

Case: 1:22-mj-00262

Assigned To : Faruqui, Zia M.

Assign. Date : 11/30/2022

Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, Stephen R. Lee, is a Special Agent assigned to the Federal Bureau of Investigation (“FBI”) Huntsville Resident Agency, Birmingham Division. I have been a FBI Special Agent assigned to the Birmingham Division since 2017. I have received specialized training regarding investigative techniques, evidence collection, and evidence preservation. I have participated in criminal investigations relating to counterterrorism, specifically domestic terrorism. Through my training and experience, I am familiar with the strategy, tactics, methods, ideology and practices of domestic terrorism and anti-government extremists. Currently, in addition to my regular duties, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent with the FBI, I am authorized by law or by a Government agency to engage in or supervise the prevention, detection, 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 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 Capitol; however, around 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, 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 sessions resumed.

Earlier this day, at approximately 1:00 p.m., a crowd of violent rioters assembled on the West Front of the United States Capitol. USCP formed a line of bike racks extending from the north end of the West Front to the south end to act as a barrier against the crowd. Officers were standing watch behind this line and fending off repeated attempts by the rioters to pull on the bike racks, either with their hands or with ropes and straps.

At approximately 2:00 p.m., some people in the crowd forced their way through, up, and over the barricades and law enforcement. The crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by USCP officers or other authorized security officials. At such time, the certification proceedings were still underway, and the exterior doors and windows of the United States Capitol were locked or otherwise secured. Members of law enforcement attempted to maintain order and keep the crowd from entering the United States Capitol.

At approximately 2:30 p.m., significant sections of the police line on and near the United States Capitol's Lower West Terrace broke as the rioters in the crowd swarmed and overwhelmed the law enforcement officers. Some of the rioters were able to penetrate the scaffolding, a position that gave them access to the stairs to the upper terraces where there are several key doors, including the doorway to the Lower West Terrace, also referred to as the "tunnel." Officers from the USCP and the Washington, D.C. Metropolitan Police Department (MPD) formed a police line in the tunnel blocking that entrance to the United States Capitol building and were repeatedly fending off assaults by some of the rioters. At approximately 2:42 p.m., rioters began entering the tunnel and ambushing the officers. The rioters broke the glass and forced the doors open. In response, the USCP and MPD officers formed a police line blocking that entrance to the U.S. Capitol building. From approximately 2:42 p.m. and on, numerous rioters were consistently attempting to breach the police line that formed in the tunnel. The rioters used various weapons, as well as the force of their bodies, in an attempt to overcome the officers. Many of the rioters assaulted MPD and USCP officers by hurling objects towards the officers, physically striking officers with batons and other blunt instruments, using lights to distract and disorient the officers, using electrical shock devices, crushing officers between the doors and walls of the confined space, and by deploying chemical sprays and fire extinguishers against the officers.

During national news coverage of the aforementioned events, video footage which appeared to have been 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.

FACTS SPECIFIC TO BRYAN SHAWN SMITH

Based on an initial review of publicly available video footage, USCP surveillance footage, and body worn camera ("BWC") footage of officers who responded to the United States Capitol,

a heavy set male wearing an army green jacket, a camouflage baseball hat, and (at times) black sunglasses, and having a light brown beard and mustache, can be seen repeatedly yelling at, impeding, and engaging in a group assault against law enforcement officers guarding the United States Capitol on January 6, 2021. That individual has been identified as BRYAN SHAWN SMITH, as described below.

Prior to joining the assault in the tunnel, SMITH engaged with law enforcement officers outside the scaffolding described above near the United States Capitol's Lower West Terrace. BWC shows SMITH confronting officers at a security barricade in this area at 2:10pm (Image 1), and resisting an officer's efforts to get him to leave the area at 2:29 pm (Image 2) (the yellow circles added to the images identify SMITH unless otherwise noted):



Image 1



Image 2

After the rioters breached the security barricades on the Lower West Terrace, a group of officers tried to fall back behind a door underneath the above-mentioned scaffolding. The BWC image below (Image 3), recorded at 2:31 pm, shows officers ducking under the scaffolding while the cream-colored door at the entrance to the scaffolding, on the right side of the image, is locked:



Image 3

Approximately 45 seconds later, the door was opened, and SMITH held the door open and refused an officer's command to step away from the doorway to allow the officer to close door (Image 4; the armed individual with the black gloves on the left of the image is an officer):



Image 4

A review of USCP surveillance footage, MPD BWC footage, and videos posted on YouTube revealed SMITH subsequently participated in a violent assault against multiple law enforcement officers in the tunnel. SMITH also carried a stun gun into the tunnel and gave it to a fellow rioter. The “tunnel” is a narrow point of entry on the Lower West Terrace of the Capitol, circled below:

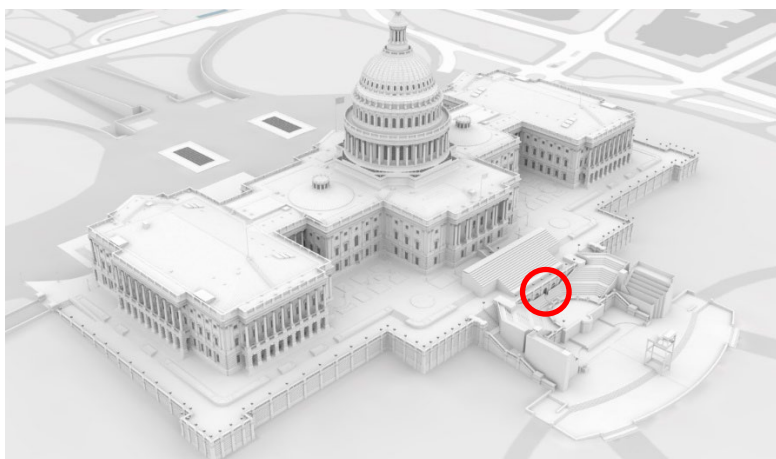


Image 5

From approximately 2:49 p.m. to 2:50 p.m., USCP surveillance footage captured SMITH entering the tunnel on the Lower West Terrace and making his way toward the front of the mob that was confronting the police line that was positioned just off camera, as seen Images 6 and 7 below.

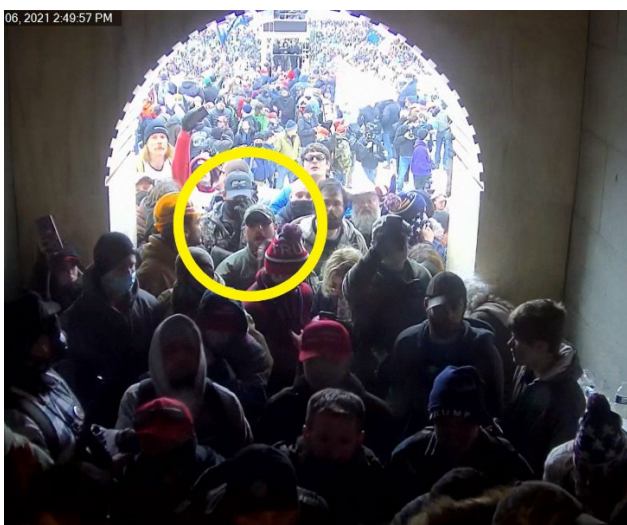


Image 6



Image 7

At approximately 2:53 pm, USCP surveillance footage captured SMITH appearing to spark a stun gun that he had removed from his pocket moments earlier; the stun gun can be seen illuminated as SMITH holds it in front of him (Image 8):



Image 8

SMITH then passed the stun gun to another rioter inside the tunnel (Image 9; the stun gun is being held by SMITH in his outstretched hand shown in the red circle).



Image 9

Within approximately one minute, the stun gun was passed from the rioter who received it from SMITH, to another rioter, and then to yet another rioter, Vitali Gossjankowski.¹ Image 10 below shows Gossjankowski brandishing the stun gun inside the tunnel within one minute of SMITH handing it off in the same location (the red circling shows Gossjankowski brandishing the stun gun toward the officers who are located just offscreen; the yellow circling shows SMITH, who has moved to the back of the tunnel):

¹ Gossanjowski has been indicted for several crimes arising from January 6, 2021, and his case is currently pending. *See* United States v. Gossjanjowski, 21-cr-123 (PLF).



Image 10

SMITH exited the tunnel quickly after passing off the stun gun. Upon exiting the tunnel, SMITH pumped his fist in an apparent effort to inspire others in the large crowd to press into the tunnel and continue the riot (Image 11):



Image 11

Gossjankowski later exited the tunnel and joined the mob on the Lower West Terrace. There, during a protracted assault by the mob on law enforcement officers, Gossjankowski used the stun gun in at least one attempt to assault an officer who was already under assault by other rioters.

SMITH entered the tunnel a third time at approximately 3:16 pm (Image 12). He made his way to the front of the mob in the tunnel and joined a group of rioters who appeared to be pushing against the police line that was just out of view of the camera (Image 13):



Image 12



Image 13

Video footage posted to YouTube appears to directly correspond to the USCP surveillance footage shown in Image 13.² At 25:59 of the video, it similarly shows SMITH pushing against rioters, including three rioters in red hats, as the group pushes against police officers in a violent attempt to breach the Capitol (Image 14). The YouTube video also shows, at 27:12, the physical assault of officers that was occurring right in front of SMITH, as SMITH was part of the group pressing the rioters into the officers (Image 15, in which a rioter grabs an officer's face shield):

² https://www.youtube.com/watch?v=cJOgGsC0G9U&feature=youtu.be&has_verified=1



Image 14



Image 15

Following the January 6 attack, law enforcement agents conducted surveillance at the address identified as SMITH's residence on SMITH's driver's license and in his military records. During that surveillance, your affiant observed a man in the front yard of the property who was wearing a baseball hat and who was not wearing sunglasses. In your affiant's opinion, this individual's appearance was consistent with the individual described above. In particular, in your affiant's opinion, the individual shown in Images 2 and 4 above appears to be the same individual as the individual observed on the front lawn of the residence identified on SMITH's driver's license and in his military records. (I have focused on Images 2 and 4 because they are two images in which SMITH is not wearing sunglasses and in which the view of him is the clearest.)

Law enforcement agents also interviewed three individuals who knew SMITH personally. These individuals assessed with 80-100% confidence that photos they were shown from the videos described above, in which the individual believed to be SMITH was captured without his sunglasses on, showed SMITH. (In the photos in which the individual believed to be SMITH is wearing sunglasses, these individuals could not assess with similar confidence that the individual was SMITH.)

The FBI further confirmed that SMITH had leave from his place of employment in Alabama from January 6, 2021 to January 8, 2021. In addition, a phone number associated with SMITH was identified in the vicinity of the Capitol during the events of January 6, 2021, and SMITH's vehicle was identified driving through Virginia on the morning of January 6, 2021.

Based on the foregoing, your affiant submits that there is probable cause to believe that BRYAN SHAWN SMITH violated 18 U.S.C. § 231(a)(3), 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. 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.

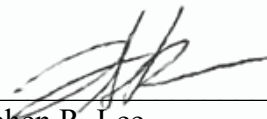
Your affiant submits that there is also probable cause to believe that SMITH violated 18 U.S.C. § 1752(a)(1), (2) and (4), which make it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; (2) knowingly, and with intent to impede or disrupt the 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; and (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.

Your affiant submits that there is also probable cause to believe that SMITH violated 18 U.S.C. § 1752(b)(1)(A), which makes it a crime to knowingly enter or remain in any restricted building or grounds without lawful authority to do so; and, in relation to the offense, to use or carry a deadly or dangerous weapon, that is, a stun gun.

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 SMITH violated 40 U.S.C. § 5104(e)(2) which makes it a crime to willfully and knowingly (E) obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings; and (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

Respectfully submitted,



Stephen R. Lee
Special Agent
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 30th day of November 2022.

HONORABLE ZIA M. FARUQUI
UNITED STATES MAGISTRATE JUDGE