

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 21-cr-28 (APM)
	:	
v.	:	
	:	
JAMES BEEKS,	:	
	:	
Defendant.	:	
	:	

GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION TO SEVER

On May 1, 2023, Defendant James Beeks filed a motion to sever his trial from that of Defendants Donovan Crowl and Kellye SoRelle. ECF No. 925. Defendant Beeks also appears to move to dismiss for improper venue, *id.* at ¶ 4, and because pretrial publicity “has irreparably tarnished ‘the Accused’ impeccable reputation,” *id.* at ¶ 9. His motion should be denied.

Although Rule 14 of the Federal Rules of Criminal Procedure allows for severance of properly joined defendants, the defendant requesting the severance bears the heavy burden of showing that joinder would cause substantial prejudice. *Zafiro v. United States*, 506 U.S. 534, 539 (1993). The Supreme Court has defined “prejudice” in this context to be a “serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.” *Id.*

Defendant Beeks claims that his case should be severed because he has “no association with the other ‘defendants’ other than a one-time membership payment. ECF No. 925 at ¶ 5. However, the indictment alleges, and the evidence at trial will show, that on January 6, 2021, Defendant Beeks joined with several of his co-defendants and additional co-conspirators to march in a “stack” formation up the east steps of the United States Capitol to the area outside of the Capitol Rotunda Doors. ECF No. 684 at ¶¶ 9, 77, 85, 89, 92. Once there, Beeks and the rest of

his group joined the mob of people attacking officers and trying to force open the doors, and then stormed into the building when the doors were breached. *Id.* at ¶¶ 9, 92-99. Defendant Beeks then accompanied half of the group in trying to push past officers down a hallway leading to the Senate Chamber. *Id.* at ¶¶ 102-105. Officers had to deploy chemical spray to rebuff Beeks' group and the others in the mob. *Id.* at ¶ 104.

The evidence at trial will further show that Defendant Beeks did not randomly find himself attacking the Capitol with his co-defendants; rather, in early January 2021, Beeks followed the Parler account of the Florida Oath Keepers, which was controlled by co-conspirator Kelly Meggs and contained information about the group's plans for January 6, 2021. *Id.* at ¶ 42. Witness testimony at trial will establish that Defendant Beeks came to D.C. on January 6 hoping to join the Oath Keepers' efforts that day.

Defendant Beeks claims he was "under the impression that the 'co-defendants' were in place to be peacekeepers" on January 6. ECF No. 925 at ¶ 8. He similarly contends that he "has disavowed any pre-planned violence," and "there is no evidence that that Accused premeditated any conspiracy to engage in the alleged crimes charged to the Accused." *Id.* at ¶ 10. The evidence at trial, including Defendant Beeks' own actions, will establish the contrary, but in any event, this is a factual defense to be presented to the jury and not a ground for dismissal or severance.

Defendant Beeks further asserts that severance should be granted because he "was never in any meetings, trainings, or chats before or after the alleged commercial 'crime' occurred," and "never met with the co-defendants" prior to January 6. ECF No. 925 at ¶¶ 6-7. Even if true, this does not provide sufficient basis for severance, as "a defendant can join a conspiracy at any time, and can properly be convicted though he was not in the conspiracy at its inception." *United States v. Bridgeman*, 523 F.2d 1099, 1108 (D.C. Cir. 1975); *see also United States v. Robinson*, 390 F.3d

853, 882 (Sixth Cir. 2004) (“[I]t has long been established that a conspirator may join a conspiracy already in progress and be held responsible for actions done in furtherance of the conspiracy before he joined.”); *United States v. Gatling*, 96 F.3d 1511, 1518 (D.C. Cir. 1996) (“In order to prove that an agreement existed, the government need only show that the conspirators agreed on ‘the essential nature of the plan,’ not that they ‘agreed on the details of their criminal scheme.’”) (quoting *United States v. Treadwell*, 760 F.2d 327, 336 (D.C. Cir. 1985)).

With respect to Defendant Beeks’ venue argument, he incorrectly states that this Court is an “Article I court” with limited jurisdiction. ECF No. 925 at ¶ 4.

Finally, the pretrial publicity surrounding this case is not grounds for dismissal, severance, or change of venue. This Court has extensively considered this issue extensively in denying several co-defendants’ motions to change venue. *See* ECF No. 415; see also Minute Order of June 30, 2022 (adopting the findings at pages 39-45 of the Court’s Memorandum Opinion and Order, ECF No. 176, issued on June 28, 2022, in the related matter of *United States v. Rhodes, et al.*, Case No. 22-cr-15 (APM)). Moreover, the three trials of the related cases that have preceded Mr. Beeks’ trial have demonstrated that a fair trial and jury pool can be found in this jurisdiction. *See, e.g.*, *United States v. Rhodes*, Case No. 21-cr-15 (APM) (D.D.C.), 10/03/22AM Tr. at 1035-38 (Court providing statistics showing the lack of bias in the jury panel called for *voir dire* for that trial); *United States v. Minuta*, Case No. 22-cr-15 (APM) (D.D.C.), 12/09/22AM Tr. at 771 (same).

