

UNITED STATES DISTRICT COURT
for the
District of Columbia

United States of America
v.

Brian Gundersen

Date of Birth: XXXXXXXX

Defendant(s)

)
Case: 1:21-mj-00161
Assigned to: Judge Faruqui, Zia M
Assign Date: 1/25/2021
Description: COMPLAINT W/ARREST WARRANT
)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of in the
in the District of Columbia, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. 1752(a)(1)- Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority;

18 U.S.C. 1752(a)(2)- Knowingly, With Intent to Impede Government Business or Official Functions, Engaging in Disorderly Conduct on Capitol Grounds;

40 U.S.C. 5104(e)(2)(D)- Engaging in Disorderly or Disruptive Conduct on the Capitol Buildings or Grounds;

40 U.S.C. 5104(e)(2)(G)- Parading, Demonstrating, or Picketing in the Capitol Buildings

This criminal complaint is based on these facts:

See attached statement of facts.

Continued on the attached sheet.

[Handwritten signature]

Complainant's signature

Thomas Harris, Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone.

Date: 01/25/2021

[Handwritten signature]



2021.01.25

15:24:25 -05'00'

Judge's signature

City and state: Washington, D.C.

Zia M. Faruqui, U.S. Magistrate Judge

Printed name and title

STATEMENT OF FACTS

Your affiant, Thomas Harris, is a Special Agent with the Federal Bureau of Investigation. Among my duties, I have been tasked with investigating criminal activity in and around the U.S. Capitol grounds that occurred 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 violations 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, shortly 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.

On or about January 12, 2021, a police chief in North Castle Township, New York, called the New York Operations Center (NYOC) of the Federal Bureau of Investigation (FBI) stating that he had information related to the Capitol Building breach and riot. The police chief informed the FBI that the Superintendent of Byram Hills High School in Armonk, NY, and multiple individuals of the community near Byram Hills High School, had determined that an individual at the riot was wearing a Byram Hills jacket. This determination was based upon photographs and videos of an individual appearing at the entrance to the Capitol Building. However, the Superintendent did not know who the specific individual was. One of those photographs, which was shown on CNN, is reproduced below as Figure 1.



Figure 1

Later that day, the police chief called the FBI again and stated the individual was believed to be BRIAN GUNDERSEN. The police chief further stated that GUNDERSEN was known to local law enforcement. Open source research revealed GUNDERSEN played varsity football for Byram Hills High School. One photograph showed GUNDERSEN and three other teammates. GUNDERSEN wore number "70." That photograph is produced below as Figure 2. The individual appearing to enter the Capitol Building in Figure 1 is wearing an apparent Byram Hills varsity jacket with a two digit number, ending in "0" on the left sleeve.



Figure 2

On January 18, 2021, FBI personnel requested a Digital Media review on Brian GUNDERSEN. That review includes a search through the database that the FBI maintains on the many tips that the FBI has received from the public about the riots at the U.S. Capitol on January 6, 2021. That search returned a number of tips related to GUNDERSEN. The tips included pictures of GUNDERSEN wearing a jacket, on multiple occasions, that appears to be the same jacket worn by the individual in Figure 1. Those images are reproduced below as Figures 3-5.

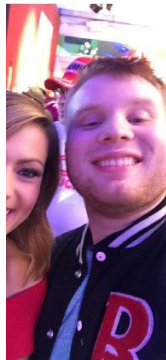


Figure 3

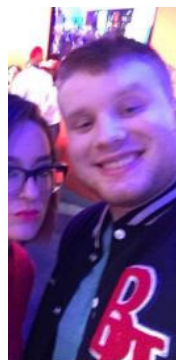


Figure 4

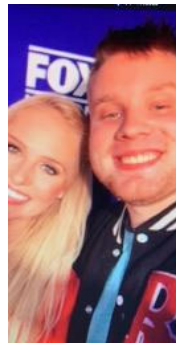


Figure 5

On or about January 12, 2021, an online tip to the FBI stated that the tipster had seen, on CNN, a man wearing a Byram Hills High School varsity jacket storming the U.S. Capitol. The tipster stated that the Facebook page for that individual and/or his brother is under the name “Brian Kristopher.” Legal process was later served on Facebook. The results of that process confirmed that the username associated with the “Brian Kristopher” account was “brian.gundersen.3.”

On or about January 13, 2021, a tip was submitted online regarding Brian GUNDERSEN, including images from GUNDERSEN's Facebook profile. According to the tip, a group of Byram Hills alumnae, based on their knowledge of GUNDERSEN and his views, believed that the man wearing the Byram Hills lettermen jacket was BRIAN GUNDERSEN.

On or about January 19, 2021, the FBI obtained another photo of the individual with the Byram Hills jacket walking toward an entrance to the Capitol on January 6, 2021. That photograph is produced below as Figure 6. The individual is circled for ease of reference. The individual is wearing the same hat and appears to be wearing the same jacket as in Figure 1.



Figure 6

On or about January 19, 2021, FBI Special Agents interviewed a witness (“W-1”) with a close personal relationship with GUNDERSEN. W-1 advised that GUNDERSEN was an avid supporter of former President Trump and a follower of commentator Nick Fuentes. W-1 told agents that on the evening of January 5, 2021, W-1 and GUNDERSEN departed Pennsylvania for Washington D.C. to attend a January 6, 2021 rally for President Trump. GUNDERSEN and W-1 became separated on the morning of January 6, 2021, due to logistical issues. W-1 was in Washington, D.C. on January 6, 2021, and IT understood that GUNDERSEN was in the city as well.

Later on January 6, 2021, W-1 received a phone call from another witness (“W-2”), who also has a close personal relationship with GUNDERSEN. W-2 stated that GUNDERSEN had told W-2 that GUNDERSEN was in the Capitol Building. W-1 met with GUNDERSEN that night to depart Washington, D.C. GUNDERSEN told W-1 that, during the day, he had been in a large group by the Capitol Building steps. That group was disarming police officers of their riot shields. GUNDERSEN told W-1 that when everyone else stormed into the Capitol Building, GUNDERSEN followed everyone inside. According to W-1, GUNDERSEN said that he walked around the halls but was never violent while inside the Capitol.

W-1 identified GUNDERSEN as the individual wearing the Byram Hill varsity jacket in Figure 1, above. IT showed the jacket to agents and confirmed that GUNDERSEN was wearing the jacket on January 6, 2021. A photograph of that jacket is produced below as Figure 7.



Figure 7

On or around January 19, 2021, W-2 was interviewed by FBI agents. W-2 was shown Figure 1, above. W-2 confirmed that the individual was GUNDERSEN.

On or around January 19, 2021, GUNDERSEN was interviewed by FBI agents. GUNDERSEN admitted going to the rally in support of Donald Trump on January 6, 2021, in Washington D.C. At first, GUNDERSEN claimed to not have gone into the U.S. Capitol Building. He admitted, however, that the person wearing the Byram Hill varsity jacket in Figure 1, above, was him. During this interview, GUNDERSEN consented to a search of his phone. During a subsequent interview later that day, GUNDERSEN admitted going into the U.S. Capitol Building on January 6, 2021. He stated he was pushed into the building by the crowd. GUNDERSEN stated that he remained in the U.S. Capitol Building for about ten minutes.

The FBI conducted an analysis of GUNDERSEN's phone. GPS data on that phone reflected that the phone was in Washington, D.C. on the morning of January 6, 2021. In addition, messages on the phone reflected that GUNDERSEN had written to others, on January 5, 2021, that he and others "might be able to bum rush the [W]hite [H]ouse and take it over" and that he was going to go to "an event" at the Capitol "in 2 days that's going to have millions of people to protest[] the results of our election."


Another message on January 7, 2021 shared a picture of members of Congress taking cover during the attack on the U.S. Capitol. GUNDERSEN wrote, "Look at these scared little bitches." A message on January 8, 2021 read, "We all stormed the us capital [sic] and tried to take over the government," followed by, "We failed but f-- it." A message on January 13, 2021 showed the

same photograph as Figure 1, above, with the individual in the Byram Hill varsity jacket circled. GUNDERSEN wrote as a caption, "They might have found me."

In addition, the phone contained a message from "Brian Kristopher" (believed to be the Facebook account name of GUNDERSEN) that was written on January 6, 2021. "Brian Kristopher" stated that he was in the Capitol that day. The phone reflects that GUNDERSEN also conducted a Google search that night for "pelosi's office."

Based on the foregoing, your affiant submits that there is probable cause to believe that BRIAN GUNDERSEN violated 18 U.S.C. § 1752(a), 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 BRIAN GUNDERSEN violated 40 U.S.C. § 5104(e)(2), 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.


THOMAS HARRIS
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 25th day of January 2021.

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ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE