

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:
	:
v.	: CASE NO. 21-cr-626 (PLF)
	:
DEREK COOPER GUNBY,	:
	:
Defendant.	:

DEFENDANT GUNBY’S PROPOSED JURY INSTRUCTION REGARDING
SIGNS, ANNOUNCEMENTS, AND BARRICADES

COMES NOW Defendant Derek Cooper Gunby (“Gunby”), by and through undersigned counsel John Pierce, with this proposed limiting instruction. This instruction should be given to the jury immediately after the Government puts on evidence (likely through a Capitol police officer testifying about security measures placed at the Capitol grounds on Jan. 6) of barriers, signs, fences or announcements not seen directly by Gunby:

You have seen evidence of certain signs, fencing, barricades or announcements placed at or near the Capitol on Jan. 6. This evidence was admitted solely as evidence of facts described in [this witness’s] testimony. You are instructed to recognize that these features may or may not have been viewed or viewable by the defendant. You are further instructed that Mr. Gunby’s knowledge of signs, markings, fencing, announcements or barricades must be proven beyond a reasonable doubt, from Mr. Gunby’s perspective rather than the perspective of anyone else.

Defense recognizes that the Court has previously denied Gunby's motion in limine to totally preclude such evidence. However, a limiting instruction is appropriate here regarding the effect of such evidence.

Limiting instructions regarding the admissibility of evidence are appropriate in certain circumstances.

A limiting instruction is appropriate in this circumstance. See, e.g., *United States v. Wallace*, 972 F.2d 344 (4th Cir. 1992) (limiting instruction appropriate where a district court permitted testimony about prior drug dealing of Wallace, which was admitted for the limited purpose of showing intent).

Indeed, a precautionary limiting instruction is necessary to avoid unfair prejudice, confusion, and misleading of a jury. See, e.g., *United States v. Gilliam*, 484 F.2d 1093, 1096 (D.C. Cir. 1973) ("nevertheless, the trial court committed reversible error under the facts of this case by failing to give an immediate cautionary instruction regarding the limited purpose for which the evidence could be used.").

Dated: October 24, 2023

Respectfully Submitted,

/s/ John M. Pierce
John M. Pierce
21550 Oxnard Street
3rd Floor, PMB #172
Woodland Hills, CA 91367
Tel: (213) 400-0725
Email: jpierce@johnpiercelaw.com

CERTIFICATE OF SERVICE

I, John M. Pierce, hereby certify that on this day, October 24, 2023, I caused a copy of the foregoing document to be served on all counsel through the Court's CM/ECF case filing system.

/s/ John M. Pierce
John M. Pierce