

STATEMENT OF FACTS

Your affiant, Special Agent [REDACTED] of the Federal Bureau of Investigations (“FBI”), is assigned to the FBI Washington Field Office’s Violent Crime Task Force tasked with investigating violent crimes and major offenders in Washington D.C. As a Special Agent with the FBI, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, 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 away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the U.S. Capitol; however, between 1:00 p.m. and 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, 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.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building

without authority to be there.

Your affiant has reviewed multiple videos taken on January 6, 2021, during the aforementioned events and observed BARTON WADE SHIVELY engaging in physical and assaultive contact with multiple law enforcement officers.

On or about January 11, 2021, the FBI generated and circulated to the public a Be On the Lookout (“BOLO”) Bulletin which included Photograph #55-AFO. The photograph was obtained from the videos observed by your affiant. (See below image –second from left bottom left row)

SEEKING INFORMATION

ASSAULT ON FEDERAL OFFICERS AND VIOLENCE AT THE UNITED STATES CAPITOL

WASHINGTON, D.C.
JANUARY 6, 2021

Photograph #49-AFO Photograph #50-AFO Photograph #51-AFO Photograph #52-AFO Photograph #53-AFO

Photograph #54-AFO Photograph #55-AFO Photograph #56-AFO Photograph #57-AFO Photograph #58-AFO

DETAILS

The Federal Bureau of Investigation’s (FBI) Washington Field Office is seeking the public’s assistance in identifying individuals who made unlawful entry into the United States Capitol Building and assaulted federal law enforcement personnel on January 6, 2021, in Washington, D.C.

Anyone with information regarding these individuals, or anyone who witnessed any unlawful violent actions at the Capitol or near the area, is asked to contact the FBI’s Toll-Free Tipline at 1-800-CALL-FBI (1-800-225-5324) to verbally report tips. You may also submit any information, photos, or videos that could be relevant online at fbi.gov/USCapitol. You may also contact your local FBI office or the nearest American Embassy or Consulate.

When calling to provide a tip on one of these individuals, please reference the above photo number, including the AFO.

Field Office: Washington D.C.

www.fbi.gov

On January 14, 2021, the FBI office in Harrisburg, Pennsylvania notified your affiant that they received a tip from an individual, identified as Witness 1, identifying SHIVELY as the person

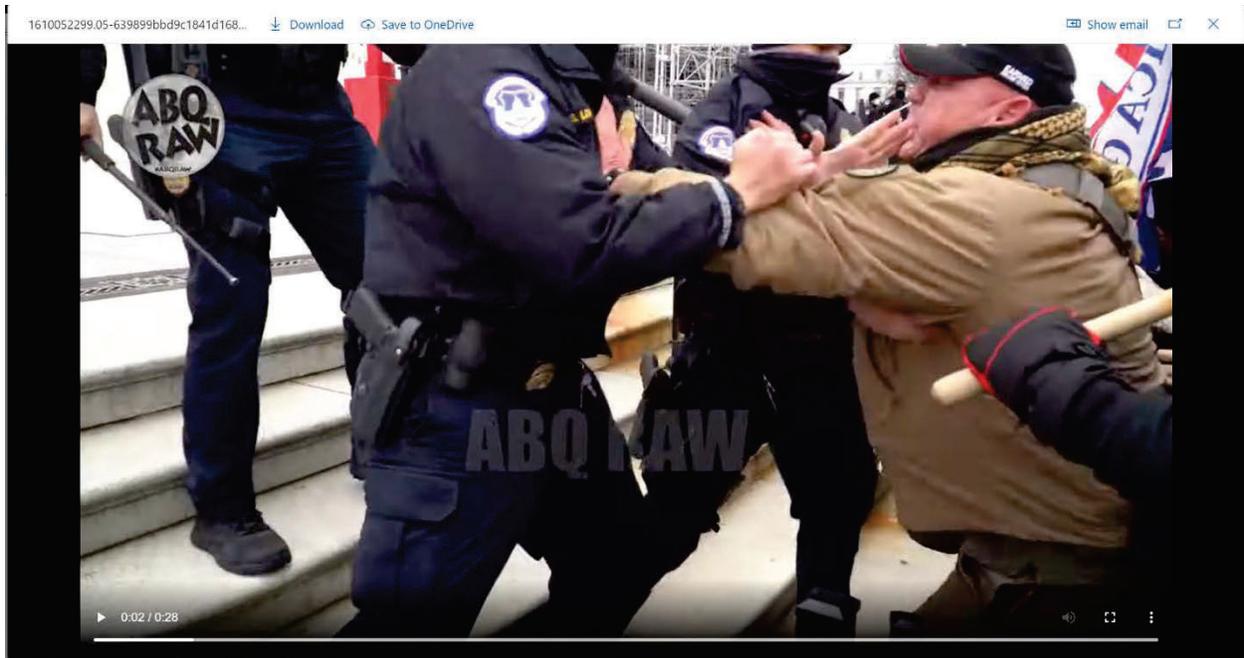
on the FBI Bulletin Photograph #55-AFO. A comparison of SHIVELY's driver's license photo and the photo from the Bulletin appeared to match. In the FBI Bulletin, SHIVELY is identified as Photograph #55-AFO is shown wearing a hat with the United States Marines logo. The Harrisburg FBI office confirmed that SHIVELY served in the United States Marines from on or about 1985 to on or about 1992 with an Honorable Discharge.

On the same evening of January 14, 2021, SHIVELY contacted local law enforcement to admit that he was at the U.S. Capitol during the January 6, 2021 incident. He admitted to seeing his photograph circulating on the news and wanted to self-surrender to the FBI. SHIVELY agreed to a voluntary interview with FBI agents from the Harrisburg FBI Office on January 14, 2021.

Before the interview began, the FBI agents advised SHIVELY that the interview was voluntary and that he was free to end the interview at any time. During the interview, SHIVELY admitted to driving to Washington, D.C. with friends to attend the Trump rally on January 6, 2021. SHIVELY further stated that he and his friends walked to the U.S. Capitol grounds and that a significant number of protestors broke through the first set of barricades. After which, SHIVELY explained that he was in the back of the crowd, but once the barricades were broken down by other rioters, SHIVELY walked over the broken-down police barriers and up the U.S. Capitol steps where law enforcement officers were standing protecting the U.S. Capitol. SHIVELY stated that when he confronted the law enforcement officers, he was pushed back, SHIVELY admitted he became angered at that time. SHIVELY admitted "I got caught up in the moment." and grabbed a police officer by his jacket and began yelling at the officer.

Consistent with SHIVELY's statement to Agents, your affiant reviewed video footage from a public tip received by the FBI's Public Affairs Office, file path 1610052299.05-639899bbd9c1841d168de1e5500df3a57683a47e-file-0_1of1_YouTube.mp4_clip_264_292. The video shows SHIVELY shoving a U.S. Capitol Police Officer on what appears to be the U.S. Capitol steps on January 6, 2021.

The screenshot below, which is derived from the above-mentioned video, shows SHIVELY, as he shoves the U.S. Capitol Police Officer, wearing a similar hat with the United States Marines logo, scarf and coat to the individual identified in Photograph #55-AFO.



During the interview with agents, SHIVELY admitted to a second incident physical and assaultive encounter with law enforcement officers. SHIVELY stated he was walking down a line of officers who were protecting the U.S. Capitol from rioters, when an officer repeatedly pushed SHIVELY with his baton and commanded SHIVELY to move away. SHIVELY admitted to punching the officer on the officer's riot helmet.

Consistent with SHIVELY's statement to agents, your affiant reviewed video footage that was obtained from a public tip received by the FBI's Public Affairs Office, file path 1610076426.47-5d07de11c91d4bb362b9a68ecac3e5347ac9456e-file-1_3of3_IMG_3399.MOV. From the review of the video, your affiant observed USCP officers and SHIVELY engaged in a physical altercation. SHIVELY is seen in a crowd of rioters struggling with police officers, repeatedly striking or attempting to strike the officers, and physically pushing the police line. SHIVELY, along with the other rioters, appears to be attempting to gain further access to the U.S. Capitol grounds.

The screenshots below, which are derived from the above-mentioned video, shows SHIVELY wearing a similar hat with the United States Marines logo, scarf and coat to the individual identified in Photograph #55-AFO and the individual in the public tip YouTube video.





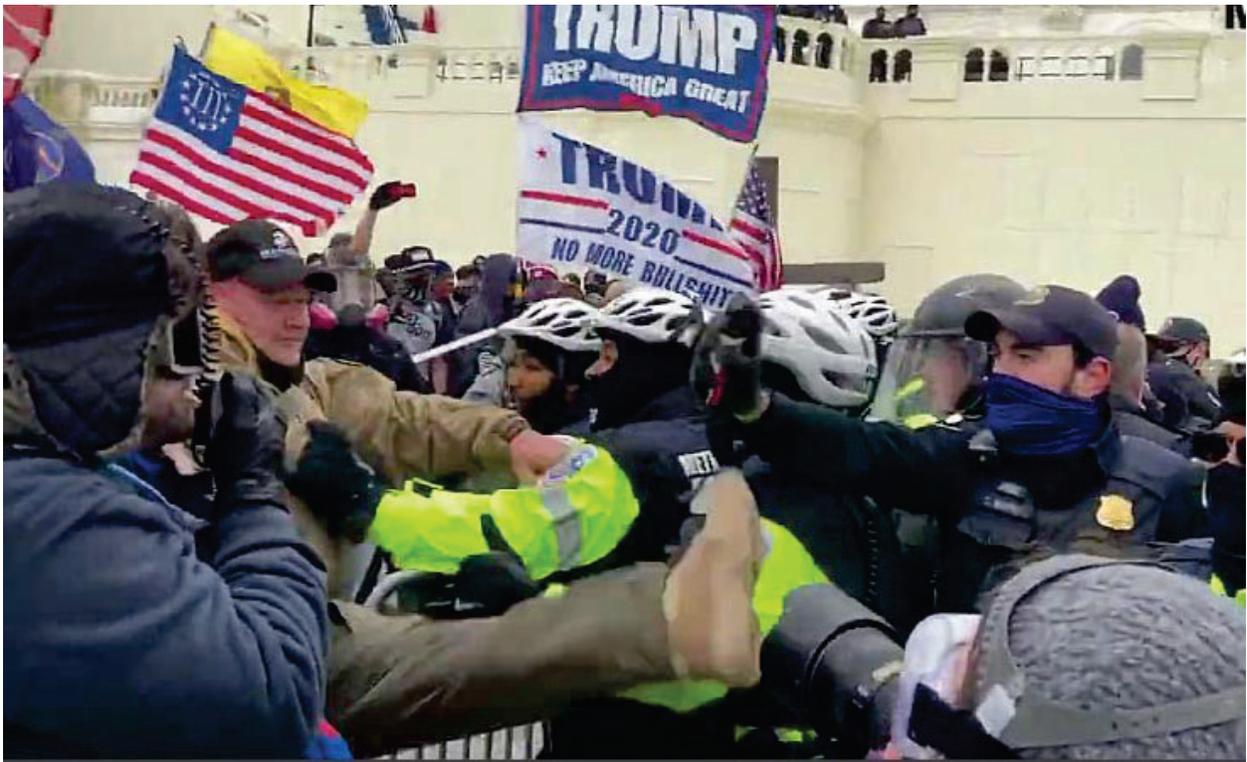
Moreover, in the interview with the FBI, SHIVELY admitted to a third incident of assaultive contact with law enforcement officers on the U.S. Capitol grounds. SHIVELY stated that when he observed three law enforcement officers at a later time, SHIVELY recognized one of the police officers as one that had confronted him earlier. SHIVELY saw that one of the officers was holding a large can of mace and SHIVELY attempted to kick the mace can out of the officer's hand. When SHIVELY attempted to kick the officer holding the mace can, he also physically "touched" the officer he recognized earlier with his hand. SHIVELY was then maced and SHIVELY became blinded by the mace and retreated.

Consistent with SHIVELY's statement to agents, your affiant two videos showing footage of the aforementioned events that occurred on January 6, 2021. The Instagram video <https://www.instagram.com/p/CJt9WdGACeO>, titled Battle At The Capitol Gets Bloody As Patriots Storm The Building, was posted by Instagram user @savwith1n and the YouTube video <https://www.youtube.com/watch?v=YzxvVi8wkrU>, titled Townhall's Frontline Footage of Capitol Building Riots posted by YouTube user StatusCoop on January 6, 2021, which shows numerous protestors confronting and law enforcement officers at the U.S. Capitol.

During the review of these videos, your affiant observed SHIVELY, engaging in physical and assaultive contact with multiple District of Columbia Metropolitan Police Department (MPD) officers on the U.S. Capitol grounds. SHIVELY is observed swinging his left arm towards a MPD officer, hereafter referred to as "MPD-1", and hitting the MPD-1's left arm. At the same time, SHIVELY is also observed kicking another MPD, hereafter referred to as "MPD 2", with his boot, striking MPD-2 in the left arm. These officers were observed wearing uniforms consistent with MPD officers.

The screenshots derived from the Instagram and YouTube videos below, show SHIVELY wearing a similar hat with the United States Marines logo, scarf and coat to the individual identified in Photograph #55-AFO and the public tip videos.



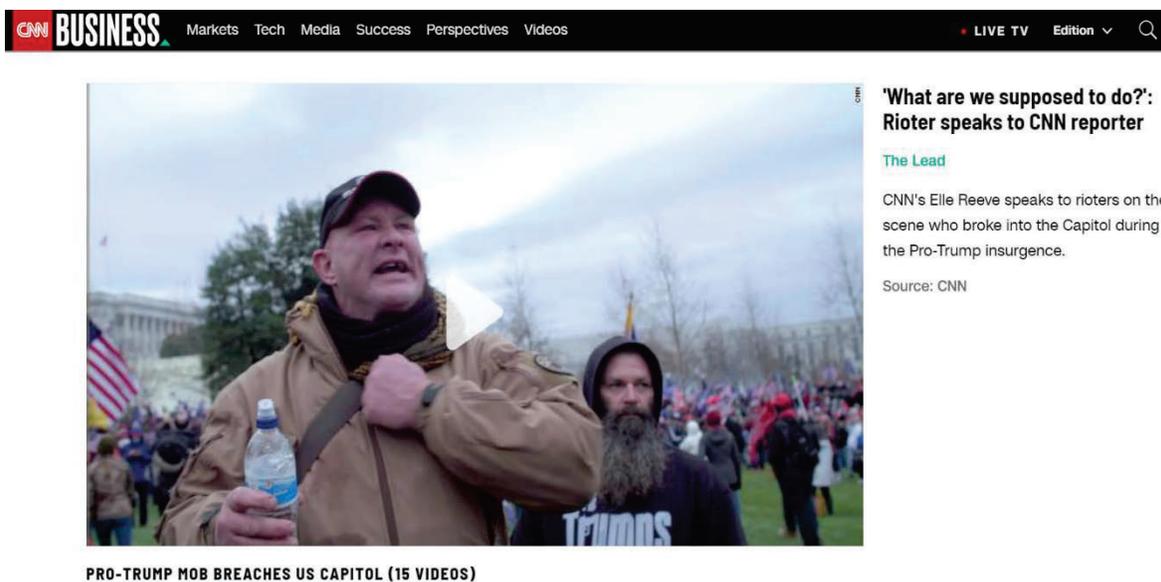


During the interview, SHIVELY was shown the above captioned screenshot and SHIVELY confirmed his identity in the photograph.

During the interview with the agents, SHIVELY also admitted that the third incident was shown on the news and posted on social media. Furthermore, SHIVELY told the agents that he has the video stored on this phone and agreed to show the agents once he regained access to his phone, which was currently in his vehicle.

SHIVELY also admitted to the agents during the interview that after the final incident, he was interviewed by a CNN reporter. Your affiant conducted an open-source search and discovered a video link, <https://edition.cnn.com/videos/business/2021/01/07/capitol-riot-inside-look-reeve-pkg-lead-vpx.cnn/video/playlists/congress-affirms-president-elect-biden-win>, of a CNN reporter interviewing SHIVELY.

During the CNN interview, SHIVELY appears to be wearing a similar hat with the United States Marines logo, scarf and coat to the individual identified in Photograph #55-AFO as well as all the above-mentioned videos. A screenshot from the CNN interview is shown below.



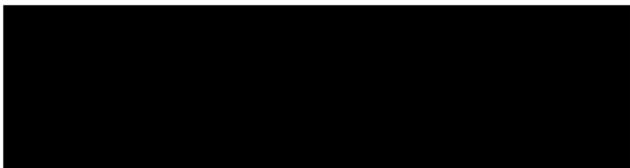
Based on the foregoing, your affiant submits there is also probable cause to believe that SHIVELY violated 18 U.S.C. § 111(a)(1) and § 2 which makes it unlawful to (1) forcibly assault, resist, oppose, impede, intimidate, or interfere with any officer or employee of the United States or of any agency in any branch of the United States Government while engaged in or on account of the performance of official duties, or aid, abet, counsel, command, induce or procure its commission. The uniformed members of the U.S. Capitol Police are officers of the United States.

Your affiant submits there is probable cause to believe that SHIVELY violated 18 U.S.C. § 231(a)(3) and § 2 which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function, or aid, abet, counsel, command, induce or procure its commission. For purposes of Section 231 of Title 18, a federally protected function means any function, operation, or action

carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof. This includes the Joint Session of Congress where the Senate and House count Electoral College votes.

Additionally, your affiant submits that there is probable cause to believe that SHIVELY violated 18 U.S.C. § 1752(a)(1), (2), and (4) which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; and (4) knowingly engages in any act of physical violence against any person or property in any restricted building or grounds; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that SHIVELY violated 40 U.S.C. § 5104(e)(2)(D)(E) and (F), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; (E) obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings; (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.



FEDERAL BUREAU OF
INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 18th day of January 2021.

 2021.01.18
12:18:55
-05'00'

ZAIA M. FARUQUI

U.S. MAGISTRATE JUDGE