

**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’S POST-TRIAL BRIEF REGARDING RESTRICTED AREA ELEMENT

During Defendant’s closing argument on January 11, 2023, the Court had questions regarding the perceived restriction at the top of the stairs on the West Terrace where the MPD officers had gathered. Counsel submits that police officers attempted, but failed to, form a police line due to multiple protesters being behind police officers and not being verbally asked or physically helped to move. Even if police officers had formed a police line, the low-visibility nature of the officers from the perspective of looking up at the line from below the stairs prevented Mr. Dennis from knowing that police officers formed a line.

First, as this Court saw in BWC footage of MPD Officers McCloskey and others, individuals were behind police officers. One man with a cane was laying behind police officers, post-injury and later moved to sit on the top step in front of the police officers. Officers did not seem concerned about the elderly man’s presence behind them, and the elderly man eventually moved on his own accord. Had the police officers formed a line or wanted to maintain a line, they would have asked or helped the man in front of the line. After all, the man was equipped with a weapon: a cane, much like a baton.

For further illustration, the issue of the perceived restricted area and the confusion over actual restriction can be easily seen in the BWC of Officer Chad Wyble in Government's exhibit 304. Government's Exhibit 304 is the BWC of Officer Wyble from 2:43 to 2:56pm. Undersigned counsel asks the Court to consider the time period on this BWC from 14:55:05 where a woman in a red baseball hat asks Officer Wyble if she can permissibly be on the stairs. She tells Officer Wyble that she is there to potentially try to talk to the congress people inside the building and that she knows Pence didn't overturn the election results.



The exchange between Officer Wyble and the woman is informative to the point at issue. Officer Wyble tells the lady with the hat that she can sit on the steps and remain there permissibly. Then seconds later he says at 14:55:44 “now they are saying to tell people to get off the steps.”



It is important to note that people are all over the steps are this time and even on the top of the steps. This entire exchange takes place less than four minutes from the time of the Robert Dennis incident and his arrest at the top of the steps. The permission to be on the steps is first given by Officer Wyble who then announces that only “now” are they saying people cannot be on the steps.



Second, even if police officers had formed a police line, the low-visibility nature of the officers from the perspective of looking up at the line from below the stairs prevented Mr. Dennis from knowing that police officers formed a line.

The visibility of the line of police officers matters because it communicates to individuals whether an area is restricted. See United States v. Nordean, 579 F. Supp. 3d 28, 60 (D.D.C. 2021) (Capitol grounds were restricted in a highly visible way, by being cordoned off by... a row of Capitol Police officers).

During the trial the Court also saw aerial video from security camera attached to the side of the U.S. Capitol Building. Mr. Dennis did not have the advantage of the same point of view. Mr. Dennis was on the Inaugural Stage and hopped down roughly six feet onto the West Front. Mr. Dennis then approached the police officers from a below eye-level perspective. Mr. Dennis could not see the lengthy L-shaped line of police officers across the staircase and rounding the edge. Mr. Dennis

only saw a few police officers. Therefore, Mr. Dennis could not have developed the belief that police officers had formed a line thereby restricting the area.

Respectfully Submitted,

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