

Case: 1:23-mj-00129
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 6/13/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

I, Brett Fernald, am a police officer with the city of Manchester, New Hampshire, and have been so since April 2013. In June 2019 I was assigned to the Special Enforcement Division as a Task Force Officer with the Federal Bureau of Investigation (FBI). In my duties as a task force officer, I investigate and support operations involving national security matters and federal criminal violations that include international and domestic terrorism. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a task force officer, 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. 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 Richard Zachary Ackerman

On or about January 8, 2021, the FBI received an online tip that included a picture of what was believed to be a U.S. Capitol Police helmet defaced with a sticker affixed to the helmet. The helmet is black with U.S. Capitol Police lettering in white on the back side of the helmet. A small circular sticker with the words “New England 131” along with a black flag appears to have been placed on the helmet above the lettering:



Image 1: Image from the online tip of what appears to be a Capitol Police Helmet with a New England 131 sticker affixed to it

Based on my training and experience, I know that New England 131 refers to the “Nationalist Socialist Club 131” (“NSC-131” for short) and the “White Defense Force.” The 131 is a reference to the alphabet letters “A C A” which stands for “Anti-Communist Action.” The group had previously been known as the “New England Nationalist Club” and the “New England National Conservative Society Club.” According to open-source media searches, NSC-131 is a neo-Nazi group with small, autonomous regional chapters in the United States and abroad, whose members see themselves as soldiers at war with a hostile, Jewish-controlled system that is deliberately plotting the extinction of the white race.

In 2021, a confidential human source (CHS-1) cooperating with the FBI reported attending a gathering with other NSC-131 members. CHS-1 does not have any pending charges and was not “working off” charges at any relevant time. CHS-1’s FBI handler reported to me that CHS-1 has consistently provided reliable information. CHS-1 reported that during the course of the gathering, a NSC-131 member known online as “Zach Parker” stated that he was at the U.S. Capitol on January 6, 2021 and found a U.S. Capitol police helmet on the ground. CHS-1 reported that “Zach Parker” stated that he placed the “New England 131” sticker on the helmet before taking a photograph of the helmet. CHS-1 also reported that “Zach Parker” said during the gathering that he still had the helmet at his residence.

On May 21, 2021, CHS-1 provided law enforcement of a screen shot of a text conversation on the communication platform Telegram between users identified as “New Englander” and “Mew.” In the conversation, “Mew” posted the following messages:

- “tell Ackerman I said hi”
- “don’t you think the police would want that helmet back tho..”

In July of 2021, Richard Zachary Ackerman flew to Germany. On August 25, 2021, Ackerman entered the United States at Boston Logan International Airport on a return flight from Germany. While going through Customs and being admitted back into the country, a secondary inspection was conducted on Ackerman by U.S. Customs and Border Protection (“CBP”). Among other things, the inspection confirmed that Ackerman lived on Lake Street in Salem, New Hampshire. While speaking with CBP officers, Ackerman stated that he had traveled to Washington, D.C. on January 6, 2021. Ackerman confirmed that he found a U.S. Capitol Police helmet on the ground. Ackerman claimed that another individual took a picture of the helmet and posted it on Telegram. Ackerman denied taking the helmet home with him.

Ackerman consented to a search of his cellphone, an Apple iPhone 11 Pro Max. On January 6, 2021, Ackerman texted with an individual identified in the phone as “I. Luz.” A portion of the conversation is below:

Ackerman:	I’m going down to DC today
I. Luz:	Oh cool have fun!
Ackerman:	If I get shot down there, just remember that I thought highly of you
Ackerman:	Add me on sc. caco1488
I. Luz:	Well i hope you don't get shot and thank you. Ok I'll add you

In another conversation on January 6, 2021, Ackerman texted with someone identified as “I. Bri.” A portion of the conversation is below:

Ackerman:	I'm omw to Washington DC rn
I. Bri:	Oooh have fun
Ackerman:	Yes... I will be going to see the action in these riots/protests

In another conversation on January 6, 2021 Ackerman was communicating with someone identified as “A. Jen.” A portion of that conversation is below:

A. Jen:	What is going on there???
A. Jen:	The news is saying Trump Supporters are breaking into the Capital Building
Ackerman:	I'm on the top of the capital
Ackerman:	Yes. I got tear gassed & had to carry this girl out of the gassing zone
A. Jen:	There is a 6p curfew
A. Jen:	Don't get arrested, you won't be able to be a Marine... Go home, it's not worth it!
Ackerman:	I'm hiding
	...
Ackerman:	Yes. I'm in the car... I got maced really bad
A. Jen:	What happened?
Ackerman:	It got really fucking crazy. Call me.
Ackerman:	I was right there, in the eye of it
Ackerman:	I stole a SWAT Team officers helmet [attachment] ¹
A. Jen:	Not smart Zach
Ackerman:	It's a war trophy

¹ The phone search conducted by CBP did not result in saved copies of sent images. While the records show that an image was sent, I have not seen the contents of the image or any attachments referenced in the materials provided to me by CBP, other than the screenshot included in the affidavit.

A CPB agent also took the following screenshot from Ackerman's phone, which appears to show that Ackerman sent a "selfie" of himself wearing a Capitol Police helmet to another individual on January 7, 2021:

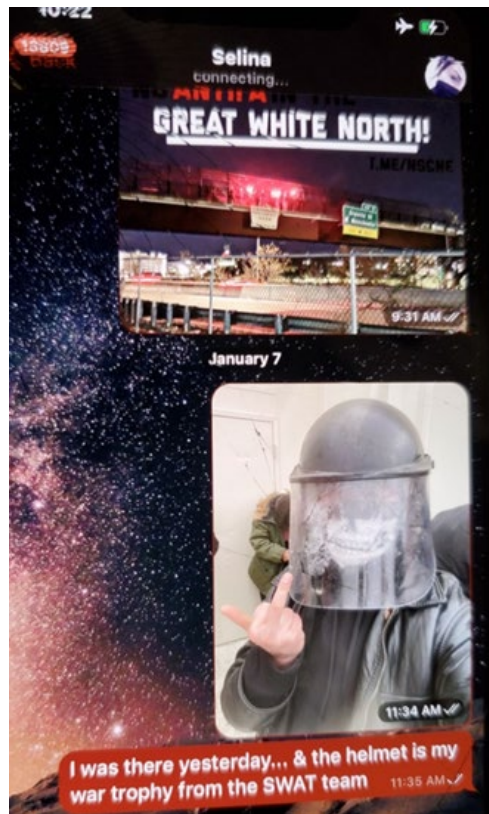


Image 2: Screenshot of Ackerman's phone taken by CBP

As shown in Image 2, after sending the image, Ackerman wrote: "I was there yesterday... & the helmet is my war trophy from the SWAT team." In addition, on January 7, 2021, Ackerman sent a message to someone identified as "Aylssa": "Here's the helmet I stole... I'll call you in the next day or two. [attachment]." On the same date, Ackerman sent the following message to someone identified as "Rae": "I was at DC today... I was right in the doorway to the building... I stole an officer's helmet. [attachment]." In another conversation on January 7, 2021, with someone identified as "Aunt Jen," Ackerman stated: "I stormed the capital, & I grabbed a helmet off of the SWAT team. [attachment]" and "I ripped a chair out of the office & circled it around... it ended up getting thrown at the police."

On June 8, 2022, I obtained a warrant to search Ackerman's residence in Salem, New Hampshire. The following day, agents executed the warrant. Agents knocked on the door and an individual who identified himself as Richard Ackerman, Ackerman's father, opened the door. Richard Ackerman confirmed that Ackerman lived at the residence but was not there at the moment. Richard Ackerman called Ackerman and informed Ackerman that agents had a warrant to search for the possession of stolen government property. Ackerman stated over the phone that the helmet was located inside the fireplace in his basement bedroom. I went into the basement

bedroom, located the fireplace, and found a U.S. Capitol Police helmet tucked inside the chimney flue.



Images 3 and 4: Photographs of the front and back of the helmet recovered from Ackerman's bedroom

Richard Zachary Ackerman's Conduct on January 6, 2021

The FBI reviewed open source videos and images, including videos available on Facebook.com and YouTube.com. I have seen Ackerman personally when conducting surveillance and observed him leave his home in Salem, New Hampshire, and arrive at his place of employment in Salem, New Hampshire, and have reviewed his New Hampshire Driver's License photograph and, based upon this, I, believe Ackerman is the individual circled in Image 5 below, which appears to have been filed on the grounds of the Capitol on January 6, 2021:



Image 5: Screenshot from a publicly available video² showing Ackerman (in the red square) on the grounds of the Capitol

² Available at <https://www.facebook.com/ben.swann3/videos/3597261303702748>, 7:01.

In another video, which also appears to have been filmed on the grounds of the Capitol on January 6, 2021, Ackerman appears to put on the helmet:



Image 6: Screenshot from a publicly available video³ showing Ackerman (in the red square) about to put on a Capitol Police helmet

In the video, Ackerman can be seen wearing a black leather jacket with a black sweatshirt underneath. In another screenshot from the same publicly available video, Ackerman can be seen wearing a small brown case on his belt:



Image 7: Screenshot from a publicly available video⁴ showing Ackerman (in the large red square) with a Capitol Police helmet and a small brown case (in the small red square)

Other publicly available footage apparently from January 6, 2021, shows Ackerman with the same style black leather jacket and a brown cellphone case with a skull and crossbones that appears to be consistent with the brown case in Image 7, above:

³ Available at <https://ia801405.us.archive.org/28/items/c5edLeuT2JHzgDkK7/c5edLeuT2JHzgDkK7.mpeg4>, 6:18.

⁴ Available at <https://ia801405.us.archive.org/28/items/c5edLeuT2JHzgDkK7/c5edLeuT2JHzgDkK7.mpeg4>, 6:17.



Image 8: Screenshot from a publicly available video⁵ showing Ackerman with black leather jacket and brown case with skull and crossbones

Based on my review of publicly available video, I have observed that Ackerman made his way to the vicinity of the terrace on the west side of the Capitol building where a stage for the Presidential Inauguration was being constructed (the “Lower West Terrace”) and positioned himself close to the arched entrance to a passageway that connects the Lower West Terrace and the interior of the U.S. Capitol building (the “Archway” and the “Tunnel,” respectively).

At approximately, 2:40 p.m., police officers entered the Tunnel and began to form a protective line with riot shields behind a set of glass inside of the Tunnel. Soon thereafter, numerous rioters entered the Tunnel. Between at least 2:54 p.m. and 4:50 p.m., rioters tried to breach the line of officers and gain entry to the interior of the Capitol building. Several rioters threw objects at the officers and used poles to strike at the officers. By approximately 4:24 p.m., officers were attempting to expel the rioters from the Archway.

By approximately 4:28 p.m., Ackerman had positioned himself near the entrance to the Archway:

⁵ Available at <https://www.youtube.com/watch?v=scgZBFPDu7c>, 5:15.



Image 9: Screenshot from a publicly available video⁶ showing Ackerman (in the red square) near the Archway

Other publicly available footage shows Ackerman near the Archway:



Image 10: Screenshot from a publicly available image⁷ showing Ackerman near the Archway

⁶ Available at

https://twitter.com/ParlerVideos/status/1358678741686321154?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1358678741686321154%7Ctwgr%5Ec45c4fc6f13e0b28c10e574fa474901512eb6cec%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fjan6attack.com%2Fvideos%2Fki%2FkiBnNejo0JW0%2F, 0:34.

⁷ Available at https://twitter.com/sally_sleuth/status/1379909558060077065/photo/2.

The individual depicted in Image 10 is wearing a U.S. Capitol Police helmet along with a black leather jacket and black sweater. These items are consistent with the items worn by Ackerman in Images 6 and 7. In addition, in the video Ackerman is wearing what appears to be a brown watchband on his left wrist. During the course of the investigation, I have observed Ackerman to be wearing a brown watchband both before and after January 6, 2021. Specifically, I observed a publicly available video⁸ of an individual who identifies himself as Zach Parker wearing a watchband on his left wrist that appears to be similar. I know this video to show Ackerman based upon my personal surveillance of him (described above) and having reviewed his New Hampshire Driver's License photograph. As recently as May 24, 2023, law enforcement observed Ackerman in Manchester, New Hampshire. In an image of Ackerman taken by law enforcement on May 24, 2023, Ackerman appears to be wearing a similar looking brown watchband on his right wrist.

In one publicly available video, Ackerman can be seen throwing a water bottle into the Tunnel:



Image 11: Screenshot from a publicly available video⁹ showing Ackerman (in the red square) after throwing a water bottle into the Tunnel

During the course of the investigation I reviewed additional video obtained during the course of the investigation, specifically one video titled 410pm.mp4 (the “410pm.mp4 video”) that shows the fighting at the Tunnel and Archway. Although Ackerman cannot be seen throwing the water bottle in this video, it appears to capture this moment from a different angle:

⁸ Available at <https://www.joshwhotv.com/v/.7yHseQ>.

⁹ Available at <https://www.youtube.com/watch?v=rKPbc-7pSDI&t=13s, 1:36>.



Image 12 (left): Screenshot from the 410pm.mp4 video obtained during the investigation as compared to **Image 11** (right) screenshot of video showing Ackerman (in the red square) after throwing a water bottle into the Tunnel. Many of the individuals in the images appear to be in the same or similar locations.

At this moment, the 410pm.mp4 video, shows a water bottle being thrown into the Tunnel, first hitting the Archway and then hitting an officer:



Image 12: Screenshot from the 410pm.mp4 video with a water bottle (circled in red) before hitting the Archway.

Although the video does not show who threw the water bottle circled in Image 12, based upon my review of the video, including observing the locations of other individuals, I believe that this is the water bottle that Ackerman threw.

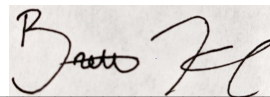
Based on the foregoing, I submit that there is probable cause to believe that Richard Zachary Ackerman violated 18 U.S.C. § 1752(a)(1) and (2) which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent 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.

I submit there is probable cause to believe that Richard Zachary Ackerman 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.

I also submit that there is probable cause to believe that Richard Zachary Ackerman violated 18 U.S.C. § 111(a)(1), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with a designated person while that person is engaged in the performance of official duties, or on account of that person’s performance of official duties. For the purposes of Section 111 of Title 18, a designated person includes officers or employees of the United States or of any agency in any branch of the United States Government. This includes officers of the U.S. Capitol Police, and also includes members of the Metropolitan Police Department when, as in the events described above, such officers were assisting a federal officer or employee in the performance of the federal officer’s duties.

Finally, I submit there is probable cause to believe that Richard Zachary Ackerman 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.



Brett Fernald
Task Force Officer
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 13th day of June 2023.

MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE