nothing happened in terms of conduct or even that the crowd where they were was peaceful. The Prices may want to show that no one was engaging in anything such as pushing or breaking anything in their presence or given location or time relevant to the Price's path. In the Affidavit in

Support of Criminal Complaint signed by Special Agent Jeffrey W. Belcher [ECF 1, Exhibit 1] [Affidavit] there are pictures in ¶18 taken from surveillance footage identifying locations. The Prices are fine saying this is a camera which captures an area inside the Senate Wing Door or Camera at the Senate Wing Door. That is clear from the pictures in paragraph ¶18 (a) and (b) [corrected for the fact the picture is actually from the Senate Wing Door and not the Senate Carriage Door]. The location of the Prices in ¶18(c) can have a similar approach by calling it the camera by the location it captures. The Prices seek confirmation that this approach satisfies, and is consistent with, any order regarding the instant motion.

II. The Prices Oppose the Motion in Limine Respecting the Capitol Hill Police Maps of Surveillance Camera Locations Because the Government May Assert That the Prices Were at a Location Inside the Capitol Other Than Inside the Senate Wing Door

Here the Prices address a contingency that may not occur. In discussion with Counsel for the United States in the instant case. There may be no plan for the Government to allege that the Prices were in the Capitol Building other than as indicated in ¶18 of the Affidavit. The Prices were not in the Capitol Building other than the short-trip (3-minutes in and 4 minutes out) to the small right-side foyer inside the Senate Wing Door. The Prices concern here is the Government claim or claim or infer the Prices were in other locations inside the Capitol Building, including based on the Google tracking or location technology described briefly in ¶¶ 16 and 17 of the Affidavit. If the Government argues the Prices were elsewhere inside the Capitol, then the location of CCV cameras inside the Capitol could

become relevant to rebut such assertions. Basically, the Prices would say, the Government had cameras here and here and the Government was not able to identify the Prices on those cameras. Again, the Prices are not encouraging any such allegations and Government counsel indicates that it is not their plan to make such assertion. Assuming that there is no such assertion, the Prices would not object to the limitation precluding the Prices from using the Capitol Hill Police surveillance camera map as an exhibit during trial. Consistent with the earlier points in this memorandum, the Prices would nonetheless wish to refer to footage potentially by describing the location of the area the camera is taking pictures.

The instant case is a technology-laden prosecution. As an example, the Prices are unaware of a police officer or witness who was on-site that claimed a specific act that Prices engaged in conduct that could constitute disorderly or disruptive conduct. The Prices did nothing memorable. As noted in the Prices Memorandum of Points and Authorities Supporting its Motion to Dismiss [ECF 54-1], the Government has yet to identify the specific conduct or location the Government claims the Prices engaged disorderly and disruptive nor a location for such conduct. The Government has yet to identify the specific conduct the Government considers as to parade, demonstrate, or picket in the Capitol Building. The Government has yet to identify the posting, cordons, or other restrictions that are necessary to define a restricted area under 18 U.S.C. § 1752(c). It is difficult to assess or address restrictions on cross-examinations when so many essential allegations of fact are missing from the Superseding Information. While they are

separate motions, the Court should be cautious regarding Government Motion's in Limine, given the failure of the Superseding Information to satisfy the requirements of the Fifth and Sixth Amendment and Federal Rule of Criminal Procedure 7(c). The right to cross-examination is a right to confront a witness under the Sixth Amendment. The Court should consider cumulative problems under the Fifth and Sixth Amendment. Motions in Limine are pre-emptive but if the Prices do not have allegations of essential facts it is not fair to argue the Prices have the proper opportunity to respond to any substantial Motions in Limine. Here, the instant motion may be sufficiently benign as to not raise so many concerns.

CONCLUSION

For the forgoing reasons, the Prices respectfully request the Court clarify that the discussion in Section I of this Memorandum is consistent with the reasonable means of identifying CCV footage. In addition, the Prices ask the Court either to reject the Motion in Limine with respect to the U.S. Capitol Hill Police surveillance map or accept the motion contingent on the understand that the Government does not seek to assert that the Prices were in locations of the Capitol Building other than as identified at the Senate Wing Door and covered by the CCV camera at that location.

Dated: August 24, 2022

Respectfully submitted,

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