

Case: 1:23-mj-00115
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 6/5/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent with the Federal Bureau of Investigation (“FBI”). Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent with the FBI, 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 facts in this Affidavit come from my personal observations, my training and experience, and information obtained from other agents, witnesses, and agencies or is based on a review of various documents, records, and reports. Because this Affidavit is submitted for the limited purpose of establishing probable cause, it does not contain every fact known by me or the FBI. The dates and times listed in this Affidavit should be read as “on or about.”

Background: Events at the U.S. Capitol on 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.

Facts Specific to JAY JAMES JOHNSTON

Based upon review of public video, closed circuit television (“CCTV”) footage and police body worn camera footage depicting the events at the U.S. Capitol building and grounds on January 6, 2021, law enforcement identified an individual who pushed against police and aided other rioters near an entrance to the U.S. Capitol known as “the tunnel.” The FBI subsequently posted a photograph of the individual at the U.S. Capitol under the name 247-AFO and requested help from the public to identify the individual. As set out in detail below, law enforcement has identified 247-AFO as JAY JAMES JOHNSTON (“JOHNSTON”) and there is probable cause to believe that on January 6, 2021, JOHNSTON committed violations of 18 U.S.C. §§ 231(a) (civil disorder) and 1752(a)(1) and (2) (unlawful entry on restricted buildings or grounds) and 40 U.S.C. §§ 5104(e)(2) (E) (impeding passage through Capitol grounds).

A. 247-AFO’s Activities at the U.S. Capitol on January 6, 2021

The FBI has reviewed body-worn camera footage showing that at approximately 2:05 p.m. on January 6, 2021, JOHNSTON was among a crowd of rioters who confronted law enforcement officers at the West Plaza of the United States Capitol. JOHNSTON, circled in yellow, can be seen holding up a cellphone to take photos and/or video.



As depicted in the videos, JOHNSTON was wearing a green camouflage neck gaiter and a dark leather jacket.

Approximately thirty minutes later, a video obtained from another defendant during the investigation ("Video 1") depicts JOHNSTON on the steps leading up to the tunnel using a cellphone to take photos and/or video of rioters attacking the police in the Lower West Terrace ("LWT") tunnel.



According to a public video ("Video 2"), JOHNSTON then walked up the steps towards the tunnel. At approximately 3:00 p.m., JOHNSTON (circled in red) was close to the entrance to the tunnel, turned back and signaled for other rioters to come towards the entrance.



At approximately 3:03 p.m., JOHNSTON was captured by CCTV footage near the entrance to the tunnel:



A few seconds later, a nearby rioter appeared to make hand gestures at JOHNSTON:



JOHNSTON then turned and made a series of hand gestures to the crowd, including clapping his hands, banging his closed fists together and pointing to the crowd. Below are zoomed still images from CCTV showing JOHNSTON gesturing to the crowd with his hands (clapping and in fists, respectively) circled in red:



At approximately 3:05 p.m., CCTV shows that JOHNSTON was handed a bottle of water by another rioter:



JOHNSTON then handed that bottle of water to a third rioter who used it to wash his eyes out. JOHNSTON then assisted at least three other rioters by pouring the water on the rioters' faces, as depicted in the below still images from CCTV:





At approximately 3:05 p.m., JOHNSTON entered the tunnel, and moved towards the front line of rioters confronting the police who were defending the entrance to the U.S. Capitol. Below is a still image from CCTV depicting JOHNSTON making his way toward the police line:



At approximately 3:06 p.m., JOHNSTON made his way further toward the police line and assisted other rioters in handing up U.S. Capitol Police shields. Below is a still image of CCTV showing JOHNSTON handing up a stolen U.S. Capitol police shield to other rioters, as well as a still from another public video (“Video 3”) depicting Johnston grasping the shield, respectively:





According to CCTV at approximately 3:07 p.m., JOHNSTON, still holding the stolen U.S. Capitol Police shield, moved to the south side of the tunnel where he held the shield over his head. Below are still images from CCTV and Video 3, respectively depicting JOHNSTON holding the shield:





According to Video 3, at the approximate time that JOHNSTON is holding the shield and moving it forward, other rioters are calling for a “shield wall” to be made. JOHNSTON then participated with other rioters in a group assault on the officers defending the LWT entrance. Specifically, several members of the crowd joined together to push against police in a concerted movement. JOHNSTON participated in this concerted movement and pushed along with other rioters for several seconds. At approximately 3:10 p.m., JOHNSTON started walking out of the tunnel.

At approximately 3:11 p.m., however, JOHNSTON reversed course and re-entered the tunnel. Thereafter, JOHNSTON joined other rioters in pushing repeatedly against the defending police officers. The rioters coordinated the timing of the pushes by yelling “Heave! Ho!” Below is a still image from a video (“Video 4”) obtained during the investigation of the January 6 attack depicting JOHNSTON pushing along with other rioters in the tunnel against the police line:



At approximately 3:13 p.m., JOHNSTON started moving out of the tunnel again. As he exited, JOHNSTON helped carry a stolen police riot shield out of the tunnel, which he handed to another rioter as he exited the tunnel. Below are still images from CCTV and Video 3, respectively, depicting JOHNSTON handling the shield:



B. Identification of 247-AFO as JAY JAMES JOHNSTON

Following the attack on the U.S. Capitol, FBI posted photographs of JOHNSTON under 247-AFO, which are set out below:



On or about March 8, 2021, an attorney contacted the FBI's National Threat Operations Center ("NTOC") and stated that s/he represented JAY JAMES JOHNSTON, who was the individual pictured in publicly disseminated photographs 247-AFO.

The FBI has interviewed three current or former associates of JOHNSTON, all of whom identified JOHNSTON as the individual in the above photographs of 247-AFO. One of these associates provided the FBI with a text message in which JOHNSTON acknowledged being at the Capitol on January 6, stating "The news has presented it as an attack. It actually wasn't. Thought it kind of turned into that. It was a mess. Got maced and tear gassed and I found it quite untastic."

Records from United Airlines show that JOHNSTON had a round-trip flight reservation from Los Angeles, California to Washington, D.C. departing on January 4, 2021 and returning on January 7, 2021.

CONCLUSION

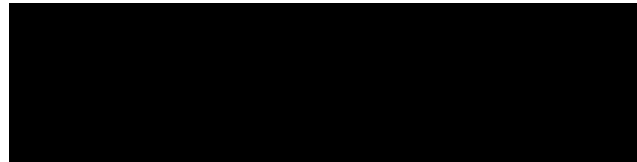
Based on the foregoing, your affiant submits that there is probable cause to believe that JAY JAMES JOHNSTON violated 18 U.S.C. 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. For purposes of Section 231 of Title 18, a federally protected function means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an

officer or employee thereof. This includes the Joint Session of Congress where the Senate and House count Electoral College votes.

Your affiant further submits there is probable cause to believe that JOHNSTON 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. 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 JOHNSTON violated 40 U.S.C. § 5104(e)(2)(E) which makes it a crime to obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings.

Respectfully submitted,



Special Agent
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 5th day of June 2023.

MOXILA A. UPADHYAYA
UNITED STATES MAGISTRATE JUDGE