

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
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 :
 v. : Case No. 22-cr-186 (TJK)
 :
 RALPH JOSEPH CELENTANO, III, :
 :
 Defendant. :
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UNITED STATES' MOTION IN LIMINE TO PRECLUDE
SELF DEFENSE OR DEFENSE OF OTHERS

The United States of America, by and through undersigned counsel, the United States Attorney for the District of Columbia, hereby requests that the Court issue an order precluding Defendant Celentano from improper arguments or evidence regarding self-defense or defense of others that are misleading, unduly prejudicial, or irrelevant in determining Celentano's guilt of the offenses charged in the Indictment, as described below.

**The Court Should Preclude the Defendant from Arguing
Self Defense or Defense of Others**

Celentano has not formally raised a claim of self-defense or defense-of-others. If he does, such arguments and evidence should be precluded. The defendant has the initial burden of production to raise a defense-of-others claim. *United States v. Biggs*, 441 F.3d 1069, 1071 (9th Cir. 2006). To establish a prima facie case of self-defense or defense of another, the Defendant must make an offer of proof of "(1) a reasonable belief that the use of force was necessary to defend himself or another against the immediate use of unlawful force and (2) the use of no more force than was reasonably necessary in the circumstances." *See id.* "If a defendant cannot proffer legally sufficient evidence of each element of an affirmative defense, then he is not entitled to present evidence in support of that defense at trial." *United States v. Cramer*, 532 F. App'x 789, 791 (9th Cir. 2013) (citing *United States v. Bailey*, 444 U.S. 394, 415 (1980)).

There is no reasonable argument that self-defense or defense-of-others are valid excuses for the offenses alleged under 18 U.S.C. § 231(a)(3), 18 U.S.C. § 1752(a), and 40 U.S.C. § 5104(e). However, a defendant like Celentano who is charged under 18 U.S.C. § 111(a) may assert, as an affirmative defense, a theory of self-defense, “which justifies the use of a reasonable amount of force against an adversary when a person reasonably believes that he is in immediate danger of unlawful bodily harm from his adversary and that the use of such force is necessary to avoid this danger.” *United States v. Middleton*, 690 F.2d 820, 826 (11th Cir. 1982).

This defense contains two important limitations. First, Congress enacted Section 111 “to protect both federal officers and federal functions.” *United States v. Feola*, 420 U.S. 671, 679 (1975). As a result, “[a]n individual is not justified in using force for the purpose of resisting arrest or other performance of duty by a law enforcement officer within the scope of his official duties.” *United States v. Drapeau*, 644 F.3d 646, 653 (8th Cir. 2011); *see also United States v. Branch*, 91 F.3d 699, 714 (5th Cir. 1996) (“[Self-defense] principles must accommodate a citizen’s duty to accede to lawful government power and the special protection due federal officials discharging official duties.”). Second, even in circumstance where an individual might be justified in using some force to resist a federal officer, that resistance must be reasonable under the circumstances. *See Abrams v. United States*, 237 F.2d 42, 43 (D.C. Cir. 1956) (observing that “the use of ‘reasonable force’ only would have been open to defendants”); *see also United States v. Wallace*, 368 F.2d 537, 538 (4th Cir. 1966) (explaining that Section 111 permits “reasonable force employed in a justifiable belief that it is exerted in self-defense”); *United States v. Perkins*, 488 F.2d 652, 655 (1st Cir. 1973) (defendant may be convicted under Section 111 where “he used more force than was necessary to protect the person or property of himself or others”).

Both limitations apply here. The video and picture evidence contained in the Government's Exhibits 607 and 607.1 show that Celentano and other rioters were illegally present in a restricted area of the U.S. Capitol and, prior to Celentano's assault on the officer, he and other individuals had violently entered the restricted Capitol Grounds and were advancing onto the Lower West Terrace of the Capitol Building during a civil disorder. He was therefore breaking the law and subject to arrest. The evidence further shows that Celentano was the initial aggressor, intentionally moving towards the officer before ramming the officer from behind and then quickly walking away. "A defendant cannot claim self-defense if he was the aggressor or if he provoked the conflict upon himself." *Waters v. Lockett*, 896 F.3d 559, 569 (D.C. Cir. 2018) (internal quotation marks and citation omitted). That principle applies fully to Section 111 prosecutions. *See, e.g., United States v. Mumuni Saleh*, 946 F.3d 97, 110 (2d Cir. 2019) ("Mumuni was the initial aggressor in the altercation with Agent Coughlin; as such, he could not, as a matter of law, have been acting in self-defense"); *United States v. Acosta-Sierra*, 690 F.3d 1111, 1126 (9th Cir. 2012) ("[A]n individual who is the attacker cannot make out a claim of self-defense as a justification for an assault.").

Even accepting that Celentano had a right to resist the officers attempting to hold the Lower West Terrace – which he did not – the evidence shows that the Defendant escalated the encounter into a violent attack on the victim-officer. *See Waters v. Lockett*, 896 F.3d 559, 570 (D.C. Cir. 2018) (self-defense not applicable "if [the defendant] and his co-conspirators used excessive force to repel Hargrove's attack"). Celentano's violent conduct was not necessary to defend himself or others, as he simply could have returned home instead of ramming the officer from behind so hard that the officer flipped over and fell off the raised platform on to the ground below. The force he used was unreasonable and, accordingly, disqualifies him from any claim

of self-defense.

Celentano's anticipated attempt to argue or submit evidence that his assaultive conduct was in defense of the individuals at the base of the Lower West Terrace should be barred. First, such a defense would be directly counter to the facts of this case: the body-worn camera and open-source footage show the Defendant charging into an officer from behind who was attempting to hold the line against advancing rioters on the Lower West Terrace, not coming to the aid of any individual. It should therefore be excluded to avoid confusing or misleading the jury. Fed. R. Evid. 403. Second, such a claim would be barred as a matter of law. When an individual uses force to come to the aid of another who is not justified in their initial use of force against a third person, then the claim of defense of others does not apply. *Fersner v. United States*, 482 A.2d 387, 390 (App. D.C. 1984) ("The trial court correctly observed that the right to use force in defense of a third person is predicated upon that other person's right of self-defense (citing *Taylor v. United States*, 380 A.2d 989, 994-995 (D.C. 1977)). Here, any person to whom the Defendant could possibly claim that he was coming to the aid or defense of would also be actively committing another federal offense, such as a violation of 18 U.S.C. § 231(a)(3), 18 U.S.C § 1752(a), or 18 U.S.C. § 111(a). The Defendant cannot claim that his use of force against the officers was in the defense of another who was also assaulting federal law enforcement officers because that person's physical engagement with the officers would itself be unlawful. *Saleh*, 946 F.3d at 110; *Acosta-Sierra*, 690 F.3d at 1126. The Defendant should therefore be barred as a matter of law from arguing that his actions were in the defense of another person. *Fersner*, 482 A.2d at 290; *see also United States v. Alberts*, 21-cr-26 (CRC), Oral Ruling Precluding A Jury Instruction for Self-Defense or Defense of Others, April 18, 2023 ("In order to [...] establish the right to an instruction or to justify [a self-defense] instruction, there must

be sufficient evidence from which a reasonable juror might infer that either the defendant did not know the identity of the law enforcement officer [...] or that the law enforcement officer's use of force viewed from the perspective of a reasonable officer at the scene was objectively unreasonable under the circumstances." (citing *Drapeau*, 644 F.3d 646, and *Branch*, 91 F.3d 699)).

CONCLUSION

For the reasons set forth above, the United States respectfully requests that this Court preclude improper argument or evidence regarding self-defense or defense of others.

Dated: May 17, 2023

Respectfully Submitted,

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