

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent assigned to the Las Vegas, Nevada Field Office. In my duties as a Special Agent, I am currently 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, detention, 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 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 Steven Fogarty

On January 11, 2021, the FBI received an anonymous tip that included the following photograph of the U.S. Capitol building during the events on January 6, 2021. (Image 1.) The photograph was published by USA Today. Your affiant has added the yellow circle to highlight the person who appears to be Steven Fogarty.



*Image 1*¹

The FBI shared Image 1—without the yellow circle—and asked for help identifying the people depicted therein. On January 11, 2021, a private citizen contacted the FBI and identified a person in the photograph as Fogarty.

On January 6, 2021, CNN interviewed a person in Washington, D.C., who appears to be wearing the same clothes as Fogarty in the photograph above: a black-and-grey hat and a black and a yellow jacket. (Image 2). During the interview, the individual told a reporter, “Unquestionable that our votes were stolen. It’s unquestionable. There is so much proof.” Later in the same interview, the same individual says, “You know this is a bunch of really really pissed off regular folks. I got a job. This is Wednesday. I’m supposed to be at work. Ya. Shhh.”

¹ Available at <https://www.usatoday.com/story/news/2021/01/07/dc-protests-help-us-identify-rioters-who-stormed-capitol/6583447002/>



Image 2²

On March 3, 2021, Steven Fogarty was interviewed at his home in Las Vegas. Fogarty briefly spoke to agents before Fogarty declared that his answer to any further questions would be “I plead the fifth”. Prior to terminating the interview, Fogarty was shown Images 1 and 2. Fogarty identified himself as the individual in Image 2 but “did not recognize” himself in Image 1.

Fogarty’s Conduct on January 6, 2021

Video taken by third parties shows that on January 6, 2021, Steven Fogarty, who can be identified wearing the same clothing as above, was in Washington, D.C. where he appears to have attended the “Stop the Steal” rally. During then-President Trump’s speech, Fogarty stood near the Washington Monument, (Image 3).



Image3³

² Interview available at <https://archive.org/details/cze7uGcgWuC6dxxkP>

³ Available at <https://archive.org/details/67K4ogyikEApJ2wXw>

After the rally, Fogarty went to the U.S. Capitol. At some point, Fogarty entered the Capitol grounds and went to the northwest terrace of the Capitol building. At this time, Fogarty was on restricted grounds. Based on my knowledge of the restricted perimeter surrounding the Capitol on January 6, 2021, shown in the map below, in order to get to the northwest terrace, Fogarty would have had to pass through restricted grounds as well. As the map reflects, the Capitol building, adjacent outer stairways, western and northwestern lawns, and its West and East Plazas were all within the restricted perimeter.

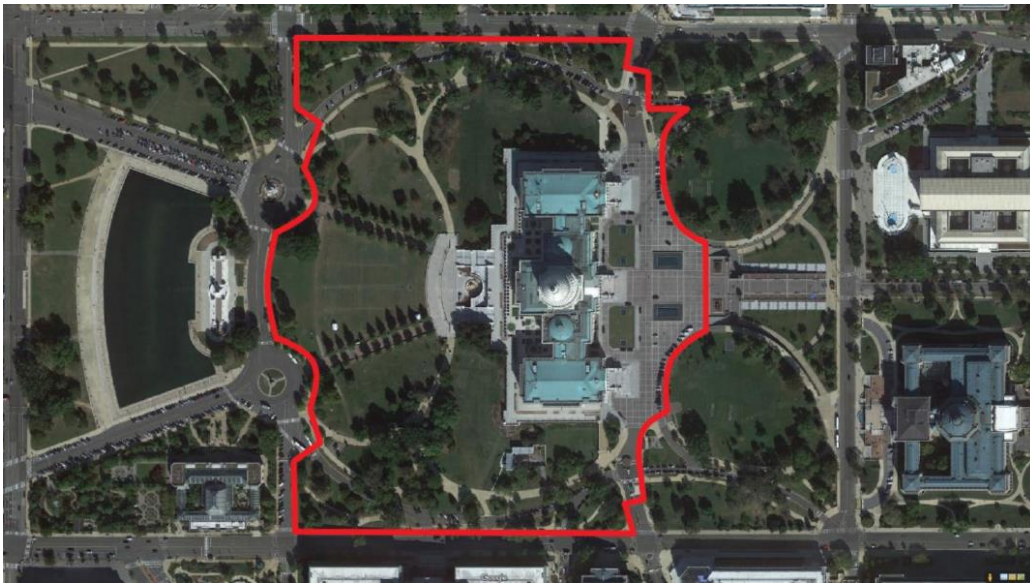


Image 4

While on the northwest terrace, video shows that Fogarty moved metal bike rack barricades that were in the area, as shown in Images 5 and 6.



Image 5



Image 6⁴

Based on the videos, your affiant believes Fogarty was moving bike rack barricades prior to entering the Capitol building. Closed circuit video (CCTV) footage shows that after moving the barricades, Fogarty entered the U.S. Capitol through the Parliamentarian door at approximately 2:51 p.m. (Image 7.)

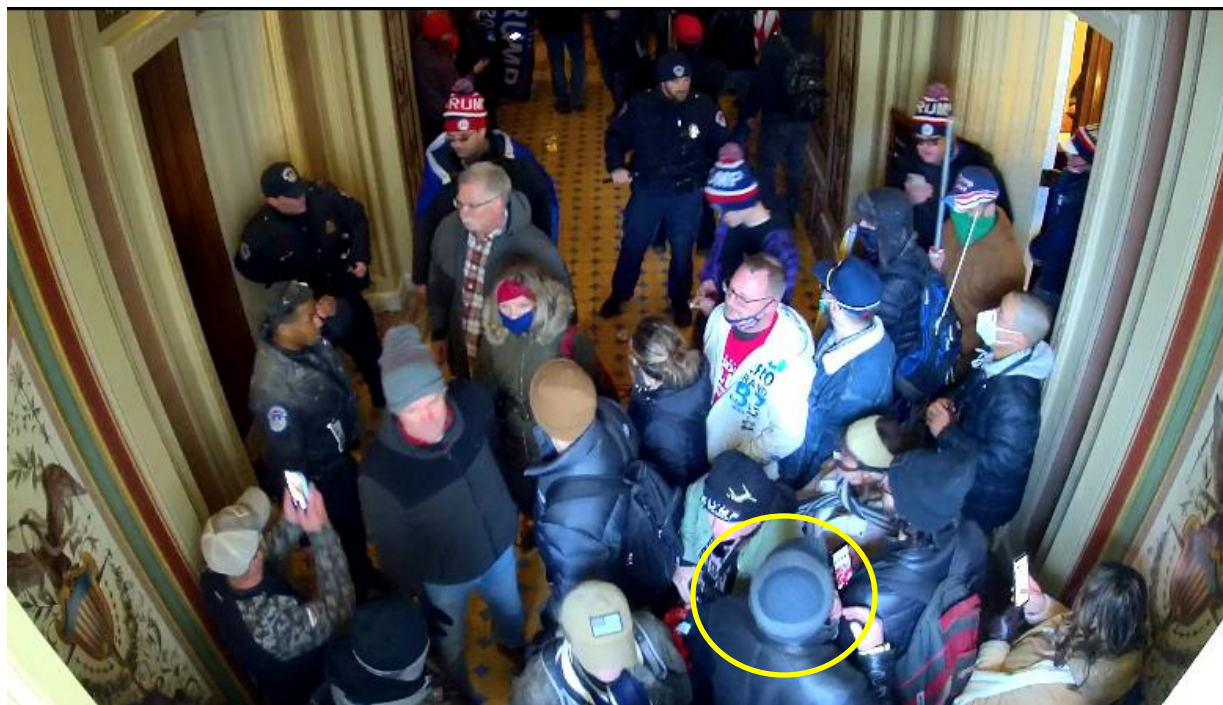


Image 7

⁴ Available at <https://www.youtube.com/watch?v=tN18-SKNrPA&t=1593>

Once he entered the Capitol, CCTV shows that Fogarty made his way deeper into the building where he was met by a U.S. Capitol Police Officer. The officer prevented Fogarty from going forward by physically blocking the hallway. CCTV and third party video shows that Fogarty began to yell and point at the officer, as shown in Images 8 and 9. In video taken by other rioters he appears to be yelling, “What’s the problem! This is our fucking building! What’s the problem!” (Image 9)



Image 8



Image 9⁵

⁵ Available at <https://archive.org/details/yPvsBnj8TnHPQieob>

After this encounter, CCTV shows that Fogarty temporarily backed up. Then, the officer who had previously prevented Fogarty's ingress left the hallway, and Fogarty moved further into the Capitol. (Image 10.)

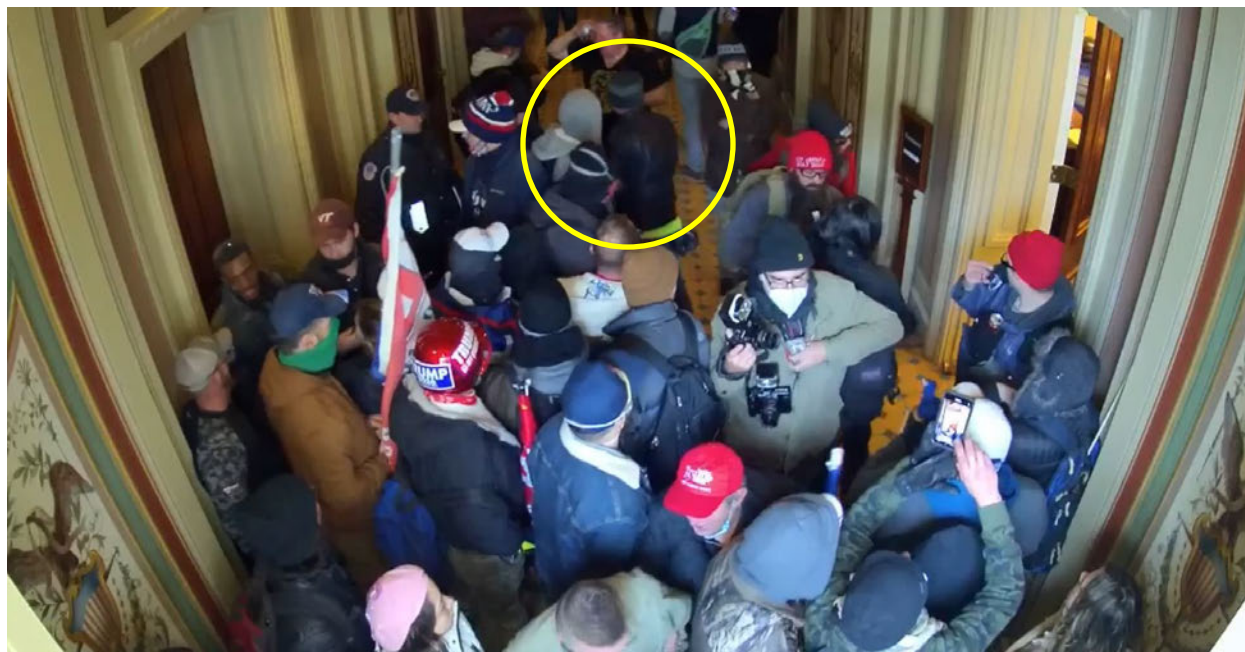


Image 10

CCTV shows Fogarty at approximately 2:58 in a hallway deeper in the U.S. Capitol. Officers had created a line in front of rioters, including Fogarty. CCTV and video taken by other rioters shows that Fogarty had a camera and was taking photos of rioters and the police at this time. At approximately 3:03 p.m., CCTV and third party video show that Fogarty exited the building. (Image 11.)



Image 11⁶

Body worn camera shows that after exiting the building, Fogarty did not leave the Capitol, but instead remained on the Northwest terrace of the building until at least approximately 3:30 p.m. (Image 12.)



Image 12

⁶ Available at <https://ia904604.us.archive.org/26/items/bhuptEKQh8x2fXGJi/bhuptEKQh8x2fXGJi.mpeg4>

Based on the foregoing, your affiant submits that there is probable cause to believe that Steven Fogarty 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 so; 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 Steven Fogarty 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.



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 17th day of October 2024.

MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE