

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	
	:	
v.	:	No. 1:21-cr-00679-JEB
	:	
ROBERT WAYNE DENNIS.	:	

**DEFENDANT ROBERT WAYNE DENNIS' MOTION TO
DISMISS COUNTS 5, 6, 7, 8 & 9AS MULTIPLICITOUS WITH
INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES**

COMES NOW Defendant, Robert Wayne Dennis, by and through undersigned counsel, hereby respectfully moves this Honorable Court for the entry of an Order dismissing Counts 5, 6, 7, 8 & 9 of the Indictment as multiplicitous.

As grounds, the following is stated:

Background

1. Mr. Dennis is charged in Counts 5, 6, 7, 8 & 9 with violations of:

Count 5 – 18 U.S.C. § 1752(a)(1) (Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority).

Count 6 – 18 U.S.C. §1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds).

Count 7 – 18 U.S.C. §1752(a)(4) (Engaging in Physical Violence in a Restricted Building or Grounds).

Count 8 – 40 U.S.C. §5104 (e)(2)(D) (Disorderly Conduct in a Capitol Building).

Count 9 – 40 U.S.C. §5104 (e)(2)(F) (Act of Physical Violence in a the Capitol Grounds or Building).

A jury trial is scheduled for January 9, 2003.

2. Convictions for all these counts would violate the Double Jeopardy Clause of the U.S. Constitution. Moreover, the unnecessary multiplication of counts will prejudice a jury against Mr. Dennis. Multiplicity arises when “an indictment charges the same offense in more than one count.” *United States v. Mahdi*, 598 F.3d 883, 887 (D.C. Cir. 2010), quoting *United States v. Weathers*, 186 F.3d 948, 951 (D.C. Cir. 1999). The Double Jeopardy Clause of the Constitution protects against “multiple punishments for the same offense.” *Weathers*, 186 F.3d at 951, cert. denied, 529 U.S. 1005 (2000); U.S. Const. amend. V, cl. 2. Also, courts have recognized that charging the same offense in multiple counts can “unfairly increas[e] a defendant’s exposure to criminal sanctions” because a jury may conclude that given the number of charges, the defendant must be guilty of something. *United States v. Clarke*, 24 F.3d 257, 261 (D.C. Cir. 1994), quoting *United States v. Harris*, 959 F.2d 246, 250 (D.C. Cir. 1992), abrogated on other grounds, *United States v. Stewart*, 246 F.3d 728 (D.C. Cir. 2001); see also *United States v. Morrow*, 102 F. Supp. 3d 232, 246 (D.D.C. 2015) (multiplicitous charges may suggest to a jury “that a defendant has committed not one but several crimes”), quoting *United States v. Reed*, 639 F.2d 896, 904 (2d Cir. 1981); *United States v. Phillips*, 962 F. Supp. 200, 202 (D.D.C. 1997).

The four counts of the information expose the defendant to double, and even triple jeopardy for the same alleged acts. The Double Jeopardy Clause protects

criminal defendants against both successive punishments and prosecutions for the same criminal offense. *United States v. Dixon*, 509 U.S. 688, 696 (1993) (citing *North Carolina v. Pearce*, 395 U.S. 711 (1969)); see also *United States v. Davenport*, 519 F.3d 940, 943 (9th Cir. 2008); *United States v Mancuso*, 718 F.3d 780, 791 (9th Cir. 2013). When two different criminal statutes are violated, “the double jeopardy prohibition is implicated when both statutes prohibit the same offense or when one offense is a lesser included offense of the other.” *Rutledge v. United States*, 517 U.S. 292, 297 (1996)).

WHEREFORE, for the foregoing reasons and such other reasons that may appear just and proper, Mr. Dennis requests this Court to grant this motion and dismiss Counts 5, 6, 7, 8 & 9 of the Indictment, as repetitive counts.

Defendant, by counsel, requests a hearing on this motion.

Respectfully Submitted,

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