

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 22-cr-186 (TJK)
	:	
RALPH JOSEPH CELENTANO III,	:	
	:	
Defendant.	:	

**GOVERNMENT’S OPPOSITION TO
DEFENDANT’S MOTION TO PRECLUDE EVIDENCE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this response to the Defendant’s Motion in Limine to preclude certain evidence related to the events at the Capitol on January 6, 2021. (ECF No. 36 at 1.) In essence, Defendant Celentano asks that the Court prevent the government from introducing evidence that accurately establishes the defendant’s crimes and conduct of himself and others; therefore, this Court, as others have done, should deny such a motion.

BACKGROUND

On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate convened to certify the vote of the Electoral College of the 2020 U.S. Presidential Election. While the certification process was proceeding, a large crowd gathered outside the United States Capitol, entered the restricted grounds, and forced entry into the Capitol building. As a result, the Joint Session and the entire official proceeding of the Congress was halted until law enforcement was able to clear the Capitol of hundreds of unlawful occupants and ensure the safety of elected officials.

In the early morning hours of January 6, 2021, Defendant Celentano traveled from New York to D.C. He attended the “Stop the Steal” rally on the Ellipse then went onto the restricted

grounds of the Capitol. While on the west terrace of the Capitol, he shouted at police officers, including yelling, “How dare you, you pathetic pieces of shit!” and got into physical scuffles with uniformed officers. Also, while on the west terrace, Defendant Celentano rammed into a U.S. Capitol police officer from behind, pushing that officer over a ledge into other officers below.

In a video taken on the grounds of the Capitol, on January 6, 2021, Defendant Celentano said to the camera, “somebody’s gotta do something.” An unidentified person asked, “what do you think we should do?” At the same time as another unidentified individual said, “they’re evacuating the building.” Defendant Celentano answered, “occupy the Capitol, our building.”

Defendant Celentano posted on the social media platform Parler after the 2020 election, as well as before and on or about January 6, 2021. In one post, Defendant Celentano wrote, “the crooked poll workers caught on video need to be identified and hauled before a federal judge and explain their actions #stop the steal.” Another post stated, “We must take back what is our, if our elected officials wont [*sic*] we will do it ourselves Make AMERICA our Again” On or about January 6, 2021, Defendant Celentano posted, “Americans have spoke [*sic*], we want our country back at all costs wake up congress and senate your fairy tales political policys [*sic*] are over we want what is ours so you pepper sprayed, tear gassed us and we the people took back OUR HOUSE not yours remember that crooked Congress and sedated Senate.” Another post read, “After today in DC congress shit their pants its [*sic*] our country we need to take it back now is the time in history.”

Based on his actions on January 6, 2021, the defendant was charged with: Count One, Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a)(1); Count Two, Civil Disorder, in violation of 18 U.S.C. § 231(a)(3); Count Three, Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1); Count Four, Disorderly

and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2); Count Five, Engaging in Physical Violence in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(4); Count Six, Act of Physical Violence in the Capitol Grounds or Building, in violation of 40 U.S.C. § 5104(e)(2)(F); and Count Seven, Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. § 1512(c)(2) and 2. (ECF 14.)

LAW

Evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.” Fed. R. Evid. 401. “The general rule is that relevant evidence is admissible,” *United States v. Foster*, 986 F.2d 541, 545 (D.C. Cir. 1993), and Rule 401 contain a “liberal” standard, *United States v. Moore*, No. 18-cr-198, 2022 WL 715238, at *2 (D.D.C. Mar. 10, 2022). Additionally, Rule 403 does not require the government “to sanitize its case, to deflate its witnesses’ testimony or to tell its story in a monotone.” *United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C. Cir. 1998). Neither Rule 401 nor 403 supports the defendant’s requested relief.

POTENTIAL EVIDENCE

Compilation Video

Defendant Celentano opposes the use of a 22-minute compilation video. The government has not finalized its exhibits yet.¹ There are different versions of the compilation video, ranging anywhere from six minutes to twenty-two minutes. Regardless of which version of the compilation video the government seeks to introduce as an exhibit, there will most likely be some portions of

¹ The government is cognizant that the defendant may have filed this motion prior to government’s final exhibit list to comply with motion deadlines.

the video that do not show Defendant Celentano, as well as locations within the Capitol that he did not enter. Regardless, the government's compilation video is relevant.

Defendant Celentano argues that the Court should exclude the video because "it is a compilation of the activities of others and is unrelated to Mr. Celentano's charges." (ECF 36 at 3.) This is not accurate. Defendant Celentano's argument ignores the nature of these crimes as a collective action. It was the mob's collective activities that disrupted Congress, and Defendant Celentano's knowledge of the collective riot bears on his *mens rea* for each of the charged offenses.

The government does not anticipate focusing its evidentiary presentation on areas of the Capitol where Defendant Celentano did not go. However, to show the overall riot, its effects, the context of Defendant Celentano's actions, and why the certification of the Electoral College vote was suspended, the government will need to present evidence to show the actions of other rioters in other areas of the Capitol building and grounds. None of the rioters were authorized to enter the Capitol or its grounds. Law enforcement officer witnesses will explain that, in expelling rioters, they could not distinguish between those rioters who were overtly violent and those who were not; everyone had to leave the building and grounds. This is because law enforcement could not predict who would act violently; any member of the crowd might be a threat to them. Indeed, throughout the day, individual officers found their attention divided by the need to monitor the whole crowd, rather than focusing on a specific individual. But for Defendant Celentano's actions alongside so many others, the riot likely would have failed to delay the certification vote. *See United States v. Mazzocco*, No. 21-cr-54, Tr. 10/4/2021 at 25 ("A mob isn't a mob without the numbers. The people who were committing those violent acts did so because they had the safety of numbers.") (statement of Judge Chutkan). While a jury will judge Defendant Celentano based

on his own actions, the context of his actions will necessarily be placed before them—that context was a riot.

Evidence of events and conduct by defendant and others on January 6, 2021, is highly relevant to the charged offenses and any unfair prejudice arising from the evidence, if present, does not substantially outweigh the probative value of the evidence. The violence of others at the Capitol is relevant to the threat members of the crowd posed to law enforcement and lawmakers being evacuated from and hiding inside the building, contextualizing law enforcement's threat mitigation efforts that day. Evidence of the magnitude of the crowd that descended on the Capitol is also related to law enforcement's inability to focus on specific individuals' actions. The sheer size of the crowd and its quick ability to overwhelm Capitol security and storm the building led to the evacuation of lawmakers gathered on January 6, 2021, to certify the Electoral College vote count and the eventual delay of that proceeding. Moreover, the government's proffer regarding this defendant's location and conduct on January 6, 2021 indicates that he was situated in the midst of this crowd able to observe the acute challenges to law enforcement and security threats posed. All such "general evidence" about the events on January 6 assists the jury in better understanding the parties' actions that day and thus the alleged criminal conduct of defendant.

See United States v. Gillespie, No. 22-cr-60.² (ECF No. 43 at 2-3.) (Memorandum and Order of Chief Judge Howell).

The actions of other rioters at multiple areas of the Capitol are relevant to elements of the crimes with which Celentano is charged. First, to prove Count Two, Civil Disorder, in violation of 18 U.S.C. § 231(a)(3), the government must establish that Defendant Celentano committed or attempted to commit an act that obstructed, impeded, or interfered with law enforcement in the performance of their duties during a civil disorder, and the civil disorder obstructed, delayed, or adversely affected either commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. Evidence of actions of other rioters at all locations of the Capitol building and grounds is relevant to prove that a civil disorder

² Defendant Gillespie was charged with many of the same crimes Defendant Celentano is charged with committing. Defendant Gillespie did not enter the Capitol building, beyond the Lower West Terrace tunnel.

was occurring and that it interfered with a federally protected function. *See United States v. Gillespie*, No. 22-cr-60. (ECF No. 43 at 3) (Memorandum and Order of Chief Judge Howell). (“Plainly, others’ actions on January 6 at the Capitol in combination with defendant’s own actions are relevant to whether a federally protected function—i.e., the Electoral College vote certification—was obstructed, delayed, or adversely affected and whether the events on January 6 constitute a public disturbance involving the violence of three or more people and posing dangers to people and property.”)

Additionally, to prove Count Seven, Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. § 1512(c)(2) and 2, the government must establish that there was an “official proceeding” and the fact that it was disrupted. The official proceeding was the certification of the Electoral College vote, and, as with Count Two, proving this charge requires presenting evidence involving the actions of other rioters at all locations of the Capitol building and grounds. *See United States v. Gillespie*, No. 22-cr-60. (ECF No. 43 at 4) (Memorandum and Order of Chief Judge Howell) (“Here, obstructing, influencing, or impeding the Electoral College vote certification, an official proceeding, involves the collective action of defendant and others similarly situated overtaking law enforcement and entering the Capitol without permission, so the crowd’s conduct is relevant to the charge.”)

Moreover, Count Seven includes the alternative theory of aiding and abetting, pursuant to 18 U.S.C. § 2. Therefore, the conduct of other rioters is extremely relevant. *See United States v. Gillespie*, No. 22-cr-60. (ECF No. 43.) (Memorandum and Order of Chief Judge Howell) (“The additional aiding and abetting charge specifically hinges on cooperative behavior: it cannot be proven with evidence that has been diligently scrubbed of all signs of other actors. As the Supreme Court has held in *Rosemond v. United States*, 572 U.S. 65 (2014), “[t]o aid and abet a crime, a

defendant must not just ‘in some sort associate himself with the venture,’ but also ‘participate in it as in something that he wishes to bring about’ and ‘seek by his action to make it succeed.’” *Id.* at 76 (quoting *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949)). The evidence of the conduct of others is so probative to the charges defendant faces that the probative value “substantially outweighs” the risk of unfair prejudice. FED. R. EVID. 403.”)

Furthermore, the government’s use of any summary video, witness, or evidence to this effect would permissibly “help the jury organize and evaluate evidence which is factually complex and fragmentally revealed in the testimony of a multitude of witnesses throughout the trial.” *See United States v. Lemire*, 720 F.2d 1327, 1348 (D.C. Cir. 1983). Any such aspects of the government’s case would need to be “accurate and nonprejudicial[,]” *United States v. Fahnbulleh*, 752 F.3d 470, 479 (D.C. Cir. 2014), and require “a sufficient foundation[,]” *United States v. Mitchell*, 816 F.3d 865, 877 (D.C. Cir. 2016). Defendant Celentano cannot substantiate his contention that the government should be precluded from presenting this information.

Even if this Court found the actions of other rioters were prejudicial, a limiting instruction would be the appropriate remedy. The D.C. Circuit has consistently upheld the use of limiting instructions as a way of minimizing the residual risk of prejudice. *See, e.g., United States v. Douglas*, 482 F.3d 591, 601 (D.C. Cir. 2007) (emphasizing the significance of the district court’s instructions to jury on the permissible and impermissible uses of the evidence); *Pettiford*, 517 F.3d at 590 (same); *Crowder II*, 141 F.3d at 1210 (stating that mitigating instructions to the jury enter into the Rule 403 balancing analysis). Therefore, this compilation video is relevant and admissible.

Images from Inside the U.S. Capitol

Defendant Celentano opposes the use of any video or images from inside the Capitol. The government has not yet finalized its exhibits. There may be some images from inside the Capitol,

specifically from the compilation video referenced above. As set forth above, this video is relevant. Another source of images from inside the Capitol building is a video of the Congressional certification process. This is relevant to Count Seven, Obstruction of an Official Proceeding. As stated above, the government must establish that there was an “official proceeding” and the fact that it was disrupted. Therefore, video evidence of certification is relevant and admissible.

Evidence of FBI’s Initial Investigation that Identified Celentano

The government does not intend to introduce detailed evidence regarding the identification of Defendant Celentano. Should the government’s trial plan change, we will advise the defendant in time to object and the Court to rule prior to seeking to introduce such evidence.

Custodial Interview of Jennifer Blake

At this time, the government doesn’t intend to use this interview. Should the government’s trial plan change, we will advise the defendant in time to object and the Court to rule prior to seeking to introduce such evidence.

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For the reasons stated above, Defendant Celentano's motion should be denied in part and determined to be moot in part.

Respectfully submitted,

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