

STATEMENT OF FACTS

Your affiant, Shawn O. Cox, is a Special Agent with the Federal Bureau of Investigation ("FBI"). I have been in this position since 2018. Previously I was employed as a Police Officer for 10 years in Virginia. I received initial training and instruction to become a Special Agent at the FBI Academy located in Quantico, Virginia, which included training concerning violations of the United States criminal statutes. I am currently assigned to the Richmond Division of the FBI, Roanoke Resident Agency. During my employment with the FBI, I have conducted and/or assisted in criminal investigations involving various criminal violations. As a federal agent, I am authorized to investigate violations of laws of the United States, and as a law enforcement officer I am authorized to execute warrants issued under the authority of the United States. 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 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, 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 and other law enforcement officers, 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.

MARKUS MALY IDENTIFIED AS AFO-324

On a public-facing FBI website designed to seek information about individuals who participated in the January 6, 2021 riot at the U.S. Capitol, FBI Washington posted photographs of AFO-324, who was involved in spraying an unknown chemical irritant at a line of police officers outside of the Capitol Building. A tip from the DC Metropolitan Police advised that the subject AFO-324 could possibly be MARKUS MALY.

Photograph #324 - AFO A

The FBI is seeking to identify individuals involved in the riots at the U.S. Capitol on January 6, 2021, including those who assaulted federal law enforcement officers. Call 1-800-CALL-FBI or visit tips.fbi.gov to submit information. Reference the assault on federal officer (AFO) photo number when calling or submitting information online. More at fbi.gov/capitolviolence



Size: 4KB

Image 1 – Photograph of AFO-324 from FBI website (<https://www.fbi.gov/wanted/capitol-violence-images/capitol-324a.jpg/view>)

Footage from January 6, 2021, shows AFO-324 wearing a dark colored jacket with a grey hood or hooded sweatshirt underneath. At times, AFO-324 also wore a black winter hat or “beanie” and a white cowboy style hat with the words “TRUMP 2020” printed on the front and what appears to be “TEAM TRUMP” printed on the back, with an American flag pattern printed on the underside. Online sleuths identified this subject as #JohnSprayne.



Image 2 – Screenshot of AFO-324

https://jan6attack.com/individuals/johnsprayne/1aeG4GVOLzeseLYFF_J-Pbh3qOfLSMu6W.png

AFO-324 carried a black canister that was consistent with what is commonly known as “bear spray” or pepper spray.

Below is the same subject, AFO-324, from D.C. Metropolitan Police’s Persons of Interest in Unrest-Related Offenses posting:

PERSONS OF INTEREST IN UNREST-RELATED OFFENSES



Federal Charges Pending due to Insurrection at the US Capitol

January 6, 2021
Approximately 2:37 pm
U.S Capitol Grounds
100 block of First Street,
NW



Anyone who can identify these individuals or who has knowledge of this incident should take no action but call police at (202) 727-9099 or text your tip to the Department's TEXT TIP LINE at 50411. The Metropolitan Police Department currently offers a reward of up to \$1,000 to anyone who provides information that leads to the arrest and indictment of the person or persons responsible for a crime committed in the District of Columbia.

Image 3 – Screenshot of AFO-324 from D.C. Metropolitan Police Posting¹

After reviewing the photos and videos of AFO-324 on January 6, 2021, I reviewed known photographs of MALY from law enforcement databases. After reviewing 1) a 2020 Booking Photo from Roanoke County, Virginia Sheriff's Office (Image 4 below); 2) a 2017 Booking Photo from Virginia (Image 5 below); and 3) a 2008 driver's license, and comparing them to photographs of the individual identified by the FBI as AFO-324, the photographs of MALY are consistent with the individual identified by the FBI as AFO-324.



Image 4, 2020 Booking Photo



Image 5, 2017 Booking Photo

FURTHER INVESTIGATION CONFIRMING IDENTIFICATION OF MALY

Based on the tips that had been provided above, law enforcement took additional steps to identify MALY.

¹ This post was created prior to FBI's involvement; the time is approximate.

Your affiant identified a phone number ending in -6777,² which is associated with MALY through phone subscriber records and cross referenced to his email and social media records. Records obtained pursuant to legal process showed an email associated with the number ending in -6777 had an associated email of malymaly666@XXXXX.com³ and an associated name of "MARK MALY". Records received from the email account revealed that the account associated with malymaly666@XXXXX.com belonged to an email account registered in the name of "Mark Maly." The email account also lists a recovery SMS phone number that matches the number ending in -6777. Pursuant to legal process, law enforcement learned that the person carrying the phone ending in -6777 was identified as having utilized a cell site consistent with providing service to a geographic area that included the interior of the United States Capitol Building.

REVIEW OF VIDEO FOOTAGE CAPTURING ASSAULTS AT U.S. CAPITOL

MALY Spraying at Law Enforcement

A review of photos and videos around the Capitol show MALY holding the canister of pepper spray near a line of police officers. MALY then sprays the canister at the police officers. MALY sprayed towards a D.C. Metropolitan Police Officer, Officer Victim 1, as seen on body camera footage.

This image below is taken from a video from the body camera of MPD Officer Victim 1. In the video, MALY can be seen moving about the crowd and displaying a black spray can towards the officers present. The image below, taken from the video at 42 minutes and 3 seconds into the video, shows MALY in the right side of the image pointing a spray can directly at the officers at approximately 14:35:44 (2:35:44 p.m.) as displayed on the time stamp of the body camera video.

² Your affiant is in possession of a full phone number, but uses the last four digits here due to the public nature of this filing.

³ Your affiant is in possession of a full email address, but partially anonymized it here due to the public nature of this filing.



Image 6 – Screenshot from Body Camera

The below images 7 and 8 are from the same body camera footage and shows MALY holding the spray can pointing it directly at the police officers at approximately 14:35:47 (2:35:47 p.m.) as displayed on the time stamp of the body camera video.



Image 7 – Screenshot from Body Camera

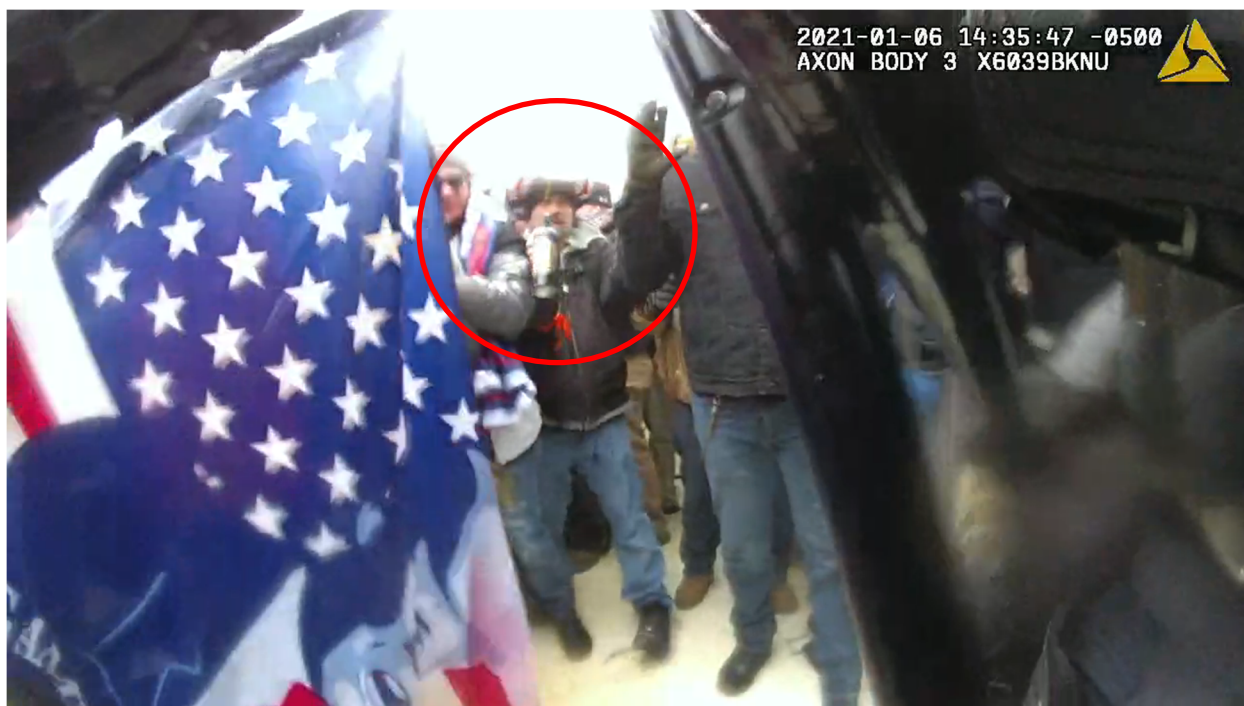


Image 8 – Screenshot from Body Camera

The below image 9 is from the same body camera footage that shows chemical spray that was just sprayed on MPD Officer Victim 1's shield at approximately 14:35:49 (2:35:49 p.m.) as displayed on the time stamp of the body camera video. This image depicts what occurred approximately two seconds after the above image capturing MALY pointing the spray directly at the police officers.



The below images (10-13) are screenshots from a video on “theresistance.video” and shows a different angle where MALY pointed and appeared to spray presumed chemical spray at law enforcement officers on the Lower West Terrace of the Capitol on January 06, 2021 at time stamp 49:16. The video originally appeared at: <https://theresistance.video/watch?id=5ff73a601669d333f2b27315>



Image 10 – Screenshot from Resistance Video



Image 11 – Screenshot from Resistance Video



Screenshots from Resistance Video

Image 12



Image 13

MALY Aiding and Abetting Defendant Jeffrey Brown (21-cr-178) to Spray Law Enforcement

On January 6, 2021, between approximately 15:09 p.m. and 15:16 p.m., a man who matches MALY's description appeared on U.S. Capitol CCTV footage in the Lower West Terrace Tunnel. The Lower West Terrace Door is an outdoor area on the west side of the U.S. Capitol Building. On January 6, 2021, all parts of the Lower West Terrace were considered "restricted grounds" and were not accessible to the public. The Lower West Terrace Door led into the U.S. Capitol Building through a tunnel. Between approximately 15:09 p.m. and 15:16 p.m., the Lower West Terrace Door was heavily guarded by U.S. Capitol Police and MPD personnel, who had formed a defensive line to prevent unauthorized access into the U.S. Capitol Building via the tunnel.

The below image, taken from 3 minutes and 30 seconds into the video, shows MALY near the center of the frame in a white cowboy hat, with "Trump 2020" written on the front of the hat, at the entrance of the tunnel:



Image 14 – CCTV Screenshot

The below image, taken from the same video at 4 minutes and 51 seconds, shows MALY in the left center of the image handing a black spray can to indicted Defendant Jeffrey Brown's outstretched hand:



Image 15 – CCTV Screenshot

MALY Possessing Shield

The below image, taken from the same video at 9 minutes and 49 seconds, shows MALY in center of the image, exiting the tunnel with what appears to be a Police riot shield.



Image 16 – CCTV Screenshot

The below image taken from “Just Another Channel”, was submitted as a public tip to the FBI and is from the same video which originally appeared at: <https://theresistance.video/watch?id=5ff73a601669d333f2b27315>

In this image, MALY is seen exiting the tunnel at the Lower West Terrace of the Capitol, with what appears to be the same Police riot shield seen above.



Image 17 –Screenshot of Resistance video found at Just Another Channel

SOCIAL MEDIA AND ELECTRONIC EVIDENCE

Pursuant to legal process, your affiant reviewed the Facebook account for the username “Mark Maly,” believed to be MALY’s Facebook account. The Facebook account used the same email and phone number associated with MALY and described above.

A review of the above Facebook account showed communications and posts about MALY’s attendance at the Capitol on January 6, 2021. On January 7, 2021, he commented on a posting and stated in part “There were lots of pissed off patriots there and we wanted our voices to be heard. I myself one [sic] of them. We were there to support President Trump and the voting process. A voting process that was hijacked and stolen from us.”

On January 7, 2021 he also engaged in conversation with one of his contacts (Contact 1)⁴. MALY wrote “No I didn’t go inside. I did have a riot shield but half way back to the bus a cop say [sic] me and took it from me . . .” Contact 1 responded with “Should have stood your ground with it.” MALY replied “I stood my ground and went back for seconds and thirds even.”

⁴ The government knows the identity of the contact, but the name is not stated here due to the public nature of this filing

The Facebook account also included conversations between MALY and someone believed to be his girlfriend on or about January 6, 2021. On January 6, 2021 at approximately 16:16 EST, his girlfriend mentioned individuals breaking through Capitol barricades; Maly responded with “We took the fuckin capital...” At approximately 16:32 EST, Maly messaged his girlfriend in response to her concern about violence at the Capitol, and wrote “I know... I’ve got stories though,” and “I was so fun...”, “It..”

MALY posted multiple photos and videos that appear from be from January 6, 2021 at the Capitol, including a selfie-style photograph that he shared on January 19, 2021. As seen below, he is wearing clothing consistent with the above subject identified as MALY at the Capitol Building on January 6, 2021.



Image 16 – Photo from Maly’s Facebook

A review of the Google account associated with malymaly666@XXXXX.com revealed photographs and video of a subject identified as MALY at the Capitol Building on January 6, 2021.

LAW ENFORCEMENT IN PERSON IDENTIFICATION OF MARKUS MALY

Your Affiant showed the below images to Officer Dakota Kidd, Roanoke County Police Department (RCPD). Officer Kidd was asked if he recognized the subject as MARKUS MALY from a previous in person law enforcement encounter with MALY. Officer Kidd reviewed the RCPD file detailing the encounter with MALY. Officer Kidd remembered that he “served papers” on MALY in February 2020 for a charge of failure to appear. Officer KIDD stated MALY had longer hair when he encountered him, but he recognized the subject pictured below as being MALY from the aforementioned law enforcement encounter. The below image is from https://jan6attack.com/individuals/johnsprayne/1x0BshB-Uq_bubdvT01EFQ9vht5ChudBS.jpeg which is a cropped picture of *Image 3 – Screenshot of AFO-324 from D.C. Metropolitan Police Posting.*



Image 17- cropped version of Image 3 – Screenshot of AFO-324 from D.C. Metropolitan Police Posting

Based on the foregoing, your Affiant submits that there is probable cause to believe that MARKUS MALY violated 18 U.S.C. § 111(a)(1) and (b), which makes it a crime to forcibly assault or interfere with any person designated in section 18 U.S.C. § 1114 as an officer or employee of the United States while engaged in or on account of the performance of official duties. Persons designated within section 1114 include any person assisting an officer or employee of the United States in the performance of their official duties. Subsection (b) includes an enhancement for violating this provision while using a deadly or dangerous weapon.

Your Affiant submits that there is probable cause to believe that MARKUS MALY 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 MARKUS MALY 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; (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 MARKUS MALY violated 40 U.S.C. § 5104(e)(2)(D), (E), & (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; and (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

Finally, your affiant submits there is probable cause to believe that MARKUS MALY violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.



Shawn O. Cox
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 13th day of January 2022.

Michael G. Harvey
U.S. MAGISTRATE JUDGE