

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

CLAYTON RAY MULLINS,

Defendant.

Case No. 21 Cr. 35 (RC)

**GOVERNMENT’S RESPONSE TO
DEFENDANT’S SENTENCING MEMORANDUM**

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 sentencing memorandum submitted by the defendant, Clayton Ray Mullins, requesting a significant downward variance from a Guidelines range of 41 to 51 months’ imprisonment to 12 months of home confinement. *See* Defendant Sentencing Memorandum (“Def. Sent. Memo”) at 1, ECF 411.

I. Mullins Mischaracterizes his Involvement in January 6th as “Charity, not Malice.”¹

In his memorandum, Mullins asks for a sentence of 12 months’ home confinement, because he has been on pre-trial release with no incident; he has significant community support; he has no criminal history; and he was there to help, not hurt, the officers. The government takes issue with this last assertion. Although only Mullins knows what he was thinking on January 6, 2021, his actions, as captured by multiple video clips, belie his assertion that he helped anyone. In fact, not one of Mullins’ actions on January 6th can be characterized as helping the police.

¹ “When mayhem erupted on the Capitol steps, Clayton chose charity, not malice, to aid the distressed souls around him. Surprised by the tumult, a lifelong instinct to serve others drove him to help people in peril.” Def. Sent. Memo at 3.

Mullins was initially at the barricade on the West Plaza, where he and fellow rioters pushed against the police line over and over again, until it finally broke at 2:28 p.m. Government's Sentencing Memorandum ("Gov. Sent. Memo") at 11-15, Exhs. 1, 3, 4, 5 (images) and Exh. 2 (video), ECF 408. Mullins did nothing to calm the crowd or extricate himself or others from the mob. The government has found no video that shows Mullins helping anyone -rioter or officer- during this time. Nor has Mullins proffered any. The only instance of "assistance" captured on video was when Mullins positioned himself on the Northwest stairs, after he and other rioters breached the police line at the West Plaza, to help rioters get closer to the Capitol building, from the West Plaza to the Lower West Terrace (LWT). Gov. Sent. Memo at 16, Exh. 7.

Once arrived at the mouth of the Tunnel on the LWT, Mullins waved fellow rioters forward, in an apparent attempt to get more people at the front line to push the police back further into the Tunnel. Gov. Sent. Memo at 17, Exh. 8. He then intentionally shoved himself into the Tunnel, and did everything he could to stay there, despite the officers trying to push the crowd out of the Tunnel. Gov. Sent. Memo at 18-20, Exh. 9 (video).

After Mullins was pushed out of the Tunnel, he did nothing to stop the violence. Instead, Mullins stood at the steps watching as officers were beaten, until he saw an opportunity, and then he walked up the steps, grabbed a fallen officer's leg, and pulled him into the crowd. Gov. Sent. Memo, Exhs. 10, 11, 12, 13, 14. After pulling Officer A.W. into the crowd, Mullins did not help him. Quite the opposite. He completely ignored the officer getting pummeled at his feet.

Mullins contends that he tried to help Officer A.W. "by pulling him away from co-defendants Sabol, Jersey and McAbee who were beating him." Def. Sent. Memo at 5. Mullins contends further that he turned his head away and "did not see that another officer was trying to

pull Officer A.W. into the Archway at the same time,” *id.* at 6, and that he let go of the officer’s leg “when he realized that an officer was assisting [Officer A.W.]” *Id.* None of these assertions are supported by videos of the event. *See* Gov. Exhs. 10, 11, 12, 13 and 14. At the time Mullins grabbed onto Officer A.W.’s leg and pulled, Officer A.W. was not being assaulted by anyone. Jersey was down the steps. Sabol was preoccupied with Officer B.M. And McAbee was still approaching. *See* Gov. Exh. 10 at 00:51-01:05.



Exhibit 10B (Exhibit 10 at 01:03)

*Mullins (circled in blue) reaches for Officer A.W.’s leg.
 Jersey is circled in green. Sabol is circled in grey. McAbee is circled in purple.*

The aerial photograph below provides another angle of the scene, approximately two seconds earlier.



Exhibit 16

Officer B.M. is prone on the ground. Mullins is circled in light blue. Stager is circled in dark blue. Courson is circled in red. McAbee is circled in purple. Barnhart is circled in yellow. Whitton is circled in orange. Jersey is circled in green. Sabol is circled in grey. Officer A.W.'s feet are circled in white.

Only after Mullins started pulling on Officer A.W.'s leg did McAbee join in. *See Gov. Exh. 11 at 00:30-00:45.* Mullins could have let go and allowed Officer A.W. to rejoin his fellow officers, who were feet away and actively trying to pull him back to safety. Mullins did not do that. Instead, he pulled on Officer A.W.'s leg for 20 seconds, enough time for McAbee to engage with and strike another officer, then turn back to Officer A.W. and help Mullins pull the officer down the stairs. Mullins only let go of Officer A.W.'s leg when McAbee and the officer started sliding down the stairs. And as Officer A.W. lay helpless on the steps, with McAbee on top of him and other rioters assaulting him, Mullins made no effort to come to his aid. Rather, he stood and watched the action at the opening of the Tunnel.



Exhibit 10C (Exhibit 10 at 01:30)

Mullins (circled in light blue) stands by as Stager (circled in dark blue), Courson (circled in red), McAbee (not visible), and other rioters stand over Officer A.W.

Officer A.W.'s BWC² captures this moment from his perspective:

² The Government is submitting Exhibit 17, the relevant section of Off. A.W.'s BWC video, as part of this response.



Exhibit 17A (Exhibit 17 at 01:23)

Mullins (circled in light blue) stands by as Stager (circled in dark blue), Courson (hands circled in red), McAbee (immediately above Officer A.W.), and other rioters stand over Officer A.W.

As McAbee held Officer A.W. down, Stager yelled, “Fuck you! Fucking traitor!” at the officer, while Courson grabbed at Officer A.W.’s waistband. Mullins just stood nearby. *See* Exh. 17 at 01:20-01:35.

Less than a minute later, when Officer B.M. got to his feet and attempted to head back to the safety of the police line, Mullins gesticulated wildly and shoved the officer back down the steps. Mullins characterized his assault on Officer B.M. as “Clayton directed [Officer B.M.] to safety away from the maelstrom of the Archway.” Def. Sent. Memo at 6. Mullins heard the rioters’ vitriol and saw the rioters beat the police with hockey sticks, flag poles, fists and bear spray.³ It is

³ In his letter to the Court, Mullins says he saw rioters “hitting policemen with a hockey stick and a flagpole and stomping and punching them. I thought [the rioters] were going to kill [the police].” Def. Letter at 3, ECF 411-1. Mullins further alleges in his letter that Officer B.M. “stumbled ... and that is when I caught him.” *Id.* That is not reflected in the videos of the event. Mullins did not catch any officer.

difficult to accept that Mullins, who had been in this heaving crowd for over two hours, thought that safety for the police was in the hands of the rioters.

Despite his assertions otherwise, Def. Sent. Memo at 3, Mullins also did nothing to assist the unconscious woman at the mouth of the Tunnel. After the police pushed Mullins out of the Tunnel, no video shows him leaning over to assist her. He did not attempt to shield her with his body once he got out of the Tunnel; he was not amongst the rioters who attempted to revive her; and he was not one of the rioters who dragged her to the police line. *See United States v. McAbee*, Gov. Trial Exh. 306 at 7:30 to 9:05. In fact, he completely ignored her and leaned over her prone body to grab Officer A.W.'s leg, twice. Then he rested on the steps, watching as other rioters moved her body and attempted to render aid. *See* Exh. 10 at 01:30-01:55.

Mullins stated that he “never had control over Officer A.W. as he briefly tried to pull him away from a violent assault;” he “illegally climbed the United States Capitol steps and assaulted an officer;” he “chose charity, not malice;” he “help[ed] people in peril;” and he “helped others in the crowd who were being trampled.” Def. Sent. Memo at 1, 2, 3, 5. In his letter, Mullins apologizes “for the harm that came to ... law enforcement that day and the damage done to the Capitol,” and acknowledges that he “was energized by the crowd” and should have “resisted the urge to follow the crowd and get close to [the] Capitol.” Def. Letter at 1. Mullins asserts that he tried to help rioters, that he “got pushed just inside the archway,” that he “shielded” the deceased woman, and that he tried to help both Officers A.W. and B.M. Def. Letter at 1, 3. Mullins said that he was ashamed for having gone to the Capitol, and was “very remorseful for the ones that lost their lives and [were] injured,” and ashamed to have a felony conviction. *Id.* at 4-5. Nowhere in his sentencing memorandum or his letter to the Court does Mullins acknowledge what he actually

did that day.

Mullins' description of his actions is a clear indication that he has not truly grappled with the true nature of his actions on January 6th. Mullins helped no one on January 6th; nor was he just a passive bystander to the mayhem around him. Mullins was an active member of the riot for at least two hours. He pushed against the police line at the West Plaza, waved on and assisted his fellow rioters towards the Capitol building, actively moved towards the Archway and shoved himself into to the Tunnel, waited for his opportunity and grabbed onto a fallen officer when the opportunity presented itself, pulled that officer down the stairs, shoved another officer back into the heaving crowd, and then left. He acknowledges none of these actions.

Respectfully submitted,

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