

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

BRADLEY WAYNE WEEKS

Defendant.

Case No. 21-cr-247 (JDB)

GOVERNMENT’S OPPOSITION TO
DEFENDANT’S MOTION FOR DOWNWARD DEPARTURE
PURSUANT TO §3E1.1(A) (ACCEPTANCE OF RESPONSIBILITY)

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves this Court to deny Defendant Bradley Wayne Weeks’s motion for a two-level downward adjustment in offense level. (ECF No. 98.) Weeks’s motion is without merit and should be denied.

A defendant is not ordinarily entitled to a downward adjustment for acceptance of responsibility when he “puts the government to its burden of proof at trial by denying the essential factual elements of guilt.” U.S.S.G. § 3E1.1 cmt. n.2. However, the Court may reduce the defendant’s offense level by two levels in the “rare” case where a defendant convicted at trial “clearly demonstrate[s] an acceptance of responsibility for his criminal conduct.” *Id.*

In support of his motion, Weeks relies merely on his post-arrest interview with the FBI and his decision not to engage in political activities or divisive online groups. Notably absent from Weeks’s factual support for his motion is any contrition for the conduct underlying *his* offenses of conviction, save for his acknowledgment that he was inside a restricted area when he committed felony obstruction of Congress and four misdemeanor offenses. Weeks asserts that he deplores the violence committed at the Capitol on January 6, but he has yet to express remorse for the role that he personally played in aggravating the riot. And, as Judge Hogan found at trial, Weeks

played a significant role. *See, e.g.*, Trial Tr. at 78 (finding that Weeks encouraged other rioters to follow him up the stairs to the Capitol).

And, contrary to Weeks’s assertion in his Motion, he did not merely proceed to trial to preserve legal issues. He contested his factual guilt, most notably, with respect to the mens rea element of 18 U.S.C. § 1512(c)(2).¹ *See* Trial Tr. at 25. At trial, the defense claimed Weeks’s sole purpose for entering the Capitol on January 6 was to rescue his injured friend: “But Mr. Weeks’s intent in entering the building wasn’t to suspend, disrupt, or any way interfere with the joint session. It’s now become a rescue mission.” Trial Tr. at 33. The evidence showed otherwise. Weeks entered the Capitol after his friend told him to meet up outside and that he took his “injured friend” on a long walk through the building—chanting, taking photos, gawking at officers and rioters—rather than walking out the nearby door he had just come in through. Judge Hogan did not even acknowledge this defense in his findings of fact. Rather, Judge Hogan said he could reach no other interpretation of Weeks’s conduct and statements before and on January 6 than that his “whole approach ... was to overthrow the operations of the government.” Trial Tr. at 76.

¹ Courts generally agree that disputing the mens rea element of an offense is a challenge to factual guilt and is incompatible with acceptance of responsibility. *See United States v. Martinez*, No. 21-50258, 2022 WL 687255 at *3 (5th Cir. Mar. 8, 2022) (affirming denial of AOR credit where defendant admitted to conduct but put government to burden of proof on mens rea element); *United States v. Melot*, 732 F.3d 1234, 1244-45 (10th Cir. 2013) (reversing grant of AOR where defendant “exercised his right to trial so he could challenge the mens rea element of the crimes charged”); *United States v. Alvarez*, 731 F.3d 1101, 1105 (10th Cir. 2013) (affirming denial of AOR credit where defendant challenged state of mind underlying the offense); *United States v. El Sayed*, 470 Fed. Appx. 491, 494-95 (6th Cir. 2012) (“[T]his Court has held repeatedly that admitting the actus reus while denying the mens rea element of an offense does not entitle a defendant to a reduction under § 3E1.1”); *United States v. Taylor*, 483 Fed. Appx. 992, 997 (6th Cir. 2012) (affirming denial of AOR credit where defendant raised insanity defense because defense challenged mens rea element).

Weeks's FBI interview further does not absolve him for the simple reason that, as at trial, he denied or obscured the essential facts underlying his convictions. Weeks did not tell the whole truth when he told the FBI:

And I didn't go up there for violence and I got sucked into something I wish I hadn't ... I had no intention -- I didn't know what was gonna happen. My intention was to stand under those, those windows and them to hear us. I wanted them to hear our voice. I'm not about violence, and I'm not about destruction. I ...I've worked for the sheriff's office. I do political consulting for a living. I'm not a violent person. It was not about that. I wanted my people to see my passion. I wanted them to know I was there in their place, and I got up on that wall -- and that's what I breached; it was the wall. My video's outside. It's not inside. I had no intention of going inside. And he went in and got caught up. I didn't know if he was like shot, if he was -- what was going on. I just wanted to get to him.

As discussed in the government's sentencing memorandum and herein, the evidence showed and Judge Hogan found to the contrary. Before he even went to D.C., Weeks made statements announcing he was going to Washington, D.C. for a "protest/revolution" and anticipated that if Trump was not kept in power, he and others would "burn the whole f*cking thing down." Trial Ex. 1.09. Weeks planned to go to the Capitol before he even arrived at the rally. Trial Ex. 1.15. He at least considered bringing weapons. Trial Tr. at 70. He told his friend and his wife that he and the other rioters "breached the Capitol," "we're going in," and "we're busting down the doors now" before he was anywhere near the doors to the interior of the building. Trial Exs. 1.38, 1.45.

Furthermore, Weeks did not voluntarily surrender to the FBI; he was arrested on a warrant. U.S.S.G. § 3E1.1, application ns.1(D). His choice to engage in a voluntary interview post-arrest occurred after he knew images of his criminal conduct were widely disseminated in the news (Joel Addington, *Local man involved in Capitol siege*, THE BAKER COUNTY PRESS, 90th Year, Volume 39, January 14, 2021, Page 1) and after his co-defendant called to warn Weeks that the FBI had reached out to the co-defendant. U.S.S.G. § 3E1.1, application ns.1(H).

Local man involved in Capitol siege

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A Macclenny man was among the horde of rioters and protesters storming Capitol Hill on January 6, actions that further sowed national political divisions and those within the Republican Party here and elsewhere.

During the uproar, Brad Weeks said in a direct message to *The Press* he inhaled some tear gas after scaling a wall outside the Capitol Building before going inside but was otherwise alright.

A few hours later he posted a video of himself yelling things like, "We got through and we're taking back the Capitol ... This is our 1776. This is how it's going to happen. This is where tyranny will fall."

The video disappeared over the weekend after Mr. Weeks said on social media he was returning home to change his voter registration from Republican to independent. He said via direct message he removed his video, not the content moderators at Facebook.



PHOTO BY JOEL ADDINGTON

Screen shot of Brad Week's deleted video from the Capitol riot January 6, 2021.

Then he stopped responding to further questions, specifically about how he views the riot in hindsight and whether he has any regrets.

Meanwhile, the FBI is warning of further violence being planned for inauguration day, January 20, in state capitols nationwide and Washington, D.C.

Mr. Weeks may have removed his video for fear of criminal prosecution, but it doesn't appear he will face charges in connection with his participation in the deadly insurrection.

His face does not appear in images circulated by the FBI in hopes of identifying rioters.

Many others who entered the Capi-

tol are facing federal counts, including "knowingly entering or remaining in any restricted building or grounds without lawful authority," shows the websites of the U.S. Department of Justice and the FBI.

Federal authorities continued this week seeking information on rioters as well as photos or video evidence against them, particularly anyone who was either being violent or inciting others to violence.

Major Randy Crews of the Baker County Sheriff's Office said Monday he wasn't aware of any arrests locally related to the violence at the Capitol last week that's been dividing Republicans across the country.

Baker County voted overwhelmingly in favor of President Donald Trump last year when he garnered more than 80 percent support county-wide. The President has now been banned from social media and political donations from major U.S. companies are drying up.

Macclenny City Commissioner Danny Norton, a fiscal hawk on budget is-

See page 2

Finally, post-trial, Weeks again asserted that, "...I really want to appeal this decision and feel I was unjustly charged ..." (https://www.givesendgo.com/BradWeeks_J6, last accessed August 10, 2023). And, importantly, Weeks did not provide any indication of acceptance of responsibility to the PSR writer: "Notably, the defendant did not provide any statements to this officer relating to his conduct in the instant offense during the presentence investigation interview." PSR ¶31.

In conclusion, for the reasons set forth above, the government respectfully requests that the Court deny the defendant's request for a two-level downward adjustment for acceptance of responsibility.

Respectfully submitted,

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