

Case: 1:23-mj-00142
Assigned To : Harvey, G. Michael
Assign. Date : 6/23/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED] assigned to the FBI Washington Field Office. In my duties as a special agent, I am assigned to the Violent Crimes Task Force. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent, 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 facts in this Affidavit come from my personal observations, my training and experience, and information obtained from other agents, witnesses, and agencies, or based on a review of various documents, records, and reports. Because this Affidavit is submitted for the limited purpose of establishing probable cause, it does not contain every fact known by me or the FBI. The dates, times, and time stamps listed in this Affidavit should be read as “on or about”.

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 were 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.

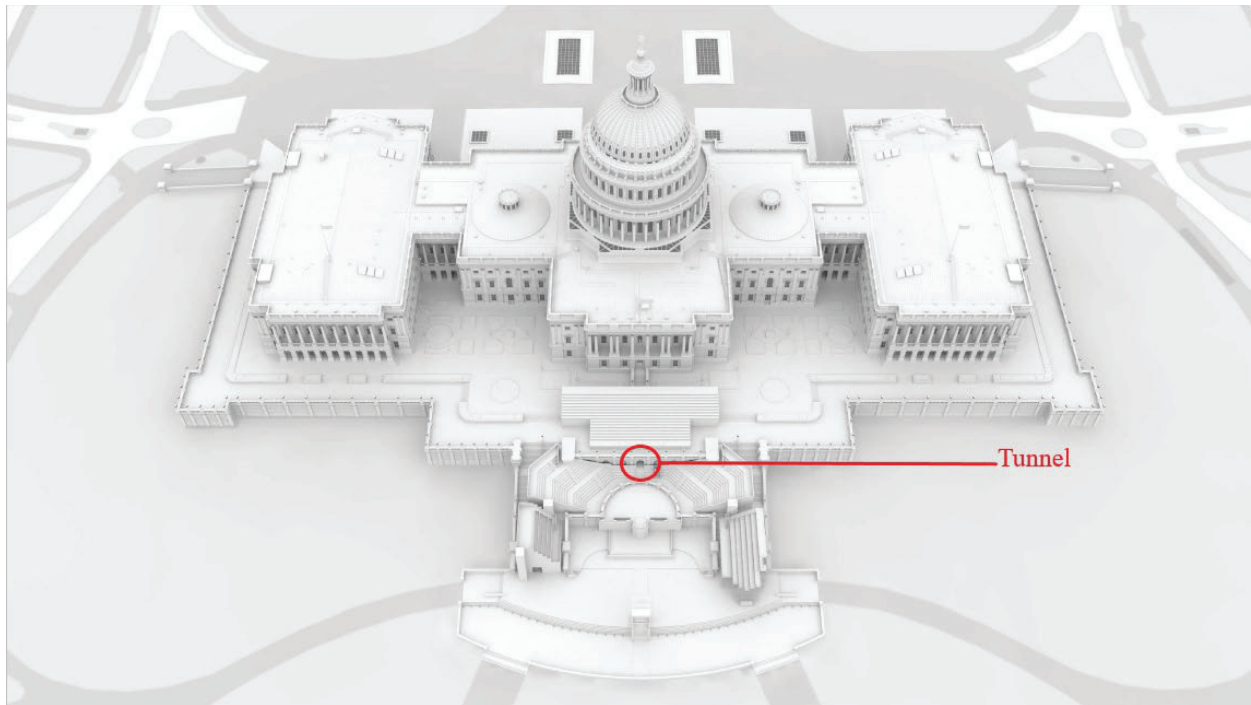


Image 1: West Front of the Capitol.

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.

IDENTIFICATION OF NATHAN BAER

Soon after the events of January 6, 2021, news outlets circulated photographs of the events at the United States Capitol. In one widely circulated photograph (See Image 2), the Federal Bureau of Investigation received multiple leads related to the identifier, AFO-112, assigned to an individual later identified as Nathan Baer.



Image 2: BAER on the Lower West Terrace of the Capitol.

Between January 17, 2021, and April 12, 2021, the Federal Bureau of Investigation received 15 tips identifying this individual as possibly being 14 different individuals. One such tip received January 26, 2021, was submitted electronically and read: “Photo 112-AFO looks like [different individual]. I have not seen him since high school some 40 years ago but he was a big tea party supporter and very pro Trump.” Another electronic tip submitted on February 8, 2021, read: “The guy in photo Photograph #112-AFO looks suspiciously like my ex-husband. Maybe it’s not him but it is very uncanny.” The individual named in this tip was not NATHAN BAER. Another electronic tip submitted on February 4, 2021, read: Photo 112-AFO I believe is [different individual]. I used to work with him. He is a plumber and I believe he lives in Campbell, CA.” The FBI has investigated thirteen of these individuals and determined that they either were not present at the Capitol on January 6, 2021, and/or that their physical appearance does not match 112-AFO.

On February 8, 2021, a tipster provided screen grabs of videos and photographs of AFO-112 on the Capitol grounds next to an open-source photograph of NATHAN BAER found at: <http://brooklynddiscovery.com/2019/06/new-york-operafest/>.¹ An example of one such comparison is seen in Image 3.



Image 3: BAER comparison photos.

On March 25, 2022, a telephonic interview was conducted with this tipster who identified NATHAN BAER as individual AFO-112. This tipster attended college with BAER at the Jacobs School of Music in Bloomington, Indiana, and believed that BAER then moved to New York City. Although this tipster had not spoken with BAER since college, the tipster was aware of BAER's YouTube channel, "The American Patriot." One video from the channel is titled "20150328-Nathan Baer," and depicts an individual resembling AFO-112 performing "Why Do the Nations So Furiously Rage" by George Frideric Handel (See Image 4).²



Image 4: Still image from BAER's YouTube channel, "The American Patriot."

On April 5, 2022, a resident of a New York City apartment building believed to be one building where BAER worked as a handyman was interviewed and informed your affiant that the witness at one point allowed BAER to reside within the witness's apartment. The witness was

¹ Last accessed April 13, 2023.

² <https://www.youtube.com/watch?v=H0loRJ57lNw> Last accessed April 13, 2023.

shown a photograph taken at or near the time of the photograph published in the Washington Post. The witness identified the individual circled in yellow as NATHAN BAER (See Image 5).



Image 5: Image shown to person familiar with BAER.

VIDEO FOOTAGE DEPICTING NATHAN BAER

A review of USCP surveillance footage, MPD body-worn camera (“BWC”) footage, open-source videos, and footage from other rioters revealed BAER repeatedly engaged in a violent obstructive conduct against multiple law enforcement officers inside the tunnel.

At approximately 2:50:39 pm, BAER made his way to the entrance of the tunnel. At this point, rioters inside the tunnel collectively pushed together in a “heave-ho” effort against the police line until at about 2:51:20 pm. At that point, the mob appeared to have lost its momentum and dissipated backward. During this time, BAER cheered on the rioters who were inside the tunnel.



Image 6: Still image from Capitol building surveillance footage at 2:50:39 pm, depicting BAER cheering at the entrance of the tunnel while rioters inside the tunnel participate in a heave-ho effort against the police line.

From the vantage point at the mouth of the tunnel, and particularly given his height of 6’2”, it appears that BAER could see the large phalanx of police officers defending an entrance to the Capitol Building, who were positioned beyond the crowd of rioters at the entrance to the Capitol building, and he could hear the door alarm from the emergency exit blaring.

At approximately 2:51:23 pm, BAER stepped away from the mouth of the tunnel, but was captured in journalist Jon Farina's footage immediately outside the tunnel, at approximately 2:52:17 pm.

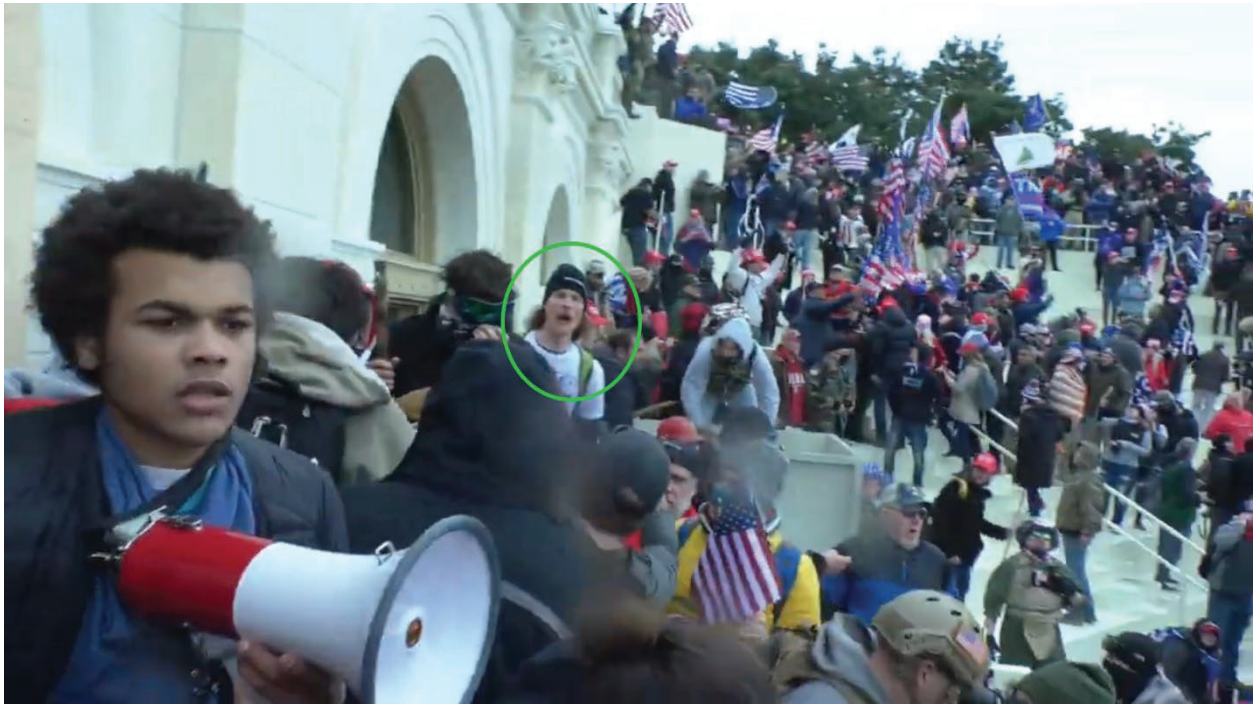


Image 7: Still image from Farina's video capturing BAER immediately outside the tunnel at approximately 2:52:17 pm.

At approximately 2:56:39 pm, there was a rush of rioters into the tunnel. At approximately 2:57:00 pm, the rioters, engaged in another heave-ho effort, their bodies moving in unison forward and back, pushing against the police line.

At approximately 2:57:11 pm, BAER entered the tunnel, but did not make it far, because law enforcement sprayed OC spray toward the rioters, causing many rioters to turn around and exit the tunnel. BAER remained at the mouth of the tunnel, with the capability to leave the premises. Despite this, he re-entered the tunnel at approximately 3:02:04 pm.

At approximately 3:03:43, the rioters in the tunnel initiated another heave-ho effort, their bodies moving in unison back and forth to apply force against the police line ahead. BAER participated in this effort, pushing his body against the rioters in front of him with so much force that he had to brace himself by putting his hand on the tunnel wall.



Image 8: Still image from Capitol building surveillance footage at 3:03:56 pm, depicting BAER (green) during a heave-ho effort, bracing himself by putting his hand on the tunnel wall. Yvonne St. Cyr (orange) is depicted filming the scene.

The footage of another rioter, Yvonne St. Cyr,³ showed that at approximately 3:04:07 pm, the police deployed OC spray to disperse the rioters, and many turned around to exit the tunnel as a result. BAER, however, stayed inside.

³ St. Cyr (22-cr-185) was convicted at trial on 3/10/23 of a total of six offenses, including two felony charges: interfering with a law enforcement officer during a civil disorder (two counts).

At approximately 3:07:15, BAER handed a police shield up to the rioters closest to the police line, who were using the shields both defensively and offensively against the police. Approximately 30 seconds later, at 3:07:41, BAER handed up another police shield.



Image 9: Still image from Capitol building surveillance footage at 3:07:41 pm, depicting BAER (green) handing up a police shield (blue) to the rioters in front of him, toward the police line. St. Cyr (orange) is depicted standing on a ledge.

At approximately 3:08:28 pm, BAER participated in another heave-ho effort, pushing his body against the rioters in front of him in unison with them, with the aim of overcoming the police line ahead of them. This effort was short-lived, lasting only around 30 seconds. BAER exited the tunnel around 3:11:28 pm, staying at the mouth of the tunnel.

About 30 seconds later, at approximately 3:11:58 pm, another heave-ho effort began in front of BAER, and he walked back into the tunnel to join the effort, pushing forcefully on the rioters in front of him, and participating in the back and forth movement. The rioters together were yelling “Heave! Ho!” as they moved back and forth to overcome the police, which was captured in Farina’s footage.



Image 10: Still image from Farina's video capturing BAER participating in a heave-ho effort at approximately 3:12:04 pm.

At approximately 3:14:15 pm, BAER handed up another police shield to the rioters in front of him.

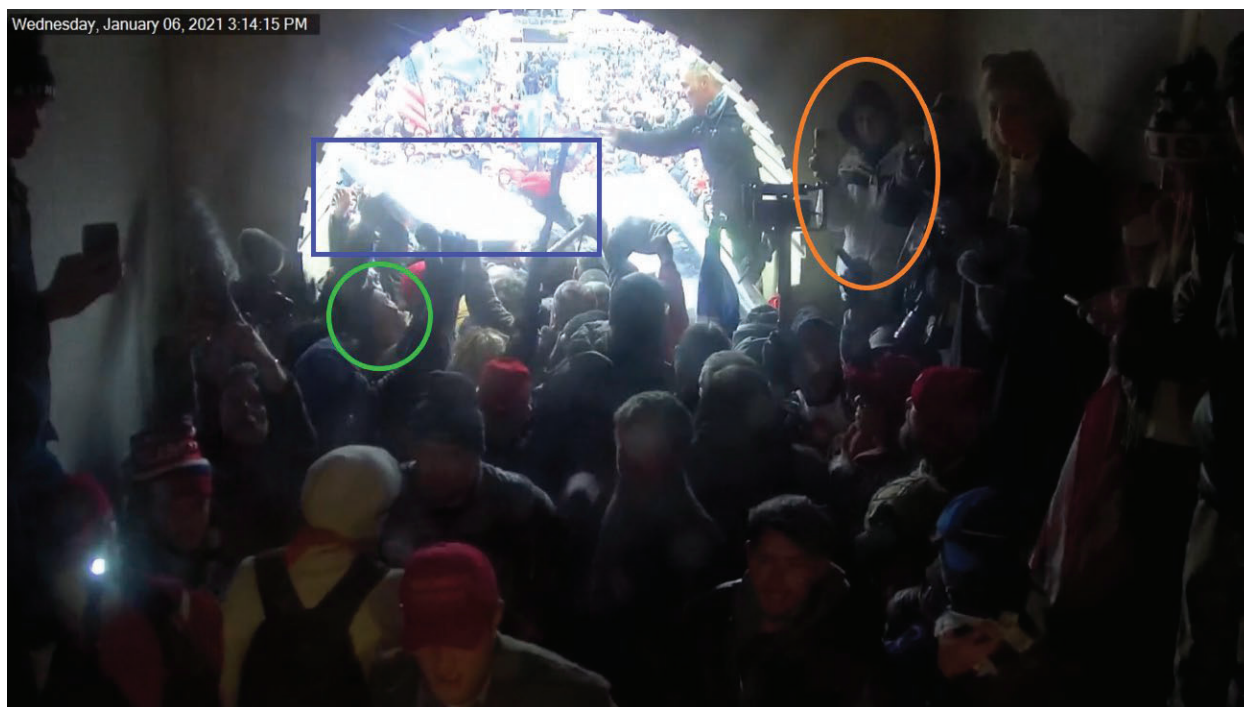


Image 11: Still image from Capitol building surveillance footage at 3:14:15 pm, depicting BAER (green) handing up a police shield (blue) to the rioters in front of him, toward the police line. St. Cyr (orange) is depicted filming the scene.

BAER then continued to force his way toward the police line. Farina's video captured BAER almost at the front of the line of rioters, very close to the doors to the Capitol building.



Image 12: Still image from Farina's video capturing BAER at the front of the line of rioters at approximately 3:16:04, with the doors to the Capitol building to his immediate right.

At approximately 3:18:00, the police line began to advance, in an effort to push the rioters from the tunnel. BAER was at the very front of the police line as they pushed the rioters out. The police were physically pushing the rioters out of the tunnel; the rioters, including BAER, were resisting the police line's effort, as captured in Image 13.



Image 13: Still image from Capitol building surveillance footage at 3:18:30 pm, capturing BAER being pushed out of the tunnel by the police, who are in the bottom right of the frame. St. Cyr (orange) is depicted standing on a ledge.

Although the police were able to clear the tunnel during this push forward, it was at this point that another rioter abducted MPD Officer Fanone, pulling him out of the tunnel and into the mob. BAER exited the tunnel at approximately 3:19:02 pm, and was right next to Officer Fanone, as he was being assaulted by rioters, as depicted in Image 2.

BAER remained outside the tunnel until at least 3:22:26 pm. He had multiple opportunities to leave Capitol grounds, but nevertheless stayed to obstruct the police.

CHARGES SUPPORTED BY PROBABLE CAUSE

Based on the foregoing, your affiant submits that there is probable cause to believe that BAER 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 there is also probable cause to believe that BAER violated 18 U.S.C. § 1752(a)(1) and (2), 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; (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 BAER violated 40 U.S.C. § 5104(e)(2)(D) 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; (F) engage in an act of physical violence in the Grounds or any of the Capitol Building.

Attested to by the applicant in accordance with telephone, this 23rd day of June 2023.

**G. Michael
Harvey**

Digitally signed by G.
Michael Harvey
Date: 2023.06.23 11:48:30
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G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE