

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	CASE NO. 1:21-CR-00679-JEB
	:	
ROBERT WAYNE DENNIS,	:	
	:	
Defendant.	:	

GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION IN LIMINE

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this response to the Defendant’s Motion in Limine ECF No. 37. Defendant Robert Wayne Dennis, who is charged in connection with events at the U.S. Capitol on January 6, 2021, requests the Court to preclude the government from: (1) using terms such as “rioters,” “breach,” “assault,” “confrontation,” “insurrectionists,” “mob,” and “anti-government extremist” or other similar terms, to describe the events of January 6, 2021, pursuant to Federal Rules of Evidence 401-403; (2) referencing Dennis as an “anti-government extremist” or using captions on photos, videos, or exhibits referencing the same; and (3) introducing evidence, making prejudicial statements, or asking prejudicial questions about the character of the Defendant. The defendant’s motion in limine asks the Court to prevent the government from using language and evidence that accurately establishes and describes the defendant’s crimes. The material the defendant seeks to exclude fairly describes the riot, rioters, and his conduct. Defendant’s arguments lack merit, and his motion in limine should be denied.

FACTUAL BACKGROUND

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol at approximately 1:00 p.m. to certify the vote count of the Electoral College of the

2020 Presidential Election, which had taken place on November 3, 2020. Temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd that had gathered outside away from the Capitol building and the proceedings underway inside.

Shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts. Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

Defendant Robert Wayne Dennis, a 62-year-old male from Garland, Texas, traveled from his home in Texas by car and arrived in Washington, D.C. on January 6, 2021, where he attended the Stop the Steal rally. After the rally he went to the U.S. Capitol, where he joined violent rioters near the Upper West Terrace. While near the stairs to the Upper West Terrace, Dennis approached a line of Metropolitan Police Department Officers (MPD) that was busy trying to control the growing crowd of rioters. Dennis was wearing a black jacket, black beanie hat, dark glasses, a tan face covering, blue jeans, and gloves. Once near the stairs, he gathered other rioters, walked toward MPD officers, violently struggled with MPD officers, grabbed an officer's baton, took an officer to the ground, and knocked the baton out this officer's hands. His conduct, as well as the conduct of his fellow rioters, was captured that day through videos and photos. In July 2021 and October

2021, Dennis also participated in interviews with the Federal Bureau of Investigation (FBI). During these interviews, Defendant described his conduct on January 6, 2021.

PROCEDURAL BACKGROUND

On November 17, 2021, the Grand Jury returned an indictment charging the defendant, Robert Wayne Dennis, with various offenses resulting from his conduct at the United States Capitol on January 6, 2021. ECF No. 13. Dennis is charged with the following offenses: civil disorder, in violation of 18 U.S.C. § 231(a)(3) (Count 1); assaulting, resisting, or impeding certain officers, in violation of 18 U.S.C. § 111(a)(1) (Counts 2, 3, and 4); entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count 5); disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count 6); engaging in physical violence in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(4) (Count 7); disorderly conduct in the capitol grounds or buildings, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count 8); and an act of physical violence in the Capitol ground or buildings, in violation of 5104(e)(2)(F) (Count 9). ECF No. 13.

On November 8, 2022, Dennis filed this motion in limine. ECF No. 37. For reasons stated below, Dennis's motion in limine should be denied.

ARGUMENT

I. The Descriptors and Evidence Dennis Seeks to Preclude Accurately Describe the Events of January 6 and the Federal Rules of Evidence Do Not Preclude Them.

Evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.” Fed. R. Evid. 401. “The general rule is that relevant evidence is admissible,” *United States v. Foster*, 986 F.2d 541, 545 (D.C. Cir. 1993), a “liberal” standard, *United States v. Moore*, No. 18-cr-198, 2022 WL 715238, at *2 (D.D.C. Mar. 10, 2022). Additionally, 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). The Sixth Amendment’s Confrontation Clause guarantees a defendant the right “to be confronted with the witnesses against him.” U.S. Const. amend VI. The Sixth Amendment guarantees this right by allowing the defendant to confront the evidence including the ability to cross examine a witnesses’ testimony at trial. *Crawford v. Washington*, 541 U.S. 36, 49 (2004). Neither Rules 801, 802, 401 nor 403 supports Defendant’s requested relief.

The events that took place at the Capitol on January 6, 2021, may be properly described as a riot, breach, assault, or insurrection. Thousands of people forced their way into the Capitol building during the constitutionally mandated process of certifying the Electoral College votes, threatened the peaceful transfer of power after the 2020 presidential election, injured more than one hundred law enforcement officers, and caused more than two million dollars in damage and loss. This was not a protest. *See United States v. Paul Hodgkins*, 21-cr-188-RDM, Tr. at 46 (“I don’t think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”) (statement of Judge Moss).

Dennis argues that the Court should bar terms like “rioters,” “breach,” “confrontation,” “insurrectionists,” “anti-government extremism,” and “mob.” ECF No. 37 at 1. According to the defendant, such terms in a video or photo are violative of the defendant’s rights under the Sixth Amendment. The government may introduce these words at trial because they accurately depict the events that occurred on that day. The rules of hearsay do not prevent witnesses from describing

what they observed firsthand in words of their own choosing. At trial, Dennis will have the ability to confront those witnesses and question them about the evidence.¹

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. Indeed, 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.” *Berger*, 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.’”).

The government should not be required to dilute its language and step gingerly around the defendant’s crimes. Contrary to the defendant’s insinuations, 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. Indeed, after carefully considering the facts of other January 6 cases, this Court has recognized the riot as just such an attack. *See, e.g., United States*

¹ In *United States v. Garcia-Zarate*, 419 F. Supp. 3d 1176 (N.D. Cal. 2020), the court there permitted witnesses to “narrate and describe events in a video based on their own perceptions,” but precluded the use of “superimposed photos, labels, or comments.” *Id.* at 1178-79. Here, the government does not intend to use “labels” or “comments” to describe events; instead, witnesses will testify based on their experiences and perceptions.

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.”). Other judges of this District have reached a similar conclusion. *See, e.g., 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.

To that end, the government’s evidence will demonstrate how the mob’s concerted efforts disrupted Congress. Law enforcement officer witnesses will explain that, in expelling rioters, they could not distinguish between those rioters who were overtly violent and those who were not: everyone had to leave. This is because law enforcement could not predict who would act violently; any member of the crowd might be a threat to them. Indeed, throughout the day, individual officers found their attention divided by the need to monitor the whole crowd, rather than focusing on a specific individual. But for the defendant’s actions alongside so many others, the riot likely would have failed to delay the certification vote. *See United States v. Mazzocco*, No. 21-cr-54, Tr.

10/4/2021 at 25 (“A mob isn’t a mob without the numbers. The people who were committing those violent acts did so because they had the safety of numbers.”) (statement of Judge Chutkan). While, in this case, the court will judge the defendant based on his own actions, the context of the defendant’s actions will necessarily be placed before them—that context was a riot. Ultimately, the defendant provides no legal authority in support of his broad claim that witnesses and government prosecutors must only describe these events using certain words and with willful ignorance to all relevant contextual information.


Dennis also argues that the Court should preclude the government from” introduc[ing] evidence, mak[ing] prejudicial statements, or ask[ing] prejudicial questions about the character of the Defendant when character is not in issue and has no relevance to the crimes charged.” ECF No. 37 at 3. The Court ought to exclude irrelevant material, and the government will not seek to admit irrelevant evidence. But the defendant fails to provide (because he cannot) the requisite analysis for this Court to order any evidence excluded at this stage. In presenting the government’s case, the use of such evidence, despite the defendant’s bare contention, may be relevant to the extent that evidence bears on the defendant’s intent and other elements of the offenses with which he is charged. Any more specific challenges should be taken up at trial if the defendant can articulate particularized objections.

CONCLUSION

To accurately present the context of what took place at the Capitol on January 6, 2021, to wit: a riot, a breach, an assault and an insurrection, the government is required to so refer and Defendant's motion to preclude such language should be denied.

Respectfully submitted,

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