

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 21 Cr. 447 (CJN)
	:	
JOSHUA CHRISTOPHER DOOLIN,	:	
	:	
Defendant.	:	

**UNITED STATES' MOTION IN *LIMINE* TO PRECLUDE
CERTAIN DEFENSE ARGUMENTS AND EVIDENCE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits the following motions in *limine* to preclude the defendant, Joshua Christopher Doolin, from introducing evidence or arguing (1) that his conduct on January 6, 2021 was authorized by former President Trump, (2) on any matter that encourages jury nullification, (3) self-defense or defense of others, (4) improper character evidence relating to his previous career, and (5) his relative culpability to his co-defendants and other acts on January 6, 2021.

BACKGROUND

On January 5, 2021, after exchanging text messages with an associate about whether to bring his AR-15 with him, the defendant decided to travel to Washington, D.C. with a group of close friends and relatives in order to attend then-President Trump's rally on the Ellipse. On the morning of January 6, 2021, while at the rally, Doolin sent a text message to another associate stating "I wouldn't mind dying with my family storming the capital [sic] on my birthday!" The defendant, his co-defendants, and others then proceeded to the Capitol. There, his co-defendants violently engaged with the police officers on the west side of the Capitol building and the defendant unlawfully acquired a United States Capitol Police ("USCP") riot shield, a law enforcement

crowd-control spray gun, and flex cuffs, which he carried with him. Later in the afternoon, the defendant relocated to the Lower West Terrace of the Capitol building, where he – using the riot shield – along with other rioters, for several minutes forcefully pushed against the line of police officers located inside a passageway leading to the interior of the building, in an attempt to break through the line or push the officers back into the building.

Based on his actions on January 6, 2021, Doolin has been charged with Theft in a Federal Enclave, in violation of 18 U.S.C. § 661 (Count 16); Theft of Government Property, in violation of 18 U.S.C. § 641 (Count 17); Civil Disorder, in violation of 18 U.S.C. § 231(a)(3) (Count 18); Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count 21); and Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count 24). (ECF No. 116).

ARGUMENT

1. This Court Should Preclude the Defendant from Arguing Entrapment by Estoppel, i.e., that Former President Trump Gave Permission to Attack the United States Capitol

In a post-arrest interview with the FBI, the defendant asserted that he did not believe he was trespassing on January 6, 2021 and that President Trump had told people that they could go to the Capitol. The government moves in *limine* to prohibit the defendant from making arguments or attempting to introduce non-relevant evidence that former President Trump gave permission for the defendant to attack the U.S. Capitol.

“To win an entrapment-by-estoppel claim, a defendant criminally prosecuted for an offense must prove (1) that a government agent actively misled him about the state of the law defining the offense; (2) that the government agent was responsible for interpreting, administering, or enforcing the law defining the offense; (3) that the defendant actually relied on the agent's misleading pronouncement in committing the offense; and (4) that the defendant's reliance was reasonable in

light of the identity of the agent, the point of law misrepresented, and the substance of the misrepresentation.” *United States v. Chrestman*, 525 F. Supp. 3d 14, 31 (D.D.C. 2021) (Howell, C.J.) (quoting *United States v. Cox*, 906 F.3d 1170, 1191 (10th Cir. 2018)).

In *Chestman*, Chief Judge Howell rejected an entrapment by estoppel argument raised by a January 6 defendant charged with, *inter alia*, violations of 18 U.S.C. § 231(a)(3) and 18 U.S.C. § 1512(c)(2). That reasoning would apply fully to a similar defense presented by this defendant:

January 6 defendants asserting the entrapment by estoppel defense could not argue that they were at all uncertain as to whether their conduct ran afoul of the criminal law, given the obvious police barricades, police lines, and police orders restricting entry at the Capitol. Rather, they would contend ... that the former President gave them permission and privilege to the assembled mob on January 6 to violate the law.

* * * *

Setting aside the question of whether such a belief was reasonable or rational, [precedent] unambiguously forecloses the availability of the defense in cases where a government actor’s statements constitute “a waiver of law” beyond his or her lawful authority.... Just as ... no Chief of Police could sanction murder or robbery, notwithstanding this position of authority, no President may unilaterally abrogate criminal laws duly enacted by Congress as they apply to a subgroup of his most vehement supporters. Accepting that premise, even for the limited purpose of immunizing defendant and others similarly situated from criminal liability, would require this Court to accept that the President may prospectively shield whomever he pleases from prosecution simply by advising them that their conduct is lawful, in dereliction of his constitutional obligation to “take Care that the Laws be faithfully executed.” U.S. Const. art. II, § 3. That proposition is beyond the constitutional pale, and thus beyond the lawful powers of the President.

Even more troubling than the implication that the President can waive statutory law is the suggestion that the President can sanction conduct that strikes at the very heart of the Constitution and thus immunize from criminal liability those who seek to destabilize or even topple the constitutional order. In addition to his obligation to faithfully execute the laws of the United States, including the Constitution, the President takes an oath to “preserve, protect and defend the Constitution.” U.S. Const. art. II, § 1, cl. 8.

Chrestman, 525 F. Supp. 3d 14, 32–33 (some internal punctuation omitted).

Nor can there be any reasonable claim that President Trump intended to or actually authorized the defendant’s particular criminal conduct. The defendant, while in an area heavily

protected by police officers, took items belonging to law enforcement agencies. He then assaulted law enforcement officers by joining in a crowd to push against a police line. The defendant will be unable to identify any remarks made by former President Trump that authorized that illegal conduct.

“[E]ntrapment by estoppel is a defense rather than an evidentiary objection and, accordingly, should have been raised prior to trial.” *United States v. Colon Ledee*, 967 F. Supp. 2d 516, 520 (D.P.R. 2013). At the very least, the government requests the Court to inquire before trial if the defendant intends to either advance a defense of entrapment by estoppel or present any argument or evidence, the purpose of which would be to support such a defense. If the answer is anything but an unqualified “no,” the Court should direct the defendant to make an offer of proof of such evidence and articulate why the defense is legally tenable. Absent an express ruling by the Court permitting such evidence or argument, the Court should prohibit the defendant from making arguments or attempting to introduce evidence that former President Trump authorized the defendant’s conduct at the Capitol.

2. This Court Should Preclude the Defendant from Arguing in a Manner That Encourages Jury Nullification, Whether During *Voir Dire* or During Trial

The defendant should be prohibited from making arguments or attempting to introduce non-relevant evidence that encourages jury nullification. As the D.C. Circuit has made clear,

A jury has no more “right” to find a “guilty” defendant “not guilty” than it has to find a “not guilty” defendant “guilty,” and the fact that the former cannot be corrected by a court, while the latter can be, does not create a right out of the power to misapply the law. Such verdicts are lawless, a denial of due process and constitute an exercise of erroneously seized power.

United States v. Washington, 705 F.2d 489, 494 (D.C. Cir. 1983). Evidence that only serves to support a jury nullification argument or verdict has no relevance to guilt or innocence. *See United States v. Gorham*, 523 F.2d 1088, 1097-98 (D.C. Cir. 1975); *see also United States v. Funches*,

135 F.3d 1405, 1409 (11th Cir. 1998) (“No reversible error is committed when evidence, otherwise inadmissible under Rule 402 of the Federal Rules of Evidence, is excluded, even if the evidence might have encouraged the jury to disregard the law and to acquit the defendant”).

The defendant may claim that he has been unfairly singled out for prosecution because of his political views.¹ But a “selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution.” *United States v. Armstrong*, 517 U.S. 456, 463 (1996). Regardless of whether alleged discrimination based on political views is a proper basis for challenging the indictment—which the defendant has not claimed to date—it has no place in a jury trial. *See United States v. King*, No. CR-08-002-E-BLW, 2009 WL 1045885, at *3 (D. Idaho Apr. 17, 2009) (“The Court will therefore exclude any evidence or argument as to selective prosecution at trial.”); *United States v. Kott*, No. 3:07-CR-056 JWS, 2007 WL 2670028, at *1 (D. Alaska Sept. 10, 2007) (precluding the defendant from educing evidence to support a selective-prosecution claim at trial). Rather, such an argument could serve as an improper invitation for the jury to nullify its fact-finding and conclusions under the law; the defendant should therefore be precluded from making it.

¹ The Government has identified an online fundraising page with the defendant’s name and picture on it titled “Free the Political Prisoners.” The page appears to have been taken down since defendant’s counsel was informed of it.

3. This Court Should Preclude the Defendant from Arguing Self Defense or Defense of Others

The defendant has not raised a claim of self-defense, but if he does, such argument should be precluded.² To establish a prima facie case of self-defense, the defendant must make an offer of proof of “(1) a reasonable belief that the use of force was necessary to defend himself or another against the immediate use of unlawful force and (2) the use of no more force than was reasonably necessary in the circumstances.” *United States v. Biggs*, 441 F.3d 1069, 1071 (9th Cir. 2006). “If a defendant cannot proffer legally sufficient evidence of each element of an affirmative defense, then he is not entitled to present evidence in support of that defense at trial.” *United States v. Cramer*, 532 Fed.Appx. 789, 791 (9th Cir. 2013)(citing *United States v. Bailey*, 444 U.S. 394, 415 (1980)).

Here, the defendant will not be able to present any evidence of a reasonable belief that his actions were necessary to defend himself against the immediate use of unlawful force. While he may have objected to law enforcement’s presence at the U.S. Capitol, their efforts to repel and defend themselves from his co-defendants and others in the crowd, or their directives that the rioters move from their position and leave the area, such objections are not relevant to a claim of self-defense. *See United States v. Urena*, 659 F.3d 903, 907 (9th Cir. 2011) (observing that “harsh words from another, insulting words, demeaning words, or even fighting words” does not provide license to “stab the offending speaker in the neck, bash their skull with a baseball bat, send a bullet to their heart, or otherwise deploy deadly force in response to the insult”).

The defendant’s own actions, and his statements of aggressive intent, undermine any claim that he had a reasonable belief that he was engaged in an act of defending himself. Likewise, the

² The fundraising page discussed above also characterizes the defendant and others’ conduct on January 6, 2021 as a “peaceful protest” that was “met with force,” implying that the defendant will argue that he only used force to defend himself.

defendant's efforts to push forward and inside the Capitol building – as others left the area – belies any claim that he was engaged in conduct that he reasonably believed was *necessary* to protect himself against unlawful force. The Court should exclude any testimony and evidence purporting to assert a claim of self-defense.

4. This Court Should Preclude the Introduction of Character Evidence Relating to the Defendant's Employment as Firefighter or Emergency Medical Technician

The defendant is a former firefighter and emergency medical technician ("EMT") and may attempt to introduce his previous employment during trial. The Court should preclude the defendant from offering evidence of specific instances of his prior good conduct, including that derived from his previous career, because such evidence is improper character evidence under Federal Rules of Evidence 404(a)(1) and 405(a).

Rule 404(a) of the Federal Rules of Evidence prohibits either party from offering evidence of character to prove that a person acted in conformity therewith on any particular occasion. The rule applies to prior good acts as well as prior bad acts of the defendant. As the Sixth Circuit has explained, "For the same reason that prior 'bad acts' may not be used to show a predisposition to commit crimes, prior 'good acts' generally may not be used to show a predisposition not to commit crimes." *United States v. Dimora*, 750 F.3d 619, 630 (6th Cir. 2014). In other words, "evidence of good conduct is not admissible to negate criminal intent." *United States v. Ellisor*, 522 F.3d 1255, 1270 (11th Cir. 2008) (internal citation omitted).

The Rule contains three exceptions, one of which governs the admissibility of evidence of a defendant's character. Fed. R. Evid. 404(a)(2)(A). Such evidence is admissible only if it relates to a "pertinent" or relevant character trait. *Id.* Consistent with Rule 405, "[w]hen evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion." Fed. R. Evid. 405(a). "When a person's

character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct," Fed. R. Evid. 405(b).

This Court should exclude character evidence if offered by the defendant to prove his general good character, including that derived from his prior public service – such as attention to duty, commitment to public service, professionalism, or dedication. Such evidence is not admissible because it is not pertinent to an essential element of the charges pending against him. *See, e.g., United States v. Washington*, 106 F.3d 983, 999-1000 (D.C. Cir. 1997) (holding that a police officer's commendations were not admissible because the defendant's dedication, aggressiveness and assertiveness in investigating drug dealing and carjacking was neither pertinent to, nor an essential element of, bribery, conspiracy, or drug and firearms charges with which he was charged); *United States v. United States v. Irving*, 2008 WL 163653, at *1 (D.D.C. Jan. 18, 2008) (excluding evidence of a detective's professional awards because the awards do not reflect pertinent character traits and the criminal allegations were plainly unrelated to the Detective's professional competence and integrity).

Courts have held that the general character trait of law-abidingness is pertinent to almost all criminal offenses. *In re Sealed Case*, 352 F.3d 409, 412 (D.C. Cir. 2003). However, even if evidence of the defendant's prior good acts was indicative of a general law-abidingness, the form of that evidence would be governed by Rule 405(a), which limits such evidence to "testimony as to reputation or by testimony in the form of an opinion." Fed. R. Evid. 405(a). Proof of specific instances of conduct is not permitted under the Rule, unless the trait or character of a person is an essential element of the charge, claim, or defense—which, in this case, it is not. *See United States v. Washington*, 106 F.3d 983, 999 (D.C. Cir. 1997). Indeed, there is no character trait derived from

the defendant's prior public service that is an essential element of a charge, claim, or defense in this case. None of the elements of the offenses with which the defendant has been charged relate to his service as a firefighter or EMT or character traits aligned with that service. Finally, any such evidence from such service, including, for example, letters of commendation, would be hearsay. *See United States v. Nazzaro*, 889 F.2d 1158, 1168 (1st Cir. 1989) (affirming the district court's refusal to admit evidence of the defendant's awards and commendations from his military service and police service because "the traits they purport to show—bravery, attention to duty, perhaps community spirit—were hardly 'pertinent' to the crimes of which [the defendant] stood accused" and because "the evidence, as presented below, seems to us classic hearsay, and inadmissible for that reason as well"). Thus, evidence of the defendant's specific good acts is inadmissible.

Accordingly, this Court should preclude the defendant from offering character evidence in the form of specific acts, or general reputation or opinion evidence beyond the scope of general law-abidingness, including that relating to his service as a firefighter or EMT.

5. This Court Should Preclude the Introduction of the Defendant's Culpability Relative to Co-defendants or Other Acts of "Good Conduct" by the Defendant on January 6, 2021

As referenced above, the defendant's co-defendants engaged in several assaults on law enforcement officers on January 6, 2021 in which the defendant did not himself participate. Additionally, during his post-arrest interview, the defendant informed FBI agents that he and several other individuals formed a wall around a police officer who had been dragged into the crowd in order to protect the officer and that the defendant believed he may have saved the officer's life. The Court should preclude any argument that the defendant's lack of additional criminal conduct on January 6, 2021 or allegedly helpful acts negate his criminal conduct. *See United States v. Camejo*, 929 F.2d 610, 612-13 (11th Cir. 1991) (witness's proffered testimony that a defendant declined to participate in a separate, contemporaneous narcotics conspiracy was an

inadmissible “attempt to portray [the defendant] as a good character through the use of prior ‘good acts’”). Indeed, such evidence is not particularly probative of whether the defendant is guilty of the offenses with which he is charged; many Capitol Riot defendants acted both violently and helpfully towards law enforcement at different times on January 6, 2021. *See, e.g., United States v. Fairlamb*, No. 21 Cr. 120 (RCL), ECF No. 50 (Government Sentencing Submission), at 14-19 (defendant who offered police officers water and offered to assist them in leaving the area subsequently shoved and punched another officer).

Evidence of past “good acts” by a defendant are generally not probative unless a defendant is alleged to have always or continuously committed bad acts or engaged in ceaseless criminal conduct. *United States v. Damti*, 109 Fed. Appx. 454, 455-56 (2nd Cir. 2004) (citations omitted). Ceaseless conduct occurs when it is alleged that all the defendant’s actions were illegal. *Id.* When that is not alleged and prosecution can point to specific criminal acts, then evidence of good acts is not probative of the issue of guilt at trial. *Id.* Using specific acts of good acts “to prove lack of intent ... is not only disfavored, it is not permitted under Rule 405(b).” *United States v. Marrero*, 904 F.2d 251, 259–60 (5th Cir. 1990) (affirming decision to exclude evidence that the defendant “provided more services to some clients than they were actually billed for and that sometimes she rendered services free of charge,” which the defendant sought to introduce to show that she did not intend to improperly bill a government agency for medical services).

Even if probative, however, the introduction of evidence of conduct with which the defendant is not charged risks confusing the issues by inviting the jury to weigh the defendant’s culpability relative to his co-defendants, suggests to the jury an improper basis on which to render a decision, and asks jury to engage in separate fact-finding about whether the defendant in fact assisted the officer. The Court should preclude the defendant from offering such evidence pursuant

to Rule 403 and exclude the evidence as its probative value is substantially outweighed by the danger of confusion of the issues or misleading the jury. *United States v. King*, 254 F.3d 1098, 1100 (D.C. Cir. 2001) (“Evidence that is admissible under Rule 404 may nonetheless be excluded under Rule 403 ‘if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.’”). The defendant’s alleged specific good act is not connected to the issues of this case. Introduction of the defendant’s alleged act of helping a police officer carries an unnecessarily risk of distracting the jury by allowing a jury to make a decision not based on whether the evidence showed that the defendant committed the charged crimes, but instead on whether the defendant performed a good deed by helping a police officer. *See United States v. Zodiates*, 235 F. Supp. 3d 439, 453 (W.D.N.Y. 2017), *aff’d* 901 F.3d 137.

CONCLUSION

Motions in limine are “designed to narrow the evidentiary issues for trial and to eliminate unnecessary trial interruptions.” *Graves v. District of Columbia*, 850 F.Supp.2d 6, 10 (D.D.C. 2011) (quoting *Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064, 1070 (3d Cir. 1990)). The government presents these issues to the Court in an effort to prepare this case for an efficient trial. For the reasons set forth herein, the United States respectfully requests that this Court grant the government’s motion in *limine* no. 1 through 5, as set forth herein.

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