

Case: 1:23-mj-00009
Assigned To : Harvey, G. Michael
Assign. Date : 1/12/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent assigned to the Kansas City Federal Bureau of Investigation (“FBI”) Field Office, Springfield Resident Agency. In my duties as a Special Agent, I have participated in many investigations and have employed a variety of investigative techniques in these investigations, including Title-III interceptions of wire communications, consensual monitoring of communications, undercover operations, confidential human sources (CHS), utilization of physical surveillance, controlled purchases of contraband, electronic surveillance (GPS precision location and monitoring intercepted telephone conversations and taking law enforcement action based on intercepted conversations), investigative interviews, trash covers, mail covers, financial investigations, the use of Administrative and Grand Jury Subpoenas, and the execution of arrest and search warrants. Currently, 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 (USCP). 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, S.E., 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.

FACTS SPECIFIC TO KYLER JOSEPH BARD

Based on an initial review of publically available video footage, USCP surveillance footage, and body worn camera (“BWC”) footage of officers who responded to the United States Capitol on January 6, 2021, a white male wearing a white sweatshirt and red, white and blue winter hat with the words “Trump” and a “45” logo, who has been identified as KYLER JOSEPH BARD, as described below, can be seen engaged in inciting a crowd of rioters and an assault against M.G., a law enforcement officer guarding the United States Capitol.

A review of Metropolitan Police Department (MPD) BWC footage showed that at approximately 3:28 p.m. on January, 6, 2021, BARD was standing on a ledge on the Upper West Terrace of the U.S. Capitol, where officers, including M.G., had formed a police line as a barrier against the riot crowd. At approximately 3:30 p.m., BARD could be seen walking on top of the ledge and carrying a megaphone. Shortly thereafter, BARD can be heard yelling into the megaphone, “Move! Move! Move! We gotta push! We gotta push! Let’s go! We gotta go! Let’s go!”



Figure 1

BARD then turned directly to Officer M.G. and, as he yelled “let’s push!,” BARD pushed Officer M.G.



Figure 2



Figure 3

Officer M.G. repelled BARD’s assault, and BARD fell backwards after continuing to resist and push against Officer M.G. As BARD fell to the ground, BARD yelled to the crowd of officers, “You’re all a bunch of pieces of shit.” BARD then got up and retreated back into the crowd.

A review of a video posted to Twitter showed a person that appeared to be BARD talking on a cell phone outside the Capitol. BARD can be heard stating, “I’ve already been maced, punched, they took my microphone away, and, uh, when I punched them, they punched me back. Maced me in the face. But it’s what we gotta do. We gotta get inside, we gotta take it over. We gotta do it.” A screenshot of the video is included in Figure 4:



Figure 4

<https://twitter.com/WhatsTrending/status/1346959037825380356?s=20&t=DeFOTL8eGvwp0DL44C38g>

Following the January 6 attack, images of BARD participating in the riot appeared on the internet. Based on the images, the FBI created a profile for BARD as moniker “AFO-447.” The FBI posted images of BARD to its website and to social media to seek public assistance in identifying BARD. A confidential human source (CHS) provided the FBI with open-source material from the Instagram account of a “kyler_bard” that appeared to show BARD on the grounds of the Capitol. In the Instagram postings provided to the FBI, the account of “kyler_bard,” which appears to be associated with KYLER JOSEPH BARD, posted pictures of BARD around the Capitol Complex stating his presence in D.C. In Figure 6, the user of Instagram account “kyler_bard” posted a photo of someone appearing to pour water in BARD’S eyes and referenced how, on January 6, he was “maced and punched for yelling in a megaphone”

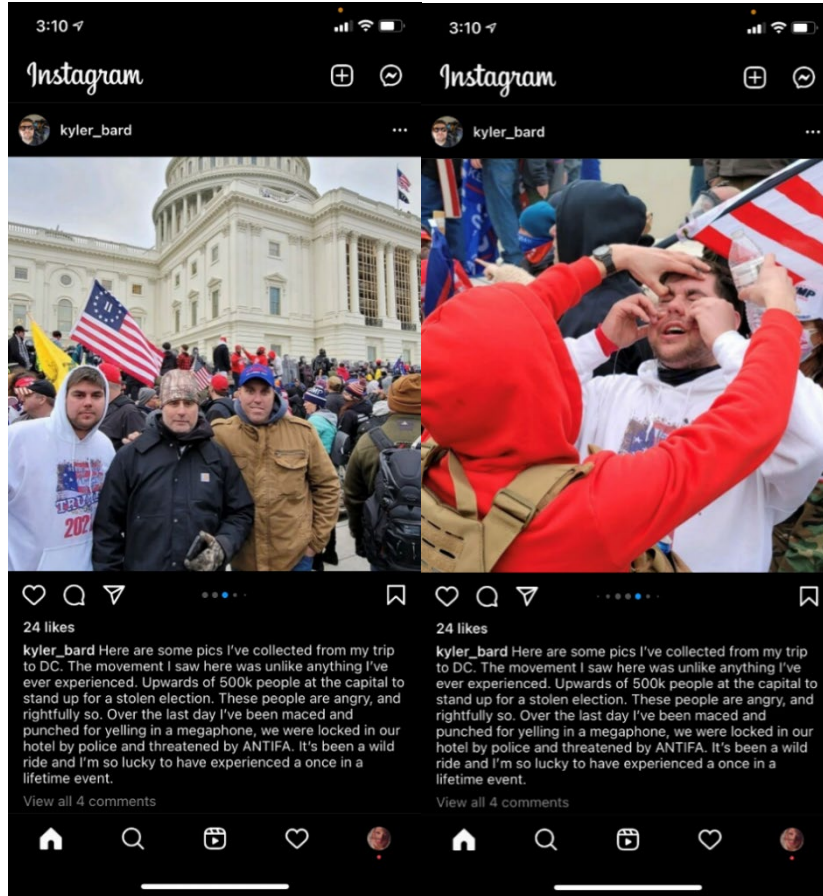


Figure 5

Figure 6

A review of additional open source information, including BARD’s Facebook page, was compared with the images of “AFO-447.” A comparison of the photographs posted to BARD’s social media and images taken at the Capitol on January 6, 2021 showed BARD to be consistent with the individual who assaulted Officer M.G. The top row of Figure 7 shows images and the dates posted to Facebook compared to images of AFO-447 on January 6. In Figure 8, BARD is seen in a photo posted to Facebook wearing similar sunglasses as AFO-447:



Figure 7

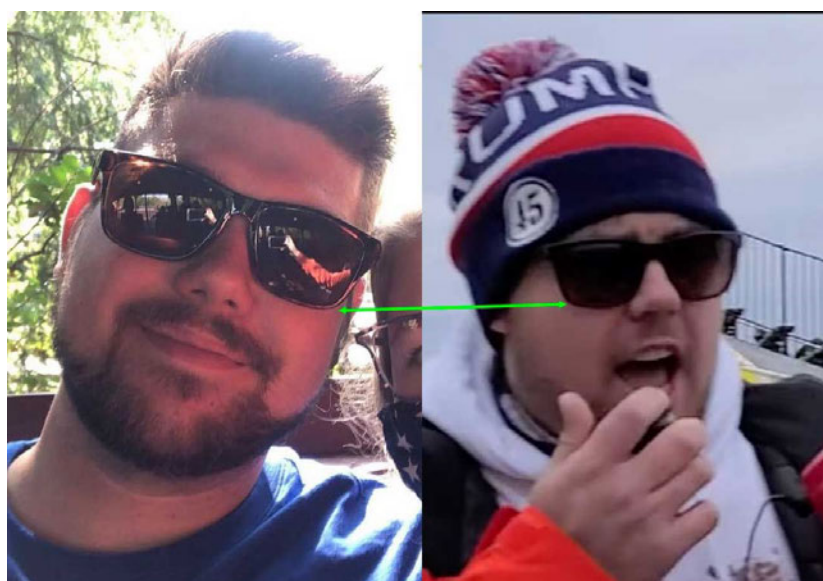


Figure 8

BARD's driver's license photo was also compared with both BARD's Facebook photos and photos of AFO-447, and the photos appeared to be consistent with BARD.

BARD was subsequently contacted at his place of residence in Missouri. The FBI Special Agent who interviewed BARD was able to confirm that BARD was the same individual as depicted in the photographs above. During the interview, BARD admitted to attending the Stop The Steal rally in Washington, D.C., on January 6, 2021, but informed agents that he did not enter the Capitol and did nothing illegal.

Based on the foregoing, your affiant submits that there is probable cause to believe that KYLER JOSEPH BARD violated 18 U.S.C. § 111(a)(1), which makes it a crime to forcibly

assault, resist, oppose, impede, intimidate or interfere with certain designated individuals. Within the meaning of this statute, a designated individual is an officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services), while such 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 official duties or on account of that assistance.

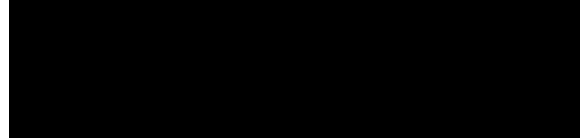
Your affiant submits there is also probably cause to believe that KYLER JOSEPH BARD violated 18 U.S.C. 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of 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.

Based on the foregoing, your affiant submits that there is probable cause to believe that KYLER JOSEPH BARD 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; and (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 KYLER JOSEPH BARD 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; and (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

Respectfully submitted,



Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 12th day of January 2023.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE