

STATEMENT OF FACTS

Your affiant, Joshua Waller, is a special agent with the Federal Bureau of Investigation (FBI). I am assigned to the Domestic Terrorism and Weapons of Mass Destruction Squad, a component of the Joint Terrorism Task Force in the Kansas City Field Office. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As an FBI special agent, I am authorized by law 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, 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 7, 2021, the FBI received an online tip through the FBI National Threat Operations Center alleging that Cale Douglas Clayton of Drexel, Missouri was involved in the riots at the U.S. Capitol on January 6, 2021.

On March 15, 2021, an FBI special agent and FBI task force officer interviewed Clayton at his residence. During the interview, Clayton stated that he traveled to Washington, D.C. to attend the rally for President Donald Trump. Clayton further stated that after the rally he walked to the Capitol grounds and that, while on Capitol grounds, he was arrested while attempting to return a police baton to the police. Clayton said he was released without charges. During the interview Clayton said he did not riot, engage in violence, or commit any acts of vandalism.

After the interview, the FBI identified Clayton in Metropolitan Police Department (MPD) body-worn camera (BWC). In the MPD BWC, Clayton is wearing a red baseball hat, a red Kansas City Chiefs sweatshirt, a khaki vest, blue jeans, and dark-colored boots. Clayton can be heard shouting at officers on the police line. For instance, at approximately 2:54 p.m., while on U.S. Capitol grounds, Clayton was observed pointing his finger at officers and shouting, “We are going to win. You don’t have enough for all of us. You might hit me once or twice. You might spray me with pepper spray. I don’t give a fuck. There ain’t enough for millions of people here and you know it.” A screenshot from the MPD BWC from 2:54 p.m. is below. The red arrow points to Clayton.



From 3:20 to 3:25 p.m., MPD BWC shows Clayton underneath scaffolding, yelling and pointing at law enforcement officers. On the BWC, Clayton can be heard shouting the following statements at law enforcement officers:

- “You guys are losing a lot of bodies.”
- “Get that pepper spray out. . . not enough.”
- “You guys fired the first fucking shot. You know that right? You guys fired the first shot.”
- “Keep that door open. We’re gonna come in right there.”
- “You guys realize your President told us to be here. Your President! Hey, how does that make you feel? You’re defying your own fucking country. Your own country you’re defying. . . . The shit has hit the fan, yes. Remember that. Who do you [inaudible]? The fucking city of D.C.? The fucking mayor? Or the President of the United States. Are you a patriot? Or are you a fucking yes man?”
- “Fucking brain washed. You’re fucking brain washed. Look at you guys. Brain washed. Brain fucking washed. This is so much bigger than what we’re fucking doing right here. This is just the tip of the iceberg. 84 fucking million of us. Pissed off. What are you guys gonna do? . . . Which side of history are you guys gonna be on?”
- “Think about it. [Inaudible] the revolution. You ain’t gonna stop it. It’s already happening. . . You guys are just gonna be a little speed bump along the way.”
- “Your fucking president told us to be here. You should be on this side, right here, going with us. You are an American citizen. Your fucking President told you to do that. You too. You too. You. All of you guys. That Tweet was for you guys. For us. For you.”

Still photographs from MPD BWC, showing Clayton pointing and yelling at law enforcement officers, are below.





Later, at approximately 4:15 p.m., law enforcement began to clear the north side of the area known as the Upper West Terrace (UWT) of the U.S. Capitol. Clayton was present on the UWT when officers were clearing the area. Protestors began to push against the police line. Montgomery County Police Department (MCPD) BWC shows that at approximately 4:23 p.m., on two separate occasions, Clayton grabbed a police shield being held by a law enforcement officer. Two stills from MCPD BWC depicting Clayton grabbing the police shields are below.



Also at approximately 4:23 p.m., Clayton was observed taking a police baton that was dropped by a law enforcement officer. Stills from MCPD BWC are below. The red arrow points to the police baton.



The FBI identified additional footage of Clayton during an open media search. In the video Clayton interferes with an Arlington County Police Department (ACPD) officer who appeared to be isolated from fellow officers. Specifically, Clayton, while holding the police baton in his left hand, grabs the officer's shield with his right hand. The ACPD officer was required to strike

Clayton's right hand to free his shield. The two stills below from the open-source video show Clayton holding the baton and grabbing the officer's shield.



Later, at approximately 4:28 p.m., U.S. Capitol outdoor surveillance shows Clayton ascending the stairs toward the police line at the UWT. During this time, officers were attempting to clear trespassers from the area. At approximately 4:30 p.m., MCPD attempted to recover the police baton from Clayton. As seen in the still below, USCP surveillance footage shows that, in response, Clayton makes contact with his right hand with one of the MCPD officers.



At approximately 4:30 p.m., MCPD attempted to take Clayton into custody, but Clayton resisted and grabbed the face shield of an MCPD officer's helmet and pushed the officer backward. During this physical altercation, Clayton was observed holding the baton in his left hand. Three stills from MCPD BWC are below. The first shows Clayton facing the law enforcement officers, and the second still shows Clayton grabbing the officer's helmet while holding the police baton in his left hand.





At approximately 4:32 p.m., Clayton was brought into custody. Clayton had the police baton in his possession at this time, and it was recovered by law enforcement officers. Law enforcement moved Clayton inside the building, where he was seated on a bench in the Rotunda. Later on January 6, 2021, Clayton was transported to an MPD station and released without charges.

Based on my observations of Clayton during the in-person interview, your affiant has determined that Clayton is the individual in the images above from MPD and MCPD BWC, from U.S. Capitol security camera footage, and from the open-source footage.

Your affiant submits there is probable cause to believe that Cale D. Clayton violated 18 U.S.C. § 111(a)(1) which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with a federal agent while they are engaged in their official duties.

Your affiant submits there is also probable cause to believe that Cale D. Clayton 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 probable cause to believe that Cale D. Clayton violated 18 U.S.C. § 641, which makes it a crime for a person to embezzle, steal, purloin, or knowingly convert to his use or the use of another, or without authority, sell, convey or dispose of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or receive, conceal, or retain the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted.

Based on the foregoing, your affiant submits that there is probable cause to believe that Cale Douglas Clayton 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; 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.

Finally, your affiant submits there is also probable cause to believe that Cale D. Clayton violated 40 U.S.C. § 5104(e)(2)(D), 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.



Special Agent Joshua Waller
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 28th day of March, 2022.

ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE