

DOJ MOVES TO LABEL JOHN SULLIVAN A PROFESSIONAL PROVOCATEUR

Yesterday, the government released a superseding indictment for John Earle Sullivan, the guy who filmed video of the insurrection and then sold it to CNN and other media outlets. In addition to adding two crimes for his possession of a knife he boasted of having in his own video but then allegedly lied to the FBI about, the government moved to seize almost \$90,000 in forfeiture. The move is an aggressive step that may be justifiable for Sullivan, but has implications for the five or so other propagandists arrested as part of the riot.

Sullivan was first charged, with civil disorder and trespassing, on January 13, after several FBI interviews. His arrest affidavit described how, repeatedly during the video he filmed of the riot, he made comments egging on the rioters. At the moment he caught Ashli Babbitt's shooting on film, he had pushed himself to the front of that mob by calling out that he had a knife.

When the government first indicted Sullivan on February 3, the added obstruction and abetting charges to the civil disorder and trespass charges. That happened at virtually the same time the government moved to revoke his bail, based off several violations of the limits imposed on his use of social media. Sullivan responded by arguing that all that media contact was his job; his lawyer even provided evidence of the funds CNN have paid him to obtain his video of the insurrection. In response, Sullivan remained on bail with more explicit limits to his Internet access.

The one public discovery notice provided to Sullivan so far includes:

- Earlier publications showing his efforts as a provocateur, including “Let’s start a riot” and “How to Take Down a Monument”
- His criminal arrest record that includes association with past outbreaks of violence at protests
- An interview he did on Infowars after the riot
- Subpoenas to CenturyLink and Beehive Broadband, suggesting they were tracking traffic on Sullivan’s website

Then things went quiet in his case until, on May 7, his lawyer filed a motion to get funds in a Utah bank released he said had been seized without warning. It argued that Sullivan is entitled to a hearing at which he can contest that he committed a crime and the funds being seized came from the crime.

Accordingly, the federal courts have held that when the government restrains a criminal defendant’s assets before trial on the assertion that they may be subject to forfeiture, due process requires that the defendant be afforded a post-deprivation, pretrial hearing to challenge the restraint. If certain minimal conditions are satisfied, “[t]he wholesale use of...forfeiture proceedings [should cause] grave concern when the Government has clearly focused its law enforcement energies and resources upon a person and attempts to restrain his property...” United States v. \$39,000 in Canadian Currency.” 801 F.2d 1210, 1219

n.7 (10th Cir. 1986).

The United States Supreme Court has made clear that pretrial seizure, pursuant to 21 U.S.C. Sec. 853 (f) requires two probable cause findings: (1) that the defendant committed an offense permitting forfeiture and (2) that the property at issue has the requisite connection to that crime.” Kaley v. United States, 134 S. Ct 1090,1095 (2014).

At the outset, defendant notes that he needs the funds in the seized bank account in order to pay his rent and household necessities. Additionally, the proceeds of the seized bank account are not the product of criminal activity alleged in the indictment.

Thus the new indictment, I guess.

The indictment ties the forfeiture not to Sullivan’s civil disorder charge, which would seem to make sense given Sullivan’s past history of profiting off inciting violence at peaceful protests, but instead to Sullivan’s obstruction charge. That seems to argue that Sullivan’s filming of the insurrection, in which he cajoled police to step down (including from the confrontation before Babbitt was shot) and cheered on the seizure of the Capitol, was part of the successful obstruction of the vote count.

Given Sullivan’s past incitement (which, ironically, was well-documented by leftist activists months before Trump supporters and Sullivan’s own brother tried to base an Antifa false flag claim on Sullivan’s presence), this may be a reasonable argument for Sullivan.

But there are at least five other right wing propagandists who were present at the insurrection for whom that might be a really troubling precedent (an InfoWars video editor Sam Montoya also witnessed and magnified Babbitt’s death).

Again, this may all be merited. And perhaps DOJ is tying Sullivan's new charges for his knife to the seizure. But it seems an important development to track.

Update: Sullivan's motion for a hearing on the seizures alluded to more discovery. This letter may describe that discovery. It describes a slew of subpoenas, including Square, JP Morgan, Venmo, Discover, Amazon, and others. In other words, the letter reflects a concerted effort to figure out how Sullivan's finances work.

But the more interesting detail is item 21, reflecting the HIGHLY SENSITIVE estimate from the Architect of the Capitol estimating the cost of replacing a window. Sullivan's own video strongly implies he broke that window. But he hasn't been charged with it yet. That's important, because he could be – and if he is, it could trigger terrorism enhancements.

It was harsh of the government to seize Sullivan's funds. But what might come next will be far more harsh.

Update: Justin Rohrlich found and shared the seizure warrants. The logic behind this seizure is as follows:

¶31: The affidavit lays out evidence of Sullivan admitting he's not a journalist, including him saying on January 5 that he made that claim up "on the fly."

¶32: A description of how after the riot, Sullivan changed his webpage description to incorporate a claim to be a journalist.

¶34: Citations to the hearing on his release violations in which he presented the contracts he got for the video.

¶35: A brag, right after he left the Capitol, saying, "Everybody's gonna want this. Nobody has it. I'm selling it, I could make millions of dollars. ... I brought my megaphone to instigate shit."

¶36: A summary of the deposits paid for use of

the video.