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9 IN THE UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 United States of America,
12 Plaintiff,
13 vs.
14 Donald Day, Jr.,
15 Defendant

Case No. CR-23-8132-PCT-JJT
**MOTION *IN LIMINE* RE:
WIEAMBILLA SHOOTING**
(Hearing requested)

16 Mr. Day respectfully moves *in limine* for an order restricting the admission
17 of evidence concerning Gareth, Nathaniel, and Stacey Train and the events that
18 took place in Wieambilla, Queensland, Australia on December 12, 2022
19 (collectively, the “Wieambilla shooting” or the “shooting”).
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21 As explained below, Mr. Day requests the Court restrict evidence concerning
22 the Wieambilla shooting to the limited statement of facts described below. *See infra*
23 Section II(C). Carefully controlling the admissibility of evidence about the Trains
24 and the shooting—acts for which Mr. Day bears no responsibility—is the only way
25 to ensure that Mr. Day receives a fair trial.¹
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28 ¹ This issue—of the admissibility at trial of evidence related to the Wieambilla
Shooting—is sufficiently significant to the scope of parties’ pretrial preparation

1 Mr. Day was ensnared in that expanded net. The online communications
2 between the Trains and Mr. Day sparked a nearly year-long investigation into Mr.
3 Day—first, by authorities in Australia; and, later, the United States—to determine
4 whether Mr. Day bore any responsibility for the shooting.

5 He did not. No evidence exists that Mr. Day had any knowledge of the
6 Train’s plans or that he in any way encouraged or instigated the attack. Instead, the
7 Train’s actions were just that—their own. Mr. Day was never charged with a crime
8 related to the shootings.

9 Nevertheless, after a year of investigation that yielded no connection to the
10 Train’s actions, the United States indicted Mr. Day. Count 1 of the indictment
11 relates to a video Mr. Day allegedly posted on YouTube on December 16, 2022—
12 four days after the Wieambilla shooting. Although the video was posted on
13 December 16, 2022, the government did not indict Mr. Day for the alleged threat
14 in the video until nearly a year later, in November 2023.

15 In the video, Mr. Day states that if “the devils come for us, they fucking die.
16 It’s just that simple. We are free people, we are owned by no one.” Amended
17 Indictment, ¶ 29. The government maintains this statement constitutes a threat
18 against “any law enforcement official who comes to DAY’s residence.” *Id.* The
19 video was posted in response to a video posted by the Trains on December 12,
20 2022. *Id.* In it, Gareth Train stated “[t]hey came to kill us, and we killed them. If
21 you don’t defend yourself against these devils and demons, you’re a coward.” *Id.*

22 * * *

23 The government has indicated—through counsel, its briefing, and through
24 materials produced in discovery—that it intends to introduce at trial a large
25 volume of evidence related to the Trains and the Wieambilla shooting.
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1 For example, in its *Notice in Opposition to Severance*, the government
2 indicated that it “intends to introduce evidence regarding the similarities in the
3 mindset and living situation between the [the Trains] and the Defendant.” *Notice*
4 at 3 (ECF. 119). Similarly, in discovery, the government has produced eight
5 statements from Queensland Police officers concerning “giving evidence in the
6 prosecution of Donald Day Jr in the Federal District Court in Arizona, USA.”
7 *See, e.g.*, Exhibits 1 - 8 (Queensland Police Service, Statements of Witnesses).
8 The statements, given by eight different QPS officers, describe, among other
9 things, investigation taken by the Queensland Police related to the online
10 accounts and electronic devices of the Trains; a forensic coordinator who
11 responded to the Train’s residence on December 12, 2022; and a tactical police
12 officer who coordinated the QPS response to the events on December 12, 2022.

13 **II. ARGUMENT**

14 Strict limitations must be placed on the government’s ability to introduce
15 evidence relating to the Wieambilla shooting. Evidence about a shootout with
16 police in which police officers were killed—events that Mr. Day was not involved
17 with—is highly inflammatory, overly prejudicial, and of little to no relevance to
18 these proceedings. Without strict limits, Mr. Day will not receive a fair trial.

19 **A. Admitting evidence about the Wieambilla shooting would violate the** 20 **First and Fifth Amendments.**

21 Both the First and Fifth Amendments prohibit the type of “guilt by
22 association” that will occur if evidence of the Trains and the events of Dec. 12 is
23 admitted in Mr. Day’s trial. “[G]uilt by association is a philosophy alien to the
24 traditions of a free society and the First Amendment itself.” *NAACP v. Claiborne*
25 *Hardware Co.*, 458 U.S. 886, 932 (1982). Under the Fifth Amendment, too, “[g]uilt
26 is personal.” *Scales v. United States*, 367 U.S. 203, 224 (1961). Any association for
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1 which criminal liability attaches “must be sufficiently substantial to satisfy the
2 concept of personal guilt in order to withstand attack under the Due Process
3 Clause.” *Id.* at 225 (reviewing conspiracy and accomplice liability schemes).

4 But, in this case, “guilt by association” is the government’s strategy—
5 explicitly. The government has already indicated it plans to introduce evidence of
6 the “similarities in the mindset and living situation,” between Mr. Day and the
7 Trains, in addition to other evidence related to the shooting. *Notice* at 3 (ECF. 119).
8 Having introduced those alleged “similarities” (along with the facts of the
9 Wieambilla shooting), the government would then invite the jury to convict Mr.
10 Day on Count 1—and all counts—based on nothing more than Mr. Day’s online
11 associations with the Trains.

12 The Trains are responsible for the deaths of three people. Mr. Day is not. He
13 has not been charged with any crime relating to the Wieambilla shooting. The
14 government should not be allowed to convict *Mr. Day* with evidence of the *Train’s*
15 guilt. Doing so would violate the prohibition on guilt by association.

16
17 **B. Evidence about the Wieambilla shooting would mislead the jury,**
18 **confuse issues, waste time, and unfairly prejudice Mr. Day.**

19 Allowing evidence related to the Wieambilla shooting would run afoul of
20 Rule 403, too. *See* Fed. R. Evid. 403. It would mislead the jury; it would confuse
21 the issues and waste time; and it would be far more prejudicial than probative.

22 First, evidence about the shooting will mislead the jury. As described above,
23 it will invite the jury to assume that Mr. Day shared some responsibility for the
24 Trains’ actions and that, in turn, he has liability for the threat alleged in Count 1
25 (and, by extension, all counts).

26 Second, evidence about the shootings will confuse the issues and waste time.
27 If the government is allowed to introduce evidence related to the shootings, Mr.
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1 Day will be forced to respond with his own evidence. Mr. Day will be forced to
2 introduce evidence about the Trains beliefs;² their mental health; the circumstances
3 of the QPS investigation of them; and the circumstances of the shooting. This
4 investigation may include serving letters rogatory to witnesses in Australia to
5 secure their attendance at a trial in the United States. In short, Mr. Day will be
6 forced to undertake a defense of the *Trains* to defend his own case. That type of
7 trial-within-a-trial would undoubtedly confuse jurors. But it would also waste time
8 and cause significant delay. Again, Mr. Day’s trial should be about *his* actions, not
9 the actions of people he never met who lived 8,000 miles away.

10 Finally, the danger of unfair prejudice greatly outweighs whatever probative
11 value might exist. Evidence of a triple-homicide, in any case, is prejudicial.
12 Evidence of a triple-homicide committed by another person, and imputed to a
13 defendant, is *unfairly* prejudicial. No curative or limiting jury instruction could
14 remedy the prejudice that might attach.

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16 **C. Any necessary “context” can be accomplished through a limited**
17 **statement of facts presented by a single witness.**

18 Mr. Day acknowledges that, to prove the threat charges in this case, the
19 government is permitted to introduce some evidence to provide the context
20 necessary for the jury to evaluate the alleged threats. But that concession does not
21 mean the government can introduce *any* evidence it wants.

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25 ² For example, Australian authorities have described the shooting as a
26 “religiously motivated terrorist attack.” The Trains, according to Australian
27 authorities, were Christian fundamentalists who subscribed to a belief called
28 “premillennialism.” Whether the Trains were, in fact, Christian terrorists would
be a subject Mr. Day would need to explore—both on cross examination and
through his own witnesses.

1 To guard against the Constitutional and evidentiary problems described
2 above, the Court should limit the evidence admitted about the Wieambilla shooting
3 to a stipulated statement of facts.

4 This approach has multiple benefits: (1) it limits, to the extent possible, the
5 prejudice that attaches to Mr. Day; (2) it avoids a trial-within-a-trial about the
6 shooting; (3) it provides all the context necessary for the government to prove its
7 case, without requiring the emotionally charged testimony of Australian law
8 enforcement officials who were involved in the shooting or investigating it; and (4)
9 it substantially reduces the length of the trial by eliminating the need for QPS
10 officers to testify (and for Mr. Day to call his own witnesses concerning the
11 Wieambilla shooting).

12 Accordingly, Mr. Day proposes that witnesses at trial discussing the
13 Wieambilla shooting be limited to the following facts:³

14 On or around December 2022, Gareth, Nathaniel, and Stacey Train
15 were individuals living in Queensland, Australia. They maintained a
16 YouTube account, through which they sometimes exchanged videos,
17 comments, or otherwise communicated with Mr. Day. Mr. Day never
18 met the Trains in person. Mr. Day referred to Nathaniel and Stacey
19 Train as “Daniel” and “Jane.”

20 On December 12, 2022, the Trains were involved in a shootout with
21 police at their home in Queensland. After the shootout, they posted a
22 video to YouTube exhorting viewers to “defend yourself against these
23 devils and demons.” They ended the video with “see you at home, Don.
24 Love you.”

25 Later that same day, the Trains were involved in another shooting with
26 police, during which the Trains were killed.

27 ³ Each party shall be responsible for informing its witnesses of these limitations
28 and shall instruct its witnesses not to volunteer additional information in response
to questions on either direct examination or cross-examination.

1 Mr. Day further requests that the government be limited to presenting
2 no more than one witness whose primary purpose is to discuss the Wieambilla
3 shooting. Mr. Day understands that brief and occasional reference to the
4 shooting, for example as a way of explaining why the FBI began reviewing
5 Mr. Day’s social media postings, may be necessary.

6 However, testimony by multiple Australian law enforcement agents—
7 which the government has informed the defense that it intends to present—
8 about an incident Mr. Day was not involved in, did not have advance notice
9 of, and is not accused of inciting, assisting, or conspiring to commit—will
10 simply distract, inflame, and prejudice the jury and risks turning the trial into
11 a referendum on the Trains instead of a trial about whether Mr. Day’s
12 YouTube video on December 16, 2022, constitutes an interstate threat.

13 **III. CONCLUSION**

14 For all these reasons, Mr. Day respectfully requests the Court limit the
15 admission of information about the Wieambilla shooting, as requested.
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18 Respectfully submitted: March 5, 2025.

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