SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

UNITED STATES	**:**	**Case no. 2017 CF2 001256**
	:	
v.	**:**	**Hon. Judge(s) Leibovitz/Epstein**
	:	
BRITTNE LAWSON	**:**	**Arraignment: 3/14/17**

MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE

BRITTNE LAWSON, through undersigned counsel, respectfully requests that this Honorable Court dismiss the charge of rioting against her in the instant case.

STATEMENT OF LIMITED REPRESENTATION

On January 20, 2017, over 200 people were arrested, allegedly in connection with protests of the inauguration of Donald Trump. Undersigned counsel represents three of the accused *pro bono*. They have each been advised as to conflicts and have waived and will again at their arraignment scheduled March 14, 2017. Counsel is filing this motion on behalf of the accused to ensure that the accused's constitutional rights are protected.

In support of this motion, counsel states the following:

RELEVANT BACKGROUND

1. On January 20, 2017, Ms. Lawson was arrested during the inauguration of Donald Trump. Ms. Lawson was one of approximately 230 adults and five juveniles arrested on one set of allegations.
2. On January 21, 2017, Ms. Lawson was charged with one count of rioting under D.C. Code § 22-1322. The charge against Ms. Lawson was based on a Gerstein affidavit just slightly over two pages long that not once mentions Ms. Lawson's name. In fact, not a single defendant's name is referenced anywhere in the Gerstein; yet, that identical

Gerstein was used as the basis for charging all 230 adults in this case.

3. The Gerstein affidavit used to charge Ms. Lawson with rioting describes conduct of a group "in excess of 300 people" that took place over a 30-minute period throughout a four-block radius. Gerstein Affidavit at 1. At different points, the narrative references the actions of "one individual"; "members of the group"; "another member of the group"; "multiple members of the group"; "some members of the group"; and "many members of the group." *Id*. at 1-2.
4. On January 21, Ms. Lawson appeared, like most other individuals charged that day, before the Court in Courtroom C-10 alongside nine other individuals also charged with rioting. These groupings of co-defendants seemed to be made at random, primarily by gender and lock-up number.
5. In order to make out a charge of rioting, the government must have probable cause that a group of five or more people, *including Ms. Lawson*, participated in a public disturbance voluntarily and on purpose and not by mistake or accident. *See Jury Instruction 6.610.*
6. For purposes of the hearing, the government did not reference orally or in writing whether or not Ms. Lawson is being accused of participating in a public disturbance or carrying out any of the actions alleged in the Gerstein, let alone which actions.

ARGUMENT

I. THE GOVERNMENT DOES NOT HAVE PROBABLE CAUSE TO CHARGE MS. LAWSON, AND SHOULD THEREFORE DISMISS THE RIOTING CHARGE AGAINST HER.

On the most basic level, "[i]t is well-established that the determination of probable cause must be an individualized matter." *Carr v. D.C.*, 565 F. Supp.2d 94, 100 (D.D.C. 2008), *aff'd in*

part, rev'd in part, 587 F.3d 401 (D.C. Cir. 2009).[1] While this standard applies in all cases, it is particularly critical in the context of rioting. A charge of rioting, by statute, requires "an assemblage of [five] or more persons." D.C. Code 22-1322(a). However, "[t]he fact that rioting is a group offense does not eliminate the constitutional requirement of particularized suspicion of guilt." *Carr*, 565 F. Supp.2d at 100.

The government here neither established a particularized suspicion of guilt for Ms. Lawson nor made an individualized determination about her alleged conduct at the time it charged her with rioting. To the contrary, it used a single generalized narrative, one lacking any specific references to Ms. Lawson or any other individual, as the basis to charge 230 different people. The government's references to "members of the group"—which could include, according to the government, up to approximately 300 people—are simply not sufficient to make out probable cause against Ms. Lawson.

This situation is no different than it was exactly 12 years ago, when a group of alleged protestors were arrested for rioting on January 20, 2005, following the second inauguration of President George W. Bush. *See Carr*, 565 F. Supp.2d at 97. There, like here, some unidentified number of protestors engaged in vandalism and an altercation with members of the Metropolitan Police Department (MPD). *See id*. at 97-98. There, like here, MPD responded by rounding up a

[1] The D.C. Circuit reversed the district court's granting of summary judgment, but affirmed its ruling that probable cause did not exist to arrest the protestors for parading without a permit. *See Carr v. D.C.*, 587 F.3d 401 (D.C. Cir. 2009). Additionally, it stated the following: "Even viewing the facts in the light most favorable to the district, the police did not have justification to arrest on any of the proffered bases. That was so because the statement of an officer that the mob acted uniformly in celebrating the destructive acts of individual protestors was only a generalized statement insufficient as a matter of law to establish probable cause *vis-a-vis* the class. The court's key holding was that it was fatal to the district's position that the officer lacked particularized grounds to believe that *every one* of the seventy persons arrested committed the crime of rioting because the officers could not possibly have observed each one's behavior." *Id*. at 405 (internal quotation marks omitted).

large number of individuals in that area at that time. *See id*. And there, like here, the government charged those arrested with rioting based on "generalized characterizations." *Id*. at 100.

The D.C. District Court *in Carr* found that the generalized statements used to charge the January 20, 2005, protestors "[we]re insufficient to establish probable cause," *id*. at 100, and the Court should do the same here. *See also id*. at 102 (The court "c[ould]not sustain [the] arrest[s]" of the alleged protestors since the government "ha[d] not provided any particularized showing that any individual [defendant] intended to engage in or further riotous behavior."). This time, instead of calling the alleged protestors "the mob," *Carr*, 565 F. Supp.2d at 102, the government is calling the alleged protestors "the group," Gerstein at 1. Instead of alleging that "the mob [acted] uniformly in celebrating destructive acts," *Carr*, 565 F. Supp.2d at 100, the government is alleging that "members of the group were observed … promoting, encouraging, and participating in acts of violence," Gerstein at 2. However, the only real difference between *Carr* and the instant case is rhetoric. The government has once again failed to "ma[ke][any] effort to ascribe misdeeds to the specific individuals arrested" and has "proffered no facts capable of supporting the proposition that [the government] ha[s] reasonable particularized grounds to believe every one of the [230] people arrested was observed committing [the] crime of rioting." *Carr*, 565 F. Supp.2d at 101 (internal quotations omitted). The charging document, in particular, does not specify how many people constitute "multiple members"; "some members"; or "many members" in any context or associated with any action. It does not provide an individualized physical description of any single person accused of engaging in any of the actions alleged in the Gerstein. And it does not state whether any of the specific conduct alleged was taken by one of the 230 people arrested as opposed to one of the 70 that got away.

The government "must show that it had probable cause to arrest each individual for rioting." *Carr*, 565 F. Supp.2d at 100. It has plainly failed to do so here. Without probable cause that Ms. Lawson committed the charged offense of rioting, the case against her should be dismissed.

WHEREFORE, for the foregoing reasons and any others that appear to the Court, Ms. Lawson, through undersigned counsel, respectfully requests that this Honorable Court dismiss the charge against her in the instant case.

Respectfully submitted,

s/Jason Flores-Williams

DC Bar No.: 1006845

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On Behalf of Ms. Lawson

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served, by email, upon the Office of the United States Attorney, 555 Fourth Street, NW, Washington, D.C. 20530, this 20th day of February, 2017

s/Jason Flores-Williams

Attorney for Defendant

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