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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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|---------------------------|---|------------------|
| United States of America, |) | Criminal Action |
| |) | No. 21-cr-127 |
| Plaintiff, |) | |
| |) | VERDICT |
| vs. |) | |
| |) | Washington, DC |
| Joshua Matthew Black, |) | January 13, 2023 |
| |) | Time: 2:00 p.m. |
| Defendant. |) | |

TRANSCRIPT OF VERDICT
HELD BEFORE
THE HONORABLE JUDGE AMY BERMAN JACKSON
UNITED STATES DISTRICT JUDGE

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1 THE COURTROOM DEPUTY: Good afternoon Your Honor.

2 This afternoon we have case number 21-127, the United States of
3 America V. Joshua Matthew Black. Mr. Black is present and in
4 the courtroom, represented by Mr. Fleckinger. Counsel for the
5 government are here, represented by Mr. Meinero, Ms. Allen, and
6 Mr. Boylan.

7 THE COURT: All right. Good afternoon, everyone. To
8 the extent findings of fact are necessary as part of this
9 proceeding, they are going to be incorporated in the transcript
10 of the ruling that I'm about to issue. There's not going to be
11 a subsequent written opinion. I assure you there will be
12 plenty of information delivered orally this afternoon.

13 I want to note, at the outset, that a lot of what I
14 have to say about the facts is in response to what the parties
15 chose to emphasize and argue. And a good portion of that,
16 particularly of the defendant's crosses and closing, was really
17 more relevant to the question of what the punishment should be
18 than to the elements of the particular offenses charged.

19 The defense placed considerable emphasis on the fact
20 that there was no evidence that the defendant physically
21 attacked anyone, destroyed any property, brandished a weapon,
22 threatened anyone with a weapon, assaulted an officer, verbally
23 abused an officer, berated or accosted the officers or was
24 profane. It emphasized the fact that the defendant turned
25 himself in, was cooperative, told the police about the knife

1 they didn't know about before, and gave them access to his
2 phone. All that was largely accurate, although the prosecution
3 witnesses and the prosecutors had a few legitimate quibbles
4 with some of it.

5 But I guess the key point I want to make is he's not
6 charged with assaulting, resisting, or impeding the officers,
7 the § 111 counts in many January 6 indictments. He's not
8 charged with impeding officers perform their duties in a civil
9 disorder, also charged in many January 6 indictments there's.
10 Not one count where violence or the use of a weapon is an
11 element, and he's not even charged with resisting the officers.

12 And while he did not physically strike or verbally
13 abuse any officers or urge others to do so and, indeed, on at
14 least one occasion took steps to protect an officer from harm
15 by others, his overall pattern of behavior and repeated failure
16 to comply with the officers' directives, going where he knew
17 they were trying to stop him from going, was inconsistent with
18 the differential, respectful attitude counsel was trying to
19 maintain that he displayed at all times. You don't have to be
20 rude or insolent or physically aggressive to be utterly
21 noncompliant.

22 So with that background, what do the facts show about
23 what the defendant did? We know he came to Washington, D.C.
24 and went to the rally on the Ellipse. In the January 14th,
25 2021 interview, Government's Exhibit 101.11, he was asked by

1 the agent, "I was wondering, too, like why the U.S. Capitol?"
2 And the defendant said, "Well, there was a girl walking around
3 at the Trump, right before Trump's speech, going, 'They're
4 storming the Capitol after the speech.' So I was like, Well, I
5 guess I better get over there and see what's happening, you
6 know? So that's why I went. But everybody's like -- everybody
7 said they were doing a protest at the Capitol. So I was like,
8 Well --"

9 The agent said, "Just went over then?" And Mr. Black
10 said, "I'm not young, so I better go ahead and, you know, get
11 to walk out."

12 Also, Government's Exhibit 100.CC, the YouTube video,
13 he started out by saying, "Like, I was at the rally when Trump
14 was speaking and then I was like -- I heard that they said,
15 yeah, after this we're marching to the Capitol building. So I
16 asked 'em, like where's the Capitol building? I looked up
17 there and I was like, I need to go there." We don't know
18 exactly when he goes, but he goes.

19 By 12:45 Inspector Lloyd has received a concerned
20 call saying a large number much people are coming his way. And
21 the defendant gets down Pennsylvania Avenue with the very first
22 wave of people to arrive at the snow fence, which had been
23 reinforced by bike racks and signs that said, "Area Closed,"
24 and officers standing behind them. These posed no deterrent
25 whatsoever.

1 By 12:54 Inspector Lloyd received notification that
2 the protestors had already breached the line at the Peace
3 Circle. We know that Mr. Black has because he has marched
4 himself up past the barricades and the officers behind him to
5 the fencing directly in front of the Lower West Terrace.
6 Officer Gibson is there to see him arrive at 12:54 p.m. There
7 is no one in front of Mr. Black. He walks right up to the gate
8 at the northern end of the Lower West Terrace and tests it. He
9 shakes it, he tries to lift it. It's Government's Exhibit
10 402.A.1.

11 There are two police officers standing directly in
12 front of him, monitoring him, signaling him and the others,
13 making it quite clear that they are supposed to stop right
14 there. But they have to walk back and forth to patrol the
15 entire space.

16 At 12:57 the defendant seizes an opportunity. He is
17 one of the first, if not the first person to climb over the
18 fence that had been erected to protect the inaugural stage, and
19 he starts strolling across the stage. Officer Gibson says this
20 made the rest of the crowd noticeably louder. The defendant is
21 intercepted by Officer Gibson, who escorts him back to the
22 fence. But the defendant does not do what he is obviously
23 supposed to do then either, which is cross back over to the
24 other side. He stands on the inside and he watches and he
25 waits.

1 Seconds later, when the crowd surges over the fence,
2 he merges right in and heads to the southern edge of the Lower
3 West Terrace. That barrier, in addition to the one down by the
4 Peace Circle, has been completely breached. The video shows
5 Mr. Black walking quickly and ending up, again, directly in
6 front of the police line. He's not supposed to be there
7 either. You can see the officer trying to direct the crowd to
8 step back. The crowd is not having any of it. The defendant
9 is not one of the noisy ones, but he isn't leaving either.
10 He's pushing slowly forward until he is directly in front of
11 the officers. This is apparent in Government's Exhibit 417,
12 the video.

13 As the pressure mounts on the officers, Inspector
14 Lloyd of the Capitol Police calls for the activation of the
15 nonlethal force unit. The defendant is struck. He was right
16 in front of the officers.

17 But while the government is inviting me to do so, I'm
18 not drawing any inferences that because the nonlethal team
19 members are bound to try to target only agitators, that the
20 defendant was in fact a leader or an agitator. I don't need to
21 go that far. He was, in fact, in front and not backing down,
22 and that's sufficient. As Inspector Lloyd said, being in front
23 is part of the problem. Not leaving is part of the problem.
24 Certainly not part of the solution.

25 The defendant was struck in the face, in the cheek,

1 and it was a bloody scene, and it does have an incendiary
2 effect on the crowd. But I'm not also not going to go so far
3 as to attribute that to Mr. Black himself. It's not needed to
4 prove the government's case and I'm not sure it's an entirely
5 fair inference. What I can say is what Mr. Meinero said at the
6 start of his opening statement: Even being shot in the face
7 wasn't enough to deter Joshua Black and, as Ms. Allen said, he
8 did not stand down.

9 He did at that point, when an officer was knocked to
10 the ground by other protestors, tell them not to hurt him. The
11 video is consistent with an attempt of his trying to shield the
12 officer with his own body, though it's not consistent with the
13 later story that the defendant told about that being why he was
14 shot.

15 Another any rate, he declines medical intervention at
16 that point. No, he says to the officers who want to take him
17 somewhere for help, "I'm with them. I'm defending the
18 Constitution. I'm a patriot."

19 Eventually, Inspector Lloyd explained, with MPD's
20 assistance, the Capitol Police establish another line,
21 reinforced with bike racks again. The MPD unit has more crowd
22 control equipment and pepper spray. This is not a message the
23 defendant decides to heed either. And Government's Exhibit
24 609, as that reveals, he's back again at the front of the line.
25 After officers persuade him to come behind the line to have

1 some water, he has the opportunity to leave, but he crosses
2 back into the crowd. And defendant then makes his way around
3 to the east side of the Capitol.

4 Officer Mark Carrion hears, at 1:59, that the group
5 coming from the west was headed around the north side of the
6 Capitol and joining up with the protestors already on the east
7 side. He describes the scene as once again woefully
8 outnumbered -- a woefully outnumbered corps of officers is
9 struggling to hold a line of bike racks. And it doesn't work
10 this time either.

11 The protestors break through, they overwhelm the
12 officers. A small group, including Officer Carrion, raced up
13 to position themselves outside the Rotunda doors. Meanwhile,
14 the mob surges up the stairs. And there, again, the defendant
15 is close to the front. He is there as officers are assaulted
16 by the crowd with an array of weapons, from their water bottles
17 to debris on the scene to chemical spray they brought with them
18 from home and, one by one, they are rendered unable to go on.

19 Ultimately, Mr. Black winds up directly in front of
20 the two officers left trying, by the themselves, to hold the
21 door against the sea of rioters that fills not only the entire
22 terrace, but the entire staircase that leads up to it. The
23 only thing that keeps him from being overrun immediately, as
24 the defendant noted, is the inconvenient fact for the mob that
25 the doors open out. But members of the mob appear on the

1 inside and succeed in breaking the pitiful barriers the
2 officers had tried to create with a flagpole and the ones
3 outside gain access.

4 Was the defendant helping the police at this point?
5 This is what he said in Government's Exhibit 1.GG, the YouTube
6 video. "And then they were pushing so hard, I couldn't even
7 breathe. You know? I mean, they were, like, crushing my
8 chest. You know? And I was yelling with what air I had, you
9 know, We need to let this cop out of here. You know? If we
10 don't let him out of here, we're never getting in. And then
11 they said, Whoa, okay. Well, that -- that makes sense."

12 His objective was not to assist law enforcement. His
13 objective was to get in. Maybe he'd been trapped by Carrion's
14 body, but once the door opened, he slid right between the
15 officers and into the Capitol building that it was abundantly
16 clear he was not supposed to enter. In Government's Exhibit
17 706 you can see him turn sideways and lead with his shoulder,
18 like someone trying to run a football, and he squeezed straight
19 through the two linemen.

20 The defendant tries to take the pushing and shoving
21 that was evident outside the door some time before, during this
22 heave-ho maneuver, to say, well, he got pushed in, he didn't
23 mean to go in. No, you cannot say that once he had positioned
24 himself precisely in front of the door, that he was forced in
25 by others. His face is resolute. You cannot see anyone one

1 behind him. He is not reacting to anyone behind him. And
2 after he gets through the two officers, he does not stop and
3 turn and remonstrate with anyone. He doesn't try to turn and
4 leave because he didn't mean to be there. He walks straight
5 ahead. And other people did push their way out.

6 Next we see him on the third floor, outside the
7 Senate Gallery. Government's Exhibit 407. Here, again, we
8 have a few outnumbered U.S. Capitol Police trying to keep the
9 belligerent protestors out of the gallery, to get them to leave
10 the area.

11 As we know from Government's Exhibits 420, 500, and
12 510, by then the vice president had been evacuated to another
13 location on the grounds, the Senate had been locked down and
14 stood in recess as of 2:13 p.m. It was not adjourned. And
15 defendant appears at about 2:42 p.m. Officers manage to get the
16 protestors in the gallery to walk away and head back down the
17 steps. The defendant makes it down to the Senate lobby on the
18 second floor, exactly where we just seen the Vice President
19 make his escape. Exactly where Officer Gazelle had whisked
20 away the remaining straggling senator.

21 Mr. Black sees the glass doors that make it clear he
22 is standing outside the United States Senate, and he tries to
23 open them. They are locked. He is not supposed to go in. He
24 appears to kneel and pray at this time. But then other
25 protestors appear with keys, people who clearly do not have the

1 authority to open the doors are making their best effort,
2 testing them out with the defendant right there waiting. But
3 then others arrive to let them know there's another way in, and
4 off he goes.

5 2:48 p.m. the defendant enters the Senate chamber.
6 This is entirely unauthorized. There was a remarkable bit of
7 testimony from the U.S. Capitol Police officer who tried to get
8 the protestors out of there, who testified that even he was not
9 allowed to be there and he had never been on the Senate floor
10 before. This is a uniformed U.S. Capitol Police officer.

11 The scene obviously reflects the fact that the people
12 using the room for their official business had been interrupted
13 and left in a hurry. Their papers and their laptops are still
14 on the desks.

15 The defendant wanders around, he checks out what's on
16 the desks in front of the dais, he touches the keypads of the
17 computers that are not his to touch and are plainly part of the
18 Senate's official business. He joins others looking at papers
19 on Senator Cruz's desk and takes the one they found interesting
20 to another desk and photographs it. Turned out to be the
21 document reflecting that Representative Gosar and Senator Cruz
22 were going to object to the certification of the count in
23 Arizona. And now that his camera is out, he poses for photos.

24 The crowd inside continues to swell and it's
25 eventually joined by the man in the hat with the Viking horns

1 and the body paint, what others in the press have referred to
2 as the Shaman. The lone U.S. Capitol Police officer, Officer
3 Robishaw, enters at the same time. By that point the defendant
4 has seated himself on the floor in front of the dais and he's
5 making a phone call. Officer Robishaw asks, "Is there any way
6 I can get you guys to leave?" The defendant does not budge.

7 Officer Robishaw, "I want you to know that this is
8 the sacrest place." Nothing happens. Officer Robishaw tries
9 again, "Can I get you guys to walk out of the room, please?"
10 The defendant tells the officer more people are coming. The
11 defendant does tell the Shaman not to disrespect the place.

12 I am not at all impressed with the defense attempt to
13 excuse the defendant's blatant disregard of what a uniformed
14 law enforcement officer, acting in the course of his official
15 duties, asked him to do by saying oh, it was a request, not an
16 order. He used the word "ask." Come on. The defendant knew
17 that a law enforcement officer wanted him to leave and he
18 ignored him twice, precisely because he knew the officer was
19 being friendly and being low key because he was so badly
20 outnumbered and at great physical risk. And that's obvious in
21 his interview on January 14th, Government's Exhibit 101.EE and
22 101.G.1.

23 It's all of a piece with every other time he was
24 confronted by officers and did exactly the opposite of what it
25 was entirely obvious that they wanted him to do.

1 The horned-hat man, along with a few others, now lead
2 a boisterous prayer from the dais. "It's our nation, not
3 theirs." Defendant joins in, 3:06 p.m., "Praise the name of
4 Jesus." And he's noticed, particularly because of his wound,
5 and he's recognized by the crowd up front.

6 Finally a long line of MPD officers, in full gear,
7 enter and wave the defendant and everyone else out. And that
8 point, when the protestors are outnumbered, he does leave.
9 It's 3:10 and 49 seconds. He's been inside the building for 30
10 minutes. And, yes, he was generally quiet and calm and not
11 verbally obstreperous, not physically attacking with the
12 police. But he was purposeful. He acted with attention at
13 every point. Yes, he was occasionally in situations involving
14 jostling and pushing. But each time he gets himself directly
15 up to the front of the line, where the officers were trying to
16 hold the line, under his own power. He places himself there.
17 Inspector Lloyd testified, "If you were on the front line, you
18 are part of the problem."

19 The defense spent a lot of time emphasizing the
20 defendant's size. They never actually said how tall he was,
21 but said that he weighed 135 pounds repeatedly. He is slight,
22 he is thin. He is not quite as short as the defense wanted to
23 make him out to be. Yes, sometimes he looks small compared to
24 much larger, taller men. But he doesn't stand out in the crowd
25 as a tiny person, markedly shorter than average.

1 When he squeezes past the 6-foot-3 Officer Carrion in
2 Government's Exhibit 706. His eyes and eyebrows are at a
3 parallel with the officer's mustache and the other officer's
4 chin. It's not as if he just comes up to his chest or fits
5 tidily under the officer's chin. Even if he's six inches
6 shorter, he would be 5-foot-9; eight inches shorter, he would
7 be 5-foot-7. He's not tiny. He's not the smallest person
8 attacking the Capitol by a long shot. He certainly didn't
9 think he was too little to be there.

10 There was also zero evidence that area carried,
11 pushed, dragged, or otherwise moved to, in, or around the
12 Capitol by any means other than his own power. He walked to,
13 in, around and out of the Capitol on his own two feet.

14 The defendant says he got jostled and pushed while in
15 the crowd while at the stop of the stairs. Maybe so. But he
16 had already gotten himself up there all by himself. And if
17 anything, his size works to his advantage at many points. He
18 was more maneuverable and he could press his way into tight
19 spaces and he did it quickly. It's captured quite memorably in
20 Government's Exhibit 706 when he squeezes between the two
21 officers to get inside.

22 He also scooted up the Rotunda stairs, and you could
23 see him passing a very large Oath Keeper, loaded down with
24 gear. He got there ahead of him. You can see at various
25 points, and not just the one in Government's Exhibit 417, where

1 Inspector Lloyd characterized his actions as using a larger man
2 in front of him as shield, that he adopts the same strategy on
3 more than one occasion of getting quite close up behind a
4 large, broad-shouldered man, sometimes putting his hands on the
5 person in front of him, sometimes not, but letting that person
6 do the blocking for him. He is directly behind someone large
7 in Government' Exhibit 402.A.1, walking towards the spot where
8 he ended getting shot with the pellet.

9 You see it again at the Rotunda doors, where he's got
10 his hands on a larger man's back during the heave-ho movement.
11 And I agree with the officer's testimony that Government
12 Exhibit 707 shows the defendant participating. He is trying to
13 get in.

14 And when the crowd so disables the sergeant trying to
15 hold the door with Officers Carrion and Salky by spraying them
16 with chemical spray that he has to make his way just past the
17 defendant, to the defendant's left, to a clear space to
18 recover, you can see in the video that there are spaces created
19 in which to move. And the defendant manages to maneuver
20 through those narrow spaces to get where? Directly in front of
21 Officer Carrion.

22 And defense counsel argues, well, he didn't realize
23 he had a way out. But that's not what the defendant said. In
24 Government's Exhibit 1.E.1, he said that an officer, "was
25 walking like a blind man because he got it right in the face.

1 You know? And I feel bad for them cops that got sprayed
2 because that pepper spray is no joke. You know? But they wind
3 up getting -- there was six of them, and when they -- all
4 pepper-spray guys got outta there, people were pulling them one
5 way and pulling them another way. The last guy that got out
6 was getting pulled one way and another. And I told -- I knew
7 he could get out on my left. And they were trying to pull him
8 to the right, and there was no way out that way. I said, let
9 him go. Let them go, they're going this way."

10 Also, Officer Carrion made a very interesting comment
11 when asked if the defendant spoke to him, that he felt like the
12 defendant was trying not to be seen. And that struck me as
13 accurate as well. Almost every time you see him, he not only
14 has on the cap and the dark glasses, but he's got the
15 camouflage hood pulled up over the cap. He is generally not
16 attracting attention. He is trying to slip by, and that is
17 exactly what he does, most of the time. Sometimes he wanted to
18 be heard. Sometimes he wanted to be photographed.

19 Having reviewed the video evidence, and particularly
20 Government's Exhibit 408, where you can see the movement of the
21 defendant's head as the voice rings out down the stairwell, I
22 agree with Special Agent Weeks that it was Mr. Black who
23 shouted, "We will not stand down." And that announcement is
24 emblematic of the entire period he spent on the restricted
25 grounds that day, from just before 1 o'clock when he jumped the

1 fence until he left at 10 after 3. It wasn't until it was
2 clear that the rioters were outnumbered that he would stand
3 down.

4 So, I have reached a verdict in this case. The
5 standard is that the government must prove every element of
6 every offense beyond a reasonable doubt. I have reviewed the
7 jury instructions to make sure that my fact finding process was
8 governed by the appropriate rules. And this ruling is
9 specifically made in accordance with all of the jury
10 instructions set forth in the parties' agreed proposed
11 instructions. In particular and in including Burden of Proof
12 and Presumption of Innocence 2.107, Reasonable Doubt at 2.108,
13 and Proof of State of Mind at 3.101.

14 Count 1 charges obstruction of an official proceeding
15 and aiding and abetting, in violation of 18 U.S. Code §
16 1512(c)(2) and 18 U.S. Code 2. The first element of that
17 offense is that the defendant attempted to or did obstruct an
18 official proceeding. Specifically, Congress's certification of
19 the Electoral College vote as set out in the 12th Amendment of
20 the Constitution. So this is whether he attempted to or did
21 obstruct or impede it. And that has been established beyond a
22 reasonable doubt.

23 Defendant's forced entry into and unlawful ongoing
24 presence in the building as a member of the mob, none of whom
25 had passed through the ordinary security screens, not to

1 mention his unauthorized presence on the floor of the Senate
2 Chamber itself, made it impossible for the certification to
3 proceed.

4 The second element of this offense is that the
5 defendant intended to obstruct or impede the official
6 proceeding. This is the most difficult issue to resolve in
7 this case. And the assessment must recognize that the
8 government carries a very heavy burden at this point.

9 What was the defendant trying to do? D.C. Standard
10 Jury Instruction 3.101 says you may infer someone's intent from
11 the surrounding circumstances. You may consider any statement
12 made or acts done, or not done, by the defendant and all other
13 facts and circumstances received in evidence which indicate his
14 intent. You may infer, but are not required to infer, that a
15 person intends the natural and probable consequences of acts he
16 intentionally did or intentionally did not do.

17 I do not agree with the defense that the defendant's
18 sole, or even primary motivation was spiritual. His motivation
19 was obviously political. And the defendant's own statements
20 are of great relevance here.

21 He starts his YouTube video, Exhibit 1.A.1, saying he
22 wanted to get his side of the story out there. And he says,
23 "Once we found out that Pence turned on us and that they had
24 stolen the election, like officially, the crowd went crazy. I
25 mean, it became a mob. We crossed the gate, we got up." And

1 then he says, "When we got there the cops had formed a line and
2 they were out numbered, probably 1,000 to 1. There was no way.
3 The only way they were going to stop the crowd was lead
4 bullets."

5 He does also say in Exhibit 1.AA, "I just wanted to
6 get in the -- inside the building so I could plead the blood of
7 Jesus over it. That was my goal."

8 After he's shot, he says, at Exhibit 1.BB, "They
9 tried to pull me behind the gate to give me medical, is what
10 they said. And I was like, 'No, I'm with them. You know. I'm
11 here to defend the Constitution. I'm a patriot. You know?'"

12 Exhibit 1.DD he talks about once he gets around to
13 the east side of the building and the Rotunda doors. "So I got
14 down the back and I was sitting there thinking, 'Why is
15 everybody just sitting on the steps?' I thought the goal was
16 to show the politicians that the people run this country.
17 That's the way it's supposed to be. You know? And so I was
18 like, 'Why are we just sitting here?'" And then he says, when
19 he got to the top and he got to the door, the people were
20 just -- "it became a mob rule situation. You know what I'm
21 saying? It was -- the patriots were pissed. I mean, it was so
22 much anger. So I just kept saying, 'Praise the name of Jesus.
23 Glory to God. God bless America.' You know? 'Praise the name
24 of Jesus. I plead the blood of Jesus. Glory to God.'" This
25 shows both his spiritual thinking and his political motivation.

1 He says, in Exhibit 1.E.1, that when he gets up to
2 the Rotunda doors and he's confronted with Officer Carrion,
3 he's either thinking or he says, "You know, I appreciate your
4 service. But, you know, we've got to show these politicians
5 that we mean business. You know? We're not -- we're -- we're
6 tired of getting lied to. We're tired of ya'll getting filthy
7 rich off our backs. You know? Lying and cheating and stealing
8 and -- we're tired of it, you know? That ain't exactly what I
9 said. But it was -- that's the gist of it, you know?"

10 Exhibit 1.F.1, again confirms the political
11 motivation. When the door gets opened up from the inside he
12 says, "They opened it up from the in -- the guys on the inside.
13 The mob, the pissed-off patriots, the guys that were here to
14 defend the Constitution of the United States. Because it
15 clearly says something about if they, you know -- my brother
16 sent me a text -- oh, man, I should have looked that up before
17 I done this. But it clearly states that in the Constitution,
18 that if the government gets crooked, as they are now, and needs
19 to be abolished or overthrown or something to that effect. You
20 know? So that's what I was there for. I was obeying the
21 Constitution. You know?"

22 Exhibit 1.H.1. We're still in the YouTube video.
23 Says he got to the place were he saw the door that said "U.S.
24 Senate on it. And said, 'I need to get in there.' I just felt
25 like the spirit of God wanted me to go in the Senate room. You

1 know? I was about to break the glass and I thought, 'No, this
2 is our house. This is not -- we don't act like that.' You
3 know? But I was tempted to, I ain't gonna lie. You know?
4 Because I'm pretty upset. You know? They stole my country."

5 And at 1.I.1 he said, "There was no organization that
6 I knew of. You know? It was just everybody found out that we
7 lost our country, and they were pissed. You know? Because the
8 Constitution specifically says if they get out of line, that
9 we, the people, will abolished them. And that's -- that's what
10 the Constitution says. So that's what we were doing. You
11 know?"

12 The second part of the YouTube video, Exhibit 2.A.1,
13 he says again, "There was no plan. It wasn't an organized
14 event. This was just the we-the-people standing up to obey the
15 Constitution, to abolished a corrupt government. That's what I
16 mean. But once we got in there, what are we gonna do? Can't
17 kill nobody. I mean, that ain't going to look right. It's all
18 about PR, you know? I mean, it may come to that. I hope it
19 don't. But it's a Democrat house. A crooked Democrat house.
20 Crooked Republicans, too. And a crooked Democrat Senate.
21 Crooked Republicans, too. And now there's a straight-up,
22 crooked, lying, cheating, you know, president. And I ain't
23 even going to say nothing about Kamala Harris. I mean, I'm a
24 Christian and I ain't supposed to talk bad about folks. So I'm
25 not going -- but you know what I'm saying. Like, you know how

1 she got to the top."

2 He says, 2.B.1, "Just want to get my side of the
3 story out there. I mean, this was kind of a long video and it
4 was rambling. But I just -- God bless America. Praise the
5 name of Jesus. If God don't do it, it ain't gonna get done. I
6 don't know what's coming next, but America has been stolen."

7 That's the end of his YouTube video. I think his
8 political motivation is somewhat clear.

9 In his interview with the FBI, this is the first one,
10 on January 8th, in Exhibit 100.DD he says -- talks about when
11 he gets around to the other side. And he says, "So, I got back
12 there and the Lord told me -- I just felt like the lord wanted
13 me to go in there and plead the blood of Jesus. Inside the
14 building, you know? I jut wanted to show the politicians that
15 we, the people, run this country, you don't. You know, you
16 swore an oath to defend the Constitution and you didn't do it,
17 you know? You're a bunch of lying crooks, Democrats and
18 Republicans, you know. I ain't a Republican, but you ain't got
19 no other choice, you know? They're a bunch of -- I ain't
20 supposed to talk bad about folks. But they ain't doing their
21 job, they ain't working for us. You know, they're all about
22 that, you know?"

23 So the agent says, "So basically you wanted to show
24 the politicians up?"

25 And he says, "Well, I wanted them to know that we,

1 the people, can do it if we decide, you know? There wasn't no
2 lead bullets flying from us. But, you know, we had the numbers
3 and the power at the moment to show them that you don't run the
4 country. We do. You know? That was -- and I wanted to plead
5 the blood of Jesus on that place because there's all kinds of
6 evil coming out of that thing. Their mission is not for the
7 good of the people, you know? And I believe that considerably."

8 Exhibit 100.F.1, also in the January 8th interview,
9 he's talking about the agents, the officers, "And they were,
10 like, 'I'm just doing my job. I'm just doing my job.' You
11 know? 'I swore an oath.' And I was like, 'Yeah to defend the
12 Constitution and that ain't what you're doing right now.
13 You're defending a bunch of crooked politicians,' which I'm
14 glad they got them out of there because if the mob had got
15 ahold of them, it would have been -- it would not have been
16 good, 'cause America is pissed off at our elected officials.
17 You can't trust them no more. They're a bunch of dirt bags,
18 you know? I'd say 90-plus percent of them are crooked as a
19 dog's leg. They can't be trusted."

20 And finally, on the January 14th interview, Exhibit
21 101.H.1, he's asked again what was the general intention, what
22 was the general idea. And Mr. Black said, "Well, we've been
23 watching the protests on TV for two years where they're burning
24 cities to the ground, killing people. So, I mean, I figured,
25 well, shoot -- I guess, you know, we'll go in there and show

1 them that we could, if we wanted to, you know? I mean, I think
2 that was pretty much the general idea."

3 The officer, agent, says, "General idea?"

4 Mr. Black says, "Like, what -- you know, we could if
5 we wanted to. We ain't, you know?"

6 He also made statements in his Man On The Street
7 interview at the Capitol, Government Exhibit 612: They stole
8 our country -- all crooked and dirty. They're not protecting
9 our freedom. God gave it to us, not the government.

10 Government's Exhibit 613: Why are you here? To
11 defend the Constitution. "Well-regulated militia" is a good
12 idea right now. The politicians are trying to divide us.
13 Can't put up with this.

14 I do agree that there is a significant spiritual
15 component to his decision making process. I credit his
16 statements that he prayed and consulted God for guidance about
17 whether and how to act on his political concerns that he
18 clearly had, and that he indeed "felt" -- and that's his word,
19 not mine -- that God was giving him direction.

20 But even as the defendant tells the story, he's not
21 claiming that he was just going about his business, and the
22 Lord spoke to him directly, out of the blue, and told him to do
23 something. It's more nuanced than that.

24 Rather, as he explained -- about as clearly as you
25 can to someone who may not share your particular faith -- that

1 once he was contemplating taking a particular action, he would
2 think deeply about each of the two competing options: Should I
3 do this? Or not do this? And based on whether he's thinking
4 about one or the other brought him a sense of peace, he gained
5 an understanding about what he felt God was telling him to do.
6 He says this in his January 8th FBI interview at Government's
7 Exhibit 100.AA and 100.CC.

8 And I want to emphasize that in my view, the record
9 establishes that he is entirely sincere about this, and I
10 accepting it as a true and accurate statement of his state of
11 mind.

12 But for purposes of this element, and the decision I
13 have to make, I don't have to resolve the complex
14 psychological -- or maybe it's philosophical or maybe it's
15 theological -- question of whether that means he was first and
16 foremost motivated by what he understood God wanted him to do
17 or motivated by his clearly articulated desire to upend the
18 government, or at least to demonstrate to those in power that
19 the mob was capable of overthrowing them.

20 These are not mutually exclusive. And the motivation
21 to overthrow the government is not an element of any charge in
22 this case. He is not charged with sedation, there was no need
23 for the government to establish that he was a revolutionary.
24 The question before me is what did he intend to do? Not why.

25 And the second element of Count 1 is whether he

1 intended to obstruct or impede a specific official proceeding;
2 the certification of the Electoral college results. That's
3 what he's charged with. It doesn't matter to this element if
4 he intended to do that with an understanding that he had the
5 Lord's imprimatur or agreement or discretion, or if he intended
6 to do it without taking that into consideration.

7 It also didn't matter if he intended to do that and
8 also intended to plead the blood of Jesus on the Senate floor.

9 And I want to digress here for a minute about that
10 because the evidence is replete with the defendant's statements
11 about pleading the blood of Jesus or wanting to plead the blood
12 of Jesus. There is no evidence in the record, though, about
13 what this means as a matter of theology. And that could vary
14 anyway depending on one's particular form of Christianity,
15 congregation you belong to, what you've been taught. And I
16 would not presume to enter that discussion.

17 But more importantly, there is little or no evidence
18 in the record about what it meant to the defendant. We get
19 only one glimpse, and that's the time when he says, in
20 Government's Exhibit 100.DD, during the FBI interview, "I
21 wanted to plead the blood of Jesus on that place because
22 there's all kinds of evil coming out of that thing." So that's
23 consistent with the expelling evil spirits theory advanced by
24 counsel in its opening. But that may not be all there is to
25 it.

1 I also note that even if you credit the defendant's
2 own statements, the evidence is consistent with the
3 government's theory that this may have been a later, or at
4 best, an additional motivation.

5 In the YouTube video, Government's Exhibit 1.GGG,
6 after he gets through the rotunda doors, he explains, "And then
7 I thought -- I just -- I thought, well, I was inside the
8 building. I'm gonna walk around and plead the blood on this
9 thing.

10 And in the January 8th interview he says, at 100.DD,
11 I just felt like the lord wanted me to go in there and plead
12 the blood of Jesus inside the building, you know. I just
13 wanted to show the politicians that we, the people, run this
14 country.

15 And that's when he explains, as I just read, that he
16 wanted to show them that we, the people, can do it if we
17 decide. We had the power and the numbers at the moment to show
18 them that you don't run the country, we do. And then he goes,
19 "and I wanted to plead the blood of Jesus on that place because
20 there's all kinds of evil coming out of that thing."

21 The government argued in closing, Well, if you wanted
22 to do that, he did that outside of the Senate, in the lobby.
23 He didn't need to go in the chambers and he didn't even do it
24 when he was inside. I'm not sure we can say that. It's not at
25 all clear to me that for this man, the pleading the blood of

1 Jesus is a distinct, visible, drop-to-your-knees moment in
2 time, a specific prayer. It could very well be an ongoing
3 internal conversation or thought process or a state of mind or
4 intention or spirituality that moved him throughout the entire
5 day.

6 But as I said, whether he had that intention and how
7 he did or did not act upon it is not the point for this count.

8 The whole discussion about the two motivations was
9 largely beside the point because for this count we have to
10 wrestle with a different question: His intent to obstruct the
11 official proceeding alleged in the indictment.

12 The law does not require proof that the official
13 proceeding was actually pending, or underway, or that it was
14 about to be instituted at the time of the defendant's actions.
15 But if the official proceeding was not pending at the time of
16 the defendant's conduct, the government must prove beyond a
17 reasonable doubt that the official proceeding was reasonably
18 foreseeable to the defendant at that time.

19 In addition, the law requires that there be a
20 connection or relationship in time, causation, or logic between
21 the obstructive act and the proceeding; that is, the government
22 must show that the defendant had knowledge that his actions
23 were likely to affect the proceeding.

24 The parties submitted jury instructions in this case
25 and in footnote 2 to the proposed jury instruction for Count 1,

1 the government provided the case law that supports what it
2 referred to as the nexus requirement. And it cited
3 *United States versus Aguilar*, 515 U.S. 593, at 599 to 600.

4 The *Aguilar* case defined the nexus requirement in
5 connection with the offense of obstructing a judicial
6 proceeding to be, quote, that the act must have a relationship
7 in time, causation, or logic with the judicial proceeding. The
8 Supreme Court reiterated the requirement that there be a "nexus
9 between the obstructive act and the proceeding" for purposes of
10 § 1512 in the *United States versus Arthur Anderson*, 544 U.S.
11 696, at 607. And it mentioned and it made it clear that the
12 defendant has to have a particular official proceeding in mind.
13 And here the official proceeding has to be the one alleged in
14 the indictment, the congressional certification of the
15 Electoral college results. Not simply some business of the
16 government, some business of the Congress or the results of the
17 election in general. But the government is not required to
18 show that the defendant's sole intent was to impede the
19 proceeding. And that's why he could have been there for his
20 religious reasons as well.

21 After reviewing all of the evidence, more than once,
22 I conclude that while it is through no fault of the
23 investigators or the prosecutors, that appears to be absent
24 from the government's proof in this case.

25 The government relies heavily on context: He went to

1 a Stop the Steal rally, people were yelling, "stop the steal"
2 at the Capitol. They tell me I can extrapolate from the words
3 "stop the steal" -- particularly given the context that the
4 attack on the Capitol came right on the heels of President
5 Trump's speech -- that they were talking about the
6 certification that Trump had been decrying before and decried
7 in his speech.

8 One problem we have with that is that the speech is
9 not in evidence. Also, we don't know how much of it the
10 defendant heard or internalized. We do know that he left with
11 the first wave of protestors and was walking towards the
12 Capitol well before it was over.

13 I do agree that you may be able to draw those
14 inferences with respect to a lot of the protestors. But we do
15 not have one single text or Tweet or statement by this
16 defendant -- before, on, or after January 6 -- where he
17 articulates his grievance in terms of anything that Congress
18 was supposed to do in terms of any proceeding that was going on
19 that day. We don't even have one single statement where
20 Mr. Black uses the phrase "Stop the steal."

21 He said, during his January 14th interview, that when
22 he got to the rally, people said that they were going to the
23 Capitol and he decided to go. Government Exhibit 101.11, he
24 was told, "We're doing a protest at the Capitol." And that is
25 a specific as it ever got.

1 The evidence did include information that President
2 Trump told the crowd to go up Pennsylvania Avenue to the
3 Capitol, but the evidence didn't include what he was
4 complaining about in particular, or what they were supposed to
5 go when they got there.

6 Defendant unquestionably went and unquestionably went
7 under his own power with the clear intent to get there and get
8 inside.

9 The government points to the Vice President's
10 announcement and the fact that the defendant said at the very
11 start of his video telling his side of the story, Government's
12 Exhibit 1.A.1, "Once we found out that Pence turned on us and
13 that they had stolen the election, like officially, the crowd
14 went crazy." But the defendant had already breached the
15 barricade at the Peace Circle by that point and he was at the
16 gate in front of the Lower West Terrace before Pence issues his
17 statement, after 1 p.m.

18 The defendant was the first to breach that barrier at
19 12:57 and 55 seconds, according to Government's Exhibit 402A.
20 And that fleeting mention of Pence is the main piece of
21 evidence that, according to the government, anchors the
22 defendant's presence at the Capitol to the certification.

23 But if the focus is the defendant's intent and not
24 the intent of the mob, another thing you can't help notice --
25 can't help but notice is that he keeps using the past tense,

1 "they had stolen the election." We had a lying, crooked
2 president. Every other statement is like that as well, and I
3 can't help think but about something Mr. Fleckinger said in his
4 opening statement, which is that the defendant seemed to have
5 thought it was already over.

6 The government persuasively argued that once the
7 defendant entered the Senate, the document that caught his
8 attention was about Cruz's objection. That the defendant went
9 to the effort to photograph it and save that photograph, even
10 if he may have deleted others. So maybe he wasn't clueless
11 about the import of the day and the nature of the proceeding.

12 But the scene surrounding the document shows the
13 defendant walked up when others had already found it and
14 they're discussing it -- and indeed, the first person to look
15 at it and interpret it mistakenly saw it as a sign that Senator
16 Cruz had forsaken the, too. The defendant does not weighed in
17 on the discussion and what he's thinking, as usual, is largely
18 inscrutable.

19 One could, in good faith, make the argument the
20 government made. One could urge that one could draw the
21 inferences, make the assumptions and connections it asks me to
22 make. And that could possibly be sufficient for Rule 29
23 purposes, where the Court is required to resolve all inferences
24 in favor of the government. But as a factfinder, I cannot say,
25 in good conscience, that the government has proved this element

1 beyond a reasonable doubt. I'm on the fence and I am troubled
2 by it and that's not good enough.

3 The third element of this count is that the defendant
4 acted knowingly, with awareness that the natural and probable
5 effective of his conduct would be to obstruct or impede the
6 official proceeding. I think it's clear that he knew he was
7 obstructing or attempting to obstruct something governmental,
8 but what is quite vague and so that falls with the previous
9 element, given the absence of the specificity.

10 The fourth element is that the defendant acted
11 corruptly. This is where I think the defendant's religiosity
12 has greater bearing than on the second element. The defendant's
13 political and religious views are deeply intertwined, and
14 they're certainly a spiritual aspect to all of it.

15 I will say first, for purposes of the Rule 29 motion,
16 that I don't find that the defense motion has to be granted on
17 the basis that the government's case included evidence that the
18 defendant believed that his actions were at least approved of,
19 if not directed by God.

20 According to *United States versus Davis*, 562 F.2d
21 681, at 683 from the D.C. Circuit, it's only when there is no
22 evidence upon which a reasonable mind might fairly conclude
23 guilt beyond a reasonable doubt that the judge may properly
24 take the case from the jury. Put another way, as the Circuit
25 said in *United States versus Weisz*, 718 F.2d, at 437, the

1 district court may grant a motion for judgment of acquittal
2 only when a reasonable juror must necessarily have had a
3 reasonable doubt as to the defendant's guilt. And in
4 evaluating a motion for judgment of acquittal, the Court should
5 consider the evidence in the light most favorable to the
6 government. That's *United States versus Wahl*, 290 F.3d 370.

7 So from the perspective of Rule 29, a juror could
8 have considered all of the evidence and found that
9 notwithstanding the mixed motives, the defendant was acting
10 with an unlawful purpose.

11 It is a much closer question, though, as to whether
12 one could conclude beyond a reasonable doubt that this
13 particular defendant, given the unique stew in his mind that
14 considerable misunderstanding about the Constitution,
15 considerable misinformation about the outcome of the election,
16 some pretty ugly assumptions about some of the political
17 figures involved, and a deep faith that infused all of his
18 political beliefs that all of that is percolating together and
19 is being further agitated and heated up by rhetoric available
20 on social media. It is a close question whether one could
21 conclude then, beyond a reasonable doubt, that Mr. Black had,
22 quote, an understanding or awareness that what he was doing was
23 wrong or unlawful, unquote. It's not the objective test of
24 whether he had it or should have had it, it's a subjective test
25 of what's inside his head.

1 Given the number of times he repeatedly passed
2 through or over obvious barricades, he repeatedly pushed his
3 way past uniformed officers, he repeatedly ignored their
4 official entreaties to desist or depart, all notwithstanding
5 the very obviously illegal mayhem around him and the very
6 obvious way the U.S Capitol Police had tried to stop him in
7 particular, a reasonable juror could conclude that this element
8 was established. But I need not decide this very close issue
9 myself, given my determination with respect to the second
10 element that requires a not guilty verdict on this count.

11 The government also moved, though, on an aiding and
12 abetting theory. So I need to consider that as well. The
13 first element of that is that others committed obstruction of
14 an official proceeding by committing each of the elements in
15 the offense charged. That was conceded.

16 But even if the government also proved the second
17 element, that the defendant knew that obstruction of an
18 official proceeding was going to be committed or was being
19 committed by others, that the defendant performed an act or
20 acts in furtherance of the offense, and that the defendant
21 knowingly performed that act or acts for the purpose of aiding,
22 assisting, soliciting, facilitating, or encouraging others in
23 committing the offense of an obstruction of an official
24 proceeding, some of that I think is iffy. You don't have the
25 same intent problem with the fifth element that you have in

1 charging him with a principal portion of this count, which is
2 that the defendant did those act or acts with the intent that
3 others commit the offense of obstruction of an official
4 proceeding.

5 And, therefore, I find the defendant not guilty even
6 on an aiding and abetting theory of Count 1.

7 That brings us to Count 2, entering or remaining in a
8 restricted building or grounds with a deadly or dangerous
9 weapon, in violation of 18 U.S. Code § 1752(a)(1) and
10 (b)(1)(A). The defense has conceded the lesser included
11 offense, but not the aggravated offense of doing this while
12 armed. Concedes that the defendant entered or remained in a
13 restricted building or grounds without lawful authority to do
14 so. And he concedes that the defendant did so knowingly. He
15 does not concede that the defendant used or carried a deadly or
16 dangerous weapon during and in relation to the offense. The
17 parties agreed that this is to be determined based on the facts
18 of the case.

19 Our agreed jury instruction was: An object may be
20 considered a deadly or dangerous weapon for one of two reasons.
21 First, an object is a deadly or dangerous weapon if it is
22 inherently or obviously dangerous or deadly. Second, an object
23 is a deadly or dangerous weapon if the object is capable of
24 causing serious bodily injury or death to another person and
25 the defendant carried it with the intent that it be used in a

1 manner capable of causing serious bodily injury or death. The
2 defendant need not have actually used the object in that
3 manner.

4 While other courts and circuit have found that a
5 knife, like a gun, is inherently dangerous, end of story, the
6 government quotes a number of these cases in its submission at
7 docket 77. We don't have circuit authority here directly on
8 that point.

9 The D.C. Circuit opinion that discusses the issue,
10 *U.S. versus Vinton*, 594 F.3d 14, at page 22, from the D.C.
11 Circuit in 2010, was considering whether there was probable
12 cause for a police officer to conclude that an individual had
13 violated a D.C. statute that was in effect at the time, not a
14 federal statute, that prohibited the carry of a deadly or
15 dangerous weapon, defined in that statute as one likely to
16 produce death or great bodily harm by the use made of it. Kind
17 of more like the second part of the standard that we have then
18 the first. And, therefore, the court looked to controlling
19 opinions issued by the D.C. Court of Appeals.

20 The circuit was talking about a different type of
21 knife than the one here. It had a butterfly knife in front of
22 it, and it said: Two categories of objects are likely to
23 produce the death or great bodily harm. Those that are
24 inherently dangerous, that is, where the design of the object
25 is such that in its ordinary use it is likely to cause great

1 bodily injury, and those that ostensibly may be used as a tool
2 in certain trades or hobbies or may be carried for utilitarian
3 reasons, but where the surrounding circumstances indicate that
4 the purpose of carrying the object is its use as a weapon.
5 That's the circuit in *Vinton* and it is quoting *United States*
6 *versus Strong*, 581 A.2d 383, and also *Scott versus*
7 *United States*, 243 A.2d 54 from the D.C. Court of Appeals.

8 The circuit described the butterfly knife and
9 rejected the notion that it was, quote, inherently dangerous,
10 close quote. It said, The record doesn't establish that
11 butterfly knives are inherently dangerous and, indeed, one can
12 imagine they might be used for sport or entertainment.
13 Nonetheless, the surrounding circumstances provided the
14 arresting officer with probable cause to believe that *Vinton*
15 intended to use it as a dangerous weapon. And it cited *Lewis*
16 *versus United States*, 767 A.2d 219, at 222 where the D.C. Court
17 of Appeals had explained where the knife possessed by the
18 defendant is not inherently dangerous, the government must
19 prove beyond a reasonable doubt that the purpose of carrying it
20 was its use as a dangerous weapon.

21 The cited case from the D.C. Court of Appeals, *Lewis*,
22 seems to focus on the surrounding circumstances, but it also
23 looks to the design of the particular knife. And it derived
24 its standard from *Scott versus United States*, at 243 A.2d 54,
25 in which the D.C. Court of Appeals said, "This court has

1 previously held that all knives are not per se dangerous
2 weapons. A knife may be used as a tool in certain trades or
3 hobbies or it may be carried for utilitarian purposes. Section
4 22-3204 does not prohibit the carrying of such instruments for
5 a legitimate purpose. The statute, as we interpret it, outlaws
6 the carrying of an otherwise useful object where the
7 surrounding circumstances, such as the time and place the
8 defendant was found in possession of such an instrument, or the
9 alteration of the object, indicate that the possessor would use
10 the instrument for a dangerous purpose."

11 Even if the weapon had not been altered, its design
12 or construction could be relevant. In some D.C. cases the
13 court found that an inherently dangerous design or the fact
14 that the object need not be altered for effectiveness as a
15 weapon, when combined with the surrounding circumstances, can
16 be the determining factor.

17 For instance, particularly menacing knives or a
18 machete have been found to constitutes dangerous weapons by the
19 court, in *Strong versus United States*, 581 A.2d 383, and *Mackey*
20 *versus United States*, 451 A.2d 887.

21 So if you put all of that case law together here, I
22 think the evidence could support a finding that the knife in
23 the circumstances of this case -- and I'm not deciding about
24 all knives, and I definitely don't have to decide about
25 smaller, folding Swiss Army pocket knives -- that this knife is

1 inherently dangerous.

2 But even if that's incorrect, it isn't necessary
3 because I also find that the second prong of the definition has
4 been satisfied, in any event.

5 The defendant's knife is long enough and sharp enough
6 from both the tip and along its edge to cut or stab. And given
7 its curved shape, its design and its condition, it's
8 intrinsically and obviously capable of inflicting death or
9 serious bodily injury. You would not need to alter it in any
10 way to render it incapable of doing so. It's true, though,
11 that those aspects make it useful in other settings; hunting,
12 fishing, the defendant's daily outdoor labor.

13 But what we do not have a situation where this
14 defendant was stopped driving his truck on the way to work in
15 Alabama, or he got into a tussle there for some reason and we
16 have to determine if that happened while armed with a dangerous
17 weapon. He wasn't coming or going from work. He wasn't
18 hunting and he wasn't fishing.

19 He drove a truck all the way here from Alabama. He
20 had a gun in the truck. He stayed overnight in Virginia. In
21 the morning, he woke up and he was going to a rally in the
22 nation's capital. He got up and he got dressed and he chose to
23 equip himself with the knife. He deliberately did not bring
24 the gun.

25 So the surrounding circumstances all indicate that in

1 this instance it was, handy as it might be, being carried as a
2 weapon and not as a tool.

3 But even if it's not inherently dangerous and the
4 issue is simply whether it is capable of causing serious bodily
5 injury or death and the defendant carried it with the intent
6 that it be used in a manner capable of causing serious bodily
7 injury or death, the evidence satisfies that test as well.

8 The evidence supports the finding that this knife is
9 capable of causing serious bodily injury or death for all the
10 reasons I just listed: Its sharp edge, its pointed tip, the
11 length of the blade, its weight, its shape. It could cut or
12 stab, and an upward stroke with the curve could do some
13 significant damage.

14 But beyond the surrounding circumstances that I
15 already discussed, we do know something about the defendant's
16 intent in connection with this knife; it's what he told us and
17 it answers the question.

18 The government's Exhibit 1.C.1, when the defendant
19 told his side of the story to YouTube, he said, "Actually, I
20 had a knife on me. But they never -- I had too much clothes
21 on. It was freezing out there, you know? So I never -- I
22 wasn't planning on pulling. I just carried a knife 'cause I
23 do. I work outside and you need knives, you know? I just -- I
24 don't -- you're not allowed to carry guns in D.C. and I don't
25 like being defenseless."

1 To the extent there's any lingering doubt about
2 whether this useful hunting, fishing, potentially landscaping
3 tool was, on January 6, a weapon, that answers the question.
4 If you are carrying it, arming yourself with it to defend
5 yourself with it, in lieu of your firearm, you are carrying it
6 with the intent to use it to cause physical harm to another
7 person.

8 The fact that the defendant said he intended to use
9 it defensively and not offensively does not affect the
10 analysis. A firearm would have been a deadly or dangerous
11 weapon even if the person carrying it believed in good faith
12 that he would only pull it in self defense. And in this
13 instance that's what the knife was, too.

14 The distinction might bear upon the legality of using
15 it if he used it and if the elements of self defense were
16 established, but it doesn't change the nature of the item
17 itself or the purpose for which it was carried.

18 While it might be legal to use something that is a
19 weapon, and a dangerous weapon, in self-defense, there is no
20 such distinction in what these statutes criminalize, which is
21 being in a particular place, a restricted area -- conduct that
22 was conceded -- while armed. The defendant has pointed to no
23 case law that supports his assertion that such a law is not
24 violated as a matter of law if the person was ostensibly
25 carrying it for self-defense. And, indeed, there is

1 controlling authority to the contrary. In *Vinton*, 594 F.3d at
2 23, "that he may have planned to use the knife only in
3 self-defense or defense of another is irrelevant, so long as he
4 intended to use it as a weapon."

5 The defense filed an interesting submission that was
6 centered around the purpose for which the knife was designed.
7 In other words, the intent of the manufacturer. That isn't
8 really an aspect of the jury instructions that the defense
9 agreed upon. But, more importantly, the defendant's own
10 examples make it quite clear why that can't possibly be the
11 deciding factor.

12 The defense noted that scalpels are designed for
13 good, they're intended for people's health, surgery. Cooking
14 knives are designed and intended for food preparation; dinner,
15 another happy outcome. But surely, surely, both could qualify
16 as dangerous or deadly weapons. For instance, if the surgeon
17 got angry and started chasing a nurse around the operating room
18 with his extremely sharp surgical tool, or if a chef went after
19 a waiter.

20 The defendant calls the knife here a hunting knife.
21 But that's kind of a broad and vague category for which the
22 defendant points to no commonly accepted definition. But even
23 if that is a thing, a hunting knife is a distinct type of
24 knife, it doesn't answer the question. It may very well be
25 that the defendant's knife was indeed designed for hunting

1 animals, and specifically, as the defense noted, for gutting
2 game. And if carried for that purpose, the D.C. Court of
3 Appeals and the D.C. Circuit might well agree that the
4 government hasn't satisfied the test. And the D.C. statute has
5 been amended to be more specific since the time of the case law
6 anyway.

7 But I am not sure it helped the defense any to
8 emphasize the gutting. If you combine the fact that, according
9 to the defendant, this knife is capable of eviscerating a deer,
10 which is large animal with a thick hide that gets used to make
11 leather products, one can easily conclude that it is capable
12 causing great bodily harm to a person and would qualify as a
13 deadly weapon if carried for that purpose; that is, for the
14 purpose of being a weapon, as opposed to its intended design.

15 And, therefore, I reject the motion for judgment of
16 acquittal with respect to the aggravating element of this
17 offense, and I find that the defendant in fact carried a deadly
18 or dangerous weapon during the commission of the otherwise
19 conceded offense of entering or remaining in a restricted
20 building or grounds, which were restricted here due to the
21 ongoing visit by the Vice President of the United States.

22 I find him guilty of Count 2.

23 Count 3, disorderly or disruptive conduct in a
24 restricted building or grounds with a deadly or dangerous
25 weapon, in violation of 18 U.S. Code § 1752(a)(2) and(b)(1)(A).

1 First element is the defendant engaged in disorderly
2 or disruptive conduct in a restricted building or grounds. And
3 this is conceded and is certainly supported by the facts.

4 Second element, which was not conceded, is that the
5 defendant did so knowingly and with the intent to impede or
6 disrupt the orderly conduct of government business or official
7 functions.

8 While I could not find my way to the intent to
9 obstruct the specific official proceeding of the certification
10 of the Electoral College vote, I do find, based on all of the
11 defendant's statements that I quote earlier, not to mention his
12 persistent, relentless efforts to get inside and stay there --
13 contrary to the very clear directions being provided by the
14 officers he insists that he respected -- that he very much
15 wanted to, at the very least, impede or disrupt the orderly
16 conduct of government functions that day.

17 The third element was that the defendant's conduct
18 occurred when or so that his conduct in fact impeded or
19 disrupted the orderly conduct of government business or
20 official functions. And that, too, is conceded and is
21 supported by the facts; in particular, his remaining on the
22 Senate floor, but his remaining in the building at all and they
23 couldn't do anything.

24 And finally, the fourth element is that the defendant
25 used or carried a deadly or dangerous weapon during and in

1 relation to the offense.

2 I deny the Rule 29 motion on that element and I find
3 that that has been established beyond a reasonable doubt for
4 the exact same reasons I noted with respect to Count 2, and
5 find the defendant guilty of count 3.

6 Count 4, unlawful possession of a dangerous weapon on
7 Capitol grounds or buildings. It's a different statute, 40
8 U.S. Code § 5104(e)(1)(A)(i).

9 The first element is that the defendant knowingly
10 entered the Capitol grounds or any of the Capitol buildings.
11 That is conceded.

12 The second element is that while he was on the
13 Capitol grounds or any of the Capitol buildings, the defendant
14 knowingly carried or had readily accessible to himself a
15 dangerous weapon. This time that term is defined in 40 U.S.
16 Code § 5104(a)(2)(B) to include, quote, a knife having a blade
17 over 3 inches in length."

18 It's something of a mixed question of law and fact
19 here because while the measurements are not disputed, what is
20 included in the, quote, blade, unquote, to be measured is
21 disputed.

22 If I were to define the blade of the knife as the
23 defense proposes, it would not be over 3 inches in length, if
24 measured in a straight line from the handle to the point, and,
25 therefore, the defendant would have to be acquitted of the

1 greater offense as a matter of law. But my legal ruling, for
2 purposes of the Rule 29 motion, is that the blade should be
3 measured as the government proposes. I agree with the many
4 courts that have concluded that the definition of "blade"
5 should not vary with the knife.

6 The issue here is whether the non, not sharpened and
7 just slightly wider part of the metal blade above the bolster,
8 which is part of the handle, should be included when one talks
9 about the blade. There is some suggestion in some of the
10 authorities that the word for the portion of the metal above
11 the bolster but below the sharpened portion of the metal blade
12 might be the tang.

13 We've previously found that the extension of the
14 metal blade all the way down into the handle is called the tang
15 and that is an extension of the metal that goes into the
16 bolster. Whether it's called the tang or not, I'm not certain,
17 but I think everyone in the room knows exactly what I'm talking
18 about right now, and it was shown many times that there's a
19 clear differentiation where the knife gets considerably wider,
20 where the bolster or guard at the top of the handle begins and
21 then there's several eighths of an inch between that and the
22 sharpened portion of where the cutting edge, I think as people
23 have described it, of the blade. So is that part of the
24 blade -- part of the blade, in quotes -- for purposes of this
25 statute?

1 There's no D.C. Circuit authority, so I'm going to
2 start with the plain meaning of the text. Merriam-Webster
3 dictionary defines blade as, "The cutting part of an implement."
4 It defines knife as "A cutting instrument consisting of a sharp
5 blade fastened to a handle."

6 Oxford English dictionary defines blade as, "The thin
7 cutting part of an edged tool or weapon, as distinguished from
8 the handle." Knife is defined as, "A cutting instrument,
9 consisting of a blade with a sharpened longitudinal edge fixed
10 in a handle. The blade is generally of steel, but sometimes of
11 other material."

12 So, the two dictionary definitions talk about two
13 portions of a knife, a blade and a handle, and they don't
14 discuss the portion that we're talking about here expressly.
15 However, the American Knife and Tool Institute, which seems to
16 be the only professional organization about the knife industry
17 that either side has pointed me to, has a protocol for
18 measuring blade length, effective as of January 1st, 2005. And
19 it says, "Where a statute, regulation or ordinance refers to
20 knife blade length, the measurement shall be the straight line
21 extending from the tip of the blade to the forward-most aspect
22 of the hilt or handle." Doesn't stop you or make any
23 differentiation where the sharpened portion of the blade is or
24 is not.

25 And here the forward most aspect of the hilt or

1 handle is the bolster, which adds heft to the knife, but also
2 serves to protect your hand from sliding down to where it could
3 be cut by the blade. And so that suggests that the blade
4 begins where it stops. There is that very slightly wider,
5 non-sharpened portion of the blade on the other side of the
6 bolster. But it's not differentiated from the sharpened
7 portion on our knife in any way and it is plainly different
8 from the bolster.

9 Special Agent Weeks explained that the resistant
10 point -- resistance point that would stop the knife from
11 penetrating into a body or some other item if the knife was
12 used in a stabbing motion, as opposed to a cutting motion,
13 would be the bolster. But that unsharpened edge of the metal
14 just above the bolster that is contiguous and part of the metal
15 blade could penetrate.

16 So even if you called it a tang and not part of the
17 blade, the tang is that portion of the blade that continues
18 into the handle. It isn't part of the handle, like the bolster
19 is. And, indeed, Webster's defines the tang as, "The
20 projecting shank, prong, fang, or tongue, as on a knife, to
21 connect with the handle." And the Oxford English dictionary
22 defines the tang as, "An extension of a metal tool or
23 instrument, as a knife, by which it is secured to its handle."
24 So it doesn't differentiate. It doesn't include the tang in
25 the handle, it differentiates it from the handle in the way all

1 these cases and all these definitions differentiate the blade
2 from the handle.

3 And that is what led the court, in *People versus*
4 *Sito*, 994 N.E.2d 624, at 630 to 631, for the Illinois Court of
5 Appeal, in 2013, to determine that "The blade of a knife is
6 properly measured from the hilt to the tip of the blade." The
7 court examined the dictionary definitions and held that they
8 make it clear that a knife is comprised of two components -- a
9 handle and a blade -- and, thus, the part of the knife that's
10 not the handle is the blade.

11 In *Perez versus State* out of Texas, at 1999 Westlaw
12 521705, July 23rd, 1999, that that court affirmed the district
13 court's inclusion of the knife's tang in determining the
14 blade's length. Defining tang to be the very thing we're
15 talking about here, "The unsharpened portion of the knife blade
16 that attaches to the handle." The court rejected -- in that
17 case the issue was whether it was void for vagueness. But it
18 said, "Any ordinary person exercising common sense would be on
19 notice that a blade includes that portion of a knife between
20 the handle and the sharpened portion of the blade."

21 Similarly, *McMurrough versus State*, 995 S.W.2d 944,
22 at 946, also out of Texas, said the blade -- quoting a
23 different dictionary -- is, "The flat-edged cutting part of a
24 sharpened tool or weapon." But it rejected the defendant's
25 argument that a blade only included that, noting the common

1 meaning merely distinguishes the cutting part from the handle.
2 Therefore, a blade is the flat-edged part, which includes the
3 sharpened part of the instrument and any remaining flat-edged
4 part up to, but not including, the handle.

5 The court came out the same way in *United States*
6 *versus Deisher*, D-E-I-S-H-E-R, at 32 M.J. 579, 580. This was a
7 folding knife, but it talked about the entire folding metal
8 portion of the knife that extends from the handle to the tip of
9 the blade. And it found that the sharpened or honed and
10 unsharpened or unhoneed portion of the folding metal part was
11 part of the blade because it wasn't part of the handle or the
12 hilt. Similarly, *Rainer versus State*, 763 S.W.2d 615.

13 There are, true, some courts that have gone the other
14 way. *Brad vica versus State*, 760 P.2d 139, at 141, from Nevada
15 in 1988, where the court said, "In strictly construing the
16 statute, we hold that the blade of such a knife is that portion
17 which is customarily sharpened from the tip of the knife to the
18 tang." So they did not include the unsharpened extension of
19 the blade which forms the hinge connecting the blade to the
20 handle. Which already shows you the problem if they're calling
21 the tang a portion of the blade.

22 The *Sito* court rejected that as being inconsistent
23 with the common understanding and the dictionary definition of
24 a knife, which is a blade and a handle. That court also noted
25 that the statute that was before it, the *Sito* court, also

1 included daggers, dirks, and stilettos, items that stab and
2 don't just cut, and it reasoned that since the entire stabbing
3 portion, and not just the cutting portion, should be included
4 when you're talking about those knives, it should be included
5 when you're talking about the length of the blade.

6 I find all of that to be persuasive, as our statute
7 also includes a dagger, dirk, or stiletto within the definition
8 of what could be a dangerous weapon.

9 I do recognize that there is another case, *In re:*
10 *Rosalio*, that also agreed with the *Bradvisa* decision. And the
11 district court -- court in this district pointed out, as the
12 defense told me, that when Congress has provided no definition
13 for the particular term, the ordinary meaning associated with
14 that term applies. To me, that points to the dictionary
15 definitions that we've been talking about and the ordinary
16 concept of a knife having a blade and a hilt, and the fact that
17 even when people talk about the tang, they talk about it as
18 being part of the blade.

19 I do agree with the defense, with the statement of
20 law that if something is ambiguous, the Rule of Lenity requires
21 the court to resolve it in the defendant's favor. But I don't
22 find "blade" to be ambiguous in the circumstance.

23 Therefore, I find that the blade is 3 3/8 inches long
24 and, thus, exceeds 3 inches, and that the government has proved
25 this element beyond a reasonable doubt. I don't accept the

1 government's invitation that I could measure it on the curve
2 and get there that way. It isn't consistent with any of the
3 authorities that the government provided and there's no legal
4 or factual information in the record to suggest that that's how
5 it would be done.

6 And I also want to note that even if my ruling on
7 this point is overturned or incorrect and the blade in this
8 case is as it was measured by Special Agent Weeks, 2 7/8
9 inches, or just under 3 inches, that does not affect the
10 analysis of whether it is a deadly or dangerous weapon for
11 purposes of Counts 2 and 3 at all.

12 The defense provided no authority for the proposition
13 that just because Congress defined the dangerous weapon in
14 Title 40, § 5104, that that definition is somehow supposed to
15 be incorporated into the criminal code in Title 18 where the
16 § 5104 definition is not even referenced. They are very
17 different sections of the U.S. Code and very different
18 statutes.

19 40 U.S. Code § 5104(e) establishes sanctions for a
20 very narrow and specific type of conduct: Possession of a
21 deadly or dangerous weapon on a bounded physical area of a
22 federal property that is generally completely open to the
23 general public, the Capitol grounds. But 18 U.S. Code § 1752
24 covers entering and remaining in, or being disorderly in, any
25 number of spaces, not just the Capitol, but spaces that become

1 restricted to the public purely by virtue of the fact that a
2 Secret Service protectee is there. Given the high ranking
3 nature of those executive branch officials, and the national
4 security interest in their physical well-being and security,
5 the critical aspect from the legislature's point of view could
6 very well be the harm the weapon could cause, as opposed to an
7 eighth of an inch or two one way or the other.

8 And if we're going to range around the code and
9 incorporate a definition from elsewhere, 18 U.S. Code
10 § 930(g) (2) defines a dangerous weapon to be: Anything readily
11 capable of causing death or serious bodily injury, except it
12 doesn't include a pocketknife with a blade of less than
13 2.5 inches of length. So this knife would qualify.

14 Given the lack of any indication that Congress
15 intended to incorporate either definition in § 1752, we can't
16 just pick up one and say it applies. And the analysis I set
17 forth in connection with those counts controls, notwithstanding
18 the analysis of purposes of Count 4.

19 So I find the defendant guilty of Count 4, while
20 armed.

21 Count 5, entering or remaining on the floor of
22 Congress, 40 U.S. Code § 5104(e) (2) (A), the defendant conceded
23 the entire count, that he entered and remained on the floor of
24 either House or Congress without lawful authority to do so.
25 And he acted willingly and knowingly. And the evidence

1 certainly supports those concessions.

2 So I find the defendant guilty of Count 5.

3 Count 6, disorderly conduct in a Capitol building, 40
4 U.S. Code § 5104(e)(2)(D), that the defendant engaged in
5 disorderly or disruptive conduct in any of the United States
6 Capitol buildings. That element was conceded.

7 The second element, which is not conceded, is that
8 the defendant did so with the intent to impede, disrupt, or
9 disturb the orderly conduct of a session of Congress or either
10 House of Congress. I find, similarly to the way I did for
11 Count 3, that this element has been established beyond a
12 reasonable doubt based both on the defendant's statements
13 afterward about what he was trying to do and his statements and
14 actions while on the premises, that I've described in detail,
15 and the way the defendant conducted himself and declined to
16 depart until essentially forced to do.

17 The object of the conduct penalized in this provision
18 is not specifically focused on a particular congressional
19 proceeding, as in Count 1. It is simply the legislature's
20 ability to go about its business in an orderly way. The
21 defendant was clearly there and he took repeated intentional
22 steps that had the natural and probable consequence of
23 preventing this group of politicians, as he called them, from
24 doing their work.

25 The third element of that offense is that the

1 defendant acted wilfully and knowingly, and that is conceded.

2 And, therefore, I find the defendant guilty of
3 Count 6.

4 In sum, I have found the defendant not guilty of
5 Count 1, and guilty of Counts 2, 3, 4, 5, and 6.

6 At this point what we need to do is set a sentencing
7 date. But we need to discuss the question of the defendant's
8 bond.

9 Mr. Meinero, would you like to be heard?

10 MR. MEINERO: Yes, Your Honor. Thank you. In light
11 of the Court's verdict, we will not be opposed to Mr. Black
12 maintaining release pending sentencing.

13 But also in light of the Court's findings based on
14 the facts of this case, that he did engage in conduct -- or,
15 participated in conduct that was violent, although he may not
16 have assaulted officers himself, that he engaged in menacing
17 language towards officers within the Capitol and also that
18 he -- has been compliant during his release, the facts of the
19 case showed noncompliance with law enforcement at the Capitol.
20 We don't --

21 THE COURT: I'll go with noncompliance with law
22 enforcement at the Capitol. I'm not sure I spoke about
23 personal violence by Mr. Black.

24 MR. MEINERO: I'm referring to the heave-ho action,
25 Your Honor, in which he participated.

1 THE COURT: All right.

2 MR. MEINERO: In light of those factors, we think
3 that maintaining him on his current conditions would be a good
4 idea. So that is what we propose.

5 THE COURT: All right. I would not intend to change
6 his conditions, but I do find by clear and convincing evidence
7 that with these conditions he's not likely to be a flight risk
8 or to pose a danger to the community. He has been 100 percent,
9 perfectly compliant with his conditions of release since the
10 day I released him.

11 He will remain on all of his existing conditions; the
12 monitoring, everything else. But I'm not going to detain him
13 between now and his sentencing date.

14 So, happy to hear from you, Mr. Fleckinger, but not
15 that you have anything to add.

16 MR. FLECKINGER: You don't need to hear from me with
17 regard to that issue.

18 THE COURT: All right. Okay. I believe that the
19 probation office is still asking for 90 days, in terms of
20 preparing a presentence report. At least -- what does that
21 take us to, Mr. Haley?

22 THE COURTROOM DEPUTY: One second.

23 MR. FLECKINGER: April 13th, for the completion of
24 the report. I can -- I'm almost completely open, I would
25 imagine, in April. So if that's when you're thinking?

1 THE COURTROOM DEPUTY: 90 days takes us to April 13,
2 Your Honor.

3 THE COURT: All right. Let me see.

4 MR. FLICKINGER: The probation need 90 days for the
5 completion of the report and then we need a couple --
6 obviously, I'm going to end up preparing a sentencing
7 memorandum --

8 THE COURT: What usually happens is you get a
9 draft --

10 MR. FLECKINGER: No, I know.

11 THE COURT: -- and that has pretty much everything
12 and it can get you started.

13 MR. FLECKINGER: No, I will.

14 THE COURT: And then sometimes it's around the same
15 time that I get the final. But I think --

16 MR. FLECKINGER: I would suggest, if it's available
17 to the Court, around the end of April.

18 THE COURT: All right. Let me see what's happening
19 then.

20 THE COURTROOM DEPUTY: You have a trial.

21 THE COURT: I have an antitrust trial. Why don't we,
22 just because -- given that trial, can we set this down for the
23 first week in May? Does that make sense?

24 MR. FLECKINGER: Sure. That's fine.

25 THE COURT: All right. How about May 5th, 9:30 in

1 the morning?

2 MR. FLECKINGER: May 5 is fine. What time?

3 THE COURT: 9:30.

4 MR. FLECKINGER: Sure.

5 THE COURT: And I'll ask for the sentencing memoranda
6 on the 28th of April. And we'll do it -- it has to be in
7 person, a felony sentencing, now.

8 MR. MEINERO: May 5th at 9:30 is fine for the
9 government.

10 THE COURT: All right. Is there anything else I need
11 to take up right now on behalf of Mr. Black?

12 MR. FLECKINGER: No. Thank you.

13 THE COURT: Anything further for the government?

14 MR. MEINERO: No, ma'am. Thank you.

15 THE COURT: Anything further from you?

16 THE COURTROOM DEPUTY: No, that's -- I was at
17 sentencing all of a sudden.

18 THE COURT: No, no, we're not there yet.

19 All righty. I hope everybody in your family is safe
20 after all the tornadoes in Alabama. I looked, and I didn't
21 seem to think that it went through where you're from. So I
22 hope everybody is safe and sound when you get home.

23 THE DEFENDANT: Thank you, ma'am.

24 MR. FLECKINGER: Thank you.

25 THE COURT: Thank you.

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings.

Dated this 25th day of January, 2023

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
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