

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 7 - 2022

**Clerk, U.S. District and
Bankruptcy Courts**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No.: 21-CR-508 (1) (BAH)
LUKE WESSLEY BENDER,	:	
	:	
Defendant.	:	

STATEMENT OF FACTS FOR STIPULATED TRIAL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Luke Wessley Bender, with the concurrence of his attorney, hereby submit the Elements and Statement of Facts for Stipulated Trial in this action.

I. Elements

A. Count One: Obstruction of an Official Proceeding.

The essential elements of the offense of obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant attempted to or did obstruct or impede an official proceeding;
2. The defendant intended to obstruct or impede the official proceeding;
3. The defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding; and
4. The defendant acted corruptly.

B. Count Two: Entering and Remaining in a Restricted Building or Grounds.

The essential elements of the offense of entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant entered or remained in a restricted building or grounds without lawful authority to do so; and,
2. That the defendant did so knowingly.

C. Count Three: Disorderly and Disruptive Conduct in a Restricted Building or Grounds.

The essential elements of the disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. That the defendant engaged in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds;
2. That such conduct occurred when, or so that, such conduct, in fact, impeded or disrupted the orderly conduct of Government business or official functions; and
3. That the defendant did so knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions.

D. Count Four: Entering and Remaining on the Floor of Congress.

The essential elements of the offense of entering and remaining on the floor of Congress, in violation of 40 U.S.C. § 5104(e)(2)(A), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. That the defendant entered or remained on the floor of either House of Congress without authorization; and
2. The defendant acted willfully and knowingly.

E. Count Five: Disorderly Conduct in a Capitol Building or Grounds.

The essential elements of the offense of entering and remaining on the floor of Congress, in violation of 40 U.S.C. § 5104(e)(2)(D), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings;
2. The defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress; and
3. The defendant acted willfully and knowingly.

F. Count Six: Parading, Demonstrating, or Picketing in a Capitol Building.

The essential elements of the offense of parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G), each of which the government must prove beyond a reasonable doubt, are as follows:

1. The defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings; and
2. The defendant acted willfully and knowingly.

II. Statement of Offense.

A. The Attack at the U.S. Capitol on January 6, 2021.

1. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured twenty-four hours a day by U.S. Capitol Police (“USCP”). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by USCP. Only authorized people with appropriate identification are allowed access inside the Capitol.

2. On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the 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 Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020. The joint session is set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18 and requires a deliberate and legally prescribed assessment of ballots, lists, certificates, and, potentially, written objections. 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.

4. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the Capitol. Temporary and permanent barricades, as noted above, were in place around the exterior of the Capitol, and USCP officers were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades. Officers of the USCP were forced to retreat and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks as required by USCP officers or other authorized security officials.

6. At such time, the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the USCP attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the Capitol, requiring the expenditure of more than \$2.7 million dollars for repairs.

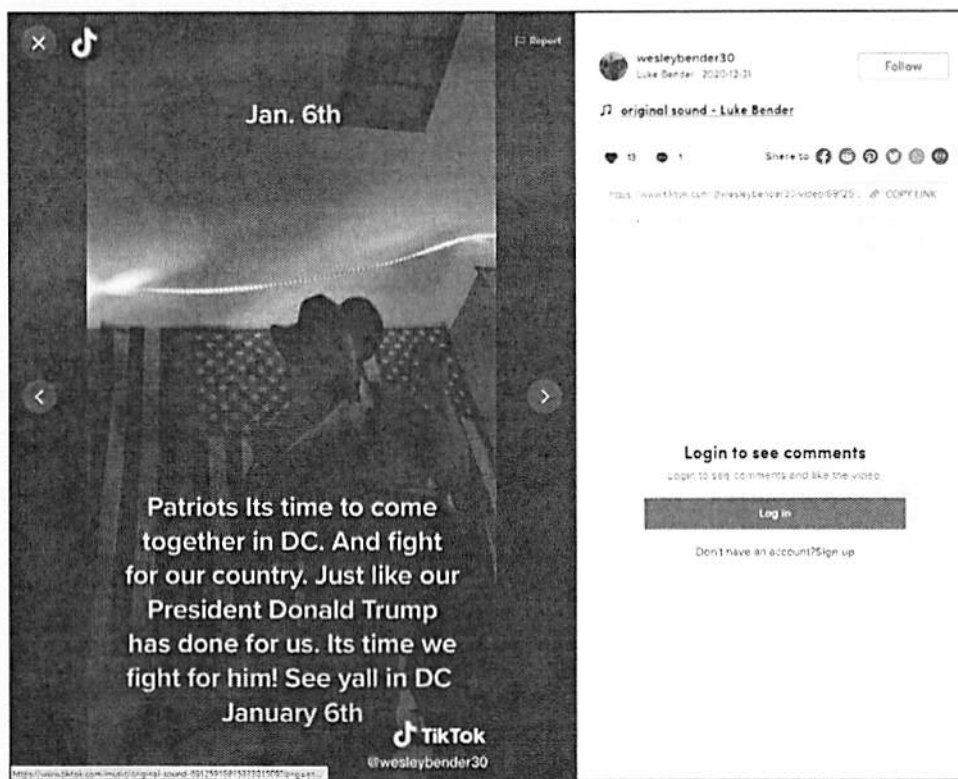
7. Shortly thereafter, at approximately 2:20 p.m., members of the House of Representatives and of the Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. on January 6, 2021. In light of the dangerous circumstances caused by the unlawful entry to the Capitol—including the danger posed by individuals who had entered the Capitol without any security screening or weapons check—Congressional proceedings could not resume until after every unauthorized occupant had been removed from or left the Capitol, and USCP confirmed that the building was secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

B. Defendant Luke Wesley Bender's Participation in the January 6, 2021, Capitol Riot.

8. The defendant, Luke Wesley Bender, lives in Fairfax, Virginia.

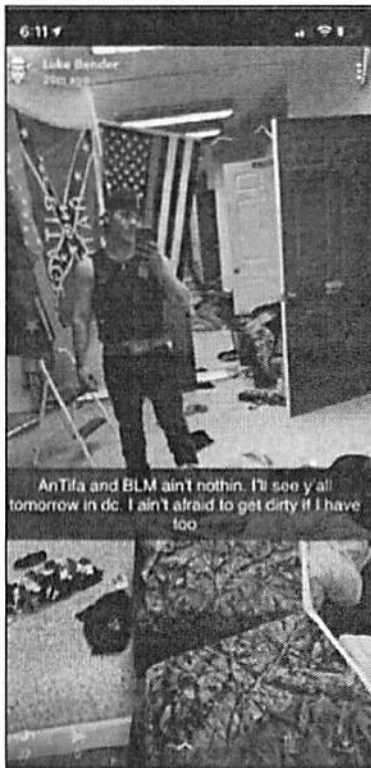
9. Prior to January 6, 2021, Bender posted various images and videos on his social media accounts showing his belief in a purported “stolen election” and voicing Bender’s support for then-President Donald J. Trump.

10. On December 31, 2020, Bender posted a video to his TikTok social media account indicating he intended to travel to Washington, D.C. on January 6, 2021. Bender, wrapped in a flag bearing the name of former President Donald Trump and standing in front of two American flags, swayed to music. Superimposed on his video is the message, “Jan. 6th[.] Patriots Its time to come together in DC. And fight for our country. Just like our President Donald Trump has done for us. Its time we fight for him! See yall in DC January 6th.”



Ex. 4.6.

11. On January 5, 2021, Bender posted a SnapChat video of himself in front of a Confederate flag and an American flag. He appears to be wearing a tactical vest. Bender included the caption, “Antifa and BLM ain’t nothin. I’ll see y’all tomorrow in dc. I ain’t afraid to get dirty if I have to.”



Ex. 5.2.

12. On the morning of January 6, Bender traveled to Washington, D.C. with his co-defendant, Landon Bryce Mitchell, via metro from Arlington, Virginia. Bender and Mitchell attended the “Stop the Steal” rally at the Ellipse. Bender stated that the rally on January 6, 2021 “was for the stolen election,” and that is why he attended. Ex. 3.1 at 26:32.

13. Bender carried a large flag bearing the name of former President Donald Trump.



Ex. 2.1, 4.8.

14. Bender and Mitchell and then marched with other protestors to the Capitol grounds.





Ex. 2.2, 2.3.

15. As they arrived near the Capitol Building, Bender and Mitchell paused for a picture, which Bender later shared on his TikTok account, accompanied by a song entitled, “Go to War.”



Ex. 4.9, 5.6, 5.7, 5.8.

16. Bender and Mitchell then climbed up scaffolding that had been erected for the inauguration of President Joseph R. Biden, Jr. *See* Ex. 3.1 at 11:15 – 12:45. He took a cell phone video of the rioters below him and law enforcement officers attempting to defend the Capitol Building using pepper spray. Bender then panned to an entrance of the Capitol Building and exclaimed, “we’re storming the Capitol!” Bender later shared that video on his TikTok account.



Ex. 4.10, 5.9, 5.10, 5.11.

17. At about 2:45 p.m., Bender and Mitchell unlawfully entered the U.S. Capitol Building through the Upper West Terrace Door.



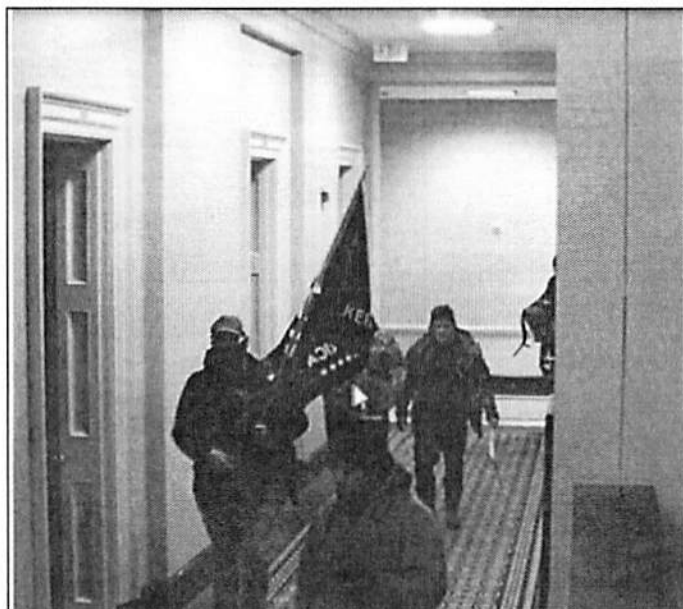
Ex. 1.1, 1.2.

18. Bender recorded part of his journey, including his entry into Capitol Building and the Rotunda. *See* Ex. 4.13, 5.12, 5.13. In one of those videos, the alarm to the Upper West Terrace Door can be heard, and Bender joined other individuals inside the U.S. Capitol and chanted, “Whose house? Our House!” Ex. 5.12. As he entered the Rotunda, Bender exclaimed, “Right now, we’re inside the Capitol. We just stormed the gates!”



Ex. 5.13.

19. Bender and Mitchell then proceeded through the Rotunda, down the East Front Corridor, through the Ohio Clock Corridor, down a hall, and into the Senate Chamber.



Ex. 1.3, 1.4, 1.5, 1.6, 1.7, 1.8.

20. Bender and Mitchell entered the Senate Floor of the U.S. Capitol Building at approximately 3:04 p.m.



Ex. 1.9, 1.10, 1.11.

21. While on the Senate Floor, Bender and his co-defendant reviewed documents sitting on tables on the Senate Floor.



Ex. 1.9, 2.4.

22. Bender sat at a Senator's desk, while Mitchell took his picture.



Ex. 2.5, 1.11.

23. Bender and Mitchell also took “selfies” from the Senate floor.



Ex. 5.14, 5.15.

24. Bender then ascended to the Senate dais and posed for pictures with fellow rioter Jacob Chansley.





Ex. 1.11.

25. At approximately 3:08 p.m., USCP officers entered the Senate Floor and directed Bender, Mitchell, and other individuals to leave the Chamber.



Ex. 1.10, 1.11

26. Bender and Mitchell left the U.S. Capitol through the Senate Carriage Door at approximately 3:10 p.m. *See* Ex. 1.12, 1.13, 1.14, 1.15, 1.16, 1.17.

27. Later on January 6, Bender posted the Tik Tok videos described above. He included captions such as, “It was so awesome [sic] to be apart [sic] of this. We made our voices heard” and “A once in a lifetime day. #patriots #fyp #trump2020 #viral #dc #patriotparty #proudboys[.]” Ex. 4.21 (metadata only). In an Instagram post on January 6, 2021, Bender included the caption, “Today was something special if you were there. It was great to be apart [sic] of it. #trump2020 #trump #dc #capital[.]”



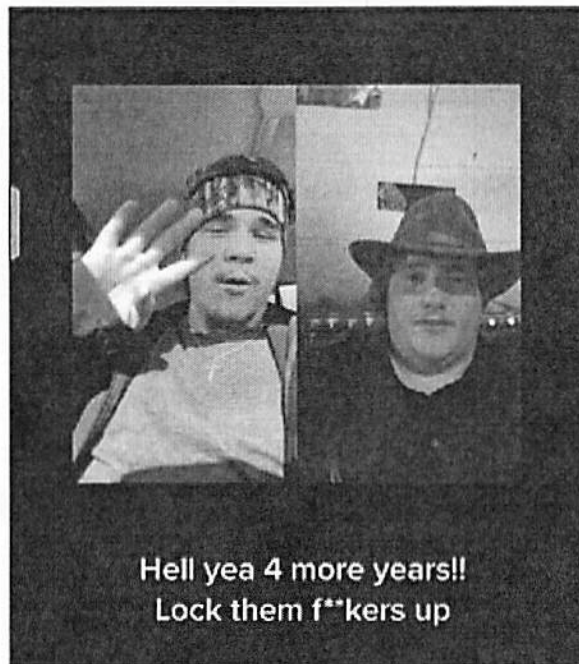
Ex. 4.8, 4.11.

28. On January 7, 2021, Bender shared on Facebook a post from Mitchell. The post contained an image of a skull surrounded by red smoke, with the caption, “Absolutely Proud of my fellow Americans who made their voices heard at the Capitol.”



Ex. 4.12.

29. On the night before inauguration was to take place, January 20, 2021, Bender posted a video to his TikTok account; the post itself had the following caption: “#duet with @brysonzero1 4 More years! #trumpismypresident #patriotparty #fuckbiden 😊😊 #fyp[.]” At the bottom of the video’s screen, Bender wrote, “Hell yea 4 more years!! Lock them F**kers up[.]”



Ex. 4.7.

30. On July 29, 2021, the Federal Bureau of Investigation (“FBI”) interviewed Bender, who waived his *Miranda* rights and agreed to speak to law enforcement. Bender acknowledged his presence on the National Mall on January 6, 2021 and his choice to enter the U.S. Capitol. Bender identified himself in screen shots of video from inside the U.S. Capitol and identified defendant Mitchell, who also entered the U.S. Capitol, as the person with whom Bender attended the events of January 6, 2021. Bender also provided information to law enforcement regarding where Mitchell worked and completed a written consent form permitting the FBI to search his electronic devices. He also told the FBI that after returning to his and his parents’ home on January 6, 2021, on his parents’ direction, he deleted the photographs he had taken at the U.S. Capitol, stopped using that phone, and began using a new phone his parents had purchased for him. Ex. 3.1 at 16:00 – 17:45.

Without waiving any arguments set forth in Bender’s Motion to Dismiss Count 1, the parties agree that if the Court finds the existence of these facts beyond a reasonable doubt, the defendant

stipulates that this evidence would establish each and every element of the charged offenses for Counts 1 through 6 of the Indictment, ECF No. 7, in light of the Court's ruling on the Motion to Dismiss Count 1 and without waiving objection to the Court's ruling

Respectfully submitted,

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DEFENDANT'S ACKNOWLEDGMENT

I, LUKE WESSLEY BENDER, have read this Statement of Facts for Stipulated Trial and have discussed it with my attorney. I fully understand the elements and the facts that are set forth. I agree and acknowledge by my signature that this Statement of Facts for Stipulated Trial is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of Facts for Stipulated Trial fully.

Date: 11/27/22

Luke Bender
LUKE WESSLEY BENDER
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of Facts for Stipulated Trial and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of Facts for Stipulated Trial as true and accurate.

Date: 12/1/22

C. Macchiaroli
CHRISTOPHER MACCHIAROLI
Attorney for Defendant Bender