

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

<b>UNITED STATES OF AMERICA</b>	:	<b>Case # 1:22-cr-00121-TNM</b>
	:	
v.	:	
	:	
<b>Jared Paul Cantrell</b>	:	
<b>Quentin G. Cantrell</b>	:	
<b>Eric Andrew Cantrell</b>	:	

**MOTION IN LIMINE TO EXCLUDE 3d-PARTY VIDEO EVIDENCE**

Pursuant to Fed. R. Evid. 802 and 403, and the 6th Amendment, Defendant Quentin G. Cantrell (“QGC”) moves to exclude third-party video evidence. In support of this motion, QGC sets forth the following facts and argument.

**I. Introduction**

QGC previously filed a 12(b) motion to dismiss Count I (inter alia) on the ground that the Government lacked evidence that would permit a reasonable jury to find the requisite mens rea, i.e., that QGC knowingly entered a restricted area. In opposition, the Government stated that it intended to produce 3d-party video evidence for the purpose of proving that QGC must have either heard an alarm or seen teargas, and therefore must have known the area was restricted. Dkt # 42, pp. 6-7. In its opposition the Government characterized the videos, and did so without supporting testimony of a sponsoring witness. The Government has not identified the individuals who made these videos, thereby denying QGC the opportunity to investigate the provenance and accuracy of this evidence. Without a sponsoring witness who can be cross-examined this evidence is particularly problematic.

QGC therefore moves this Court to exclude 3d-party video evidence pursuant to Fed. R. Evid. 802, 403, and the 6th Amendment.

## II. Legal Standard

Courts generally look to the contents of the video, and the purpose for which it is offered, to decide whether it is hearsay. For example, videos that contain verbal statements conducted intended as a statement is typically hearsay evidence. *See, e.g., U.S. v. Martinez*, 588 F.3d 301, 310-11 (6th Cir. 2009). Likewise, despite being hearsay videos can be admissible if they fall into one of the hearsay exceptions, such as being a learned treatise. *See, e.g., Constantino v. Herzo*, 203 F.3d 164, 173-74 (2d Cir. 2000). When the Government seeks to introduce video evidence, it has the burden to establish the non-hearsay relevance of that video. *United States v. Sutton* (Dist. D. C., October 23, 2022) LEXIS 192681.

## III. Statement of Facts

1. During discovery the Government produced a number of video files, including both CCTV video, which was apparently recorded by security equipment used to monitor the Capitol, and 3d-party video, which was not recorded by agents of the government.

2. For example, during discovery the Government produced a video file entitled “IMG\_0781.MOV,” and described it in their index as “video from rioter’s cell phone.” See Ex. A, 2022-04-11 Cantrell Initial Discovery Letter, Appendix.

3. The Government produced a number of other 3d-party videos in folders describing them as “open source video.” For example, the April 11, 2022 production included folders entitled “Serial 66 – Open Source Video” and “Serial 72 – Open Source Video.” Ex. A.

4. During discovery the Government produced a video file entitled “January 6, 2021 Washington D.C. Protest to Stop the Steal-.mp4,” and described it, in their index, as “open source video.” Id.

5. These folders include a number of video files, including “Facebook video#162071834810837.mp4”; Facebook video#2813037288970354.mp4”; Facebook

video#374330009062030.mp4”; and others. Ex. A.

6. None of the individuals who recorded these videos were identified during discovery.
7. None of the recording equipment used to record these videos was identified to QGC.
8. None of the software employed to record these videos was identified to QGC.

#### **IV. Argument**

##### *A. The “Teargas!” Video*

The Government seeks to establish that QGC knowingly entered a restricted area using 3d-party videos. The Government argued in its opposition to QGC’s Motion to Dismiss that “a reasonable jury could make inferences and conclusions about defendant’s knowledge regarding permission to enter the Capitol,” based on a 3d-party video in which it asserted “several people can be heard yelling “Teargas!” Dkt. # 42, p. 6. Rather than establishing a non-hearsay purpose, the Government has explicitly admitted it is offering this video for a hearsay purpose, namely, to prove that teargas was deployed at a place and time at which QGC might have observed it. The Government’s proposed inference depends not just upon the assertion that the people yelled “Teargas!,” but that they were correct in announcing that teargas had been fired (or, perhaps, announcing that it was about to be fired).

As an initial matter, Defendant notes that it disputes the Government’s characterization of this video. Even after having been told to listen for people yelling “Teargas!” and playing the video several times over, it is not clear that this accurately transcribes voices in the recording. Compared to a courtroom or deposition, the environment is noisy and the sound quality is poor, and even in those controlled environments accurate transcription is sometimes difficult. It is therefore not certain what voices in this video said. This is exacerbated by the fact that the Government has not identified a sponsoring witness for the video. No one can be cross-examined

about how the recording comports with what they heard and saw at the time, about the hardware and software used to record the video, or about the conditions and methods of recording. All of this underlines the fact that such video evidence is properly excluded as hearsay, as unfairly prejudicial, and as a violation of QGC's 6th Amendment right to confront his accusers.

The expert opinions of Guillermo Cosson further demonstrate the need to exclude the Government's 3d-party video evidence. *See* Dkt. 50, Attachment 2. Cosson is an expert in Information Technology, including cell phones such as the ones presumably used to make these 3d-party videos. He will, if necessary, testify that there are many variables, including hardware, software, and movement in the camera, environment, and the person recording, which can affect the resulting video and audio, rendering it poor evidence for the things the Government is attempting to prove with these videos. *Id.* Both the hardware and software alter what they record, such that what is recorded may not accurately reflect what a nearby person might have heard or seen. *Id.* Cosson notes that, without the ability to cross-examine the person who made the video such evidence is particularly unreliable. *Id.*

*B. The "Alarm" Video*

The Government also stated that it "will argue that the defendants heard" an alarm that it contends is audible on another 3d-party video "from the vantage point of a rioter entering the same door that defendants entered a few minutes later." Dkt. # 42, p. 7.

Once again, QGC first objects to the Government characterization of the evidence. In particular, QGC Objects to the characterization of the person who recorded the video as "a rioter." The Government has not even identified this individual, much less established they rioted. In any event, the Government's stated purpose for offering this video is to prove what QGC heard. The likelihood that QGC heard the alarm is a function of the relative volume of

other sounds in the environment, and so this argument inherently relies on the accuracy with which the recording captured the relative volumes of those sounds. Without a sponsoring witness this foundation is absent.

*C. Other 3d-Party Video*

During discovery the Government produced a number of other 3d-party videos. Although based on counsel's review they do not appear to be particularly relevant to QGC's case, it is possible that the Government will try to argue that some detail is relevant. Because the Government is seeking to prove QGC's state of mind by showing what he say and heard, alterations in the recording that might from hardware, software, movement and so forth, would make such evidence unreliable. Such video evidence should be excluded for the same reasons as the "Teargas!" and "alarm" videos.

**V. Conclusion**

Because the Government has not identified any of the hardware or software used to generate the 3d-party video evidence it has produced in this case, nor any sponsoring witnesses for them, the Court should exclude them, pursuant to Fed. R. Evid. 802, 403, and the 6th Amendment.

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