

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Task Force Officer with the Federal Bureau of Investigation (“FBI”) assigned to the [REDACTED]. In my duties as a Task Force Officer, I investigate domestic terrorism. Currently I am assigned to investigate 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 the prevention, detection, investigation, or prosecution of a violation of Federal criminal laws.

I. The Events of 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, S.E., 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.

II. Actions of David Evan Smither

Based upon review of public video, closed circuit video footage and police body worn camera footage depicting the events at the U.S. Capitol building and grounds on January 6, 2021, law enforcement has identified a person who entered and remained within the U.S. Capitol building on January 6, 2021. As set out in detail below, that person has been identified as David Evan Smither.

On January 6, 2021, Smither attended the Stop the Steal rally in Washington, D.C. From the rally he walked to the Capitol and trespassed over the restricted perimeter that had been established around the grounds that day.



Smither (circled in green) at the Stop the Steal rally



Smither walks from the Stop the Steal rally to the Capitol

Smither made his way to the West Front of the Capitol and then up to the Upper West Terrace. From there, he entered the Senate Wing Corridor of the Capitol building.

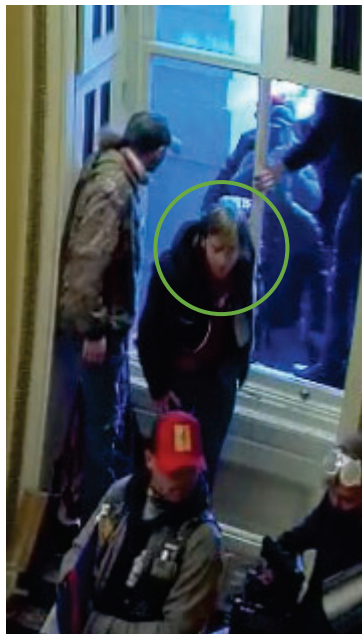


Smither on the West Front, at the base of the Capitol steps

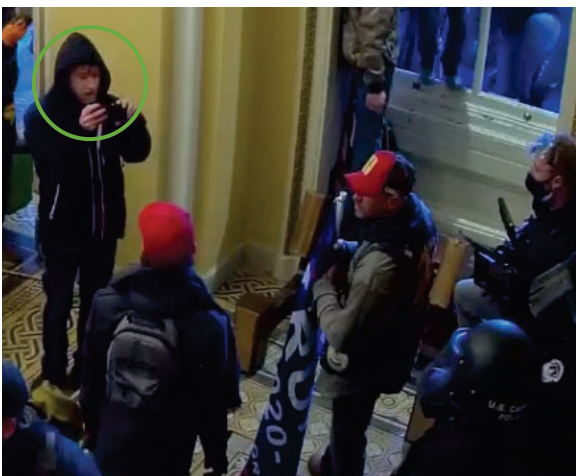


Smither about to enter the Senate Wing Corridor

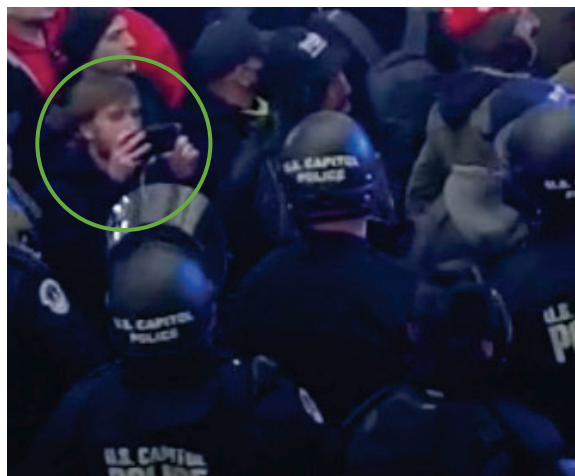
Smither entered the Senate Wing Corridor by climbing through a smashed window and stepping over downed furniture. He did so at approximately 3:11:58 p.m. Smither then appeared to photograph several officers facing him, turned the other way, and walked towards the Capitol Crypt. He returned to the Senate Corridor and left the building at 3:25:17 p.m., about 13 minutes after he entered.



Smither enters the Senate Wing Corridor through the broken window



Smither photographs officers as he enters the Senate Wing Corridor



Smither photographs officers again as he leaves the Senate Wing Corridor

On March 9, 2021, I interviewed Smither, who admitted to entering the Capitol. (This interview occurred by phone. I earlier spoke briefly with Smither in person outside his home). Smither said that he noticed toppled barricades as he approached the Capitol. He also said that as he climbed the steps, Capitol Police officers blocked the area and maced people who were going inside building. Smither said that for this reason, he decided to enter the building from another entrance. Once inside, Smither said he saw police officers in riot gear, and remained there until police pushed the crowd back.

The FBI also took photographs of a red t-shirt that Smither owned with “KONY 2012 INVISIBLE CHILDREN” written on it. Smither could be seen in photos from January 6 wearing the shirt under a black hoodie.



Picture of “Kony 2012 Invisible Children” shirt provided by Smither



Smither wearing the same shirt on January 6, 2021

I can further confirm that the man identified in the images above is, in fact, Smither. I participated in in-person interview of Smither on approximately February 25, 2021. His appearance during that interview matched those in the photos above.

Based on the forgoing, I submit that there is probable cause to believe that Smither 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 the lawful authority to do so and with the 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 persons 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 also submit that there is probable cause to believe that Smither 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.


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 6th day of December, 2023.



Digitally signed by G.
Michael Harvey
Date: 2023.12.06
11:04:32 -05'00'

HONORABLE G. MICHAEL HARVEY
UNITED STATES MAGISTRATE JUDGE