

Case: 1:23-mj-00146
Assigned To : Harvey, G. Michael
Assign. Date : 6/27/2023

STATEMENT OF FACTS Description: Complaint W/ Arrest Warrant

Your affiant, [REDACTED], is an FBI Special Agent assigned to the FBI Knoxville Division. In my duties as a special agent, I am assigned to Joint Terrorism Task Force (JTTF). 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 facts in this Affidavit come from my personal observations, my training and experience, and information obtained from other agents, witnesses, and agencies, or 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, times, and time stamps listed in this Affidavit should be read as “on or about”.

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 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.

Earlier this day, at approximately 1:00 p.m., a crowd of violent rioters assembled on the West Front of the United States Capitol. USCP formed a line of bike racks extending from the north end of the West Front to the south end to act as a barrier against the crowd. Officers were standing watch behind this line and fending off repeated attempts by the rioters to pull on the bike racks, either with their hands or with ropes and straps.

At approximately 2:00 p.m., some people in the crowd forced their way through, up, and over the barricades and law enforcement. 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 by USCP officers or other authorized security officials. At such time, the certification proceedings were still underway, and the exterior doors and windows of the United States Capitol were locked or otherwise secured. Members of law enforcement attempted to maintain order and keep the crowd from entering the United States Capitol.

At approximately 2:30 p.m., significant sections of the police line on and near the United States Capitol's Lower West Terrace broke as the rioters in the crowd swarmed and overwhelmed the law enforcement officers. Some of the rioters were able to penetrate the scaffolding, a position that gave them access to the stairs to the upper terraces where there are several key doors, including the doorway to the Lower West Terrace, also referred to as the "tunnel." Officers from the USCP and the Washington, D.C. Metropolitan Police Department (MPD) formed a police line in the tunnel blocking that entrance to the United States Capitol building and were repeatedly fending off assaults by some of the rioters. At approximately 2:42 p.m., rioters began entering the tunnel and ambushing the officers. The rioters broke the glass and forced the doors open. In response, the USCP and MPD officers formed a police line blocking that entrance to the U.S. Capitol building. From approximately 2:42 p.m. and on, numerous rioters were consistently attempting to breach the police line that formed in the tunnel. The rioters used various weapons, as well as the force of their bodies, in an attempt to overcome the officers. Many of the rioters assaulted MPD and USCP officers by hurling objects towards the officers, physically striking officers with batons and other blunt instruments, using lights to distract and disorient the officers, using electrical shock devices, crushing officers between the doors and walls of the confined space, and by deploying chemical sprays and fire extinguishers against the officers.

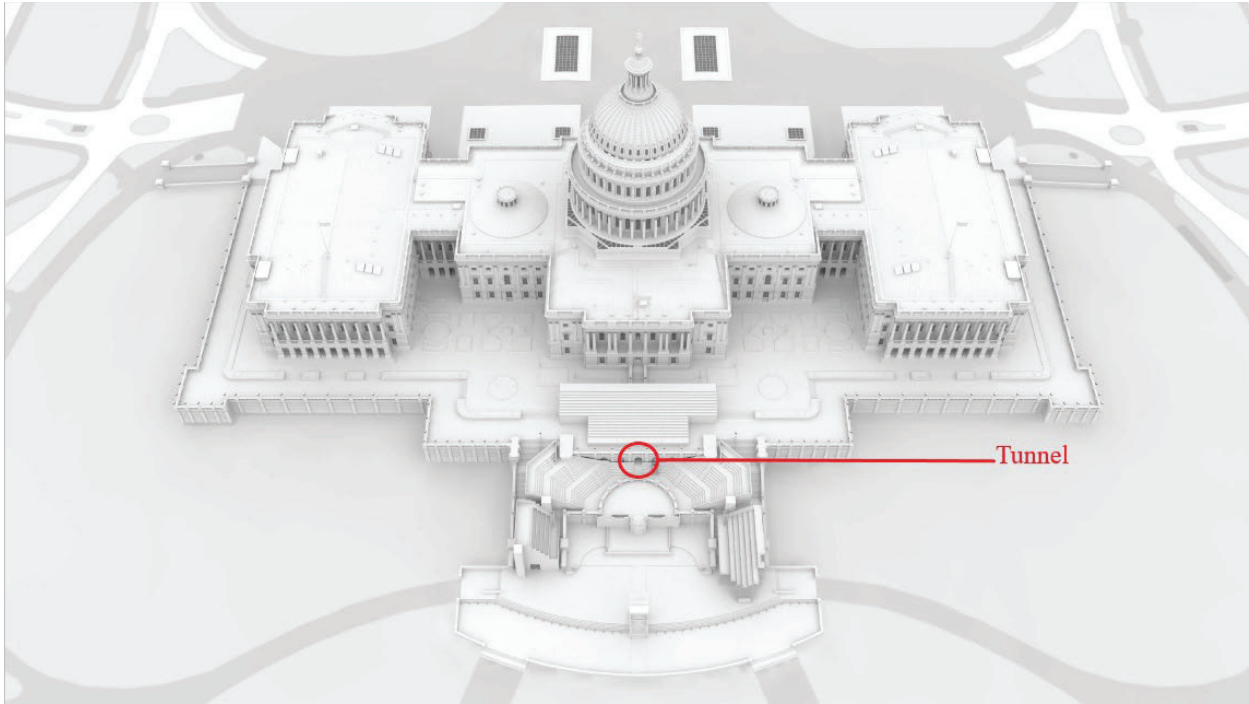


Image 1: West Front of the Capitol.

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 MICHAEL ASBURY

On January 13, 2021, Witness 1 submitted an online tip was submitted to the FBI, reporting that MICHAEL ASBURY of Knoxville, Tennessee, was a possible suspect in the riot at the United States Capitol. Witness 1 had viewed a video on ASBURY's personal Facebook page depicting him on Capitol grounds on January 6, 2021. Witness 1 did not know ASBURY personally, but was shown the Facebook video by an associate¹ of ASBURY's. Witness 1 provided Asbury's name and address to the FBI.

On January 17, 2021, FBI interviewed ASBURY at the address provided by Witness 1, which was ASBURY's home. ASBURY admitted to attending the rally for President Trump and moving with the crowd to the Capitol building. ASBURY denied entering the Capitol or committing violence on January 6, 2021. ASBURY claimed he did not venture closer than 15 feet from the building but did witness violence towards law enforcement.

On March 23, 2021, the FBI interviewed Witness 2. Witness 2 had known ASBURY for approximately 30 years. Witness 2 stated that ASBURY posted on Facebook that he would be going to Washington D.C. on January 6, 2021. After the Capitol riot, Witness 2 viewed two videos posted by ASBURY on Facebook showing ASBURY cursing at law enforcement. The videos were removed from ASBURY's Facebook shortly after January 6, 2021. Witness 2 also saw ASBURY's

¹ Said associate is not "Witness 2" referenced below.

photo on the FBI's wanted list in connection to the Capitol riot. Witness 2 said ASBURY was wearing a tan Carhartt coat.

Using the information about ASBURY provided by Witness 1 and Witness 2, FBI queried Tennessee Department of Motor Vehicle (DMV) records. According to DMV records, ASBURY is approximately 43 years old, and his primary address is in Knoxville, Tennessee.

After receiving the tips regarding ASBURY's involvement, law enforcement reviewed numerous surveillance videos from the U.S. Capitol building and publicly available videos online. A man whose appearance is consistent with the person identified by Witness 1 and Witness 2 can be seen in the Lower West Terrace area of the Capitol building on January 6, 2021. Based on my training, experience, and my personal comparison of the video footage with ASBURY's Facebook posts, DMV records, and the information from Witness 1 and Witness 2, the man seen in the video footage is ASBURY. ASBURY was initially seen wearing camouflage pants, a tan jacket, a camouflage backpack, and a camouflage balaclava with black trim along the face opening.

ASBURY was captured at the Capitol on January 6, 2021, in a publicly-available YouTube video entitled "Patriots STORM U.S. Capitol"². **Image 2** and **Image 3** are still images from said video.



Image 2: Still image from "Patriots STORM" video depicting ASBURY on Capitol grounds.

² <https://www.youtube.com/watch?v=iNFcdpZdkh0>



Image 3: Still image from “Patriots STORM” video depicting ASBURY on the media tower on the west front of Capitol grounds.

As noted above, Witness 1 and Witness 2 reported a Facebook page associated with ASBURY. Based on my training and experience, your affiant believes the Facebook page reported by Witness 1 and Witness 2 is publicly identified by the URL [facebook.com/Michael.Asbury.31](https://www.facebook.com/Michael.Asbury.31). This was determined by comparing the publicly available Facebook images and videos to known images of ASBURY.

The FBI obtained the records associated with the above Facebook account. The records showed that ASBURY discussed his plans to travel to Washington, D.C., with Facebook Friend 1 (FF1) using Facebook’s unified message feature, also known as a private message. On January 5, 2021, ASBURY sent a private message to FF1, “I’m headed to dc now.” On January 6, 2021, at 5:48 pm, FF1 sent ASBURY the following message: “Please tell me you’re okay buddy.” ASBURY responded at 7:34 pm, “I’m good brother. Just got out” and at 7:35 pm, “It was so fucking amazing i cant describe”.

In public comments on January 7, 2021, ASBURY wrote, “I shook hands with the officer who peppered me. He seemed nice.” “Btw, today wasn’t about you. It was about our constitution.” “We sent a fucking message today. You should be thanking us”.

VIDEO FOOTAGE DEPICTING MICHAEL ASBURY

A review of USCP surveillance footage, MPD body-worn camera (“BWC”) footage, open-source videos, and footage from other rioters revealed ASBURY repeatedly engaged in a violent obstructive conduct against multiple law enforcement officers inside the tunnel.

ASBURY was captured by Capitol building surveillance footage outside the tunnel entrance at approximately 2:49:25 pm. ASBURY entered the tunnel by climbing on the left archway, as seen in **Image 4**.



Image 4: Still image from Capitol building surveillance footage at 2:49:25 pm, depicting ASBURY at the entrance of the tunnel.

From the vantage point at the mouth of the tunnel, ASBURY could see the large phalanx of police officers defending an entrance to the Capitol Building, who were positioned beyond the crowd of rioters at the entrance to the Capitol building, and could hear the door alarm from the emergency exit blaring.

About one minute later, at 2:50:39 pm, ASBURY moved further into the tunnel, and BAER made his way to the entrance of the tunnel. At this point, ASBURY appeared to lean his full body weight against the rioter in front of him (with no one pushing ASBURY from behind). Additional rioters joined behind him, pushing against him, and they collectively pushed together in a “heave-ho” effort against the police line until at about 2:51:20 pm. At that point, the mob appeared to have lost its momentum and dissipated backward, ASBURY among them.



Image 5: Still image from Capitol building surveillance footage at 2:50:39 pm, depicting ASBURY inside the tunnel participating in a heave-ho effort against the police line.

After this first heave-ho effort, ASBURY stood at the mouth of the tunnel for approximately two minutes, with nothing appearing to prevent him from retreating. During that time, he handed a police riot shield to rioters outside the tunnel, as part of an effort to disarm the police, as captured in **Image 6**.



Image 6: Still image from Capitol building surveillance footage at 2:52:24 pm, depicting ASBURY (red) at the mouth the tunnel handing a police riot shield (blue) to the rioters outside the tunnel.

ASBURY then re-entered the tunnel with the apparent intention to re-engage with the police line at approximately 2:53:19 pm. A rioter next to him sprayed toward the police line with OC spray. Another rioter directly behind him threw a large object toward the police line. ASBURY assisted in throwing a police shield toward the crowd behind him, away from the police line, as captured in **Image 7** and **Image 8**. Other rioters followed suit, taking shields away from the police in an effort to disarm them.

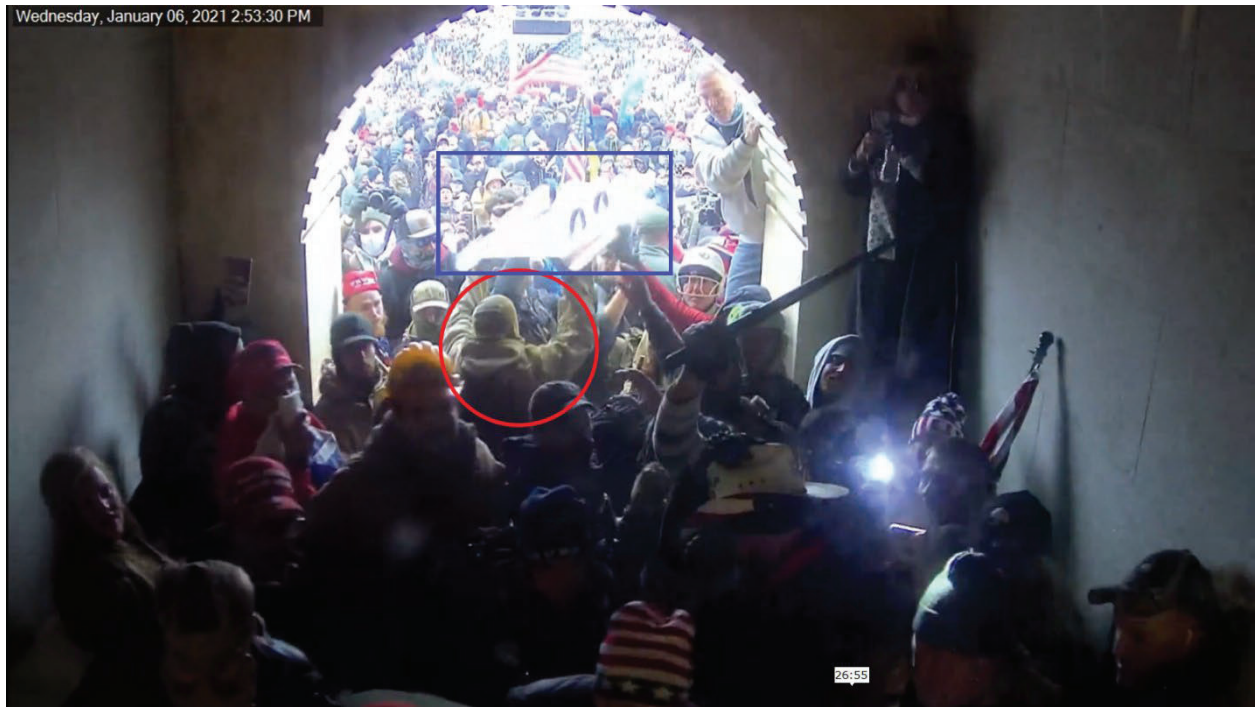


Image 7: Still image from Capitol building surveillance footage at 2:53:30 pm, depicting ASBURY (red) at the mouth the tunnel handing a police riot shield (blue) to the rioters behind him.



WASHINGTON
UNBELIEVABLE Footage | Trump Supporters Battle Cops Inside the Capitol

Image 8: Still image from the footage of journalist Jon Farina depicting ASBURY inside the tunnel holding a law enforcement shield over his head at approximately 2:53:30 pm. This appears to be a mirror image of **Image 7**.

ASBURY then passed what appeared to be a functional stun gun out of the tunnel to a man in a blue jacket,³ as captured in **Image 9**. ASBURY then kept moving forward toward the police line.

³ The man in the blue jacket has been identified as Vitali GossJankowski (21-cr-123). No prior interaction between ASBURY and GossJankowski has been identified. GossJankowski told the FBI that he recovered the stun gun from the ground, but the video evidence contradicts this statement.



Image 9: Still image from Capitol building surveillance footage at 2:53:57 pm, depicting ASBURY (red) handing another rioter a stun gun (yellow), identifiable by a small red light.

The mob, including ASBURY, engaged in another heave-ho effort. ASBURY's weight shifted forward, and he leaned on the rioters in front of him, who were in turn pushing against the police line at the entrance to the building. This second push, around at 2:54:28 pm, was more brief than the initial push, but ASBURY was engaging with apparent knowledge of the situation at this point, given that he had previously viewed the police line from an elevated position while he was standing on in the archway (as captured in **Image 4**), had participated in a heave-ho effort (as captured in **Image 5**), and worked with other rioters to take shields away from the police (as captured in **Image 6**, **Image 7**, and **Image 8**).

ASBURY kept moving forward toward the police line, and at 2:56:19 pm, ASBURY went out of the frame of the CCTV camera. BWC footage from MPD Sgt. William Bogner and Farina's footage depict ASBURY inside the vestibule doors of the tunnel around 2:56:41 pm, as depicted in **Image 10** and **Image 11**, respectively. Voices that appear to be from law enforcement officers are heard yelling, "Ladies and gentlemen, back up!" and "Get back!" while an alarm is sounding.



Image 10: Still image from Sgt. Bogner's BWC footage depicting ASBURY at the police line inside the tunnel at 2:56:41 pm.



Image 11: Still image from Farina's footage depicting ASBURY and Sgt. Bogner inside the tunnel at approximately 2:56:41 pm. It appears to be a mirror-image of **Image 10**.

At approximately 2:56:39 pm, there was a rush of rioters into the tunnel. At approximately 2:57:00 pm, the rioters, including ASBURY, engaged in another heave-ho effort, their bodies

moving in unison forward and back, pushing against the police line. ASBURY began to make his way out of the tunnel at approximately 2:57:40 pm, after law enforcement sprayed OC spray toward the rioters. He removed the balaclava from his head as he exited.

At approximately 3:00:28 pm, ASBURY was standing at the mouth of the tunnel and engaged in conversation with David Mehaffie,⁴ dubbed #tunnelcommander by citizen sleuths online, due to his having directed the movement of the rioters inside the tunnel. As captured in **Image 12**, Mehaffie pointed in the direction of ASBURY, said something, and ASBURY nodded his head “yes” and responded.⁵ ASBURY stood at the mouth of the tunnel for approximately two minutes, with the apparent capability to leave the premises. Despite this, he re-entered the tunnel at approximately 3:02:04 pm.



Image 12: Still image from Capitol building surveillance footage at 3:00:28 pm, depicting ASBURY (red) and Mehaffie (purple) at the mouth the tunnel.

At approximately 3:03:43, while ASBURY was inside the tunnel, the rioters initiated another heave-ho effort, their bodies moving in unison back and forth to apply force against the police line ahead. ASBURY again maneuvered his way to the front of the police line at approximately 3:04:07 pm, past the frame of the Capitol surveillance CCTV camera. However, the footage of another rioter, Yvonne St. Cyr,⁶ captured him there. St. Cyr’s video shows that

⁴ Mehaffie (21-cr-40) was convicted at trial on 9/13/22 of a total of four offenses, including two felony charges: aiding and abetting in assaulting, resisting, or impeding law enforcement officers, and interfering with a law enforcement officer during a civil disorder.

⁵ The conversation between ASBURY and Mehaffie is not audible, because it was captured on U.S. Capitol CCTV, which does not have sound.

⁶ St. Cyr (22-cr-185) was convicted at trial on 3/10/23 of a total of six offenses, including two felony charges: interfering with a law enforcement officer during a civil disorder (two counts).

Asbury was inside of the doors leading into the building, where the police line was, as captured in **Image 13**. At the moment that ASBURY reached the front of the line, rioters behind him surged forward and began the back and forth heave-ho effort against the police. The video shows rioters with hands on each other's backs, pushing back and forth.

The police employed OC spray to disperse the rioters, and many, including ASBURY, turned around to exit the tunnel as a result. He exited the tunnel at approximately 3:05:41 pm.



Image 13: Still image from St. Cyr's video depicting ASBURY beyond the doors to the Capitol building at approximately 3:04:07 pm.

ASBURY remained at the mouth of the tunnel after exiting. At approximately 3:17:04 pm, Capitol surveillance footage captured ASBURY cheering on the heave-ho effort from the mouth of the tunnel.

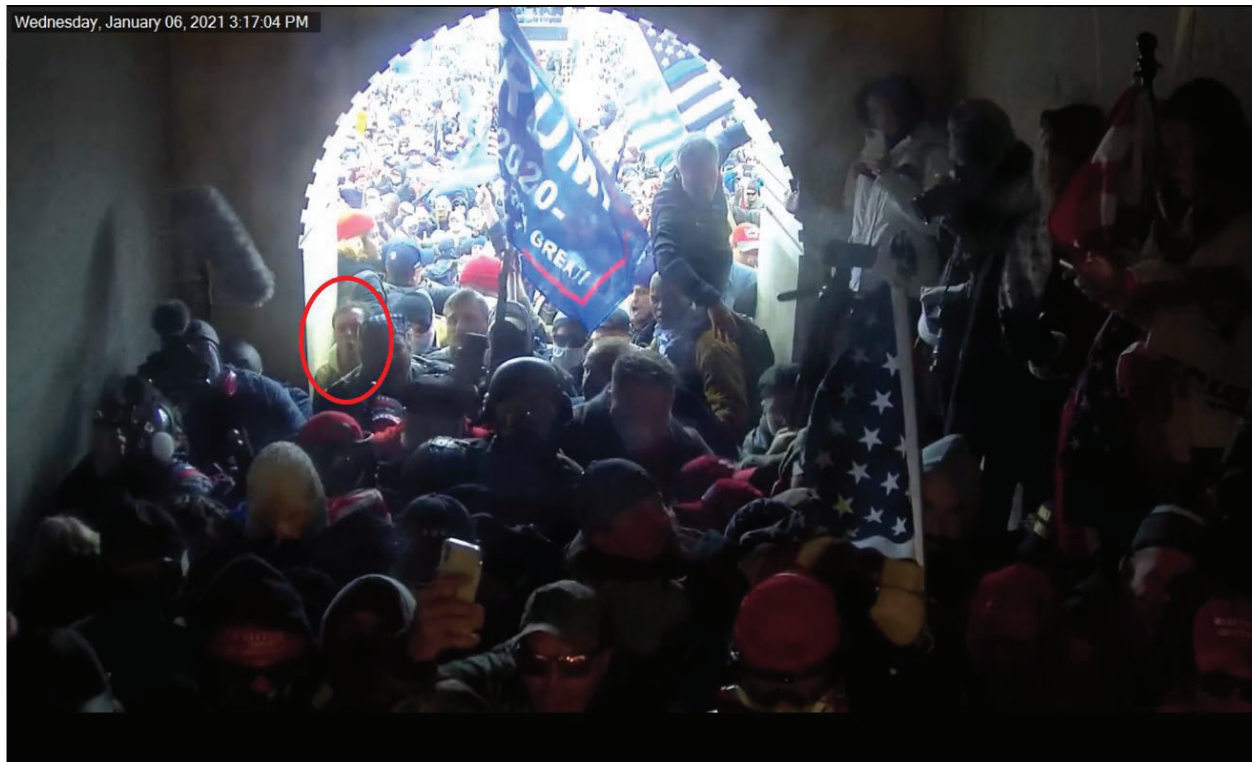


Image 14: Still image from Capitol building surveillance footage at 3:17:04 pm, capturing ASBURY at the mouth of the tunnel.

ASBURY remained outside the tunnel until at least 3:41:55 pm. ASBURY had multiple opportunities to leave Capitol grounds, but nevertheless stayed to obstruct the police.

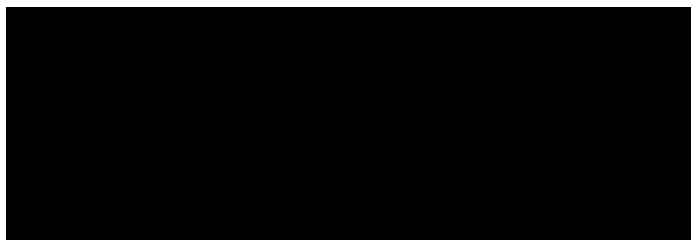
CHARGES SUPPORTED BY PROBABLE CAUSE

Based on the foregoing, your affiant submits that there is probable cause to believe that ASBURY 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 submits there is also probable cause to believe that ASBURY 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; (4) knowingly engages 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.

Your affiant submits there is also probable cause to believe that ASBURY 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; (F) engage in an act of physical violence in the Grounds or any of the Capitol Building.



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 27th day of June 2023.

G. Michael
Harvey



G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE