

STATEMENT OF FACTS

Your affiant, Benjamin Spinale, is a Special Agent with the Federal Bureau of Investigation (“FBI”) and I am assigned to the Washington Field Office. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent with the Federal Bureau of Investigation, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations 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 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 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 Capitol; however, shortly 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.

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.

On January 6, 2021, at approximately 3:45 pm – 4:30 pm, Kyle Fitzsimons (herein referred to as FITZSIMONS) was observed pushing and grabbing against officers who were holding a police line in an arched entranceway on the lower west terrace of the Capitol Building. Capitol building surveillance footage captured FITZSIMONS at the terrace archway (circled in red below):



FITZSIMONS moved to the front of the group of rioters and was observed grabbing at officers. In the image below, FITZSIMONS is wearing a dark blue sweater and a white coat, appearing on Capitol building surveillance to the left of the archway. FITZSIMONS was then observed reaching down and grabbing at officers as he entered the archway:



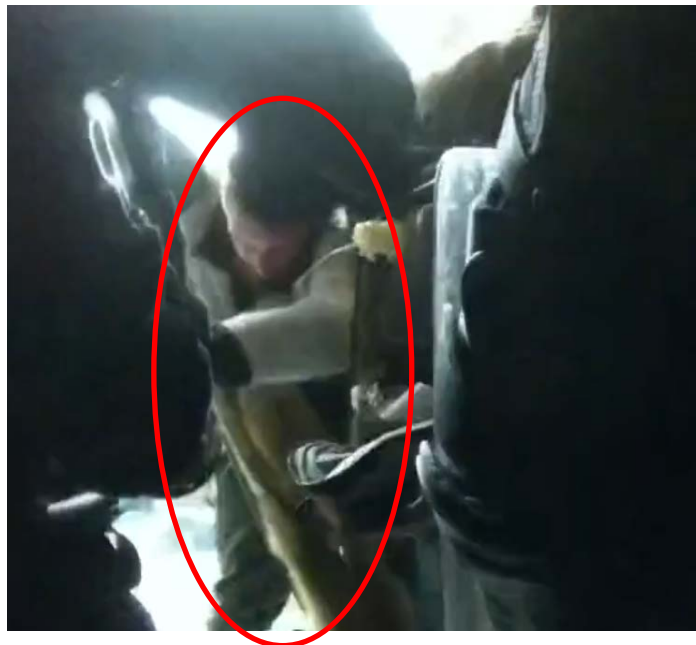


After being struck by officers' batons, FITZSIMONS got up and moved towards the middle of the archway; he lowered his shoulder and charged at the line of officers. The officer's helmet in the lower right corner of the footage has MPDC printed on the back, indicating the Officer belongs to the Metropolitan Police Department (MPD) of the District of Columbia:



FITZSIMONS simultaneously appeared on MPD body worn camera, where he was observed performing the same actions stated above: lowering his shoulder and charging at the police line while swinging at officers. The image below shows FITZSIMONS with his head down,

engaging with officers with what appears to be fur pelt hanging from around his neck, wearing dark pants and rubber boots:



After officers fought off FITZSIMONS, surveillance footage depicted FITZSIMONS retreating back into the crowd. A BOLO (Be On the Look Out) was issued for FITZSIMONS after video surveillance was reviewed which depicted him engaging in the above-stated actions in the lower west terrace archway:



A concerned citizen (C-1) observed the BOLO and reported to the FBI that the BOLO looks similar to an individual by the name of Kyle Fitzsimons from Lebanon, Maine. C-1 has interacted with FITZSIMONS in person on a number of occasions. C-1 reported FITZSIMONS gave an interview to the Rochester Voice wherein FITZSIMONS stated he attended President Trump's rally at the Ellipse and walked over to the Capitol after the speeches ended. Your affiant reviewed the news article entitled "West Lebanon man recounts the hope, then terror he

encountered on Jan. 6” authored by the Rochester Voice.¹ In the article, FITZSIMONS was interviewed and the article recounted that FITZSIMONS was clubbed in the head with a baton after he was unwillingly pushed forward to a police line outside the west face of the Capitol. FITZSIMONS stated that after being hit in the head, he moved towards the perimeter where he was helped down the Capitol steps towards an ambulance. He was then transported to a local hospital and received six stitches to his head. In the article, FITZSIMONS is quoted as saying, “The speeches from the morning were overtly preaching the election was not over, there was a path to victory through decertification, there was a plan to delay the certification by the House and Senate and then state legislatures would convene and (certify) the right result.” FITZSIMONS stated that as the rally at the Ellipse ended, the crowd was asked by President Trump to walk to the Capitol to “give our Republicans, the weak ones ... the kind of pride and boldness that they need to take back our country.” FITZSIMONS stated that he went to his car at a local parking garage and changed from regular clothes to his butcher whites and carried an unstrung bow with him, which was meant to signify his peaceful intent. The article included several pictures which were attributed to FITZSIMONS in the captions below. The captions described the images depicted in the photographs and in parentheses “Kyle Fitzsimons photo.” See below for a picture in the article with caption “inset a picture of Fitzsimons taken earlier in the day” in which FITZSIMONS is seen wearing a dark blue sweater, a white coat with the name “Kyle” on the left shoulder, a fur item and what appears to be a wooden stick:



The article contained two additional photographs that were attributed to Fitzsimons. The first included the caption, “The thousands who went to protect at the Capitol found themselves in tight spaces as they ascended from the west front (Kyle Fitzsimons photo).” The photo appears to be taken by the scaffolding on the west face of the Capitol building as individuals were ascending the Capitol steps:

¹ Available at <https://www.therochestervoices.com/west-lebanon-man-recounts-the-hope-then-terror-he-encountered-on-jan-6-cms-15693> (last checked January 31, 2021).



The second image included the caption, “Looking out from the west front of the Capitol at a huge throng of humanity and the Washington Monument (Kyle Fitzsimons photo)”, taken from higher up on the Capitol steps, looking down to the west terrace with scaffolding to the right and left and the Washington Monument in the distance:



Additionally, the news article cited a video from Right Side Broadcast Network capturing FITZSIMONS as he descended from the steps of the west side of the Capitol building with blood on his face, with FITZSIMONS wearing a dark apron over his white coat. Below is a screen shot of the Right Side Broadcast Network video, capturing FITZSIMONS at 4:19 pm:



Additionally, C-1 reported that FITZSIMONS called into a Town of Lebanon meeting on January 7, 2021. Your affiant watched the video of the meeting, which was posted on YouTube. In the video, FITZSIMONS stated he had returned from Washington D.C. after being there between January 5th and 6th, 2021. In the video, FITZSIMONS stated that he was present on the Ellipse for the speeches made by politicians. FITZSIMONS said he believes that Trump is a lion leading an army of lambs through “lawfare”. Following the addresses, the crowd was directed to march down Pennsylvania Avenue to the Capitol. FITZSIMONS stated that he went to an unknown parking garage to put on a costume. FITZSIMONS’s costume was a butcher’s jacket and an unstrung bow. This costume held an indiscernible symbolic value to FITZSIMONS. FITZSIMONS also reasoned that if it were the last day of the republic, he wanted to live it like he did every day. FITZSIMONS stated he was at the protest for peace. As FITZSIMONS approached the Capitol building, he said there were individuals already involved in disorder who were climbing the building. FITZSIMONS stated he was near a group of individuals near a police line that was protecting a doorway. According to FITZSIMONS, anyone “sucked in” to the crowd was pushed into the police line and were subjected to force. FITZSIMONS stated that he went through “two cycles” of being pushed into the police line, at which point he was struck in the head by a police officer with a baton. FITZSIMONS was bloodied, so he left the steps of the Capitol building, where he was attended to by rescue members. FITZSIMONS was treated at a hospital and received six stitches in his head. FITZSIMONS said this was a peaceful protest gone wrong and the violence at the protest was a set up, and it wasn’t the MAGA crowd. FITZSIMONS further identified himself as a pawn in that set up.

On January 21, 2021, C-2 was telephonically interviewed by the FBI regarding a tip C-2 had provided. C-2 has interacted with FITZSIMONS in person on a number of occasions. C-2 stated he/she saw the article featuring FITZSIMONS published in the Rochester Voice (described above), as well as a post attributed to FITZSIMONS published on the “Lebanon

Maine Truth Seekers” Facebook page with FITZSIMONS name and email listed as the contact. While the post may not have been made by Fitzsimons, it is understood that he communicated the message to the author of the message, who posted it on Fitzsimons’ behalf (pictured below):

1/21/2021

(7) Lebanon Maine Truth Seekers - Posts | Facebook

Lebanon Maine Truth Seekers

December 24, 2020 at 3:51 AM ·

Discussion and offer by Lebanon resident Kyle Fitzsimons....

What has the local reaction been to the pretty obvious fraud being perpetuated since Trump lost the election?

Not since the rigged election of 1960 has a State sent dueling electors to DC and now we have 7 doing that this year.

I've seen the flags. I know there are supporters of Mr. Trump in town.

I'm also seeing flags that this election was stolen and we are being slow walked towards Chinese ownership by an establishment that is treasonous and all too willing to gaslight the public into believing the theft was somehow the will of the people.

Would there be an interest locally in organizing a caravan to Washington DC for the Electoral College vote count on Jan 6th, 2021?

I am arranging the time off and will be a driver if anyone wishes to hitch a ride, or a lead for a caravan of vehicles.

If a call went out for able bodies, would there be an answer?

Merry Christmas,

Please contact

Kyle Fitzsimons

kylefitzsimons.kf@gmail.com

C-2 stated FITZSIMONS was known to be very vocal about his right-wing political beliefs, was a gun owner, and C-2 felt FITZSIMONS held racist beliefs, but has not heard FITZSIMONS make violent expressions towards government or law enforcement. On January 26, 2021, C-2 was shown a photograph from the article published in the Rochester Voice (pictured and discussed above); C-2 confirmed the pictured individual was Kyle FITZSIMONS. C-2 also stated that FITZSIMONS was currently employed at Hannaford Supermarket in York, Maine.

On January 21, 2021 C-3, who has interacted with FITZSIMONS in person on a number of occasions and is familiar with FITZSIMONS’ voice, was interviewed by the FBI concerning a tip C-3 provided to the FBI on January 12, 2021. C-3 described FITZSIMONS as an “anti-establishment” type who is opposed to government interference and frequently discusses firearms, but has not heard of FITZSIMONS making violent expressions towards government or law enforcement. C-3 also stated he/she was present during the January 7th Lebanon town meeting (discussed above) where FITZSIMONS called in and discussed his role in the Capitol riots. C-3 was again interviewed on January 26, 2021, wherein C-3 confirmed the voice of the person

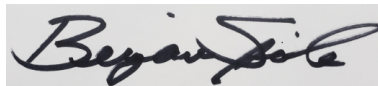
recounting the events at the U.S. Capitol on January 6, 2021 during the Lebanon town meeting was FITZSIMONS. C-3 was shown a photograph of FITZSIMONS from the Rochester Voice news article and C-3 identified the individual in the photograph as FITZSIMONS.

Based on the foregoing, your affiant submits that there is probable cause to believe that FITZSIMONS violated 18 U.S.C. § 1752(a)(4), which makes it a crime to 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, 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 FITZSIMONS violated 40 U.S.C. § 5104(e)(2)(F), which makes it a crime to willfully and knowingly engage in an act of physical violence in the Grounds or any of the Capitol buildings.

Your affiant submits there is also probable cause to believe that FITZSIMONS violated 18 U.S.C. § 111(a)(1), which makes it crime for whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties. For purposes of Section 1114 of Title 18, an officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance.

Finally, your affiant submits there is probable cause to believe that FITZSIMONS 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.



Special Agent Benjamin Spinale
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 1st day of February 2021.

ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE