

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-3007
(Cr. No. 21-25 (RDM))

UNITED STATES OF AMERICA,

Appellee,

v.

JORDEN ROBERT MINK,

Appellant.

**UNITED STATES’ MEMORANDUM OF LAW AND FACT ON
APPEAL FROM PRETRIAL DETENTION ORDER**

Appellant Jorden Mink is charged with committing ten crimes, including multiple violent felonies, arising from his participation in the January 6, 2021, assault on the United States Capitol (12/13/21 Order (Doc. 45) at 3).¹ Mink’s crimes were captured in numerous videos, which the district court found to be “striking in their display of [Mink’s] violent and fervent participation in advancing the mob’s breach of the Capitol Building, including his successful efforts to shatter two large windows

¹ “Doc.” refers to the document number assigned by the district court’s electronic docket.

with a baseball bat, which enabled rioters to bypass law enforcement and to enter the building” (*id.* at 3-4). Mink also assaulted police officers who were protecting an entrance to the Capitol by, among other things, using what appears to be a flagpole to “repeatedly—and savagely—strike[] at the officers, who raise[d] their shields to meet his intense blows” (*id.* at 4). The district court denied Mink’s motion to revoke a previously imposed order detaining him pending trial, finding that “the violent nature of [Mink’s] acts on January 6 and his criminal history demonstrate that he would pose a danger to the community if released” (*id.* at 5). Mink cannot establish any error in this determination, much less the clear error required for reversal, and thus the district court’s order should be affirmed.

Factual Background

On January 6, 2021, a joint session of Congress convened at the U.S. Capitol to certify the vote count of the Electoral College for the 2020 Presidential election (Government’s Opposition to the Defendant’s Motion for Revocation of the Detention Order (Opp.) (Doc. 40) at 2). A large crowd of people gathered outside and forced entry into the Capitol

building at around 2:00 p.m. (*id.*). Members of Congress were evacuated, and the joint session was suspended until around 8:00 p.m. (*id.* at 3).

Mink was not just part of the crowd that violently breached the Capitol, but actively participated in the attack. Multiple videos show Mink standing on a Capitol building window ledge with a baseball bat, which he used to repeatedly strike a window until he knocked it out of its frame (Notice of Filing (Doc. 44) at 1-3; see also 12/13/21 Order at 4).² Other rioters used that opening to enter the Capitol building (Opp. at 3-4; 12/13/21 Order at 4). Mink himself also entered the Capitol; after he left, he helped to remove property from inside, including a chair that he passed to other rioters (Notice of Filing at 4). Mink subsequently used the baseball bat to shatter a second window next to the first (*id.*).

Mink then went to the Capitol's West Terrace entrance, where officers from the United States Capitol Police and D.C.'s Metropolitan

² The government's opposition to Mink's release motion contained screenshots from numerous videos that captured Mink's conduct at the Capitol on January 6. After the district court asked the government to provide the videos themselves, the government did so via a Notice of Filing that also briefly described the videos and identified where in the videos Mink can be seen. Together with this memorandum, the government is filing an unopposed motion to supplement the appendix with a disc containing the videos.

Police Department had massed within the entrance tunnel to prevent rioters from entering the building (Opp. at 5). There, Mink pushed his way to the front of the crowd and then repeatedly attacked the officers (*id.*). Mink began his assault by spitting and throwing objects at the officers, including a large traffic cone, a rectangular object that appears to be a step or a drawer, and multiple poles (*id.* at 5-7; see also Notice of Filing at 2). Mink then took what appears to be a flagpole and violently struck the officers until the pole broke (*id.*).

In several of the videos, Mink can be seen holding a red cell phone in his hand (Opp. at 4-5; Notice of Filing at 2). At one point, he appears to use it to take a video of the crowd (Opp. at 4; Notice of Filing at 2).

The government's post-January 6 investigation revealed that, on November 3, 2020—the date of the presidential election—Mink posted to his Instagram account a photo of himself holding an AR-15-type rifle with an “I voted” sticker (Opp. at 8). The commentary to the post reads: “‘The ballot is stronger than the bullet’ – Abraham Lincoln. Well . . . my magazines will be fully loaded just in case it’s not!” (*Id.*) Mink also posted a photo of himself at the Lincoln Memorial on January 3, 2021 (*id.*). On January 9, 2021, three days after he participated in the attack on the

Capitol, Mink unsuccessfully attempted to purchase another firearm (*id.* at 10).

Mink was arrested on January 18, 2021 (Opp. at 8). During the arrest, Federal Bureau of Investigation (FBI) agents found a loaded handgun on Mink's person and two loaded rifle magazines in his vehicle (*id.* at 10). The rifle ammunition was a size that would appear to fit the weapon Mink was holding in his November 3, 2020, Instagram post (*id.*). Law enforcement never found that firearm, which Mink's fiancée claimed was stolen by a family member (*id.* & n.7). The FBI agents also found in Mink's car an FBI-issued wanted poster seeking information on people involved in the January 6 Capitol riot; Mink was one of the ten rioters whose photos appeared on the poster (*id.* at 9).

When FBI agents searched Mink's home on January 18, they found a jacket and hat matching the clothing Mink was wearing in the videos of the January 6 attack on the Capitol (Opp. at 9). The agents did not find the red phone Mink was seen holding in those videos (*id.* at 10). Instead, when the FBI agents arrested Mink, he was carrying a different cell phone (1/29/21 Transcript (Tr.) (Doc. 40-2) at 17). Receipts in Mink's vehicle indicated that he had bought that phone after January 6 (*id.*).

Procedural History

On January 27, 2021, a grand jury indicted Mink for seven crimes: (1) obstructing, influencing, or impeding an official proceeding, 18 U.S.C. § 1512(c)(2); (2) theft of government property, 18 U.S.C. § 641; (3) destruction of government property, 18 U.S.C. § 1361; (4) entering or remaining in a restricted building or grounds with a deadly or dangerous weapon, 18 U.S.C. § 1752(a)(1), (b)(1)(A); (5) disorderly conduct in a Capitol building, 18 U.S.C. § 5104(e)(2)(D); (6) engaging in an act of physical violence in the Capitol building or grounds, 18 U.S.C. § 5104(e)(2)(F); and (7) parading, demonstrating, or picketing in a Capitol building, 18 U.S.C. § 5104(e)(2)(G) (Indictment (Doc. 5)). A superseding indictment issued February 24, 2021, added three charges: (8) civil disorder, 18 U.S.C. § 231(a)(3); (9) assaulting, resisting, or impeding officers using a dangerous weapon, 18 U.S.C. § 111(a)(1), (b); and (10) assaulting, resisting, or impeding officers, 18 U.S.C. § 111(a)(1) (Superseding Indictment (Doc. 7) at 4-5).

On January 29, 2021—after the first indictment but before the superseding one—a magistrate judge in the Western District of Pennsylvania held a detention hearing and ordered Mink detained

pending trial, after finding that the government had established by clear and convincing evidence that Mink posed a danger to the community (Order of Detention Pending Trial (Doc. 40-1) at 2). Noting that the red cell phone Mink had on January 6 “mysteriously disappeared” after the attack, the judge believed that Mink “may attempt to obstruct justice moving forward if [he was] released” (1/29/21 Tr. 86). The judge further found that Mink’s “involve[ment] in this crime against our democracy and that [he] engaged in a violent attack on the United States Capitol, evidence[d] . . . nothing but a complete and total disregard for the Government and for the rule of law” (*id.*). “[F]or that reason,” the judge continued, “I don’t think that any conditions I impose would be effective because I don’t think that [Mink] would abide by them” (*id.*).

Mink was transferred to the District of Columbia and made his initial appearance there on March 16, 2021. On November 9, 2021, Mink moved the Honorable Rudolph D. Moss to revoke the magistrate judge’s detention order and to release him on conditions pending trial (Motion for Revocation of Detention Order (Doc. 38)).

On December 13, 2021, Judge Moss entered a written order denying Mink’s release motion (12/13/2021 Order). Reviewing the question of

Mink’s release *de novo*, Judge Moss found “that the factors set forth in 18 U.S.C. § 3142(g) weigh in favor of [Mink’s] continued pretrial detention” (*id.* at 2). First, the nature and circumstances of Mink’s offenses “weigh[ed] in favor of detention” (*id.* at 3). Mink “is charged with committing ten crimes, including multiple violent felonies, while participating in the violent attack on the U.S. Capitol that occurred on January 6, 2021” (*id.*). Mink assaulted law enforcement officers and did so using a dangerous or deadly weapon, which “are violent crimes that threaten the safety of the community” (*id.*). “Simply put, ‘if any crime establishes danger to the community and a disregard for the rule of law, assaulting a riot-gear-clad police officer does’” (*id.* (quoting *United States v. Fairlamb*, 535 F. Supp. 3d 30, 39 (D.D.C. 2021) (Lamberth, J.))).

Judge Moss found that the strength of the evidence “also weighs in favor of detention” (12/13/2021 Order at 3). The government had submitted “video recordings reflecting some of [Mink’s] conduct at the U.S. Capitol on January 6, 2021” (*id.*). The court found the videos to be “striking in their display of [Mink’s] violent and fervent participation in advancing the mob’s breach of the Capitol Building, including his successful efforts to shatter two large windows with a baseball bat, which

enabled rioters to bypass law enforcement and to enter the building” (*id.* at 3-4). In one video, Mink

appears to be standing outside of an entrance to the Capitol, where a group of police officers in riot gear is under assault by the mob. [Mink] pushes his way to the front of the crowd and hurls objects—which appear to include a traffic cone, a large rectangular-shaped object, and a pole—at the officers from close range. Unsatisfied, [Mink] descends back into the crowd, finds more objects, and again violently throws them at the police officers, who are under siege. Finally, [Mink] reappears with what appears to be a flag pole, again pushes up to the front line, and repeatedly—and savagely—strikes at the officers, who raise their shields to meet his intense blows.

(*Id.* at 4.) The court found this evidence to be “substantial and disturbing,” and to “strongly support[] the government’s view that [Mink] would pose a threat to the community if released” (*id.*).

Mink’s history and characteristics also supported his continued detention, “albeit less clearly than the other factors” (12/13/2021 Order at 4). Mink’s “criminal record includes two convictions for disorderly conduct, two convictions for driving under the influence, one conviction for simple assault, and one conviction for trespass” (*id.*). Although none of these were felony offenses, Mink’s “record at least suggests that [he] has a penchant for disregarding the law” (*id.*). The court found this conclusion to be “buttressed by evidence that [Mink] was ‘aware that [he]

was wanted by the FBI’ shortly after January 6, but his cell phone ‘mysteriously disappeared’ between January 6 and his arrest on January 18, 2021” (*id.* (quoting 1/29/21 Tr. 86)).

Finally, Judge Moss found that the “fourth and final factor, danger to individuals or the community, weighs in favor of detention” (12/13/21 Order at 4). The “violent nature of [Mink’s] acts on January 6 and his criminal history demonstrate that he would pose a danger to the community if released” (*id.* at 5). And Mink’s Instagram post “suggesting that he was prepared to use an assault-style rifle if unsuccessful at the ballot box” was “chilling” given Mink’s “sustained, violent assault on the police officers who were protecting the Capitol on January 6, 2021” (*id.*).

Ultimately, “[i]n considering the four factors together,” the district court concluded “that no condition or combination of conditions of release could reasonably assure the safety of the community” and denied Mink’s motion for release pending trial (12/13/21 Order at 5-6).

The district court extended Mink’s time to appeal its order to January 26, 2022 (12/26/21 Minute Order). *See generally* Fed. R. App. P. 4(b)(4). Mink timely noted an appeal that day (Doc. 49).

ARGUMENT

The District Court Did Not Err in Denying Mink’s Motion for Release.

Under 18 U.S.C. § 3142(e)(1), a district court “shall order the detention” of a defendant pending trial if the court “finds that no condition or combination of conditions will reasonably assure . . . the safety of any other person and the community[.]” As more commonly stated, “the relevant inquiry is whether the defendant is . . . a ‘danger to the community.’” *United States v. Vasquez-Benitez*, 919 F.3d 546, 550 (D.C. Cir. 2019). In conducting its dangerousness inquiry, the district court must consider “(1) the nature and circumstances of the offense charged . . . ; (2) the weight of the evidence . . . ; (3) the history and characteristics of the person . . . ; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person’s release.” 18 U.S.C. § 3142(g). This Court reviews the district court’s dangerousness determination for clear error. *See United States v. Munchel*, 991 F.3d 1273, 1282 (D.C. Cir. 2021).

Here, the district court committed no error, much less clear error, when it found that Mink poses a danger to the community and thus declined to release him before trial. The court considered each of the

§ 3142(g) factors and appropriately found all of them to weigh in favor of detention. Both the nature and circumstances of the offenses with which Mink is charged and the powerful evidence he committed those crimes strongly support the court’s dangerousness determination. Multiple videos of the January 6 Capitol attack show Mink (1) repeatedly striking Capitol building windows with a baseball bat until he breaks them, allowing other rioters to bypass law enforcement and enter the building; (2) entering the Capitol building himself, and then helping to vandalize it by removing property from inside; and then (3) violently assaulting law enforcement officers attempting to protect the Capitol by spitting at them, throwing multiple large objects at them, and then striking officers with what appears to be a flagpole until the pole breaks. As this Court has recognized, those, like Mink, “who actually assaulted police officers and broke through windows, doors, and barricades . . . are in a different category of dangerousness than those who cheered on the violence or entered the Capitol after others cleared the way.” *Munchel*, 991 F.3d at 1284. The Court has repeatedly relied on this distinction when affirming

pretrial detention orders involving defendants who engaged in violence on January 6.³

The district court also appropriately found that Mink’s history and characteristics and the seriousness of the danger he poses weigh in favor of detention. Mink’s history of committing criminal offenses, including one for assaultive conduct, “at least suggests that [he] has a penchant for disregarding the law” (12/13/2021 Order at 4). This conclusion is further supported by the fact that Mink knew he was wanted by the FBI following the January 6 attack and chose to discard the cell phone he was carrying that day (*id.*). *See, e.g., Sandlin*, 853 F. App’x at 683 (affirming pretrial detention order where defendant attacked police officers on January 6 and, in the weeks after the attack, “crisscross[ed] the country’ to evade law enforcement, used encrypted communications, and deleted

³ *See, e.g., United States v. Lang*, No. 21-3066, 2022 WL 127437, at *1 (D.C. Cir. Jan. 12, 2022); *United States v. Fitzsimmons*, No. 21-3069, 2021 WL 6102443, at *1 (D.C. Cir. Dec. 17, 2021); *United States v. Brown*, No. 21-3063, 2021 WL 5537705, at *1 (D.C. Cir. Nov. 17, 2021); *United States v. Gieswein*, No. 21-3052, 2021 WL 5263635, at *1 (D.C. Cir. Oct. 19, 2021); *United States v. Khater*, 856 F. App’x 322, 323 (D.C. Cir. 2021); *United States v. Sandlin*, 853 F. App’x 682, 682-83 (D.C. Cir. 2021); *United States v. Quaglin*, 851 F. App’x 218, 219 (D.C. Cir. 2021); *United States v. Sibick*, 848 F. App’x 442, 442 (D.C. Cir. 2021).

incriminating social media posts”). And both Mink’s violent conduct on January 6 and his November 3, 2020, Instagram post “suggesting that he was prepared to use an assault-style rifle if unsuccessful at the ballot box” support the court’s finding that Mink would pose a serious danger to the community if released (*id.*). *See, e.g., Quaglin*, 851 F. App’x at 219 (affirming pretrial detention order where defendant attacked police officers on January 6 and also “admitted to participating in violence in furtherance of his political beliefs in the months leading up to January 6, 2021”).

Mink’s arguments do not establish otherwise. Mink claims that “the district court failed to properly review the detention hearing record as required by 18 U.S.C. § 3145(b) and failed to hold its own evidentiary hearing” (Appellant’s Memorandum of Law and Fact (Mem.) at 10). But nothing in § 3145(b) requires the district court to hold a second evidentiary hearing; rather, the statute merely provides that, “[i]f a person is ordered detained by a magistrate . . . the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.” As other courts have recognized, when a district court reviews

a magistrate judge's detention order under § 3145(b), "there is no statutory requirement that the [district] court hold a hearing. . . . Rather, the court may hold a hearing, if it so chooses." *United States v. Oakes*, 793 F. App'x 744, 747 (10th Cir. 2019). The district court "has the discretion to hold or decline to hold a new evidentiary hearing. . . . A court will generally not hold a new hearing 'absent newly-discovered evidence that was not available to the magistrate judge.'" *United States v. Christie*, No. 3:17-cr-00257 (VAB), 2018 WL 4845745, at *2 (D. Conn. Oct. 4, 2018) (citing *United States v. Hall*, 651 F. Supp. 13, 14 (N.D.N.Y. 1985), and quoting *United States v. Streater*, No. 3:97-CR-232 (EBB), 1999 WL 1067837, at *3 (D. Conn. Nov. 5, 1999)). Mink identifies no newly discovered evidence and nowhere argues that the district court abused its discretion when it failed to hold a second evidentiary hearing. There is thus no merit to his suggestion that the district court's detention order should be reversed based on its failure to hold a new evidentiary hearing.

Mink's attempts to downplay the seriousness of his conduct likewise do not provide a basis for reversal. Mink asserts, for example, that although he violently assaulted law enforcement officers on January 6, "he at no time caused bodily injury to anyone" (Mem. at 14). He claims

that he is alleged merely “to have broken some windows” during the Capitol riot (*id.*). He notes that, although he used a baseball bat to break Capitol building windows and what appears to be a flagpole to assault law enforcement officers, he is not alleged to have possessed “a firearm, knife, or any type of incendiary device” on January 6 (*id.*). He suggests that the court should have ignored the disappearance of the cell phone he carried on January 6 because he “was under no legal obligation to maintain any personal property he possessed before, during, or after the events at the Capitol Building” (*id.* at 12). And he claims that his November 3, 2020, Instagram post implicitly threatening violence if the election did not go his way was “a single social media post depicting Mr. Mink legally possessing a firearm” (*id.* at 13). Whatever the (dubious) merits of these assertions, none should leave this Court “with the definite and firm conviction that a mistake has been committed.” *Munchel*, 991 F.3d at 303 (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). This Court’s “standard of review is for clear error, not to substitute [its] judgment for that of the District Court.” *United States v. Hale-Cusanelli*, 3 F.4th 449, 457 (D.C. Cir. 2021). Here, the district court appropriately found Mink’s conduct on January 6 to be

“violent and fervent,” “savage[],” and “disturbing,” and correctly determined that Mink’s criminal history and disappearing cell phone “at least suggest[] that [Mink] has a penchant for disregarding the law” (12/13/21 Order at 3-4). These conclusions were not clearly erroneous. *See generally Hale-Cusanelli*, 3 F.4th at 457 (finding no clear error even where “[r]easonable minds might disagree on that [dangerousness] determination”).

Mink (at 15-19) compares his case to *Hale-Cusanelli* and *Munchel*, but neither of those cases supports his argument that the district court clearly erred here. The defendant in *Hale-Cusanelli* was a military veteran with no criminal history who “wore a suit and tie” to the Capitol on January 6, “did not bring with him any form of weapon,” and entered the Capitol building “through doors that had already been kicked open.” 3 F.4th at 451. Notwithstanding the defendant’s lack of violent conduct on January 6, the Court found no clear error in the district court’s dangerousness finding based on the defendant’s “extensive history of statements condoning violence against those of other races and religions[.]” *Id.* at 457. Here, in contrast, Mink not only has a history of committing crimes, albeit minor ones, but, more importantly, used

multiple weapons, including a baseball bat and what appears to be a flagpole, to breach the Capitol building and to violently attack the officers guarding it. If the district court in *Hale-Cusanelli* did not clearly err in ordering that defendant detained pending trial based upon the danger he posed to the community, the district court here surely committed to such error.

Munchel likewise fails to advance Mink's position. There, the Court remanded for the district court to reassess the defendants' dangerousness because the district court "did not explain" how it reached its conclusion that the defendants posed a danger to the community where they "assaulted no one on January 6; . . . did not enter the Capitol by force; and . . . vandalized no property[.]" *Munchel*, 991 F.3d at 1283. Mink, however, did all of those things, and more. As noted above, this Court has repeatedly found that "those who actually assaulted police officers and broke through windows, doors, and barricades . . . are in a different category of dangerousness than those who cheered on the violence or entered the Capitol after others cleared the way." *Id.* at 1284. The district court committed no error when it relied on Mink's assaultive and violent

conduct on January 6 to conclude that he posed a danger to the community and should be detained pending trial.

CONCLUSION

WHEREFORE, the government respectfully requests that the district court's detention order be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 27(d)

I HEREBY CERTIFY pursuant to Fed. R. App. P. 32(g) that this motion contains 3,852 words, and therefore complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). This motion has been prepared in 14-point Century Schoolbook, a proportionally spaced typeface.

/s/

DANIEL J. LENERZ

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing memorandum to be served by electronic means, through the Court's CM/ECF system, upon counsel for appellant, Komron Jon Maknoon, Esq., kjm@maknoon-law.com, on this 18th day of March, 2022.

/s/

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