

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 22-00060-BAH
)	
VINCENT GILLESPIE)	

DEFENDANT’S MOTIONS IN LIMINE

Defendant, Vincent Gillespie, hereby moves in limine for an order excluding the following: (1) any general evidence, including testimony, videos, photos, or other exhibits, of the events of January 6, 2021, from locales at the Capitol where Gillespie never was and did not know about, and (2) references at trial by any witnesses or the government pejoratively characterizing the event as an “insurrection”, “riot”, or “attack” and those assembled on the Capitol grounds as “rioters” or “mobs.”

ARGUMENT

The government has charged Gillespie in an eight-count superseding indictment with (1) assaulting an officer under 18 U.S.C. § 111(a)(1); (2) obstructing a law enforcement during a civil disorder under 18 U.S.C. § 231(a)(3); (3) entering or remaining in a restricted building or grounds under 18 U.S.C. § 1752(a)(1) ; (4) disorderly and disruptive conduct in a restricted building or grounds under 18 U.S.C. 1752(a)(2); (5) engaging in physical violence in a restricted building or grounds under 18 U.S.C § 1752(a)(4); (6) disorderly conduct in a Capitol building under 40 U.S.C. 5104(e)(2)(D); (7) engaging in an act of physical violence within the Capitol grounds under 40 U.S.C. § 5104 (e)(2)(F); and (8) obstruction of an official proceeding under 18 U.S.C. § 1512(c)(2). Each of the alleged violations is limited in scope to Gillespie’s actions during an approximately

fifteen-minute period starting at 4:11 p.m. when he entered the Lower West Terrace Tunnel before being pushed out of the tunnel by law enforcement at approximately 4:26 p.m.

It naturally follows that the evidence at trial should be similarly limited in scope to the circumstances surrounding Gillespie and not to the broader actions of individuals or groups of individuals on January 6, 2021. Further, any evidence introduced should be carefully limited to ensure compliance with the federal rules of evidence to avoid an unfair prejudice through gratuitous and prejudicial characterizations. To ensure such compliance, the defense raises the following evidentiary objections in limine.

I. THE COURT SHOULD EXCLUDE ANY GENERAL EVIDENCE, INCLUDING TESTIMONY, VIDEOS, PHOTOS, OR OTHER EXHIBITS, OF THE EVENTS OF JANUARY 6, 2021, AT THE EAST SIDE OF THE UNITED STATES CAPITOL, THE UPPER WEST TERRACE OF THE CAPITAL, AND ANY INTERIOR PORTIONS OF THE CAPITOL (INCLUDING THE ROTUNDA, CRYPT, LEGISLATIVE OFFICES, AND THE TWO CHAMBERS).

“Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would without the evidence; and (b) the fact is of consequence in determining the action. Fed. R. Evid. 401. Under Rule 402, only relevant evidence is admissible. Fed. R. Evid. 402.” *United States v. Fitzsimons*, No. 21-CR-158, 2022 WL 1658846, at *2 (D.D.C. May 24, 2022) (internal quotations omitted). “[T]he burden is on the introducing party to establish relevancy,” *Dowling v. United States*, 493 U.S. 342, 351 n.3(1990), as well as admissibility under other evidentiary rules. *United States v. Oseguera Gonzalez*, 507 F. Supp. 3d 137, 147 (D.D.C. 2020).

Gillespie is charged with violations related to *his* alleged conduct. Evidence in the aggregate, related to the conduct of others on January 6, 2021—including protesters, demonstrators, and people

generally—is not relevant. The conduct of others is not at issue in this case, and the admission of such evidence lacks any tendency to make a fact at issue more or less probable. The government has no relevant purpose for introducing such evidence as it does not link any alleged conduct of Gillespie to the elements of any of the charges. For this reason, any general evidence of the events of January 6, 2021, unrelated to the direct and specific alleged conduct of Gillespie is irrelevant and should be excluded.¹

Regardless of whether such evidence has some modicum of relevance – it does not – any value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. Rule 403 renders relevant evidence inadmissible upon a showing that it presents a risk of “unfair prejudice,”—prejudice that is “compelling or unique,” *United States v. Mitchell*, 49 F.3d 769, 777 (D.C. Cir. 1995) (quoting *United States v. Washington*, 969 F.2d 1073, 1081 (D.C. Cir. 1992)), or has “an undue tendency to suggest decision on an improper basis,” *United States v. Ring*, 706 F.3d 460, 472 (D.C. Cir. 2013) (quoting Fed. R. Evid.

¹ The government earlier this week provided a draft exhibit list to the defense. The list includes references to “200 series” exhibits that are categorized as “General Evidence of the Capitol Grounds and the Riot on January 6th” to which this Motion is addressed. The government followed up this day by uploading the exhibits themselves to a cloud-based service for transfer to the defense. The impending deadline for the filing of Motions in Limine – also this day – has prevented counsel from examination of the specific “general” materials the government proposes to introduce. Defendant reserves the right to supplement this Motion with exhibit-specific objections.

403 advisory committee's note to 1972 proposed rules); *see also United States v. Oseguera Gonzalez*, 507 F. Supp. 3d 137, 146–47 (D.D.C. 2020).

Evidence of others' conduct at other locations in and around the Capitol is wholly untethered from Gillespie's conduct which forms the sole basis for the indictment. The only purpose of introducing this evidence is to impermissibly inflame the passions of the jury and provide a skewed perspective of Gillespie's actual alleged conduct. In other words, admission of such evidence would allow the jury to superimpose the general conduct of others onto Gillespie, viewing his alleged actions through the aggregate lens of the January 6, 2021, event as a whole. This is improper. Permitting introduction will create a vast undue tendency for the jury to tie Gillespie's culpability to the culpability of others present—others necessarily unknown to Gillespie – and placing the blame for the general conduct that occurred at the Capitol on January 6, 2021, on Gillespie, rather than considering simply his own alleged conduct as alleged in the indictment. Because the introduction of general evidence of the events of January 6, 2021, is substantially more prejudicial than probative the Court must bar its introduction. Fed. R. Evid. 403.

II. THE COURT SHOULD EXCLUDE PEJORATIVE CHARACTERIZATIONS OF THE EVENT.

For similar reasons, defendant moves that the government and its witnesses be precluded from characterizing the event in pejorative terms such as “insurrection”, “attack”, and “riot,” and not be permitted to elicit testimony characterizing the participants in terms such as “rioters” or “mobs.” Such references to the participants carry a high risk of unfair prejudice and confusion as the jurors

may - indeed, are likely to - equate Gillespie's participation in the events as indicative of general criminality.

Besides being misleading and prejudicial, such characterizations do nothing to prove any fact at issue "more probable or less probable than it would be without" the resort to such characterizations and therefore must be excluded. See Fed. R. Evid. 401, 402. But such judgments carry with them a such a high likelihood of unfair prejudice and confusion that it they must be excluded pursuant to Fed. R. Evid. 403. Such characterizations – which have nothing to do with whether Gillespie committed the crimes set for the in the indictment - will only result in an appeal to emotion, rather than an objective consideration of the charge in the indictment. See *United States v. Fulmer*, 108 F.3d 1486, 1497-98 (1st Cir. 1997) (reversing conviction where references to the Oklahoma City bombing, while of some probative value, tremendously outweighed by prejudicial impact); *United States v. Rodriguez-Cortes*, 949 F.2d 532, 541 (1st Cir. 1991)(reversing conviction where introduction of defendant's Colombian identification card, although relevant, presented impermissible danger of conviction on improper basis). The government and its witnesses should therefore be instructed to use neutral terms such as "event" for the assembled crowd and "participants" for those involved.

CONCLUSION

For the foregoing reasons, the Court should grant this Motion *in limine*.

VINCENT GILLESPIE

By his attorneys

/s/ Timothy G. Watkins

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CERTIFICATE OF SERVICE

I, Timothy G. Watkins, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on November 4, 2022.

/s/ Timothy G. Watkins

Timothy G. Watkins