

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

Case No.: 1:21-cr-00647-RDM

BENJAMEN SCOTT BURLEW.
Defendant.

OPPOSITION TO GOVERNMENT MOTION IN LIMINE

Comes now the defendant, BENJAMEN SCOTT BURLEW, and files this opposition to the government's motion in *limine*.

I. Relevant Procedural History

On October 13, 2023, the government filed two motions in *limine*. The defendants now files this opposition.

II. Argument

A. Self-Defense/Defense of Others

The standard for asserting self-defense with respect to assault on a law enforcement officer is still whether or not the police officer used excessive force. *Coleman v. United States*, 194 A.3d 915 (D.C. 2018). "The essence of the self-defense situation is a reasonable and bona fide belief of the imminence of ... bodily harm." *Kinard v. United States*, 96 F.2d 522, 526 (D.C. Cir. 1938). Distinguishing between "excessive force" and "reasonable amount of force" requires the fact finder to take into account evidence of the defendant's mental state under the circumstances. *See, Fersner v. United States*, 482 A.2d 387, 391-92 (D.C. Cir. 1984).

When a defendant "present[s] any evidence that she acted in self-defense," the government assumes the burden of proving, beyond a reasonable doubt, that she did not. *See Williams (Shirley) v. United States*, 90 A.3d 1124, 1128 (D.C. 2014). A defendant who

responds to aggression in an effort to defend herself may avail themselves of a valid self-defense even if she acts in part out of a heightened state of emotion. Moreover, as humans rarely experience one emotion at a time, it is only to be expected that, in a situation where a person might need to act in self-defense, she will experience some mix of fear and anger or indignation or vindictiveness. *Cf. Brown v. United States*, 256 U.S. 335, 343, 41 S.Ct. 501, 65 L.Ed. 961 (1921) (noting that as the common law of self-defense has evolved over time, "it has tended in the direction of rules consistent with human nature"). *See People v. Nguyen*, 61 Cal.4th 1015, 191 Cal.Rptr.3d 182, 354 P.3d 90, 113 (2015) ("[I]t would be unreasonable to require an absence of any feeling other than fear, before [use of force] could be considered justifiable [self-defense]."); *State v. Adviento*, 319 P.3d 1131, 1157 (Haw. 2014) (observing that "actions taken in self-defense may indeed be committed while the defendant is subject to a certain degree of terror, resentment, rage or anger"); Wayne R. LaFare, *Substantive Criminal Law* § 10.4 (c) (2d ed.) (noting that a defendant acting in self-defense "does not lose the defense because [s]he acts with some less admirable motive in addition to that of defending [her]self," as in a situation where the defendant also "us[es] force upon h[er] adversary because [s]he hates him"). In short, the government will prevail over a claim of self-defense only when it proves that the defendant did not reasonably believe that she was in imminent danger of bodily harm, *see infra* p. 27—not when it proves the defendant reasonably experienced other emotions.

Every person has the right to use a reasonable amount of force in defense of another person if (1) s/he actually believes that the other person is in imminent danger of bodily harm and if (2) s/he has reasonable grounds for that belief. The question is not whether looking back on the incident the fact finder believes that the use of force was necessary. The question is whether under

the circumstances as they appeared to HIM at the time of the incident, actually believed that the person he was seeking to defend was in imminent danger of bodily harm and could reasonably hold that belief. *Criminal Jury instructions for the District of Columbia* Instruction 9.510 Defense of A Third Person. Fifth Edition (2014)

Mr. Burlew fully anticipate the evidence at trial will establish sufficient facts for a jury to conclude he acted in self-defense. He did not initiate or provoke the attack suffered at the hands of law enforcement and others. The force used by law enforcement was excessive and unwarranted. And most significantly, Mr. Burlew responded with limited force designed to halt the attack.

B. Remaining Issues

Defendant does not oppose the Government's Motion in Limine related to the following topics:

1. Expert witnesses;
2. Cross examination of U.S. Secret Service;
3. Argue Jury Nullification.

III. Conclusion

Wherefore, having filed this opposition in response to the government's motion *in limine*, BENJAMEN SCOTT BURLEW, prays that this Honorable Court deny the request and permit him to raise necessary defenses as outlined herein.

I ASK FOR THIS:

_____/s/_____
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