

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

UNITED STATES OF AMERICA

v.

**JOSHUA CHRISTOPHER DOOLIN
MICHAEL STEVEN PERKINS
OLIVIA MICHELE POLLOCK,**

Defendants.

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CASE NO. 21-cr-447 (CJN)

**UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO
PRECLUDE USE OF CERTAIN LANGUAGE AT TRIAL**

Defendant Joshua Doolin moves to preclude the United States from using the words “Rioters,” “Breach,” “Confrontation,” “Anti-Government Extremism,” “insurrectionists,” and “mob” at trial, and from describing Doolin as an “Anti-government extremist.” ECF 162 at 1. Essentially, Doolin asks the Court to prevent the government from using language that accurately describes the defendant’s crimes and opinions. Because these terms fairly capture the riot, rioters, and Doolin’s conduct and beliefs, the Court should deny the motion.

I. Background

On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate convened to certify the vote of the Electoral College of the 2020 U.S. Presidential Election. While the certification process was proceeding, a large mob gathered outside the United States Capitol, entered the restricted grounds, and breached the Capitol building. As a result, the Joint Session and the entire official proceeding of the Congress was halted until law enforcement was able to clear the Capitol of hundreds of unlawful occupants and ensure the safety of elected officials.

Defendant Doolin traveled to Washington, DC and ultimately participated in the riot of January 6, 2021. Video footage shows that, among other things, Doolin advanced on a line of police officers near the Capitol's west front and confronted them by pointing a flagpole at them (Doolin was apparently repelled by a chemical spray). Later in the day, Doolin could be seen closer to the Capitol, on its Upper West Terrace, yelling at officers. Zip tie handcuffs were tucked into his belt, and a riot-control spray gun—seemingly belonging to law enforcement who had been overrun by the mob—was slung over his shoulder. By 4:20 p.m., hours after first arriving on the Capitol grounds, Doolin could be spotted with his co-defendant Jonathan Pollock near the tunnel connecting the Lower West Terrace to the Capitol building's interior. Amidst the scrum, Doolin was seen carrying a riot shield (again, belonging to law enforcement).

For his actions, Doolin was charged with violating 18 U.S.C. §§ 111(a)(1) and (b), which together make it a crime to use a deadly weapon to assault law enforcement officers in the performance of their duties, and 18 U.S.C. § 231(a)(3), which prohibits interfering with officers' work during a civil disorder. Doolin was also charged with violating 18 U.S.C. § 1752(a)(1), (2), and (4), which generally prohibit entering restricted buildings or grounds, and 40 U.S.C. § 5104(e)(2)(F), which prohibits engaging in violence on the Capitol grounds. Finally, Doolin was charged with 18 U.S.C. §§ 641 and 661 for his theft of the riot-control spray gun and riot shield.

II. Argument

In seeking to preclude the government's use of certain words, Doolin makes three arguments.

First, Doolin argues that any video, photo, or "other item of evidence" that contains his verboten words will constitute improper hearsay or opinion testimony. ECF 162 at 2 ("If these terms are included on a video, photo, or other item of evidence, or referenced, [w]hile the time and location of a video recording might not be hearsay or generate a Confrontation Clause

problem, [the] statements . . . are testimonial. Opinion testimony is not helpful, if the opinion is one that the witness is in no better position to render than the jurors themselves.”)

Second, Doolin argues that describing him as an “Anti-Government Extremist” would constitute improper evidence of an irrelevant character trait. *Id.* at 3 (“the character of Mr. Doolin and his views about the government is wholly irrelevant to any of the listed charges and is therefore not ‘pertinent.’”).

Third, Doolin argues that testimony on his anti-government views (and, presumably, use of his other banned words) are not pertinent and would have a prejudicial effect outweighing the testimony’s probative value. *Id.* at 4 (“As this evidence [of Doolin’s views] is of little relevance to begin with, the danger of its use far outweighs its probative value”).

Taking the arguments in turn, *first*, Doolin appears to believe that any video, photo, or other piece of evidence containing the words he dislikes would be hearsay or opinion testimony. Doolin doesn’t know what evidence the government will introduce, nor how that evidence will be authenticated. Doolin cannot categorically exclude evidence on hearsay or opinion grounds simply because he dislikes that evidence’s message. The proper time for Doolin to raise his objections is when the evidence is introduced, not before.

Second, while the government makes no commitment either way to describing Doolin as an “Anti-Government Extremist,” Doolin’s beliefs and prior actions are relevant to several of the charges against him. For instance, Doolin’s political views may become directly relevant to show his intent to “impede or disrupt the orderly conduct of Government business or official functions,” 18 U.S.C. § 1752(a)(2). The government should not be precluded from introducing evidence that describes Doolin’s political views and that may establish Doolin’s motives, plans, knowledge, and intent on January 6, 2021. *See United States v. McDowell*, 762 F.2d 1072, 1075

(D.C. Cir. 1985) (per curiam) (holding that bulletproof vest did not violate Fed. R. Evid. 404(a) where it “was not offered to prove a bad character and thus, by inference, a propensity to commit crimes” but was “squarely relevant on the issue of intent”); *cf.* Fed. R. Evid. 404(b)(2) (permissible uses of prior bad acts evidence include proving “motive, opportunity, intent, preparation, plan, [and] knowledge . . .”). Doolin’s motion to preclude use of the term “Anti-Government Extremist” as improper character evidence is thus misdirected and should be denied.

Finally, broadly construing Doolin’s argument, he appears to claim that, not just “Anti-Government Extremist,” but also his other disfavored terms would be unfairly prejudicial. ECF 162 at 4. Evidence or language is unfairly prejudicial if it has “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *United States v. Sanford Ltd.*, 878 F. Supp. 2d 137, 143 (quoting Fed. R. Evid. 403, advisory committee’s note). However, Rule 403 does not require the government “to sanitize its case, to deflate its witnesses’ testimony or to tell its story in a monotone.” *United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C. Cir. 1998). By their very nature, criminal charges involve an accusation that someone has wronged another person or has wronged society. Accordingly, such charges arouse emotion—and there is nothing improper about that. In fact, while cautioning against prosecutorial misconduct in *United States v. Berger*, the Supreme Court simultaneously recognized that “[t]he United States Attorney . . . may prosecute with earnestness and vigor—indeed, he should do so.” 295 U.S. 78, 88 (1935). “[T]he law permits the prosecution considerable latitude to strike ‘hard blows’ based on the evidence and all reasonable inferences therefrom.” *United States v. Rude*, 88 F.3d 1538, 1548 (9th Cir. 1996) (quoting *United States v. Baker*, 10 F.3d 1374, 1415 (9th Cir. 1993)). When a prosecutor’s comments fairly characterize

the offense, fairly characterize the defendant's conduct, and represent fair inferences from the evidence, they are not improper. *Cf. Rude*, 88 F.3d at 1548 (the use of words like victim, deceit, outlandish, gibberish, charlatan, and scam was not improper); *Guam v. Torre*, 68 F.3d 1177, 1180 (9th Cir. 1995) (“[T]here is no rule [of evidence or ethics] requiring the prosecutor to use a euphemism for [a crime] or preface it by the word ‘alleged.’”).

Here, the government should not be required to dilute its language and step gingerly around Doolin's crimes. What took place on January 6, 2021, was in fact a riot involving rioters, and an attack on the United States Capitol, the government of the United States, and American democracy. After carefully considering the facts of other January 6 cases, many other members of this Court have recognized the riot as just such an attack. *See, e.g., United States v. Mostofsky*, 1:21-cr-138 (JEB), Sent. Tr. at 40–41, May 6, 2022 (describing the riot as an “attack,” describing the Capitol as “overrun,” and describing Mostofsky and other rioters as engaged in “an attempt to undermine [our] system of government.”); *United States v. Rubenacker*, 1:21-cr-193 (BAH), Sent. Tr. at 147–48, May 26, 2022 (describing the defendant as “part of this vanguard of people storming the Capitol Building” as part of the initial breach, and finding that his conduct “succeeded, at least for a period of time, in disrupting the proceedings of Congress to certify the 2020 presidential election”); *United States v. Languerand*, 1:21-cr-353 (JDB), Sent. Tr. at 33–34, January 26, 2022 (“[T]he effort undertaken by those who stormed the Capitol . . . involved an unprecedented and, quite frankly, deplorable attack on our democratic institutions, on the sacred ground of the United States Capitol building, and on the law enforcement officers who were bravely defending the Capitol and those democratic values against the mob of which the defendant was a part.”). None of this language is hyperbole; rather, these findings used vivid and violent language because they described a visceral and violent event. So, too, will prosecutors

need to use appropriate language—and not euphemisms—to describe the nature and gravity of the defendant’s conduct.

In another January 6 case, *United States v. Vincent Gillespie*, Chief Judge Howell recently denied a defendant’s motion in limine to exclude references to substantially similar terms under Fed. R. Evid. 403. Memorandum and Order, ECF No. 43, 1:22-cr-00060 (BAH) (Nov. 30, 2022). The court found that the terms “insurrection,” “attack,” “riot,” “mob,” and “rioters” “accurately describe[d] the events that occurred on January 6, 2021.” *Id.* at 5–6 (collecting other cases using these terms to describe the events of January 6). Chief Judge Howell declined to “muzzl[e] the government or its witnesses from employing commonly used phrases to describe the events on January 6, 2021,” and held that “the mere use of these terms does not . . . signal prejudice substantially outweighing their probative value” under Fed. R. Evid. 403. *Id.* at 6–7. This Court should reach the same conclusion for the terms Doolin seeks to exclude.

III. Conclusion

For the reasons stated above, Defendant Doolin’s motion should be denied.

DATED: February 10, 2023

Respectfully submitted,

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ORDER

This matter having come before the Court pursuant to defendant Joshua Doolin's motion in limine to preclude the government's use of certain terms, ECF No. 162, filed on November 27, 2022, it is hereby:

ORDERED that defendant Joshua Doolin's request is **DENIED**.

The Honorable Carl J. Nichols