

Case: 1:23-mj-00207
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 8/17/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, John W. Smith, is a Special Agent with the Federal Bureau of Investigation (“FBI”) assigned to the Denver Division. In my duties as a Special Agent, I investigate criminal violations relating to terrorism, civil rights, and online threat communications. 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 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 Clive A. Kincaid

After January 6, 2021, records obtained by the FBI indicated that the user of telephone number 505-296-****¹, was inside the U.S. Capitol on January 6, 2021. The FBI performed records checks on this phone number and assessed the likely user of this phone number to be CLIVE A. KINCAID. Your affiant obtained KINCAID's Colorado Driver's License photo to become familiar with his appearance.

KINCAID ascended to the Upper West Terrace on the Northwest stairs, under the scaffolding. He was verbally engaging with officers attempting to hold the top of the stairs and had his hands on a bike rack the officers used as a barricade. KINCAID continued holding onto this bike rack as other rioters pulled it away from the officers. *See Image 1* below. KINCAID held what appears to be pepper spray. *See Image 2* below.

Image 1: KINCAID holding onto a bike rack that was just pulled from officers



¹ Your affiant has removed the last four digits of this telephone number for privacy purposes. Your affiant knows the last four digits.

Image 2: KINCAID holding what appears to be pepper spray on the NW Stairs



After the mob pulled the bike rack away from the officers, KINCAID stood at the top of the NW stairs and spoke with an officer. During this conversation, KINCAID appears to be sprayed with some type of chemical spray deployed by a rioter behind him. KINCAID then made his way through the police line closer to the Capitol after speaking some more with the officer.

Your affiant reviewed surveillance camera footage from inside the U.S. Capitol on January 6, 2021. KINCAID was observed entering the U.S. Capitol at approximately 2:27 PM, through the Rotunda door. KINCAID walked to the House of Representatives' side of the building, stood at the front of the mob as it pushed through police in the statuary connector hallway, and proceeded up to the 3rd floor. He exits the Capitol building through a door on the South side of the 1st floor of the House of Representatives side at 2:52 PM, twenty-five minutes after entering. The images below are KINCAID inside the U.S. Capitol on January 6, 2021.

Image 3: KINCAID entering the U.S. Capitol through the East Rotunda Door at 2:27 PM, less than one minute after rioters pulled officers away - breaching this door.

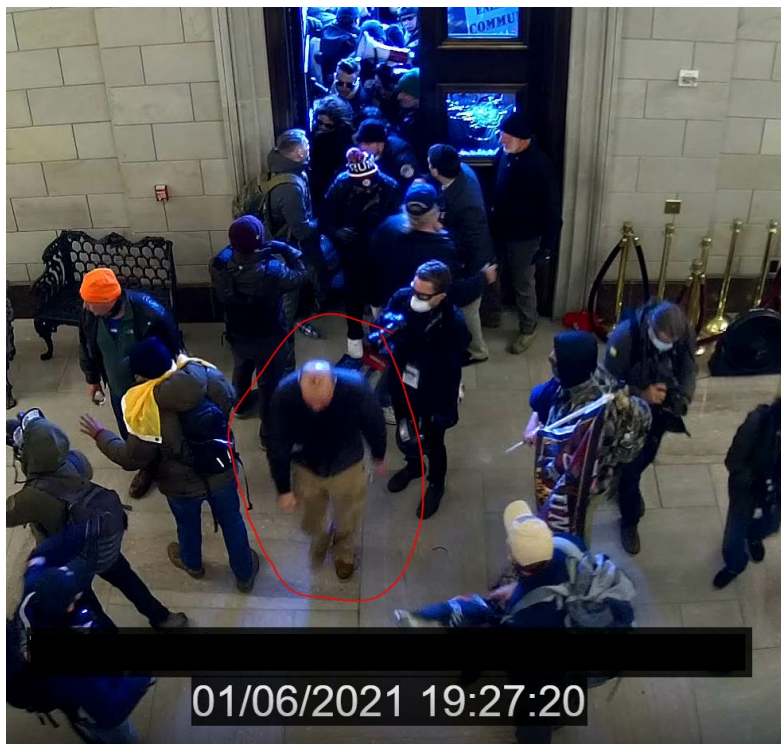


Image 4: KINCAID in a hallway in the Northeast corner on the 2nd floor of the House of Representatives area of the U.S. Capitol

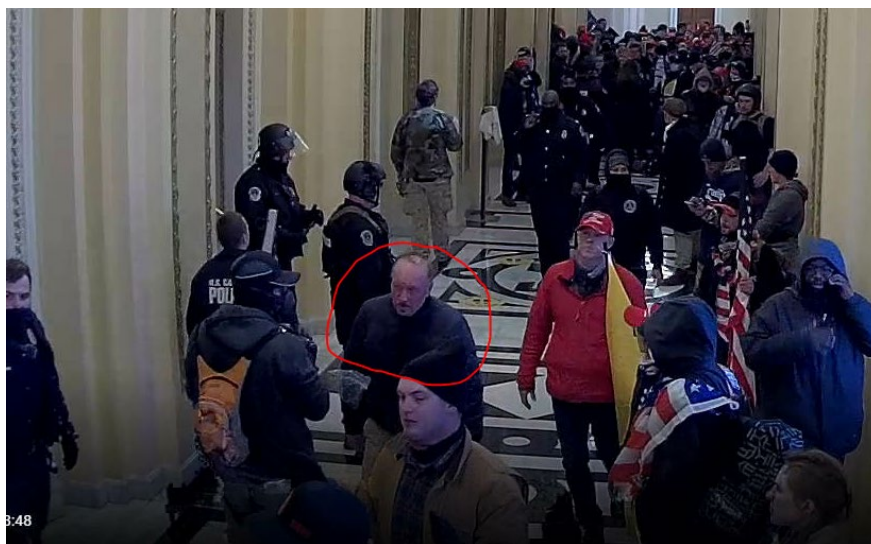


Image 5: KINCAID in a hallway in the Northwest corner on the 3rd floor of the House of Representatives area of the U.S. Capitol



Image 6: KINCAID exiting the U.S. Capitol through a door on the South side of the 1st floor of the House of Representatives area at 2:52 PM.

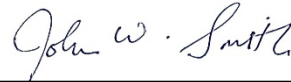


Your affiant obtained subscriber information for the telephone number 505-296-**** for the period covering January 6, 2021. The subscriber of the phone number was Lynn Kincaid, who is CLIVE KINCAID's wife. Your affiant confirmed that Lynn Kincaid is jointly listed in real estate and vehicle registration records with CLIVE KINCAID.

Your affiant interviewed CLIVE KINCAID on August 28, 2021. KINCAID admitted to being inside the U.S. Capitol on January 6, 2021. KINCAID reviewed the images above and confirmed that he is the person in the images. During the interview, KINCAID advised that the cell phone he had with him inside the U.S. Capitol on January 6, 2021 likely had phone number 505-296-****. KINCAID stated his wife is Lynn Kincaid. Kincaid stated a female law enforcement officer shot him with six rubber bullets and sprayed him with pepper spray on the outside of the US Capitol before he entered the building. Kincaid believes the officer shot him because he and the others had climbed up onto the Capitol balustrade, and she hit him because all the other people around him ducked down and he did not. Open-source video confirms these two incidents on the NW Stairs but cannot confirm that Kincaid was actually hit by rubber bullets.

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



John W. Smith
Special Agent FBI

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 17th day of August 2023.

HONORABLE MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE