

Case: 1:23-mj-00133
Assigned To : Harvey, G. Michael
Assign. Date : 6/20/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent assigned to the FBI Cincinnati Division, Columbus Resident Agency, Joint Terrorism Task Force (JTTF). In my duties as a special agent, I investigate international and domestic terrorism offenses. 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.

Identification of Dustin Martin

On or about January 7, 2021, a concerned citizen (C-1) provided a tip to the FBI that contained a photo of an individual who C-1 identified as DUSTIN MARTIN (MARTIN), a biracial male from Ohio around 29 years of age. C-1 provided an image of what appears to be a Facebook post that seems to depict MARTIN inside the U.S. Capitol (Figure 1). The individual in the photo that C-1 identified as MARTIN has his face partially obscured by a bandana. The individual is also wearing a cap and a black sweatshirt with the words “We call it the Chinese virus because it comes from China” displayed in large white and red letters.

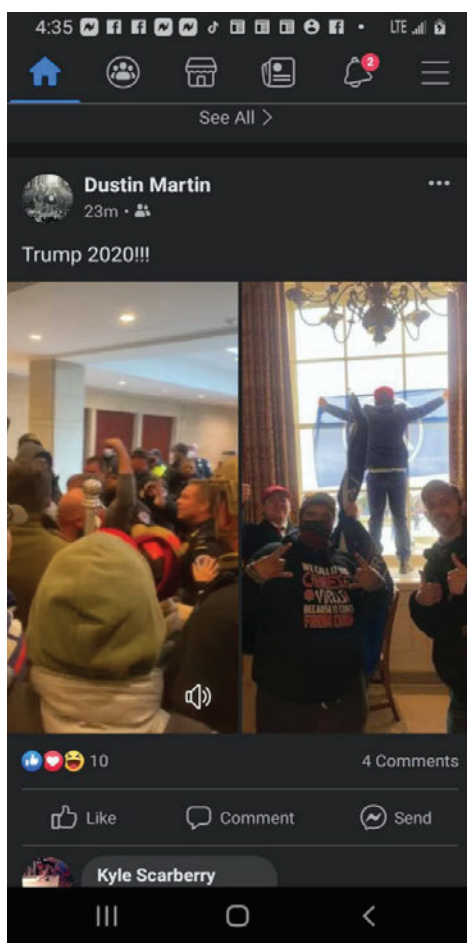


Figure 1

On or about January 17, 2021, a concerned citizen (C-2) provided a tip to the FBI that contained a Facebook post from MARTIN in which MARTIN writes, “So now I can say I’ve been hit with rubber bullets, bear mace, pepper spray, teargas, and wrestle with Capital Police fuck yeah ‘America Bitches’ I’ll do it all over again too!” (Figure 2) C-2’s tip further said that MARTIN is from Grove City, Ohio, and posted a video of himself inside the U.S. Capitol but deleted it.



Figure 2

On or about January 18, 2021, a concerned citizen (C-3) provided a tip to the FBI that one of C-3's Facebook friends was inside the U.S. Capitol on January 6, 2021. C-3 provided a screen capture of the same Facebook post from MARTIN that C-2 provided the FBI (see again Figure 2). Later, during an interview with the FBI on March 25, 2022, C-3 advised that a couple of days after the riot, C-3 was no longer able to view MARTIN's Facebook profile because MARTIN either deleted it or restricted it.

In April 2021, the FBI opened an investigation of MARTIN based on the multiple tips it received regarding him being inside the U.S. Capitol building on January 6, 2021. As part of its investigation, on or about July 15, 2021, the FBI interviewed MARTIN. During the interview, MARTIN admitted that he made the Facebook post claiming that he fought with the Capitol Police but said that he only made the post to ingratiate himself with individuals who would admire him for such an action. MARTIN stated that he was caught in the middle between the rioters and Capitol Police and pushed back on the barricade to protect himself. MARTIN stated that the Capitol Police maced him and then he retreated, but that he did not assault any police officers and did not enter the U.S. Capitol. The FBI showed MARTIN the photo that C-1 provided the FBI in

the tip that depicted MARTIN inside the U.S. Capitol, but MARTIN stated that he was not the individual depicted in the photo (see Figure 1 above).

In March 2022, the FBI conducted a facial recognition query of an image of MARTIN against archived open-source footage from January 6, 2021. The query identified several photos of MARTIN (circled in yellow or red) both outside and inside the U.S. Capitol building on January 6, 2021 (see figures 3-6 below). MARTIN's face is unobscured in several of the photos and MARTIN is dressed in the same attire as the individual in the photo C-1 provided in the tip. Additionally, one of the FBI interviewing agents from the July 15, 2021, interview of MARTIN confirmed that the individual in the photos returned by the query was the same individual who was interviewed by the FBI on July 15, 2021.



Figure 3



Figure 4



Figure 5



Figure 6

Statements of Dustin Martin Prior to January 6, 2021

Records obtained from a subpoena to Meta Platforms Inc. (Facebook) indicate that MARTIN is the subscriber of Facebook UID 100000670809521, Vanity Name: [REDACTED], associated with e-mail address [REDACTED] On or about

September 30, 2022, the FBI received search warrant returns from Meta Platforms, Inc. (Facebook) regarding MARTIN's Facebook account. The returns contained Facebook messages MARTIN sent or received between November 3, 2020 and January 9, 2021 (when MARTIN deactivated the account). The returns also contained Facebook posts, shares, status updates, comments, and photo and video attachments associated with the account from the same time period.

A review of the account revealed a significant amount of Facebook content related to the 2020 Presidential Election. Specifically, several messages and images that MARTIN shared, sent, or received suggested MARTIN ascribed to the belief that the election was stolen from former President Trump. For example, on or about November 4, 2020, Facebook friend K.B. sent MARTIN a screenshot of an exchange in which a supposed voter claimed they were unable to vote because someone else already voted for them. MARTIN responded, "I have no doubt that's happening we can all call it fake but there's no doubt why is it taking so long how is it they can find so many votes for one person not one for another like come on suck it up let him be president for four more years make America even greater."

On or about December 31, 2020, K.B. sent MARTIN an article about a Republican Senator's plan to object to the certification of the electoral college vote on January 6, 2021. MARTIN replied, "I seen that first one and people are saying that like 17,000 votes were stolen from Trump at that spot." When K.B. stated that the election should be overturned, MARTIN replied, "It should be this whole thing is bullshit there's literally fraud right in our face and ppl are like nope can't be."

In several message exchanges between MARTIN and Facebook associates on or around January 6, 2021, MARTIN stated that he was traveling to Washington D.C. to support President Trump and for the certification of the electoral college vote.

On or about January 1, 2021, MARTIN sent a message to Facebook friend S.C. which partially stated, "I'm really hoping Pence actually standby I keep hearing he won't." On or about January 2, 2021, MARTIN sent S.C. an image of the schedule and cost of airline flights to the Washington D.C. area, and wrote, "[G]oing to DC for the Trump rally and electoral college votes but look if you wanna fly down, we're driving."

On or about January 6, 2021, MARTIN sent a Facebook message to Facebook friend S.H. in which MARTIN wrote, "We're in Maryland on our way to D.C." When S.H. asked MARTIN why, MARTIN responded, "Electoral votes, the rally" and "Trump going to win."

Martin's Conduct on January 6, 2021

This affiant has reviewed Closed Circuit Television Footage (CCTV) retrieved from the U.S. Capitol Police, Body Worn Camera footage (BWC) retrieved from D.C. Metropolitan Police Officers, and open-source video depicting the events that took place at the United States Capitol on January 6, 2021. This affiant has identified MARTIN in a number of such videos.

Specifically, MARTIN can be seen in open source footage at the rally in support of President Trump at the ellipse. He visibly reacts to Trump saying, "we are going to walk down to

the Capitol.” MARTIN is later seen approaching the Capitol from the West side, arriving at the Lower West Terrace, where a line of police officers was attempting to keep the incoming crowd away from the Capitol Building using bike rack barricades.

The FBI obtained BWC footage from a law enforcement officer at the Lower West Terrace in the vicinity of MARTIN at approximately 1:36 PM. The footage shows MARTIN (circled in red), in a large gathering of rioters who were standing on the opposite side of a metal barricade from a line of law enforcement officers. The officers attempt to push the crowd back using a metal bike rack barricade, and the rioters push against the barricade. MARTIN can be seen approaching the barricade and placing his hands and head against the front line of rioters in what appears to be an effort to aid the push. After a tussle, many of the rioters, including MARTIN, fall to the ground. MARTIN subsequently retreats away from the barricade (see Figures 7-9 below). An open source video shows the same from another angle (see Figure 10).



Figure 7



Figure 8



Figure 9

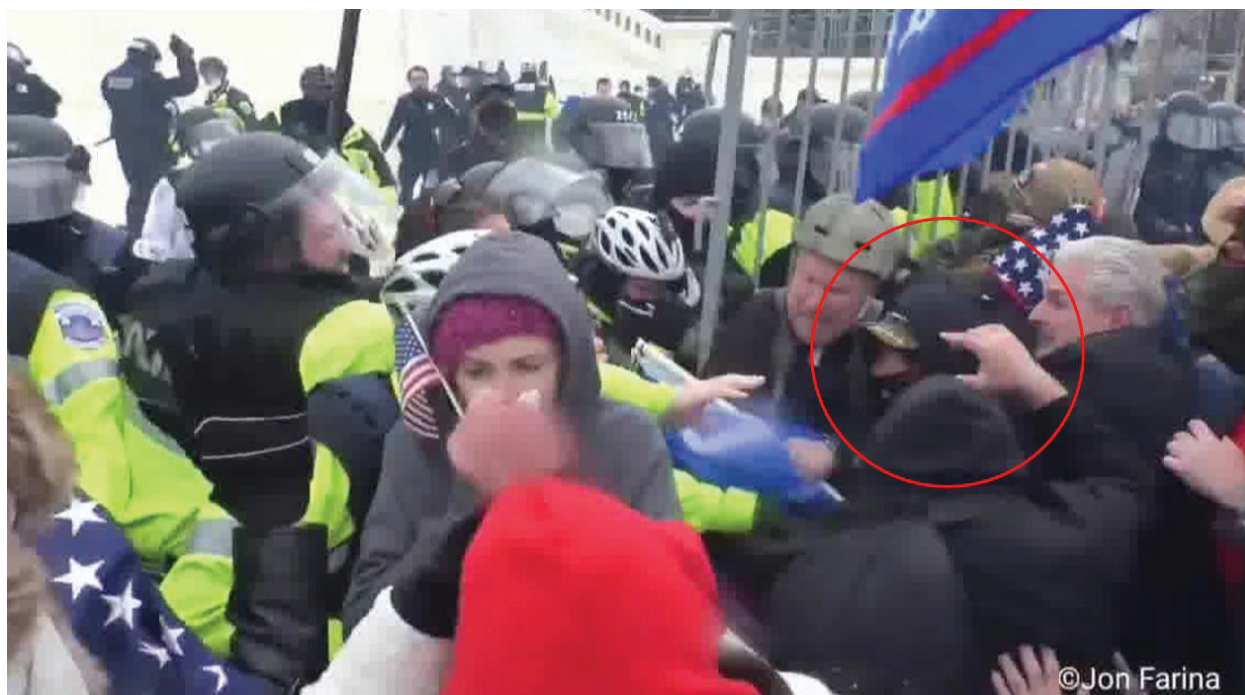


Figure 10

At approximately 1:50 PM, a group of rioters on the Lower West Terrace pushed a line of police officers up a set of stairs that leads to the Upper West Terrace of the Capitol Building. Other rioters, including MARTIN, followed that initial group up onto the stairs. However, another police line prevents the crowd from advancing further up the stairs. At approximately 2:10 PM, the rioters again push past the police lines on the steps and gain access to the Capitol Building for the first time that day. MARTIN is seen in an open source video outside of the Senate Wing Door at approximately 2:15 PM (see Figure 3 above). In this video, a man appears to come from inside the Capitol building and says to MARTIN, “they started shooting at us.” He later adds, “rubber bullets. It fucking hurts.” About four minutes later, MARTIN entered the U.S. Capitol Building through the Senate Wing Door.

CCTV and open source footage show MARTIN moving throughout the Capitol Building. MARTIN enters the Crypt, where a large crowd of rioters chant and push against a line of police officers. As the crowd pushes the officers back, MARTIN advances further into the Crypt, and then enters an area referred to as the Upper Level Entrance to the Capitol Visitor’s Center (CVC).

Video footage shows MARTIN with several other rioters in the vicinity of two large security doors in the CVC Upper Level Entrance at approximately 2:30 PM. Moments before MARTIN appears on video, U.S. Capitol Police Officers are seen attempting to lower two large security doors, and retreating into the CVC as rioters throw objects at them. MARTIN enters the area as the rioters prop open the security doors and place furniture underneath the doors to prevent them from lowering again. MARTIN continues down a flight of stairs and into the CVC.

MARTIN remains in the CVC for about 15 minutes, after which he reenters the Crypt. Open source video shows MARTIN chanting with other rioters in the hallway between the Crypt

and Senate Wing Door at approximately 2:50 PM (see Figure 6 above). MARTIN exits the Capitol Building through a window near the Senate Wing Door at approximately 2:57 PM.

MARTIN remained on the Upper West Terrace for nearly an hour. Open source footage shows MARTIN with a group of rioters gathered at the base of a short flight of stairs, in front of a line of police officers standing at the top of those stairs and dressed in riot gear. The FBI reviewed BWC footage from a law enforcement officer in this police line at approximately 3:41 PM. The front row of rioters use what appears to be a white tarp, presumably to obscure the vision of the law enforcement officers and to protect the rioters from law enforcement's pepper spray, and initiates a push up the stairs against the law enforcement officers. A fight ensues and the law enforcement officers deploy pepper spray to subdue the attackers. During the initial push, some rioters are located behind the tarp and not visible on BWC. As rioters retreat and the tarp lowers, MARTIN can be seen bracing himself against the front row of rioters, apparently participating in the push (figures 11 and 12). As law enforcement continues to deploy pepper spray, MARTIN is hit directly in the face (figure 13) and retreats into the crowd. CCTV shows MARTIN retreating from the Upper West Terrace at approximately 3:45 PM.



Figure 11



Figure 12



Figure 13

Additional Statements of Dustin Martin

On January 6, 2021, MARTIN messaged Facebook friend S.C. to say, “We stormed the capital broke the lines,” and “We made it.” MARTIN also sent S.C. the photo that he posted to his Facebook profile where MARTIN claimed he had been hit with mace and wrestled with the Capitol

Police (see Figure 2 above). S.C. asked MARTIN if he was alright and informed him that a paramedic friend was in the area who could help MARTIN. MARTIN told S.C., “It was worth getting sprayed it hurt like a bitch I thought I was going to be blind...”

In the days following the January 6, 2021 riot, MARTIN sent messages to several Facebook friends in which MARTIN alluded to being inside the Capitol. For example, on or about January 8, 2021, MARTIN’s Facebook friend J.S.S. messaged MARTIN and told him to delete the Facebook photo of him getting maced as well as every photo and video on MARTIN’s phone of him in or near the Capitol. In response, MARTIN wrote, “Never forced in anywhere didn’t brake or steal anything and I was mased outside.”

Moreover, MARTIN sent Facebook messages to S.C. in which he stated that he planned to delete his Facebook content to avoid scrutiny from law enforcement. On or about January 7, 2021, MARTIN messaged S.C., “So I guess the FBI is looking for everybody that went there even though we were let in so I took down all my shit even though I didn’t break anything or steal anything or assault anybody.” In another message, MARTIN informed S.C. that he removed his Facebook content because he was concerned about his children: “Cheah buddy!!! Well I hear they’re looking for everybody that went inside not just the ones that broke in I took all my stuff down bc the girls but don’t think i won’t stand for what’s right and if shit really pops off let’s get it crackin!!!!” MARTIN further wrote, “Might sound like a pussy but I’m bout to delete mine on that just in case.” Records obtained from Meta Platforms Inc. (Facebook) indicate that MARTIN deactivated his account on January 9, 2021, three days after the January 6, 2021 riots at the U.S. Capitol.

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

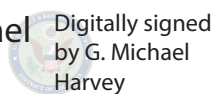
Your affiant submits there is also probable cause to believe that MARTIN violated 40 U.S.C. §§ 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any 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; (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Finally, your affiant submits there is probable cause to believe that MARTIN violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 20th day of June 2023.

G. Michael
Harvey



G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE