

Case: 1:23-mj-00191
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 8/1/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED] is a Federal Bureau of Investigation Special Agent assigned to the Philadelphia Division, Capital Area Resident Agency. In my duties as a special agent, I have conducted public corruption investigations, been assigned to a violent crimes task force and have responsibility for managing terrorism related matters. Currently, I am also tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As an FBI 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.

I have been employed as a Special Agent with the FBI since 2007. During this time I have participated in numerous public corruption, violent crime and terrorism related investigations, during which I have executed federal arrest warrants and search warrants for residences, businesses, cellphones and vehicles. I have conducted undercover operations, reviewed and analyzed taped conversations, and debriefed witnesses, including cooperating witnesses and confidential sources. I have also participated in numerous Title III electronic communications interceptions, the analysis and use of pen registers, trap and trace devices, and search warrants of cellular towers.

The United States 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 U.S. 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 U.S. 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 U.S. 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.

Since January 6, 2021, the FBI has been investigating and identifying those who were at the U.S. Capitol without authority and disrupted the proceedings. During that investigation, the FBI identified multiple videos showing a man in a dark brown jacket advancing towards several law enforcement officers surrounded by rioters and assaulting them with a flagpole. The videos showed the man, wearing a brown jacket and informally nicknamed #BrownJacketJabber by various online sources, on the West Plaza of the U.S. Capitol building grounds. Other videos showed #BrownJacketJabber wearing glasses, blue jeans, black gloves, and using a cellular telephone.

Identification of GATES

In early 2022, the FBI received various tips identifying #BrownJacketJabber as Lowell GATES (“GATES”) (who was wearing a dark brown jacket on January 6, 2021).

Investigators obtained the Pennsylvania driver’s license photograph for GATES, which listed his date of birth as [REDACTED], and the individual in that photograph appears to be the same person depicted in the following images, all of which were taken around the U.S. Capitol on January 6, 2021.



Figure 1: Still image of GATES on the West Plaza of the U.S. Capitol building on January 6, 2021.



Figure 2: Still image of GATES holding a Trump flag on the West Plaza of the U.S. Capitol building on January 6, 2021.

In October 2022, I and an FBI Task Force Officer went to GATES's place of employment in Camp Hill, Pennsylvania in an attempt to speak with him. GATES agreed to speak with investigators and admitted to being at the U.S. Capitol riot on January 6, 2021. I showed GATES his driver's license photograph as well as the photographs depicted in Figure 1 and 2 above, and GATES positively identified himself in each of the three photographs. During the interview, GATES provided investigators with his telephone number, [REDACTED]. Investigators subsequently reviewed this telephone number against cellular tower records in the vicinity of the U.S. Capitol ground on January 6, 2021, but did not find a match.

GATES described travelling to Washington, D.C. on January 6, 2021 with a group of friends. GATES stated he walked to the Ellipse to watch former President Donald Trump's speech, but did not stay for the entire speech. Instead, GATES walked to the U.S. Capitol building and stood near the scaffolding. GATES got close to the bicycle racks at the bottom of the U.S. Capitol steps and saw police officers spraying rioters in the face with a chemical spray. GATES stated that he "would have been pissed" to be sprayed in the face. GATES stated after the mob was sprayed, there was pushing and shoving and bike racks were thrown to the side. GATES was indirectly struck by a rubber ball. GATES was exposed to the chemical spray from the police officers and felt the effects of the spray himself and had to pull his jacket over his head; he indicated that he still felt the effects of the spray the following day. He felt he did not deserve to be sprayed. Nonetheless, GATES insisted he did not take any actions in retaliation for being sprayed or struck by the rubber object. Indeed, GATES explained that he "generally had a lot of fun" and estimated he arrived at the U.S. Capitol from between 1:00 p.m. and 1:30 p.m. and left at approximately 3:00 p.m.

GATES's Conduct on January 6, 2021

The FBI reviewed numerous videos and photographs from January 6, 2021, including closed-circuit television from the U.S. Capitol ("CCTV"), law enforcement body-worn cameras ("BWC"), and open-source videos. GATES is visible throughout a number of those videos, and the clothing he was wearing (brown jacket, dark gloves, and glasses) was consistent throughout the various images obtained and reviewed.

Based on those videos and photographs, it appears GATES walked to the U.S. Capitol building along Pennsylvania Avenue from the direction of the Ellipse. Once he arrived within the restricted perimeter of the U.S. Capitol, GATES approached the West Plaza and appeared to use a cellular telephone to photograph and or video the riot while standing near the scaffolding on the side of the West Plaza.



Figure 3: GATES (circled in yellow) using a cellular telephone to photograph or video the riot at the U.S. Capitol on January 6, 2021.

During the riot on January 6, 2021, members of the mob confronted and assaulted law enforcement officers defending the U.S. Capitol building. In particular, rioters pushed back against police lines defending the West Plaza. In one of the BWC videos reviewed, the mob was screaming at officers while pelting them with various objects. In the midst of the conflict, at approximately 2:29:49 p.m., the BWC video showed GATES approach a group of officers and use a flagpole to assault them.



Figure 4: GATES (circled in red) assaulting officers with a flagpole at the U.S. Capitol at approximately 2:29:49 p.m. on January 6, 2021.

Immediately after his assault on the officers, GATES lowered the flag pole he used to strike the officers and revealed his face. He then backed away from the the officers.



Figure 5: GATES (circled in red) assaulting officers with a flagpole at the U.S. Capitol at approximately 2:29:50 p.m. on January 6, 2021.

During the course of this investigation, I identified an open source video which shows GATES striking the officers with the flag pole. Based on a comparison of the two videos, I believe the second video shows the same assault from a different angle. In the second video, GATES is visible on the bottom right hand side of the screen. Seven or eight rioters stood between GATES and a group of police officers standing together with their backs against a wall. The officers are stationary behind riot shields, and initially do not appear to be aware of GATES. In the video,

GATES stooped down to pick up something which he then threw at the group of police officers. Shortly thereafter, GATES raised his flag pole like a spear and lunged at the officers, striking at them three times.



Figure 6: GATES (circled in yellow) charging at officers with a flagpole raised like a spear at the U.S. Capitol at approximately 2:29 p.m. on January 6, 2021.



Figure 7: GATES (circled in yellow) assaulting officers with a flagpole at the U.S. Capitol at approximately 2:29 p.m. on January 6, 2021.

In another video, which shows rioters (including GATES) on the West Plaza and other rioters on the Lower West Terrace, GATES stands in the mob talking on a cellular telephone.



Figure 8: GATES (circled in yellow) using a cellular telephone on the West Plaza of the U.S. Capitol on January 6, 2021.

Based on the foregoing, I submit there is probable cause to believe Lowell GATES violated 18 U.S.C. §§ 111(a)(1) and 111(b), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 of Title 18 while engaged in or on account of the performance of official duties, while using a deadly or dangerous weapon. Persons designated within section 1114 of Title 18 include any person assisting an officer or employee of the United States in the performance of their official duties and where the acts in violation of this section involve physical contact with the victim and the intent to commit another felony.

I submit there is additional probable cause to believe GATES 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.

I also submit there is probable cause to believe GATES violated 18 U.S.C. § 1752(a)(1) and (4), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do and (4) knowingly engage in any act of physical violence against any person or property in any restricted building or grounds; 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.

I submit there is also probable cause to believe GATES violated 40 U.S.C. § 5104(e)(2)(D) and (F), 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 (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.



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 August 2023.

A handwritten signature in blue ink that reads "M. A. Upadhyaya".



Moxila A.
Upadhyaya

MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE