UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 21-cr-719 (JEB)**
	:	
CYNTHIA BALLENGER and CHRISTOPHER PRICE,	:	
	:	
	:	
Defendants.	:	

GOVERNMENT'S REPLY TO DEFENDANT'S REPONSE TO GOVERNMENT'S MOTION IN LIMINE TO LIMIT CROSS-EXAMINATION OF SECRET SERVICE AGENCY WITNESSES

The United States of America respectfully submits this reply to defendants' response to the government's motion in limine to restrict the presentation of evidence regarding cross-examination of Secret Service agency witnesses. In our motion, we argued that defendants should be specifically foreclosed from questioning Secret Service witnesses about the following:

1. Secret Service protocols related to the locations where protectees or their motorcades are taken at the Capitol or other government buildings when emergencies occur; and
2. Details about the nature of Secret Service protective details, such as the number and type of agents the Secret Service assigns to protectees.

Because the defendants' response to the motion in limine does not assert that these details will be relevant, the defendants should be limited by Federal Rules of Evidence 401 and 403 from inquiring about them on cross-examination. ECF No. 51 at 4. Indeed, evidence of the nature of Secret Service protective details is not relevant in this case. The number or type of assigned agents on a protective detail does not alter the probability that the Capitol and its grounds were restricted at the time. In response, defendants have not articulated opposition that bears on the material question of guilt or the credibility of the Secret Services witnesses. Instead, defendants focus on a multitude of unrelated and irrelevant issues that the Court need not consider at this time.

First, defendants summarize various cases in support of its argument that we have not cited authority in support of our motion in limine. To the contrary, as we demonstrated in our motion, it is well-established that a district court has the discretion to limit cross examination. *See Alford v. United States*, 282 U.S. 687 (1931) ("The extent of cross-examination [of a witness] with respect to an appropriate subject of inquiry is within the sound discretion of the trial court.").

Second, defendants lodge several arguments related to their motion to dismiss the case. *See* ECF No. 59 at 10-14. They argue, for example, that there exists a legal issue as to the definition of "restricted area." Defendants also argue that their actions were not "in fact" the reason that the certification process was delayed. ECF No. 59 at 15. They also include a lengthy discussion of why defendants believe they are not liable for the conduct charged. ECF No. 59 at 14-17. For example, defendants argue that they did not run afoul of the statutes charged because "the actions, inactions, and negligence of other parties" may be the reason that the electoral certification was delayed. These arguments are not responsive to our motion and do not bear upon the requested relief.

Third, defendants vaguely contend that they "have questions" for Secret Service witnesses "related to every aspect of piece of [the] statutory language" regarding what constitutes a "restricted area." ECF No. 59 at 13. Defendants also vaguely assert that they may have questions about other theories of the case, including "prior practices" or "prior protocol" of the Secret Service, *id.* at 14-15. They further contend that determining "who decided the course of proper security measures" could constitute relevant evidence at trial. ECF No. 59 at 15.

Defendants appear to misunderstand our motion in limine, which is limited to requesting that defense is foreclosed from questioning Secret Service witnesses on two specific topics. Although defendants vaguely assert that "[q]uestions regarding 'protocols' would be relevant," they do not specifically identify why questions regarding protocols "related to the locations where

protectees or their motorcades are taken at the Capitol or other government buildings when emergencies occur" are relevant. Indeed, as we detailed in our motion, they are not.

Additionally, defendants misconstrue the relevance of the Secret Service witness's testimony. As we explained in our motion, "[t]o prove violations of 18 U.S.C. § 1752(a)(1) and (2), the government intends to offer testimony to establish that the Capitol and its grounds were "restricted" on January 6, 2021, for purposes of § 1752(a) because the protectees were present there and being protected by the Secret Service. *See* 18 U.S.C. § 1752(c)(1)(B) (defining restricted buildings and grounds)." ECF No. 51 at 4. None of the other elements to be proven, or available defenses, implicates further testimony from the Secret Service. Thus, little attention is owed to defendants' theoretical, unsupported contentions that the Secret Service may have additional information that falls within the scope of our motion in limine—indeed defendants have fallen far short of demonstrating that such evidence is at all relevant.

Fourth, defendants summarize Inspector Lanelle Hawa's testimony from *United States v. Griffin*, and contend that Inspector Hawa's testimony covered extensive issues and topics. ECF No. 59 at 19-22. From there, defendants argue that "the Government has already identified the timing and locations of Vice President Mike Pence as described and required in the *Griffin* case," ECF No. 59 at 18, and suggests that this same testimony can be elicited at trial here. Again, this argument is not responsive to our motion. Unlike in *Griffin*, our motion in limine does not seek to limit cross-examination on "[i]nformation related to the location within the Capitol or its grounds to which the Vice President and his family or their motorcade, were taken once the right began on January 6, 2021." *See* ECF No. 59 at 18; ECF No. 51.

Fifth, defendants argue that their Fifth and Sixth Amendment rights would be eroded if cross-examination is limited. But defendants overstate the relief requested in our motion. We do not seek, as defendants suggest, to limit defendants to asking any Secret Service witness only one

question. ECF No. 59 at 24. Defendants also make various arguments regarding the sufficiency of the Superseding Information. *Id.* at 30-31. Again, this is not responsive to our motion in limine, nor do the defendants raise a valid challenge in their motion.

Finally, defendants argue that our motion is "broad and ambiguous" because it seeks to limit cross-examination regarding "details about the nature of Secret Service protective details." ECF No. 59 at 27. They argue that the government cannot "claim a category is off limits and then dwell in the category." *Id.* Defendants misapprehend the evidence that the government intends to offer to meet its burden of proof and the scope of the orders in limine the government seeks limiting cross-examination to protect national security. As an initial matter, we do not intend to question any Secret Service witness about the topics for which we seek to limit cross-examination. And, to the extent that the Secret Service witness testifies on direct examination either about their location or the location of a protectee on January 6—which would allow defendants to cross-examine the witness on those topics—those facts are not within the scope of the order in limine that the government seeks limiting cross-examination of the Secret Service witness. The government seeks an order limiting cross-examination as to Secret Service protocols and the nature of Secret Service protective details, *see* ECF No. 51 at 2, 4, neither of which are relevant to whether the Capitol or its grounds were restricted on January 6 or to the credibility of the Secret Service witness within the scope of his or her testimony.

Moreover, to prove Counts 1 and 2, the government must prove beyond reasonable doubt that, on January 6, 2021, the Capitol building and grounds were "restricted" for the purposes of 18 U.S.C. § 1752(c). To do that, the government need only establish that the area was "posted, cordoned off, or otherwise restricted" and that it was an area "where a person protected by the Secret Service is or will be temporarily visiting." 18 U.S.C. § 1751(c)(1)(B). It is for this limited

purpose that the government will offer testimony by a United States Secret Service representative.

For the reasons stated herein and in the Government's Motion in Limine, the United States respectfully requests that the Court grant its Motion in Limine to Limit Cross Examination of Secret Service Agency Witnesses, ECF No. 51.

Respectfully submitted,

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