

Case: 1:23-mj-00253
Assigned To : Meriweather, Robin M.
Assign. Date : 09/13/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, Michael Martin is a Special Agent assigned to FBI Omaha. In my duties as a special agent, I am a “federal law enforcement officer” within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a search warrant. I have been a Special Agent with the Federal Bureau of Investigation (“FBI”) since December 2020. I am currently assigned to the Joint Terrorism Task Force (JTTF) of the FBI’s Omaha Division. My responsibilities include the investigation of possible violations of federal law. During my career, my investigations have included the use of various surveillance techniques and the execution of various search, seizure, and arrest warrants.

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.

The subject, Donald Pearston (“Pearston”) was identified through a video taken outside the Capitol Building on January 6, 2021. In the video, Pearston discussed being inside the Capitol Building on two occasions during the January 6, 2021 riot; and being forced out and pepper sprayed by law enforcement. A review of CCTV footage from the Capitol on January 6, 2021 shows Pearston inside the building in the “rotunda” area. Pearston was wearing a black “leather like” jacket with black hood, a blue Nike shirt with the letters displayed in black and a white Nike “swoosh” underneath, blue jeans, and a white mask. In the video, it appears a chemical agent is sprayed into the air. Pearston stumbled out of the crowd, hunched over, and then stood up, removing his hood. Pearston was observed on CCTV using his cellular phone and then exiting the building. It appears that the video of Pearston, where he stated he was inside the building, was taken directly outside the door where Pearston was observed exiting.

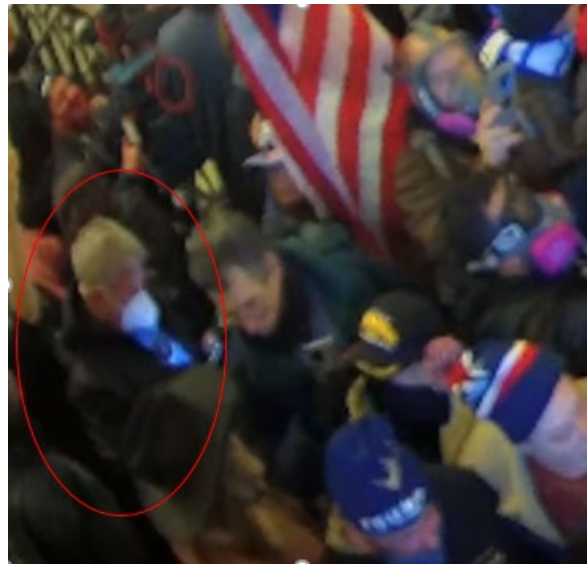
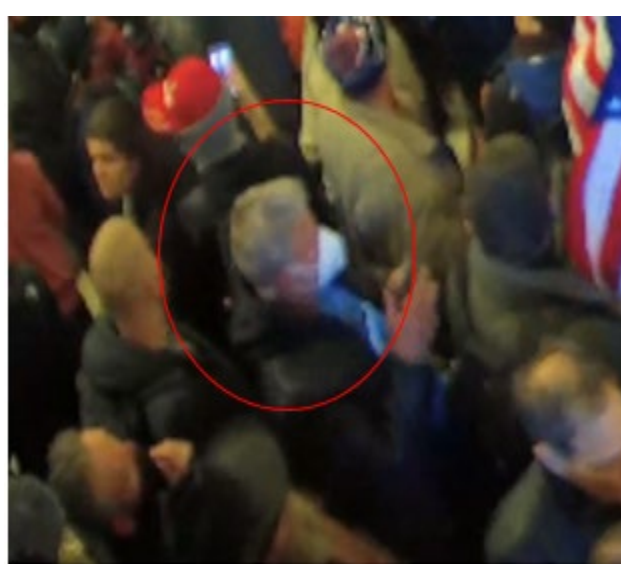
INTERVIEW OF DONALD PEARSTON

I, along with SA Robert Sellers, interviewed Pearston on December 14, 2021 with his attorney. Pearston stated that he flew to Washington DC on January 5, 2021 to attend the Trump Rally. Pearston stated that he traveled by himself and did not meet with anyone in DC. Pearston stated he stayed in a downtown DC hotel. Pearston admitted to going to the Capitol building. Pearston claimed he walked past open barricades and into the building through an open door somewhere in the northwest corner of the building. Pearston claimed he followed the crowds through the building and made his way into a large room. While inside the large room, Pearston stated law enforcement pepper sprayed the crowd and he exited. Pearston claimed he re-entered the building through another open door and into a service area when he needed to use the restroom. While in the service area, Pearston claimed law enforcement entered the room and told everyone to exit the building. Pearston stated he heard a loud bang, which he believed to be a “flash bang.”

Pearston was shown screen shots of the video of him inside and outside the Capitol Building. Pearston admitted the subject in the photos was him.



**Snip of Youtube_video_blog in which subject states he was in the Capitol Building on two different occasions and was forced out by law enforcement.*



**Screenshots of subject inside the Capitol Building near the “rotunda” area. Area where subject is observed is within feet of the exit door. Just outside the exit door is where the video above was filmed.*

Open Source Analysis and Review of Capitol Video

I reviewed a video uploaded to Facebook where Pearston discussed being in the Capitol Building.

- Facebook video uploaded to profile of user neonpvnda (www.facebook.com/neonpvnda/videos/3850030091721367). Donald Pearston (DP) appears at approximately the 44:19 mark and has the following interaction with two unidentified males (UM1 and UM2):

- UM1: What happened?
- DP: What happened?
- UM1: What happened?
- DP: Well I got worked. And then I, and then I got tear-gassed or sprayed.
- UM1: Are you okay?
- DP: Yeah I'm good man, I'm good.
- UM1: Jesus. So you got inside the building huh?
- DP: I've been in the building twice. [DP points] I, I was in up there but I got beat pretty bad by the riot police.
- UM1: Uh, Are they des-, are they destroying anything?
- DP: What's that?
- UM1: Are they destroying stuff or is it okay in there?
- DP: We're not destroying anything inside. I've been in one of the reps office, one dude was in there smoking a joint...
- UM1: [Laughs]
- DP: ...with his feet on the desk and that was ridiculous but yeah yeah. It was awesome. And I got in here as well [DP points] but the- they ran me out the back and I came back up here. And I got hit [DP points], I got beat up a little heavier here with the sticks.
- UM1: Yeah.
- UM2: They broke the window.
- DP: Yeah. I was standing right there. All those rocks, did you guys see that? I was trying to fucking get out of there and those rocks just started pummeling; busted the...[unintelligible]
- At approximately the 45:16 mark, the group being filmed, to include Pearston, are seen chanting "USA!"

The following is a still image from the video:



A review of capitol video reveals that Pearston went into the Captiol Building two times. The first entry occurred through the Senate Wing Door at approximately 3:06 PM EST. It appears that Pearston went through the Crypt down the Hallway of the Memorial Door and House Wing Door. Pearston then exited out of the South Door of the Capitol at approximately 3:12 PM EST. It appears that Pearston then went to the east side of the Captiol Building, climbed the steps and entered through the doors near the Rotunda at approximately 3:21 PM EST. Pearston stayed in the Rotunda area until being pushed out of the Captiol by the police. Pearston exited the Capitol at approximately 3:30 PM EST. The images below are screen shots from closed caption video taken inside of the Capitol building on January 6, 2021. Pearston appears in each image circled in red.

PEARSTON’S FIRST ENTRY AT 3:06 PM

██████████
Approx. Time: 3:06
Clip Time:16:42

Notes:



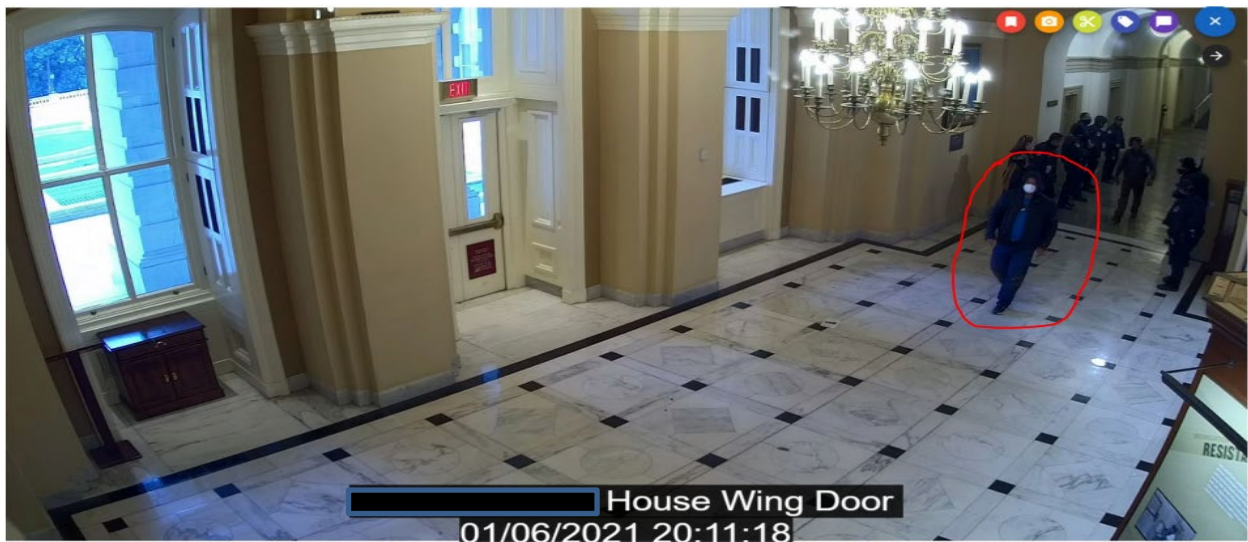
██████████
Approx. Time: 3:09
Clip Time: 10:33

Notes:



██████████
Approx. Time: 3:11
Clip Time: 1:17

Notes:



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



Special Agent Michael Martin
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 September 2023.

ROBIN M. MERIWEATHER
U.S. MAGISTRATE JUDGE