

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

UNITED STATES OF AMERICA

v.

DERRICK EVANS,

Defendant.

Case: 1:21-MJ-00016

Assigned to: Judge G. Michael Harvey

Assigned Date: 1/8/2021

Description: COMPLAINT W/ ARREST WARRANT

VIOLATIONS:

**18 U.S.C. § 1752(a),
(Restricted Building or Grounds)**

**40 U.S.C. § 5104(e)(2)
(Violent Entry or Disorderly Conduct)**

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT
AND ARREST WARRANT**

I, David J. DiMarco, being first duly sworn, hereby depose and state as follows:

PURPOSE OF AFFIDAVIT

1. This Affidavit is submitted in support of a Criminal Complaint charging DERRICK EVANS with violations 18 U.S.C. § 1752(a) and 40 U.S.C. § 5104(e). I respectfully submit that this Affidavit establishes probable cause to believe that EVANS (1) did knowingly enter or remain in any restricted building or grounds without lawful authority, or did knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct, and (2) did willfully and knowingly 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 any deliberations of either House of Congress. Specifically, on or about January 6, 2021, EVANS traveled to Washington, D.C., and knowingly and willfully joined and encouraged a crowd of individuals who forcibly entered the U.S. Capitol and impeded, disrupted, and disturbed the orderly conduct of business by the United States House

of Representatives and the United States Senate.

BACKGROUND OF AFFIANT

2. I have been a Special Agent with the Federal Bureau of Investigation since May, 2004. I am currently assigned to the Northern Virginia Violent Crime Task Force, Criminal Division of the Washington Field Office of the FBI. As an FBI Agent, I have participated in numerous investigations involving unlawful narcotics distribution, organized crime, bank robberies, homicide, kidnappings, threats cases, unlawful firearms cases and other violent criminal offenses. In these investigations, I have been involved in the application for and execution of numerous arrest and search warrants related to the aforementioned criminal offenses. Through my training and experience, I am familiar with the actions, habits, traits, methods, and terminology utilized by violent criminal offenders.

3. Unless otherwise stated, the information in this Affidavit is either personally known to me, has been provided to me by other individuals, or is based on a review of various documents, records, and reports. Because this Affidavit is submitted for the limited purpose of establishing probable cause to support an application for an arrest warrant, it does not contain every fact known by me or the United States. The dates listed in this Affidavit should be read as "on or about" dates.

BACKGROUND

4. 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. Vice President Mike Pence was present

and presiding in the Senate chamber.

5. With the joint session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. Temporary and permanent barricades surround 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 approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. At such time, the joint session was 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 Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows. Shortly thereafter, at approximately 2:20 p.m., 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 session resumed.

STATEMENT OF FACTS SUPPORTING PROBABLE CAUSE

6. On January 6, 2021, DERRICK EVANS, DOB 4/2/1985, a resident of West Virginia, streamed live to his Facebook page, www.facebook.com/DerrickEvansTheActivist, a video depicting EVANS joining and encouraging a crowd unlawfully entering the U.S. Capitol. I have identified EVANS as the person operating the livestream not only from context, but also by comparing the voice of the individual operating the livestream to EVANS' voice in a campaign

video—EVANS is a recently elected member of the West Virginia House of Delegates—that EVANS posted to his Facebook page at <https://www.facebook.com/DerrickEvansTheActivist/videos/derrick-evans-thats-the-truth/176714066936197/>. EVANS' voice in the campaign video is consistent with the voice of the individual operating the livestream. In addition, as noted below, EVANS identifies himself by first and last name during the recorded video capturing the offense.

7. EVANS has since deleted the video from his Facebook page, but a user of the website Reddit posted a copy of EVANS' livestream at https://www.reddit.com/r/WestVirginia/comments/krxnz2/delegate_derrick_evans_breaking_into_the_united/. I have reviewed the video, which is approximately 5 minutes and 19 seconds long. Among other conduct, it shows:

- a. At the outset, EVANS is in the midst of a large crowd gathered outside a large, closed set of double doors to the U.S. Capitol. The doors appear to be at least 12 feet tall, with an ornamental metal design and a large window paced approximately 7 feet high in each door.
- b. Almost immediately, EVANS makes a comment to the effect that he has pepper spray in his right eye. Approximately 4 seconds into the video, a comment bubble visible on the livestream by a Facebook user named Gina Murabito reads, "be some dummies to go inside so they all get locked in & arrested".
- c. Approximately 28 seconds into the video, EVANS shouts, "There we go! Open the door!" EVANS then begins to chant, "Our house! Our house!"
- d. Approximately 40 seconds into the video, EVANS states, "We're at the door now. There's cops on the inside stopping us now."

- e. Approximately 49 seconds into the video, EVANS reiterates that he cannot see out of his right eye, presumably because of pepper spray.
- f. Approximately 1 minute and 34 seconds into the video, EVANS shouts, “The door is cracked,” as individuals in the front of the crowd appear to successfully pry open the doors and begin entering.
- g. Approximately 1 minute and 42 seconds into the video, EVANS shouts, “We’re going in!” and “They’re in, they’re in, they’re in...”
- h. Approximately 2 minutes and 22 seconds into the video, EVANS chants at the individuals in the front of the crowd at the doorway, “Move! Move! Move!”
- i. Approximately 2 minutes and 42 seconds into the video, EVANS shouts, “We’re in, we’re in, we’re in...let’s go, keep it moving, baby!” The crowd then begins to slowly push through the doorway.
- j. Approximately 3 minutes and 3 seconds into the video, EVANS states that he has pepper spray in his eye and mouth.
- k. Approximately 3 minutes and 50 seconds into the video, EVANS crosses the threshold of the doorway and enters the U.S. Capitol.
- l. Approximately 3 minutes and 56 seconds into the video, EVANS shouts, “We’re in, we’re in! Derrick EVANS is in the Capitol!”
- m. For the remainder of the video, EVANS walks through the Capitol.
- n. Approximately 4 minutes and 11 seconds into the video, EVANS approaches a U.S. Capitol Police officer and appears to fist-bump him while stating, “We still respect you, all right?”
- o. Approximately 4 minutes and 52 seconds into the video, EVANS shouts, “No

destruction of anything! No vandalizing property, no vandalizing!

p. Approximately 5 minutes and 15 second into the video, right before it ends, EVANS states, "I don't know where we're going. I'm following the crowd."

8. I have also viewed public posts on EVANS' Facebook page, some of which I believe are potentially relevant to EVANS' motive and intent.

9. For instance, on December 28, 2020, EVANS posted a meme, with a picture of President Donald J. Trump, and the text, "FIGHT FOR TRUMP. JANUARY 6. We're Comin'!". EVANS included the caption, "Anyone else going to DC on Jan 6th?"



10. On December 30, 2020, EVANS posted another meme showing President Trump and the text, "TAKE AMERICA BACK. BE THERE. WILL BE WILD. D.C., JANUARY 6, 2021. EVANS captioned the post, "One week from today! Who's going?"



Derrick Evans - The Activist

December 30, 2020 at 10:53 AM · 🌐

One week from today! Who's going?



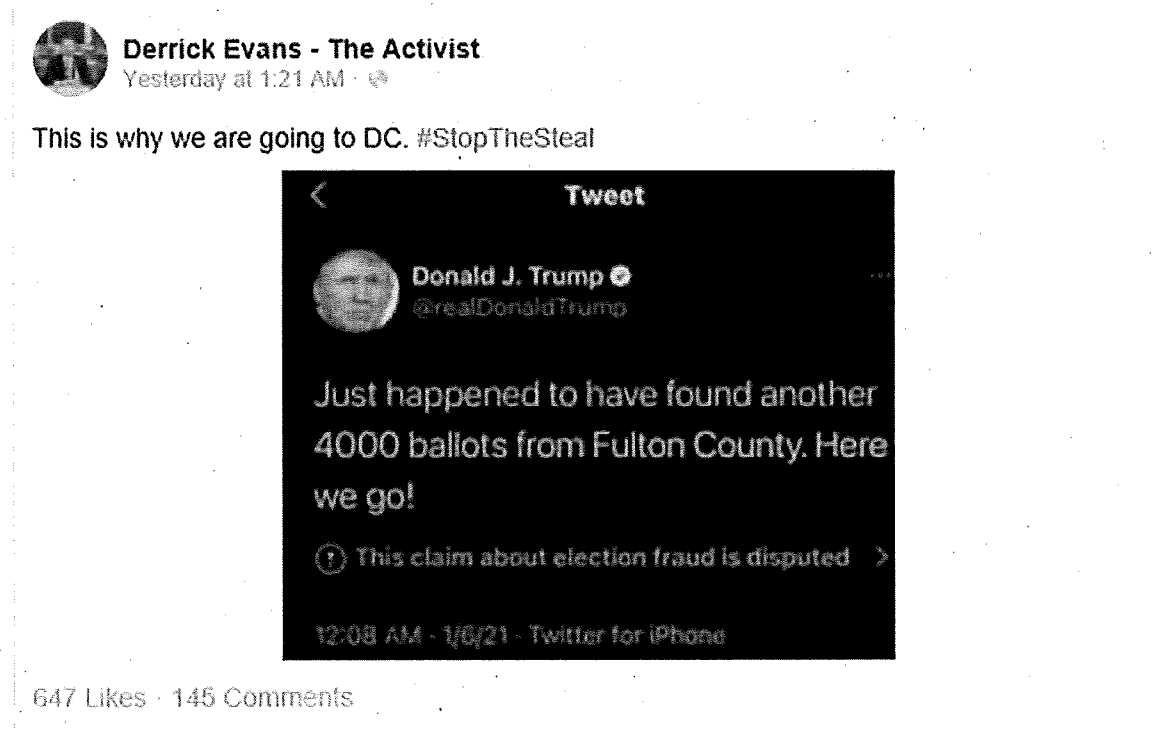
1,098 Likes · 74 Comments

11. On December 31, 2020, EVANS posted another meme featuring a photograph of President Trump, and the text, "A STORM IS COMING...AND THERE IS NOTHING THE LEFT CAN DO TO STOP IT!"

12. On January 5, 2021, at 6:59 p.m., EVANS posted a photo of Washington, D.C., with the caption, "We have two charter buses leaving the local area in 3 hours. I can't wait for tomorrow. #StopTheSteal." At 10:06 p.m., EVANS posted a photo that appeared to show individuals seated

inside a charter bus with the caption, “Two bus loads of Patriots from WV, KY, and Ohio are loaded up and heading to DC. #StopTheSteal.”

13. At 1:21 a.m. on January 6, 2021, EVANS posted a screenshot of a tweet by President Trump with the caption, “This is why we are going to DC. #StopTheSteal.”



14. Also on January 6, 2021, EVANS posted videos of crowds in Washington, D.C., on the National Mall and outside the Capitol. In one of these videos¹ taken outside of the Capitol prior to the livestream above, at the approximate 1 hour, 35 minute, 38 second mark, EVANS states, “They’re making an announcement right now saying if Pence betrays us you better get your mind right because we’re storming that building.” He then laughs and says, “I’m just the messenger, so don’t be hating on me. I’m just telling you what I’m hearing right now on the ground.” As described above, however, the subsequent video of EVANS entering the Capitol is no longer posted

¹ Available at <https://m.facebook.com/DerrickEvansTheActivist/videos/2462496777392229> (last viewed on January 7, 2021).

to his Facebook account.

15. Later on January 6, 2021, EVANS posted the following “official statement” to his Facebook page:

I want to thank everyone for their prayers today. I am on the bus headed back home to WV. As many of you know, for the last few years, I have traveled across the country to film many different events. Today, I had the opportunity to film another event in DC. I want to assure you all that I did not have any negative interactions with law enforcement nor did I participate in any destruction that may have occurred. I was simply there as an independent member of the media to film history.

I note that Evans classifies himself as a “political candidate” on his Facebook page and does not appear to identify himself as a member of the media.

CONCLUSIONS OF AFFIANT

16. Based on the foregoing, your affiant submits that there is probable cause to believe that EVANS violated:

- a. 18 U.S.C. § 1752(a), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; (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; (3) knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions, obstruct or impede ingress or egress to or from any restricted building or grounds; or (4) knowingly engage 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 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; and

b. 40 U.S.C. § 5104(e)(2), which makes it a crime for an individual or group of individuals to willfully and knowingly (A) enter or remain on the floor of either House of Congress or in any cloakroom or lobby adjacent to that floor, in the Rayburn Room of the House of Representatives, or in the Marble Room of the Senate, unless authorized to do so pursuant to rules adopted, or an authorization given, by that House; (B) enter or remain in the gallery of either House of Congress in violation of rules governing admission to the gallery adopted by that House or pursuant to an authorization given by that House; (C) with the intent to disrupt the orderly conduct of official business, enter or remain in a room in any of the Capitol Buildings set aside or designated for the use of— (i) either House of Congress or a Member, committee, officer, or employee of Congress, or either House of Congress; or (ii) the Library of Congress; (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; or (G) parade, demonstrate, or picket in any of the Capitol Buildings.

17. As such, I respectfully request that the court issue an arrest warrant for EVANS.

The statements above are true and accurate to the best of my knowledge and belief.

SA DAVID J. DIMARCO
SPECIAL AGENT DAVID J. DIMARCO
FEDERAL BUREAU OF INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephone, this 8 day of January, 2021.



G. Michael Harvey
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HON. G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE