

Case: 1:23-mj-00117
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 6/6/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, James Farris, is a Special Agent with the Federal Bureau of Investigation assigned to the counterterrorism squad in the Fort Worth Resident Agency of the Dallas Division. In my duties as a Special Agent, I have investigated violations of federal law involving complex financial frauds, public corruption, and violent crimes, and I currently investigate federal violations concerning domestic terrorism. I have gained experience through training and work related to conducting these types of investigations. Currently, I am tasked with investigating criminal activity in and around the U.S. 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.

Background

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.

Identification of David Davis

On or about January 16, 2021, the FBI received an anonymous tip that an individual named David Davis from Keller, Texas had posted videos on social media platforms and admitted that he had been inside the U.S. Capitol on January 6, 2021. The tip further provided screenshots of Twitter posts by user “DirtyWhiteCoun1” (display name “Dirty White Country Boy”) and noted that he went by David A Davis on Facebook. One such screenshot showed a Twitter post by display name Dirty White Country Boy stating, “We’re in the capital and they shot a girl in the neck and killed her.” The FBI ran database checks on the name David Davis, which revealed an associated phone number xxx-xxx-7775 (the “phone number ending in -7775”) and an associated address in Keller, Texas. Based on this information, I obtained Texas driver’s license photo and information for David Allan Davis (hereinafter “DAVIS”).

Based on information previously provided by Google, subsequent to legal process served by the FBI, an electronic device logged into Google Account ID ending in -2077 was likely within the U.S. Capitol on January 6, 2021, in violation of federal law. According to information provided by Google, subsequent to legal process served by the FBI, Google Account ID ending -2077 was associated with account email address xxxxx.xxxxxx@gmail.com (“the *Gmail* address”) and the phone number ending in -7775, and had a listed name of Dirty White Country Boy.

For a time, the FBI was unable to locate DAVIS at the Keller, Texas address. In January 2022, FBI located DAVIS in Hudson, Florida. Another agent from the FBI attempted to interview DAVIS on January 20, 2022. DAVIS declined to interview, but confirmed that his phone number was the number ending in -7775. That agent subsequently identified DAVIS as the individual depicted in the photos included below as Images 1 and 2 from inside the U.S. Capitol on January 6, 2021.



Images 1 and 2

Further, according to information provided by U.S. Bank N.A., subsequent to legal process, a credit card account ending in -1318 in DAVIS' name reflects a purchase in the amount of \$11.20 on transaction date January 4, 2021 with the following description (number redacted):

AMERICAN xxxxxxxxxx1016 FORT WORTH TX
DAVIS/DAVID 01/05/21
DALLAS TO DULLES
DULLES TO DALLAS

DAVIS' Twitter Activity Relating to January 6, 2021

According to information provided by Twitter, subsequent to legal process, the account ID ending in -1859 has username "DirtyWhiteCoun1" and is associated with the phone number ending -7775 (the "Twitter account"). Based on the username and association with the same phone number, I believe that the Twitter account belongs to DAVIS.

According to information provided by Twitter, subsequent to legal process, DAVIS made numerous posts and sent messages related to the events of January 6, 2021 on the Twitter account.

On January 5, 2021, at approximately 5:17 p.m., DAVIS posted on the Twitter account in part:

Hard to fathom that communism is even a debate! For over half my life we fought wars over it. Yet here we are on the brink of it.\n\nUnfortunately, if this FRAUDULENT ELECTION isn't corrected the only alternative is a bloody civil war.\n\nWhat a waste!

The same evening, at approximately 5:43 p.m., DAVIS retweeted another user, stating in part:

RT @LLinWood: I fear @realDonaldTrump is walking into trap tomorrow. Led by Pence @VP @Mike_Pence. A few Senators will object. [. . .]

In the morning of January 6, 2021, at approximately 1:16 a.m., DAVIS posted on the Twitter account from Chantilly, Virginia:

Big News out of Pennsylvania! Letter from Pennsylvania Legislatures (Senate) to Mitch McConnell. Pennsylvania is informing the US Senate of decertification of their Election results! [. . .]

At approximately 4:14 a.m., DAVIS posted on the Twitter account from Chantilly, Virginia: “Plan A: Love my country. Stay [&] fight peacefully. Defend the Constitution. [. . .] Plan B: Hate communism. Move out to the country. Prepare to kill Communists. [. . .]”

At approximately 8:43 a.m., DAVIS re-tweeted former President Trump on his Twitter account: “RT @realDonaldTrump: States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process [. . .]”¹

At approximately 2:59 p.m., DAVIS posted on the Twitter account: “We’re in the capital and they shot a girl in the neck and killed her.”

At approximately 3:10 p.m., DAVIS posted on the Twitter account: “From this day forward the police are traitors!”

At approximately 4:50 p.m., DAVIS posted on the Twitter account: “We’re leaving peaceful now next time no fucken way!”

At approximately 5:31 p.m., DAVIS posted on the Twitter account, tagging another Twitter user: “Were you there and did you storm the capital along with us?”

At approximately 6:45 p.m., DAVIS sent direct messages to another user about the shooting of another rioter inside the Capitol:

It was like 10 feet in front of me when it happened and there was about 25 people in front of me. I might have caught something on my camera because it was on a stick. I videotaped the guy who videotaped the girl that was shot. I have no idea what’s even on my video until I get home. I’ve got 64 GB x3 SD cards full.

There was so many people pushing on both sides that I thought I was going to get crushed and then there was tear gas and I couldn’t breathe

¹ The full text of underlying publicly available Tweet is as follows: “States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval. All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!”

At approximately 7:33 p.m., DAVIS made multiple posts to the Twitter account:

I like how some people want to put the term \"Patriot\" into a nice little box filled full of stupid pacifists when it comes to sending an historic message to HARDCORE CRIMINAL ELECTION FRAUD, COMMUNISM, and INJUSTICE to the people of America whose SACRED RIGHT to VOTE was STOLEN!\",

I was there and I was damn proud to be!\n\nIt was a historic moment and we sent a message. A message that would have never been sent if we would have been the nice little pansies that the left laugh at! [. . .]

On January 8, 2021, at approximately 2:48 p.m., DAVIS posted on the Twitter account, “On the way from the Mall to the Capitol we stopped at the DOJ and told them to do their fucking jobs! They were pretty nervous. At one point they had police in riot gear and shields then they shut the doors. Some asshole was looking down laughing from 3rd Floor.” As part of this post, DAVIS uploaded a video appearing to depict protestors outside the Department of Justice.

At approximately 3:00 p.m., DAVIS posted a video to the Twitter account that appeared to depict the “Stop the Steal” rally on the Ellipse. DAVIS wrote in the accompanying post: “This was about 5-10 minutes before The President was done with his speech. . . . I started moving out on the way to the Capitol. \n\nThe best part of this trip was going to the Capitol!”

At approximately 4:39 p.m., DAVIS directly messaged another user on Twitter, stating “They’re starting to arrest people for entering the Capitol too. I’m still not taking down my video, but I’m not posting anymore either.” At 4:41 p.m., DAVIS messaged again, “It’s too late anyway. They had it the second I uploaded it.”

DAVIS’ Facebook Activity Relating to January 6, 2021

According to information provided by Facebook, subsequent to legal process, the account with identifier number ending in -3490 has vanity name “david.davis.5492,” the provided name of Dave A Davis, and is associated with both the *Gmail* account and the number ending in -7775 (the “Facebook account”). Based on all this information, I believe that the Facebook account belongs to DAVIS.

DAVIS sent messages from the Facebook account to others related to the events of January 6, 2021.

On January 9, 2021 at approximately 4:45 p.m., DAVIS messaged another individual that “[t]hey’ve been arresting people who were in the capitol. I may go to real jail.”

On January 10, 2021 at approximately 8:55 a.m., DAVIS sent the following message to another individual: “There was no violence at the Capitol except by the capital police. There was a few people who busted things with big deal. It was great to be there.”

DAVIS' Conduct inside the U.S. Capitol on January 6, 2021

Based on my review, I have located DAVIS on video showing him outside and inside the U.S. Capitol building on January 6, 2021, as reflected in the still images that follow. On those videos, Davis is wearing a red hat, black sunglasses, and a red mask. DAVIS is also consistently seen holding a stick that appears to have a camera or other electronic recording device attached. I know that it is DAVIS in these images because his appearance is consistent with DAVIS' driver's license photo and the images he was identified in above by the interviewing agent—in particular, he appears to wear the same red hat, black sunglasses, and red mask as in those images, and is holding the same stick.

On January 6, 2021, DAVIS entered the U.S. Capitol Building for approximately 39 minutes. I identified DAVIS on publicly available video on the stairs leading to the Upper West Terrace, which had been breached earlier by other rioters. A still image from that video is included below as Image 3.



Image 3

At approximately 2:16 p.m., DAVIS entered the Senate Wing Door, which had been breached by rioters. A still image from Capitol CCTV footage is included below as Image 4, with DAVIS circled in red.

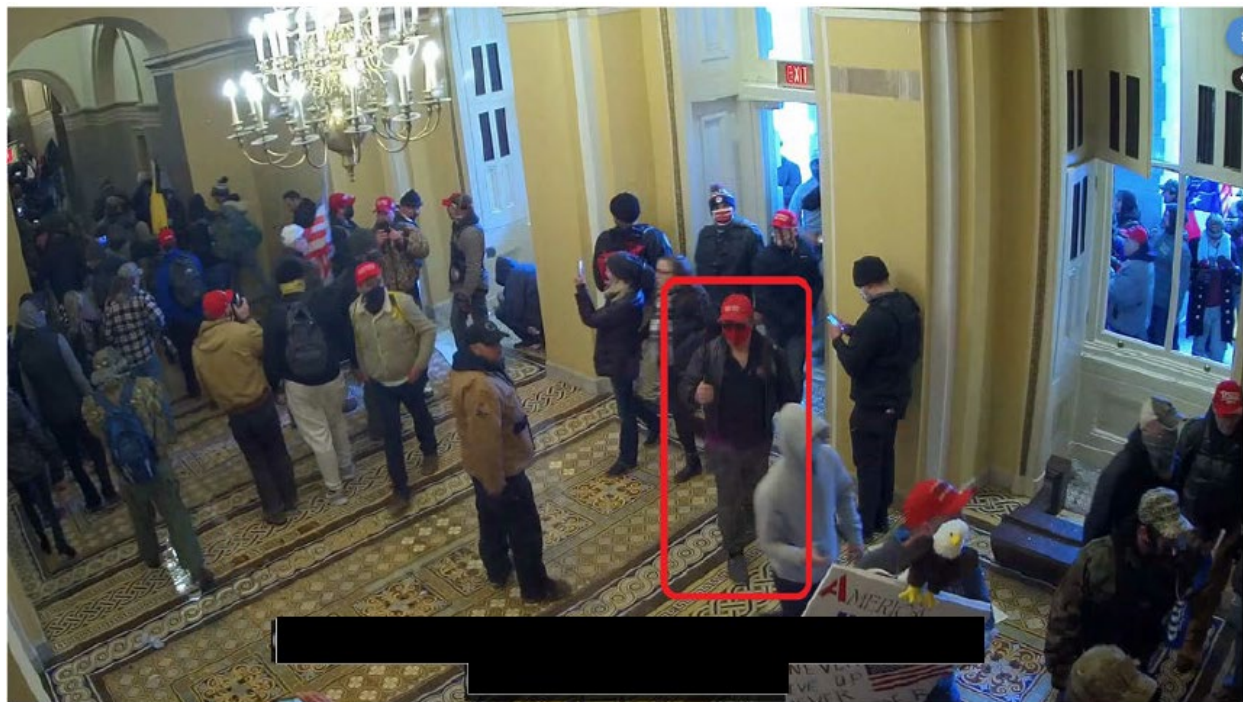


Image 4

A publicly available video shows that, as DAVIS entered the building, the glass in the Senate Wing Door was shattered and an alarm was audible. A still image from that video is included below as Image 5.



Image 5

DAVIS then proceeded to the Crypt, where he and the crowd encountered a line of police officers. DAVIS is circled in red in the still image from Capitol CCTV footage included below as Image 6:



Image 6

According to a video obtained from another January 6 defendant, pursuant to a court-ordered search warrant, DAVIS chanted with the crowd, “Lock them up!” A still image from that video is included below as Image 7.



Image 7

According to information provided by Twitter, subsequent to legal process, DAVIS posted a video to his Twitter account on January 6, 2021 at approximately 8:07 p.m., stating in relevant part: “So this should have uploaded but it didn’t. Yes I was there This was on my phone but not on my video camera that was also running at the time. I have 192GB of video I can’t look at until I get home.” The video appears to depict a line of police officers in the Crypt. A voice on the video shouts: “We can take ‘em. We can take these fuckers. We can take these fuckers. Fucking communists. Fucking communists. Fucking communists. Fucking commies.” A still image from this video is included below as Image 8.



Image 8

Minutes later, the crowd rushed the line of officers. Based on publicly available video, DAVIS was at the front of the crowd as it pushed forward. A still image from that video is included below as Image 9, with DAVIS is circled in red:



Image 9

DAVIS proceeded with the crowd through the Memorial Door, as reflected in the still image from Capitol CCTV at approximately 2:27 p.m. included below as Image 10. DAVIS is circled in red.



Image 10

DAVIS traveled one floor upstairs, and appears on Capitol CCTV footage at approximately 2:31 p.m. in Statuary Hall. A still image from that footage is included below as Image 11, with DAVIS circled in red:



Image 11

DAVIS joined a growing crowd in the Statuary Hall Connector. A line of police officers stood between the rioters in the Connector and the House Chamber Door. The still image included

below as Image 12 is taken from Capitol CCTV footage at approximately 2:32 p.m., with DAVIS circled in red:



Image 12

At approximately 2:36 p.m., the mob overran the line of officers and pushed forward to the House Main Door. DAVIS joined the crowd and appeared to continue to film in the hallway outside of the House Main Door, as reflected in the still image from publicly available videos included below as Images 13 and 14:



Image 13



Image 14

Rioters, including DAVIS, then walked along the hallway south of the House Main Door. A still image from Capitol CCTV at approximately 2:44 p.m. is included below as Image 15, with DAVIS circled in red:

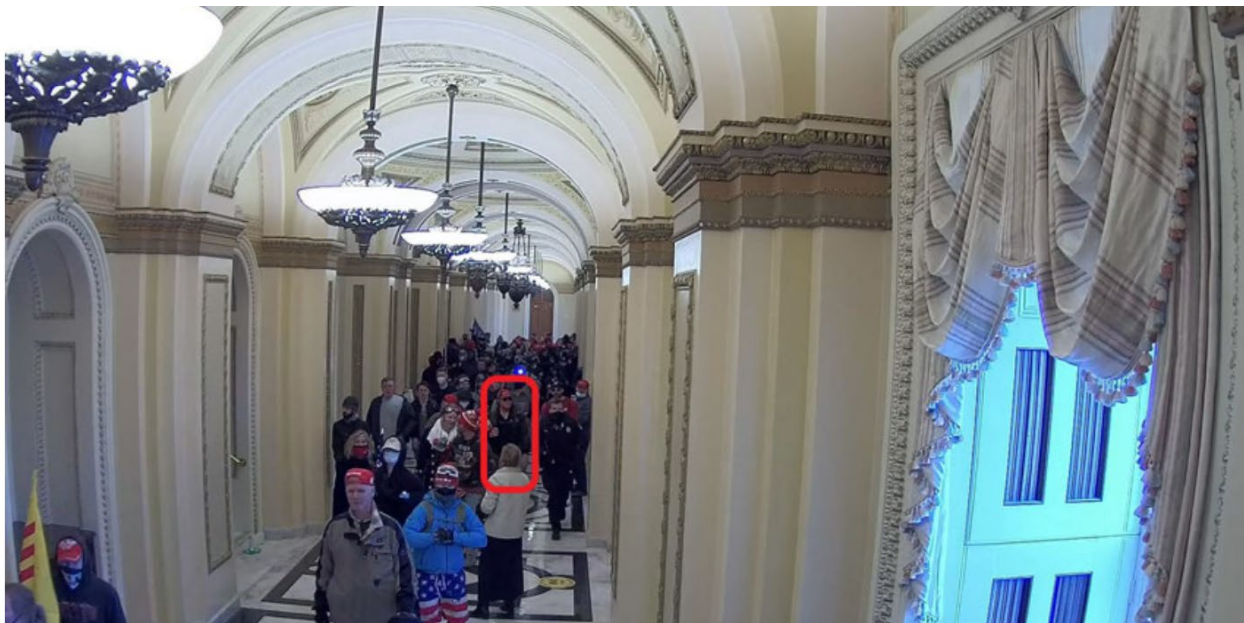


Image 15

DAVIS twice entered the Rayburn Reception Room, H-207, off of the main hallway. DAVIS first entered for approximately thirty seconds before re-emerging into the hallway. A still image from CCTV footage at approximately 2:44 p.m., after DAVIS left the room for the first

time, is included below as Image 16, with DAVIS circled in red. DAVIS then wandered back to the crowd outside the House Main Door.

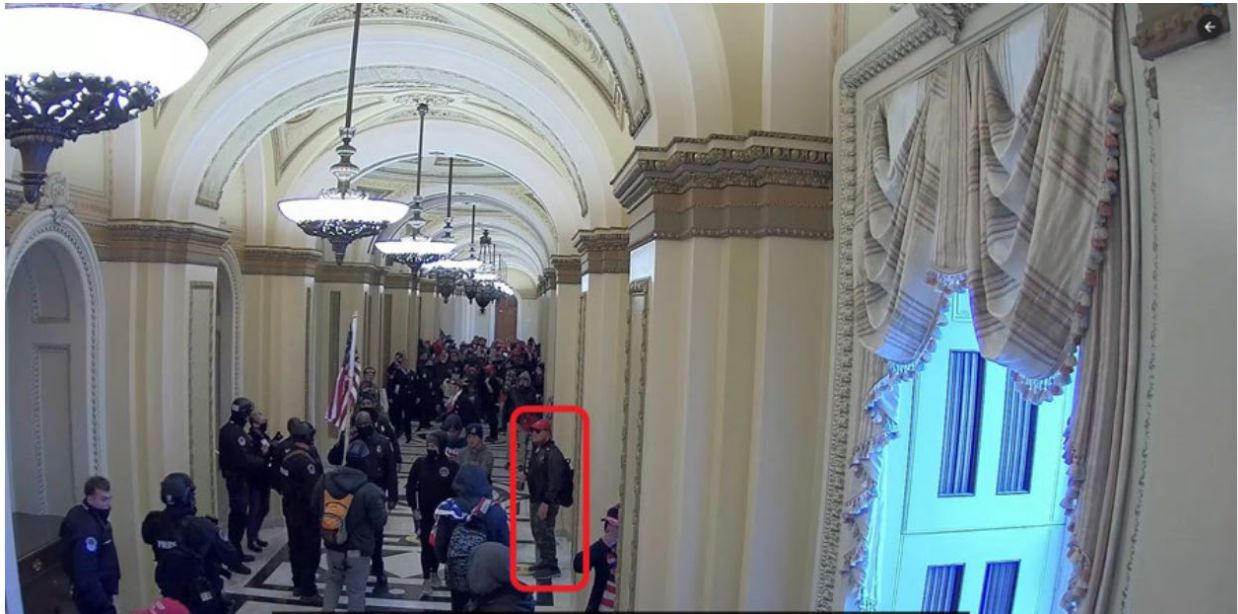


Image 16

At approximately 2:46 p.m., DAVIS entered the Rayburn Reception Room room for a second time, for approximately 20 seconds. By the time DAVIS exited the room for the second time, the hallway was filled with what appears to be smoke or tear gas, as reflected in the still image from CCTV footage included below as Image 17:



Image 17

DAVIS then turned the corner and walked south, following other rioters in the direction of the Speaker's Lobby. He is seen at approximately 2:47 p.m. and 2:48 p.m. in the still images from CCTV footage included below as Images 18 and 19, respectively. DAVIS is circled in red.



Image 18



Image 19

At approximately 2:54 p.m., DAVIS is seen again on Capitol CCTV, heading towards the East Front House Door. A still image from that footage is included below as Image 20.

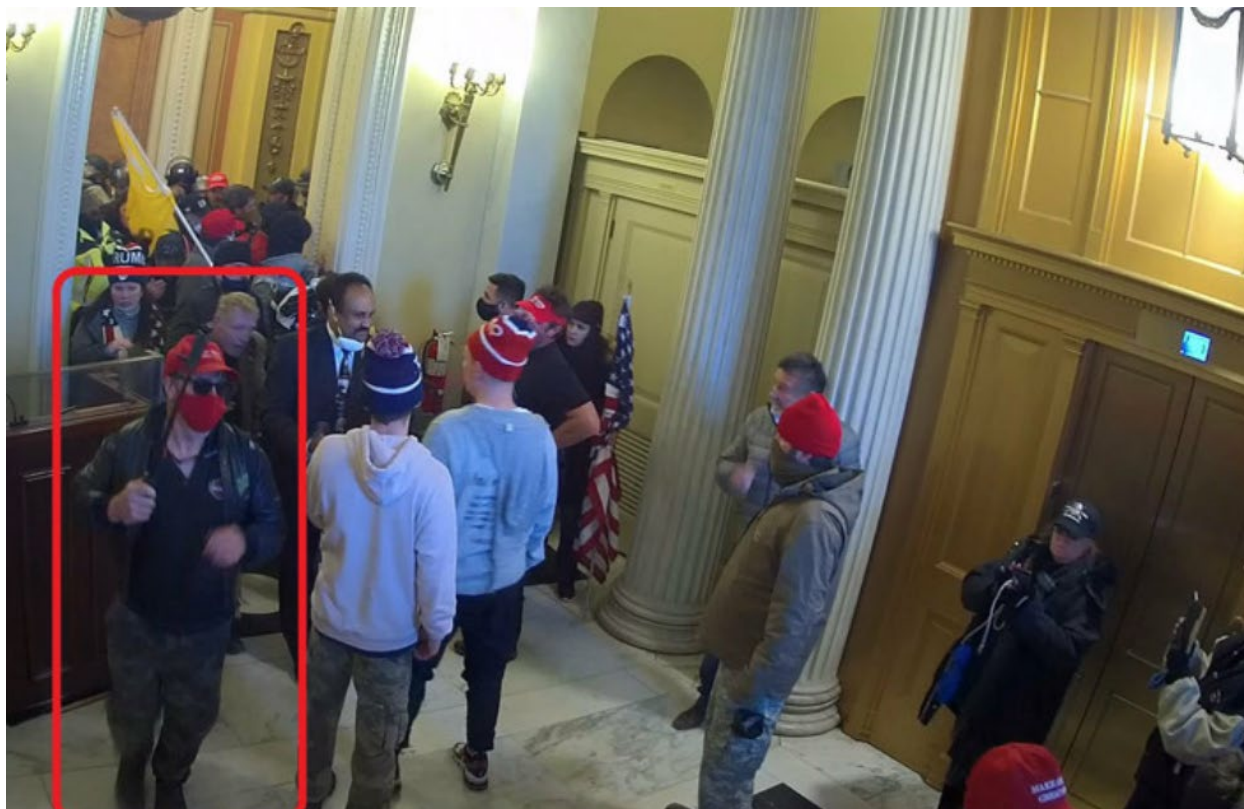


Image 20

DAVIS left the Capitol Building through the East Front House Door at 2:55 p.m., as reflected in the still image from Capitol CCTV included below as Image 21.



Image 21

DAVIS is also seen leaving the Capitol in another publicly available video, in which an alarm is audible. A still image from that video is included below as Image 22.

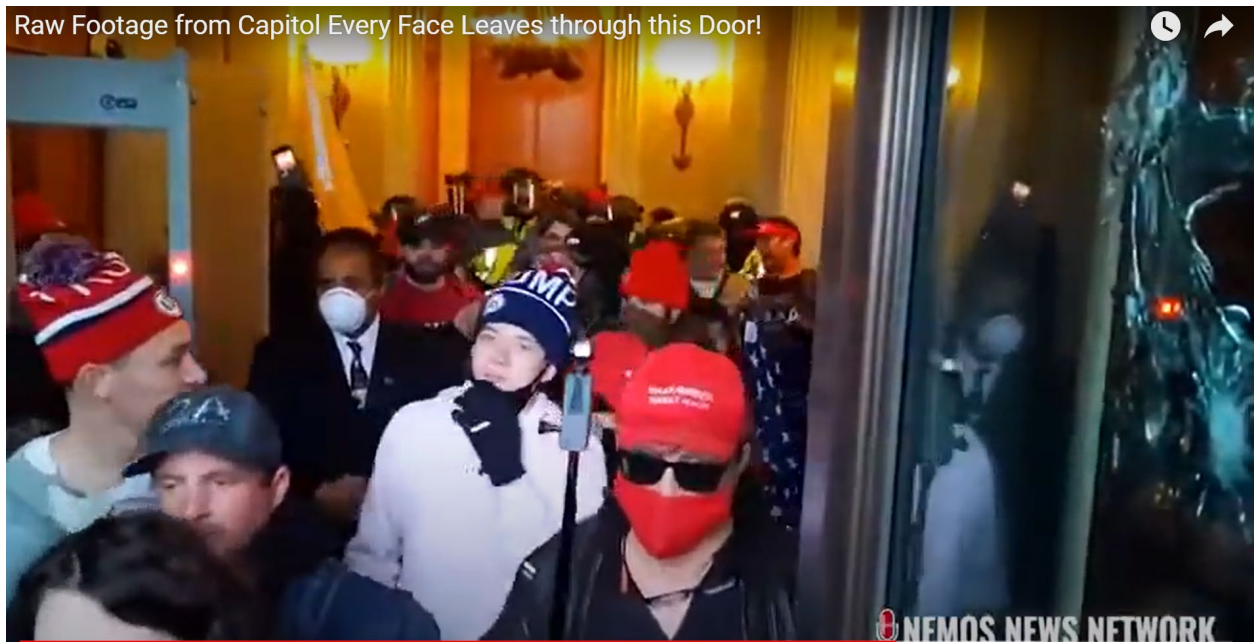


Image 22

Once he left the Capitol Building through the East Front House Doors, DAVIS spoke with others about what he had seen in the Capitol. Specifically, in a publicly available video, an

individual asked DAVIS if he had witnessed the shooting of a rioter by the Speaker’s Lobby. DAVIS responded that he had not, but he had “seen the video of it, some kid videotaped it. . .shot her right on the neck, killed her, he had blood on his hands. . . They killed her.” When asked what she was doing, DAVIS responds, “Just going through the door.” A still image from this video is included below as Image 23.



Image 23

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



James P. Farris
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 6th day of June 2023.

MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE