

Case: 1:23-mj-00079
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 4/11/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, Jeffrey Cotner, is a Special Agent with the Federal Bureau of Investigation (FBI) assigned to the Dallas Division. In my duties as a special agent, I investigate domestic terrorism. 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 the prevention, detection, investigation, or prosecution of a violation of Federal criminal laws.

I. The Events Of 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, 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.

II. Actions Of Nathan Donald Pelham

According to records obtained through a search warrant served on Google, a mobile device associated with a Gmail address attributable to Pelham which as described below is attributable to Nathan Donald Pelham, was geo-located to the north end of the US Capitol Building, in vicinity of the U.S. Senate Press Photographers' Gallery, on January 6, 2021. Google estimates device location using sources including GPS data and information about nearby Wi-Fi access points and Bluetooth beacons. This location data varies in its accuracy, depending on the sources of the data. As a result, Google assigns a "maps display radius" for each location data point. Thus, where Google estimates that its location data is accurate to within 10 meters, Google assigns a "maps display radius" of 10 meters to the location data point. Finally, Google reports that its "maps display radius" reflects the actual location of the covered device approximately 68% of the time.

In this case, Google records reflect that the mobile device associated with a Gmail address attributable to Pelham was present in or around the locations illustrated in the map of the U.S. Capitol building below, Figure 1, on January 6, 2021, between 2:31 PM to 4:07 PM. According to these records, the mobile device was geo-located to locations centered at or around the U.S. Capitol grounds on 37 separate occasions, the overwhelming majority of which were centered at points physically within the U.S. Capitol building. The points on the map in Figure 1 range in accuracy from 24 to 229 meters.

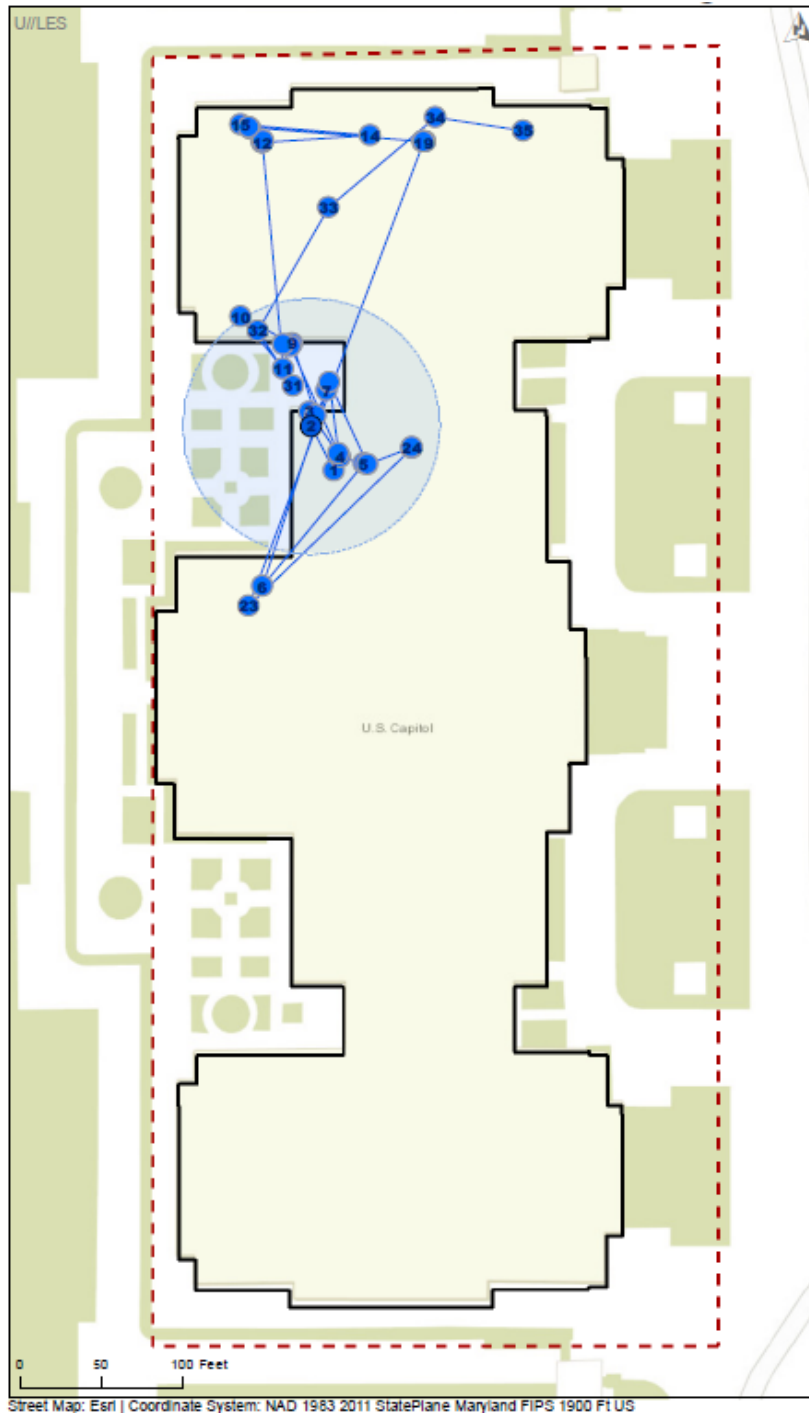


Figure 1

The timeframe in which the user of the Google account was geo-located to the U.S. Capitol corresponded with the time in which protesters were known to have breached the U.S. Capitol Building. According to search warrant return data, the captioned Google account was associated with an account recovery Short Message Service (SMS) number xxx-xxx-0043. A check of public

databases attributed the cell phone number to Nathan Donald Pelham, at an address in the Eastern District of Texas.

According to U.S. Customs and Border Protection (CBP), On or about March 17, 2021, Pelham attempted to leave the United States and enter Canada via the Blue Water Bridge between Port Huron, Michigan and Sarnia, Ontario. He was denied entry by the Canadian authorities, and he was thereafter detained by U.S. CBP in Port Huron, where he was interviewed while in CBP custody, and his Samsung S10e cell phone was examined by CBP. During the CBP examination of Pelham and his possessions, photos and video of Pelham near a door to the U.S. Capitol on January 6, 2021, were located. In at least one such photograph, Pelham can be seen wearing a hat with a logo associated with a nationalist group known as the "Proud Boys." (Your affiant is aware several individuals affiliated with the Proud Boys have been arrested in connection with the events of January 6, some of whom have been charged with conspiracies to obstruct Congressional proceedings and interfere with law enforcement that day.) Pelham advised CBP Officers that he was present at the U.S. Capitol on January 6th, 2021.

Pelham was then *Mirandized* by two FBI Task Force Officers (TFOs). After acknowledging his *Miranda* rights, Pelham chose to speak with the TFOs. During the interview, Pelham admitted to being present at the U.S. Capitol. He admitted to going up the steps on the North (Senate Chamber) side and to being within approximately three feet of the Capitol building. Pelham stated he never saw, touched or went around a barricade of any type while approaching the Capitol. Pelham stated there were Police Officers all around and in the crowd but he was never told or heard that he was entering a restricted area. Once he arrived Pelham found people were on the steps of the Capitol building and he walked up the steps. Pelham stated that when he got to the top of the steps he was about two feet from the Capitol Building but never physically touched or entered the building. Pelham stated that while at the Capitol he used his Samsung cell phone to take photos and videos. Pelham stated he used his Samsung cell phone's GPS system via Google maps to get to the United States Capitol grounds from his hotel. Pelham denied any affiliation with the Proud Boys, and stated that he purchased the hat referenced above, on or about January 5, 2021, because he liked the logo associated with it. Pelham stated that he was wearing his hat, an American Flag gaiter, goggles, a 1776 hoodie, jeans and gloves. At the conclusion of the interview, Pelham stated that he would be willing to take a polygraph to prove that he was not lying. Pelham was released by CBP a short time thereafter, but CBP retained custody of his Samsung Galaxy S10e cell phone.

On April 19, 2021, a search warrant was obtained for Pelham's Samsung Galaxy S10e in the U.S. District Court for the Eastern District of Michigan. Between June 10, 2021 to June 11, 2021, your affiant reviewed an extraction of Pelham's Samsung Galaxy S10e. During the review of evidence, photos and videos of Pelham in Washington D.C. and near an entrance to the U.S. Capitol Building were observed, but not inside the U.S. Capitol. Photos/videos of individuals wearing Proud Boys clothing were observed.

Text messages related to Pelham's trip to Washington D.C. were observed and some of the most pertinent ones are noted below:

1/7/2021 2:06:23 PM (UTC+0)

From: 1(xxx) xxx-6796 Wife

To: 1(xxx) xxx-0043 (owner)

It's a good thing you kept your mask on

1/7/2021 2:06:41 PM (UTC+0)

From: 1(xxx) xxx-6796 Wife

To: 1(xxx) xxx-0043 (owner)

If you have a video of being inside, don't post it

1/7/2021 2:18:17 PM (UTC+0)

From: 1(xxx) xxx-0043 (owner)

To: 1(xxx) xxx-6796 Wife

I know I am smart honey

1/15/2021 5:03:08 PM (UTC+0)

From: 1(xxx) xxx-1475 "Rukus"

To: 1(xxx) xxx-0043 (owner)

This guy actually wasn't so bad if I'm being honest. It was the first fool that almost got himself killed that I really didn't like, but this guy here just chimed in when he heard me scream at the first guy. He didn't know what I was yelling at him for, and tensions were high already. I shook his hand in the capitol as we passed each other. The other little tool got no respect from me, and never will.

On October 8, 2021, your affiant reviewed images and videos from an extraction of Pelham's Samsung Galaxy S10e, to determine what Pelham was wearing on January 6, 2021. Your affiant filtered the images and videos to look at the ones that were taken on January 6, 2021. Below is a screen shot that was taken from a video found on Pelham's cell phone.



Figure 2: screen shot from 20210106_143159.mp4

As seen in the above photo, Pelham was wearing a black ball cap with a small gold crest to one side of the front of the hat, a black-hooded sweatshirt with white stars on the front, a navy gaiter with white stars and stripes, and a pair of goggles with a black frame. An unknown white male with a black helmet, clear helmet shield, black sweatshirt, a tan tactical/armor vest, and a black gaiter with what looks like faded stars and stripes, can be seen standing behind Pelham. Below is another screen shot that was taken from a video on Pelham's cell phone.



Figure 3: Screen shot from 20210106_165857.mp4

As seen in the above photo, Pelham was still wearing the same black ball cap, a navy gaiter with white stars, and a hooded black sweatshirt with white stars. During the same video, Pelham's hand briefly crosses the screen wearing what appears to be a tan or brown glove.

On October 8, 2021, your affiant also reviewed United States Capitol Police (USCP) closed-circuit television footage (CCTV) from January 6, 2021. A USCP camera that was near to where Pelham was geo-located was reviewed. Below are screen shots taken from that camera's footage, with Pelham circled in red.

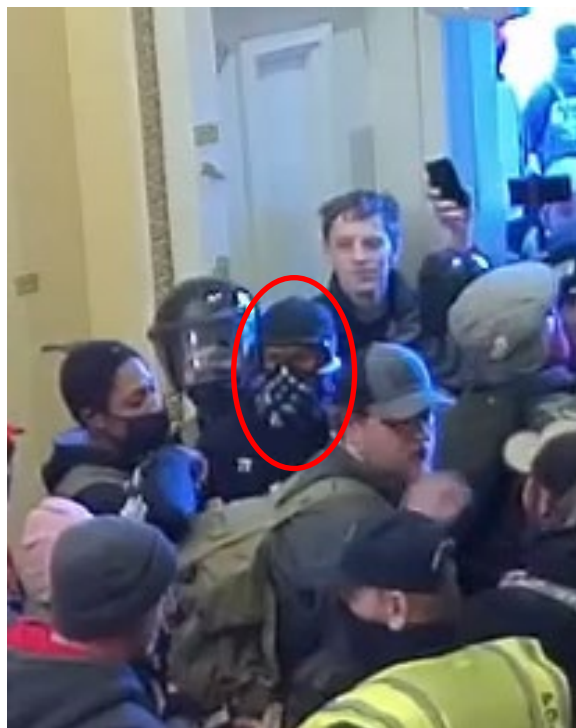


Figure 4: screenshot from USCP CCTV surveillance camera



Figure 5: screenshot from USCP CCTV surveillance camera

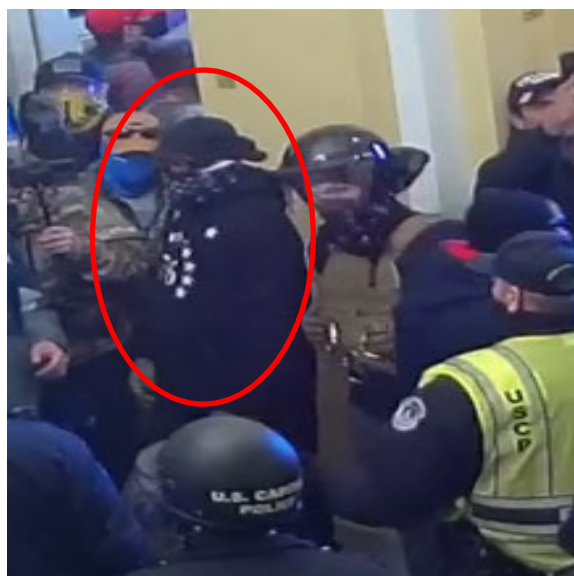


Figure 6: screenshot from USCP CCTV surveillance camera

As seen in the above screen shots from CCTV footage, an individual I believe to be Pelham based on his appearance, clothing, and the times and locations he was observed, was seen inside

the U.S. Capitol Building wearing the same black ball cap (turned backwards), black-hooded sweatshirt with white stars on the front, navy gaiter with white stars, goggles with black frame and brown gloves. In addition, you can see what appears to be the same unknown white male with a black helmet, clear helmet shield, black sweatshirt, a tan tactical or armor vest, and a black gaiter standing behind Pelham.

On October 21, 2021, your affiant interviewed Pelham at his residence in the Eastern District of Texas. When shown pictures of another individual near Pelham at the Capitol, Pelham said that he recognized the other individual as “Minnesota guy,” but did not know his true name. Your affiant showed Pelham a copy of Figure 2 above. Pelham confirmed that it was himself and “Minnesota guy” standing outside the U.S. Capitol area. Lastly, your affiant showed Pelham a copy of Figure 6 above. Pelham initially said that it was “Minnesota guy” in the picture, but not Pelham, but later in the same interview he confirmed that it was himself and “Minnesota guy” in the picture standing inside the U.S. Capitol building by the front door. According to Pelham, the police were having people come inside and then go right back out. The police had them walking a certain direction because people were clustered up and a lady was yelling about someone with Antifa.

In response to being asked why Pelham previously told the agents he did not go inside the building, Pelham said he did not think about when they did a little loop around and the police made them go like that, “I did not think about that, honest to God.” Pelham pointed to a police officer in the picture and said he was taking pictures with some of the people.

When asked again why Pelham did not tell the agents that he went inside the Capitol, he said that he did not think about it, “honest to God,” that he was at the border and that he got “hemmed up.” Pelham said he was trying to deliver a camper and was sitting there for 14 hours, and that he had no recollection of what was going on. He further said that he had been sitting in a room and did not know what was going on, that his wife was freaking out, that he had two kids (not with him at the time) and that he was losing his job (believed to be referring to losing his job for not being able to deliver the camper to the customer in Canada). Pelham was just frustrated. Referring to his first interview with agents at the Canadian border, Pelham said that he was not clear headed and was trying to recollect every single thing that day.

In speaking with your affiant, Pelham thought he was inside for 10 to 11 seconds. He said it was so quick and fast that Pelham did not remember. Pelham stated that he did not have to push through any police lines or barricades, they were opening “stuff” for people to come in and that everything was wide open by the time he got there. According to Pelham there were five cops just standing there. Pelham said he did not go inside any other doors after he left the Capitol building. Pelham observed a guy trying to break a window before Pelham entered the Capitol. According to Pelham, everyone was bunched up and two guys stopped the individual from breaking the window.

Based on review of USCP CCTV footage, however, it appears that Pelham entered the Senate Wing Door and was inside the U.S. Capitol Building for approximately 7 minutes and 21 seconds. Pelham remained close to the door that he entered for the duration that he was inside the U.S. Capitol Building.

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



Jeffrey Cotner
Special Agent FBI

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 11th day of April 2023.

Moxila A. Upadhyaya
U.S. Magistrate Judge