

STATEMENT OF FACTS

Your affiant, Benjamin Harris, is a Special Agent with the Federal Bureau of Investigation (“FBI”) assigned to the FBI’s Denver, Colorado Division working from an office in Loveland, Colorado. In my duties as a Special Agent, I investigate domestic terrorism and other national security violations, among other things. 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, detention, investigation, or prosecution of a violation of Federal criminal laws.

Background – The U.S. Capitol on January 6, 2021

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.

Facts Specific to This Investigation

On or about January 11, 2022, the FBI received a tip that DUSTY HIGGINS, a Colorado resident, Tik Tok username @DustyHiggins420, Twitter username @Dusty Higgins420, was involved in the January 6, 2021 Capitol Riot. On 1/6/2021, after the Capitol Riot ended, Higgins posted multiple Tik Tok videos and Twitter pictures of selfies from the front of the riot when the doors at the base of the Capitol were attacked.

The FBI then identified user @DustyHiggins420 as Dusty Allan Higgins, dob 8/30/1981, with a Colorado Driver's license showing his address in Clifton with employment at the Bee Dynasty in Grand Junction.

From February 2002 to February 2007, Dusty Higgins served in the United States Navy as a law enforcement specialist.

On January 19, 2021, special agents of the FBI interviewed Higgins. During his interview, Higgins stated he traveled to Washington D.C. on his own. On January 6, Higgins was listening to President Trump's speech. Prior to the speech ending, he started marching towards the Capitol Building. Higgins stated that he entered the Capitol building through a broken window. After entering, Higgins walked around for about ten minutes before being ushered out of the building by police officers who were telling people to leave through a certain area. During the interview, Higgins stated, "our constitution tells us that when we have a treasonous government they should be overthrown." He further stated that his intention at the Capitol was not to overthrow the government but to make a statement. Higgins felt like the statement was made.

On February 2, 2021, Person 1, an individual who had been in consistent contact with Higgins, was interviewed by an FBI special agent via telephone. Person 1 stated that they observed a video on Higgins' Facebook or Instagram account showing Higgins inside the Capitol building with a crowd chanting "USA". At the end of the video Higgins turned the camera around to himself and said, "we will not be fucking stopped." Person 1 submitted the video as a tip to the FBI. After observing the video, Person 1 contacted Higgins, who stated that he went in the Capitol through a previously broken window, and numerous people went through. Higgins stated he was in the Rotunda area. Based on statements Higgins has made to Person 1, Person 1 believes that Higgins considers himself a member of the Proud Boys militia and believes the Proud Boys have radicalized HIGGINS through their appeals to the U.S. Constitution.

Below is a still from the video when Higgins turns the camera around to himself:



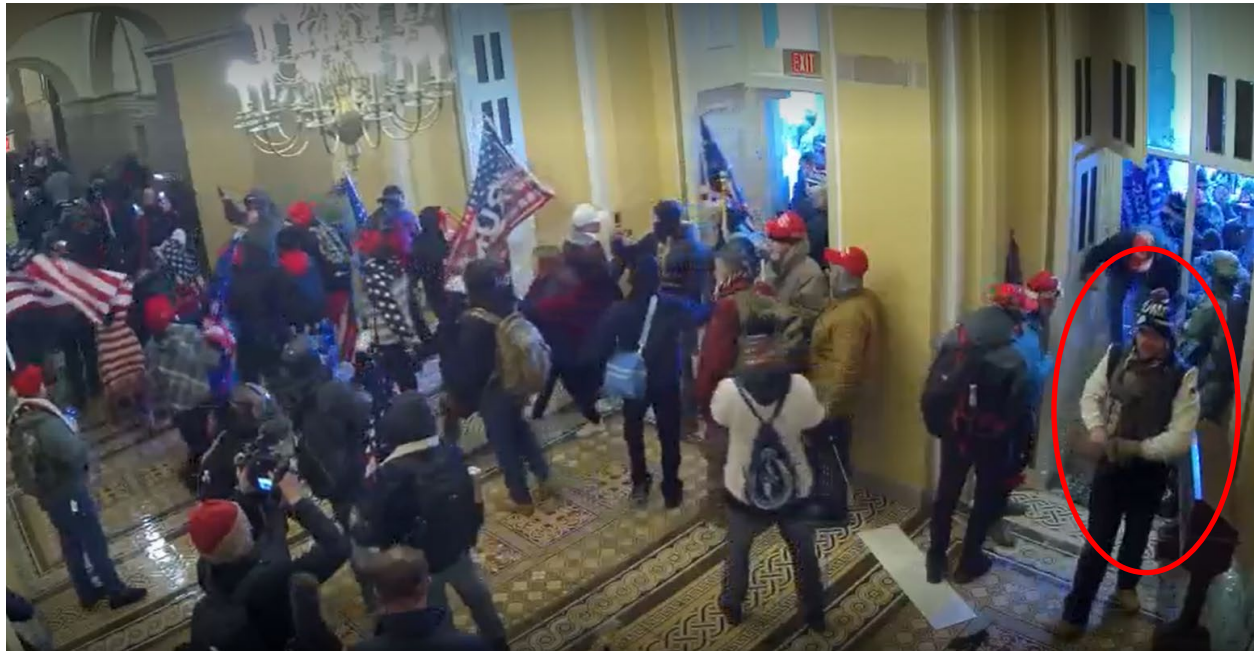
Records obtained by the FBI pursuant to a search warrant from Verizon Wireless in May 2021 show that a device associated with a telephone number known to be used by HIGGINS was located inside the Capitol on January 6, 2021, at approximately 2:32 p.m. EST.

On July 30, 2021, the FBI obtained search warrants for Facebook, Instagram, and Tik Tok. A review of the Instagram warrant shows that on 1/7/2021, a user asked, “You made it inside?? that's tight. Glad to see you made it in.” Higgins replied through his Instagram handle, higgins.dusty, “Sure fucking did man!” Additionally, on 1/7/21, Higgins sent the same video he sent to Person 1 which shows him inside the Capitol to a different user on Instagram. Higgins also told another user on 1/7/2021, “I made it in the capitol,” and to another user, “made it in the capitol yesterday. It was nuts” along with the following photo:



According to my research, this is the Charles Aycock statue with a Trump 2020 flag. According to the Architect of the Capitol website, aoc.gov, the statute is located in the crypt of the Capitol building. Higgins sent this photo to a number of individuals through Instagram.

The FBI also discovered numerous videos of Higgins in the Capitol Building on January 6, 2021 using Capitol CCTV's fixed cameras. I can tell these videos were taken at the Capitol on January 6, 2021 based on my knowledge of the exterior and interior views of the Capitol Building and based on the actions of the protestors in the videos. The clothing worn by Higgins in the following still images matches the clothing from the Instagram video. The first two stills are from CCTV video from the Senate wing door on 1/6/2021.



Higgins then enters the Crypt. The following still was taken from the CCTV video labeled Crypt North, and the second photo shows Higgins next to the Charles Aycock statue:



Higgins then exited the Capitol, out a window near the Senate Wing Door. The following still was taken from CCTV video labeled Senate Wing Door.



Based on the foregoing, your affiant submits that there is probable cause to believe that DUSTY HIGGINS 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.

Your affiant submits there is also probable cause to believe that DUSTY HIGGINS violated 40 U.S.C. § 5104(e)(2)(D) and (G), 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 (G) parade, demonstrate, or picket in any of the Capitol Buildings.



Benjamin Harris
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 3rd day of February 2023.

ROBIN M. MERIWEATHER
U.S. MAGISTRATE JUDGE