

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	CASE NO.: 21CR00599-RBW
)	
Plaintiff,)	
vs.)	
)	
DONNIE DUANE WREN,)	
)	
Defendant.)	

**DEFENDANT WREN’S RESPONSE TO UNITED STATES’ MOTION IN
LIMINE REGARDING CROSS-EXAMINATION OF U.S. SECRET
SERVICE WITNESS**

The Defendant, **DONNIE DUANE WREN**, through undersigned counsel, file this his Response to the United States’ Motion in Limine Regarding Cross-Examination of U.S. Secret Service Witness.

INTRODUCTION

Count Two of the Superseding Indictment charges Mr. Wren with violating 18 U.S.C. § 231(a)(3) by instructing, impeding, or interfering with law enforcement during a civil disorder which in any way or degree obstructed, delayed, or adversely affected the conduct or performance of any federally protected function. Counts Seven through Nine charge Mr. Wren with violating 18 U.S.C. § 1752(a)(1, 2, and 4) by knowingly entering or remaining in a restricted building or grounds without lawful authority, engaging in disorderly or disruptive conduct in, or within proximity

of, any restricted building or grounds, and knowingly engaging in any act of physical violence against any person or property in any restricted building or grounds. That statute defines “restricted buildings or grounds” to include any building or grounds temporarily visited by a person being protected by the Secret Service. 18 U.S.C. § 1752(c)(1)(B).

To meet its burden of proof at trial, the government states that they will call a witness from the United States Secret Service to testify that at the time of the Capitol demonstration, Secret Service agents were on duty to protect Vice President Mike Pence and his two immediate family members, all of whom were present at the Capitol. These officials will purportedly further testify about the Capitol protest’s effect on the Secret Service’s protection of Vice President Pence and his family members.

The government’s Motion in Limine seeks that:

“The defendants should be specifically foreclosed from questioning the 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;
2. Details about the nature of Secret Service protective details, such as

the number and type of agents the Secret Service assigns to protectees.”¹

The Defendant highly opposes such limits as they prevent him from presenting a constitutionally protected complete defense in this case. Furthermore, limiting such testimony may be seen by the finder of fact as a guilt via association.

ARGUMENT

I. THE GOVERNMENTS REQUEST PREVENTS THE DEFENDANT FROM PRESENTING A COMPLETE DEFENSE

“Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’” *Crane v. Kentucky*, 476 U. S. 683, 690; *Holmes v. South Carolina*, 547 U.S. 319 (2006). **(emphasis added)**.

The government seeks to have entire lines of relevant inquiries barred. “The Secret Service’s general protocols about relocation for safety should be excluded as irrelevant because such evidence does not tend to make a fact of consequence more or less probable.” See Motion Page 4 of 7.

The government seeks to show that the building was “restricted” while simultaneously seeking to bar any questioning about “general protocols” due to the restricted nature of the building, essentially preventing the Defendant from proving:

¹ See Motion in Limine, herein after referred to as (“Motion”), ECF #53.

A. The building was not restricted.

B. That the government failed to follow protocols to indicate the grounds were restricted.

C. Secret Service failed to follow “general protocols” to indicate the building or grounds were restricted.

D. That the government failed to follow its own “general protocols”.

E. That Secret Service acted in a manner consistent with the building NOT being restricted.

F. That on the day of the incident the government’s actions did not rise to the level of what they are alleging today at the time of Defendant’s alleged trespass.

The right of confrontation is “[o]ne of the fundamental guarantees of life and liberty . . . long deemed so essential for the due protection of life and liberty that it is guarded against legislative and judicial action by provisions in the Constitution of the United States and in the constitutions of most if not of all the States composing the Union.” *Kirby v. United States*, 174 U.S. 47, 55, 56 (1899)

By limiting Mr. Wren’s cross-examination, Wren is deprived of significant opportunities to show the grounds were not restricted, and that the Secret Service acted in a way that supports the Defendants position. Furthermore, there is a significant risk that the evidence sought to be introduced creates a substantial risk of the jury reaching a finding by “guilt by association”.

Guilt by association is often excluded because the probative value of injecting before the jury evidence of someone else's guilt is minimal when balanced against its tendency to be unfairly prejudicial to a defendant. *U.S. v. Roark*, 924 F.2d 1426 (8th Cir. 1991) (evidence of defendant's membership in the Hell's Angels was an attempt to prove guilt by association and should have been excluded).

In this instance, it is not alleged that Mr. Wren was a threat to the Vice President or entered the Capitol building itself. Mr. Wren is constitutionally afforded the ability to cross-examine witnesses presented against him to show that his actions or inactions complied with relevant law, and that “general protocols” were not followed indicating that the building was not restricted.

The confrontation right is a procedural guarantee that ensures that any testimony presented to a jury be tested through “the crucible of cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

By limiting the testimony allowed, the court is limiting the Defendants ability to test the governments witnesses through the crucible of cross examination and allowing invaluable evidence of the government’s failures to indicate the Capitol was restricted to go by the wayside. In this matter, the Defendant faces a significant risk of loss of life and liberty. If the government chooses to introduce the Secret Service to prove the grounds are restricted despite alternative means existing, they should not be given the benefit of having the cross-examination limited. Such means

only harms the Defendant's ability to present a full and complete showing of the testimony.

“[T]he Confrontation Clause is generally satisfied when the defense is given a full and fair opportunity to probe and expose . . . infirmities [in a witness's testimony] through cross examination.” *Delaware v. Fensterer*, 474 U.S. 15, 22 (1985). A full and fair opportunity to cross-examine generally “guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact,” *Coy v. Iowa*, 487 U.S. 1012, 1016 (1988) (citing *Kentucky v. Stincer*, 482 U.S. 730, 748 (1987) (Marshall, J., dissenting)), because, as the Supreme Court reasoned, “[i]t is always more difficult to tell a lie about a person to his face than behind his back,” *id.* at 1019 (internal quotation marks omitted). “A defendant's Sixth Amendment right to confront the witnesses against him is violated where it is found that a trial judge has limited cross-examination in a manner that precludes an entire line of relevant inquiry.” *United States v. Israel*, 60 M.J. 485, 488 (C.A.A.F. 2005) The confrontation right is a procedural guarantee that ensures that any testimony presented to a jury be tested through “the crucible of cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

As this Court is well aware, this prosecution, among hundreds of others, spawned out of a “breach” at the Capitol on January 6, 2021, protestors who sincerely felt the election was stolen and that their government was about to be taken

over by despots. The government has presented close to a thousand cases against individuals, just like Mr. Wren, many utilizing the same pleadings, same motions, and same arguments.²

Judge McFadden of this Court has *rejected* the precise motion the government has filed herein. See *U.S.A. v. Nicholas Rodean*, Case No. 1:21-cr-00057 (TNM), ECF # 36, Order Denying the governments motion to limit cross-examination of U.S. Secret Service witnesses. The Court, in rejecting the government's request as to the requirement of 1752(a), stated rather succinctly: "If the Government wishes to continue to pursue this misdemeanor charge, it must be prepared to fully prove it."

CONCLUSION

For these reasons, the Defendant requests this Honorable Court enter an order DENYING the Government's Motion to limit cross-examination of witnesses they choose to present. The Defendant has a constitutional right to confront those witnesses and present a complete defense, including the failure of the government to follow its own procedures.

Respectfully submitted,

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² Capitol Breach Cases, Department of Justice - <https://www.justice.gov/usao-dc/capitol-breach-cases>

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By:/s/ George T. Pallas
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CERTIFICATE OF SERVICE

I certify that on this 17 day of March 2023, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing.

By:/s/ George T. Pallas
GEORGE T. PALLAS, ESQ.