

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

UNITED STATES OF AMERICA	:	
	:	CASE NO.: 1:21-CR-599 (RBW)
v.	:	
	:	
DONNIE DUANE WREN	:	
	:	
Defendant.	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION IN LIMINE TO
PRECLUDE USE OF CERTAIN LANGUAGE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this opposition to Wren’s Motion in Limine (Inflammatory Words and Phrases), such as “mob,” “insurrection,” “attack on the Capitol,” “attack on democracy,” “attack on Congress,” and other references. ECF No. 59 at 1. In essence, Wren asks that the Court prevent the government from using language that accurately describes the defendant’s crimes. The language that Wren seeks to exclude fairly describes the riot, rioters, and his own conduct, and the Court should deny his motion.

BACKGROUND

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

Wren and his co-defendant, Thomas Harlen Smith, traveled from Alabama and Mississippi, respectively, to the Washington, D.C. area on or about January 5, 2021. They attended the “Stop the Steal” rally, then walked to the grounds of the United States Capitol, where they entered the restricted grounds. There, they joined in the ongoing riot.

Wren and Smith were in the Lower West Terrace Tunnel area at around 3:00 p.m. They made their way to the Tunnel entrance. Wren remained at the mouth of the Tunnel while Smith, carrying a flag attached to a flagpole, entered the Tunnel and approached the police line standing guard at the doors leading into the Capitol building. Moments later, Smith jammed the flagpole like a spear trying to stab at one of the glass windowpanes within the first set of Tunnel doors.

Less than an hour later, at approximately 3:50 p.m., Smith and Wren made their way to the Upper West Terrace, where they stood directly in front of the police line, walking back and forth and waving flags for approximately 10 minutes. A physical conflict began between the police and the crowd of rioters at approximately 4:21 p.m. Smith and Wren participated in this conflict, pushing back against the officers’ riot shields for approximately 25 seconds. Smith turned his back to the officers then used his body weight to push into a police riot shield. Wren leaned into one of the officer’s shields, using the weight of his body and his hands to push into the shield.

Smith, following the physical confrontation with the police line, charged into a crowd of rioters to kick an officer’s backside, then darted out of the crowd. Moments later, Smith threw a metal stick/pole at the police line. The metal stick/pole hit an officer in the head, causing the officer to stagger backwards. Smith then retreated into the crowd of rioters.

Smith and Wren left the Upper West Terrace area at approximately 4:30 p.m. and began their departure from the Capitol grounds.

Based on his actions on January 6, 2021, Wren was charged with Civil Disorder, in violation of 18 U.S.C. § 231(a)(3) (Count Two); Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a)(1) (Count Four); Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count Seven); Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count Eight); Engaging in Physical Violence in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(4) (Count Nine); and Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D).

ARGUMENT

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). Neither Rule 401 nor 403 supports Wren’s requested relief.

Wren argues that the Court should bar terms like “terrorist/terrorism,” “mob,” “militia,” “insurrection,” “sedition,” “treason,” “attack on the Capitol,” “attack on democracy,” “attack on Congress,” and “election denier”. ECF 59 at 1, 4. Wren argues these words/phrases “have no relevance to the issue of guilt or innocence and only tend to inflame and prejudice the jury.” ECF 59 at 4. Evidence or language is unfairly prejudicial if it has “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *United*

States v. Sanford Ltd., 878 F. Supp. 2d 137, 143 (quoting Fed. R. Evid. 403, advisory committee’s note). 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.’”).

Here, 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, many other members of this Court have recognized the riot as just such an attack. *See, e.g., United States v. Mostofsky*, 1:21-cr-138 (JEB), Sent. Tr. at 40–41, May 6, 2022 (describing the riot as an “attack,” describing the Capitol as “overrun,” and describing Mostofsky and other rioters as engaged in “an attempt to undermine [our] system of government.”); *United States v. Rubenacker*, 1:21-cr-193 (BAH), Sent. Tr. at 147–48, May 26,

2022 (describing the defendant as “part of this vanguard of people storming the Capitol Building” as part of the initial breach, and finding that his conduct “succeeded, at least for a period of time, in disrupting the proceedings of Congress to certify the 2020 presidential election”); *United States v. Languerand*, 1:21-cr-353 (JDB), Sent. Tr. at 33–34, January 26, 2022 (“[T]he effort undertaken by those who stormed the Capitol . . . involved an unprecedented and, quite frankly, deplorable attack on our democratic institutions, on the sacred ground of the United States Capitol building, and on the law enforcement officers who were bravely defending the Capitol and those democratic values against the mob of which the defendant was a part.”). None of this language is hyperbole; rather, these findings used vivid and violent language because they described a visceral and violent event. So, too, will prosecutors need to use appropriate language—and not euphemisms—to describe the nature and gravity of the Wren’s conduct.

CONCLUSION

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

Respectfully submitted,

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