

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

Criminal Case No. 1:19-cr-00257-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. ERIC KING,

Defendant.

**GOVERNMENT’S MOTION IN LIMINE
REGARDING CONDITIONS OF CONFINEMENT**

INTRODUCTION AND BACKGROUND

Defendant is charged with assaulting a correctional officer at the Federal Correctional Institution (“FCI”) in Florence, Colorado, on August 17, 2018. ECF 1. The alleged assault took place over a very short period prior to 2:00 pm on that date. See, e.g., Exs. 1-2 (describing the events surrounding the assault). Defendant’s pretrial motions, as well as his proposed statement of the case submitted to government counsel via email on September 21, 2021, suggest that he intends to make arguments or present evidence that he was placed in a “Stryker” chair, held in four-point restraints, and housed in the “Special Housing Unit” or “SHU” following the alleged assault. See, e.g., Ex. 3 (defense draft proposed statement of the case). For the reasons set forth below, the Court should preclude evidence or argument on any of these subjects.

ARGUMENT

Irrelevant evidence is inadmissible. Fed. R. Evid. 402. Evidence is relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401. Actions taken by Bureau of Prisons (“BOP”) officers to restrain or confine the defendant after the alleged assault are not relevant because such actions have nothing to do with whether the defendant intentionally and forcibly assaulted a federal officer engaged in the performance of his duties, causing bodily injury. See 10th Cir. Crim. J.I. § 2.09 (2021), *available at* <https://www.ca10.uscourts.gov/form/criminal-pattern-jury-instructions> (last visited Sept. 21, 2021). This case is not a civil action designed to challenge conditions of confinement, and it is not impact litigation. It is a criminal trial to determine if defendant is guilty or not guilty of the assault alleged in the indictment, and how BOP officers chose to restrain defendant after the assault is not relevant.¹

Moreover, even if the Court determines that this evidence (or argument) is minimally relevant, it should be precluded under Federal Rule of Evidence 403 because it will confuse issues, mislead the jury, and waste time, while proving nothing. See Fed. R. Evid. 403. Allowing the defense to delve into the circumstances of defendant’s confinement after the alleged assault would serve no purpose other than to distract the jury from the key issue in this case, i.e., whether defendant assaulted Lieutenant Wilcox. Allowing such testimony or argument would also open the door to the

¹ Should defendant take the stand and testify, thereby subjecting himself to cross-examination about statements made during his interview on August 20, 2018, the government would agree to revisit this issue to the extent necessary to allow the jury to evaluate the voluntariness of King’s statement on that date.

government presenting evidence of the facts of defendant's underlying conviction, his security classification, and his past disciplinary history within BOP facilities, because such evidence would provide additional background for why BOP's response to the alleged assault was appropriate. The Court can and should exercise its supervisory powers over this trial to ensure that it does not get bogged down by sideshows.

CONCLUSION

For the reasons set forth above, the Court should preclude any evidence or argument regarding defendant's placement in a "Stryker" chair, BOP's use of four-point restraints, or defendant's confinement in the SHU in the days following the alleged assault on August 17, 2018.

Respectfully submitted this 21st day of September, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2021, I electronically filed the foregoing **GOVERNMENT'S MOTION IN LIMINE REGARDING CONDITIONS OF CONFINEMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

s/ Aaron Teitelbaum _____

Aaron M. Teitelbaum
Assistant U.S. Attorney