

Case: 1:23-mj-00203
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 8/14/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED] is a Special Agent with the Federal Bureau of Investigation (FBI) and is presently assigned to the Cincinnati Division, Columbus Resident Agency. Among my duties as a Special Agent, I conduct investigations of criminal activity that uses force or threat of violence in furtherance of a social/political agenda. 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 or supervise the prevention, detection, investigation, or prosecution of a violation of Federal criminal laws.

The facts in this Affidavit come from my personal observations, my training and experience, and information obtained from other agents, witnesses, and agencies or is based on a review of various documents, records, and reports. Because this Affidavit is submitted for the limited purpose of establishing probable cause, it does not contain every fact known by me or the FBI. The dates and times listed in this Affidavit should be read as “on or about”.

Background: Events at 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.

Identification of Benjamin Michael Shuler

1. Immediately following the events of January 6, 2021, the FBI and other law enforcement agencies began investigating the crimes committed on January 6. As part of this investigation, the FBI reviewed body worn camera (BWC) footage from multiple responding law enforcement agencies, including the Montgomery County Police Department (MCPD), which was assisting U.S. Capitol Police in their response to the riot. MCPD Officer M.D.'s BWC revealed a possible assault by a white male with a full, copper beard; wearing a gray T-shirt, a dark green jacket, and an American flag baseball cap with a distinctive black symbol; and carrying a backpack. The FBI assigned this individual the moniker AFO-435 (“Assault on Federal Officer”).

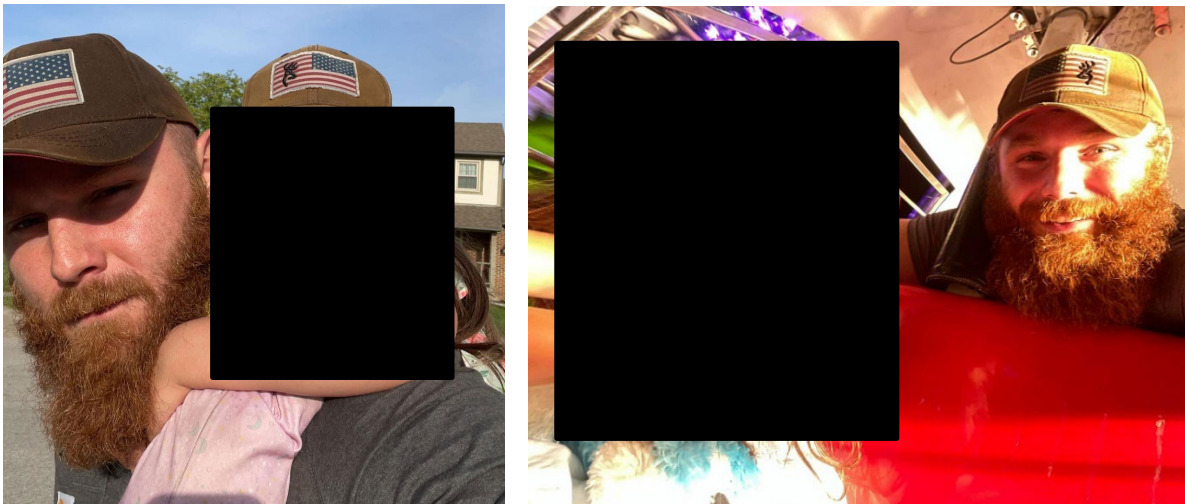
2. On October 21, 2021, the FBI Chicago Field Office interviewed an individual (“Witness 1”) who has a personal relationship with SHULER. Witness 1 visually identified SHULER using photos taken from the Capitol grounds. *See* Images 1–3 below. Witness 1 also provided information about SHULER’s Facebook account.



Images 1, 2, and 3 (left to right): Photographs Shown to Witness 1 and Witness 2

3. On the same day, I located the Facebook account titled “Benjamin Shuler,” which is associated with Facebook account # 1380167903. The account included multiple publicly available photographs of a white male with a full beard, wearing an American flag baseball cap

with a distinctive black symbol, that are consistent with photographs of SHULER on January 6, 2021. *See* Images 4 and 5.



Images 4 and 5: Photographs from SHULER's Facebook Account

4. On November 18, 2021, the FBI Chicago Field Office interviewed another individual (“Witness 2”) who has a personal relationship with SHULER. Witness 2 reported that SHULER told Witness 2 that he (Shuler) went to the Capitol during the unrest on January 6, 2021. SHULER told Witness 2 that while he was at the Capitol he observed two police on the Capitol steps hitting an old man so SHULER stepped in and struck the police to stop them. Witness 2 did not know if at any time SHULER actually entered the Capitol. Witness 2 visually identified SHULER in photos taken at the Capitol grounds. *See* Images 1, 2, and 3.

5. On October 12, 2022, I interviewed SHULER. SHULER initially denied going to the U.S. Capitol on January 6, 2021. When shown photographs of himself from January 6, 2021 at the U.S. Capitol, SHULER acknowledged that he had in fact gone to the Capitol on January 6 and had interacted with law enforcement officers while there.

Assaultive Conduct by BENJAMIN MICHAEL SHULER

6. On January 6, 2021, at approximately 4:48 p.m., a police line established on the northwest stairs to the Capitol began to descend the stairs to clear the area of protesters. *See* Image 6.



Image 6: Photograph of U.S. Capitol on January 6, 2021

7. At approximately 4:49 p.m., SHULER resisted the police line and began pushing MCPD Officer M.D.'s (Victim Officer 1) riot shield several times and pressing his body into the riot shield. See Images 7 and 8.



Image 7: Shuler (circled in red) on the Northwest Staircase as captured by Officer M.D.'s BWC



Image 8: Shuler (circled in red) on the Northwest Staircase as captured by Officer M.D.'s BWC

8. At approximately 4:53 p.m., as the police line attempted to advance down the steps, SHULER continued to resist and pressed his body into an additional unidentified police officer's (Victim Officer 2) riot shield and shoved it back several times as the officer was attempting to deter SHULER. See Image 9.



Image 9: Shuler (circled in red) on the Northwest Staircase pushing against Victim Officer 2's riot shield, as captured by Officer M.D.'s BWC

9. At approximately 4:54 p.m., as officers continued to move the police line down the northwest stairs, SHULER continued to resist and violently pushed Victim Officer 2's riot shield several times with what appeared to be a significant amount of force. *See Images 10-12.*



Image 10: Shuler (circled in red) on the Northwest Staircase pushing against Victim Officer 2's riot shield, as captured by Officer M.D.'s BWC



Image 11: Shuler (circled in red) on the Northwest Staircase pushing against Victim Officer 2's riot shield, as captured by Officer M.D.'s BWC



Image 12: Shuler (circled in red) on the Northwest Staircase pushing against Victim Officer 2's riot shield, as captured by Officer M.D.'s BWC

10. At approximately 4:57 p.m., as the police line approached the bottom steps, Officer M.D.'s BWC appears to show SHULER gesturing to others to meet him in front of the police line. See Image 13.



Image 13: Shuler (circled in red) as captured by Officer M.D.'s BWC

11. At approximately 4:58 p.m., SHULER again appears to resist the police line by pushing back and swiping at an unidentified officer's (Victim Officer 3) riot shield. *See* Image 14.



Image 14: Shuler (circled in red) as captured by Officer M.D.'s BWC

CONCLUSION

Based on the foregoing, your affiant submits that there is probable cause to believe that Benjamin Michael SHULER violated 18 U.S.C. § 111(a), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in Section 1114 of Title 18 while engaged in or on account of the performance of official duties, or to aid, abet, counsel, command, induce, or procure the commission of such offenses. Persons designated within Section 1114 include any person assisting an officer or employee of the United States in the performance of their official duties.

Your affiant submits there is also probable cause to believe that Benjamin Michael SHULER violated 18 U.S.C. § 231(a)(3) and § 2, 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.

Your affiant submits that there is also probable cause to believe that Benjamin Michael SHULER violated 18 U.S.C. §§ 1752(a)(1), (2), (4), and 2, which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do so; (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 engage in any act of physical violence against any person or property in any restricted building or grounds, or attempt or conspire to do so; or to aid, abet, counsel, command, induce, or procure the commission of such offenses. 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.

In addition, your affiant submits there is probable cause to believe that Benjamin Michael SHULER 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.

[REDACTED]

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 14th day of August 2023.

HONORABLE MOXILA A. UPADHYAYA
UNITED STATES MAGISTRATE JUDGE