

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

BRIAN GUNDERSEN,

Defendant

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Criminal No. 21-CR-137 (TFH)

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, Brian Gundersen, with the concurrence of his attorney, hereby submit the Elements and Statement of Facts for Stipulated Trial as to Counts 1 and 2 of the Second Superseding Indictment. ECF No. 21.

I. ELEMENTS

COUNT ONE

The essential elements of the offense of obstruction of an official proceeding and aiding and abetting, in violation of Title 18, United States Code, Sections 1512(c)(2) and 2, each of which the government must prove beyond a reasonable doubt, are:

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.

The government further alleges that the defendant aided and abetted others in committing obstruction of an official proceeding. To satisfy its burden of proof in proving that the defendant aided and abetted others in committing this offense, the government must prove the following

beyond a reasonable doubt:

1. Others committed obstruction of an official proceeding by committing each of the elements of the offense charged;
2. The defendant knew that obstruction of an official proceeding was going to be committed or was being committed by others;
3. The defendant performed an act or acts in furtherance of the offense;
4. The defendant knowingly performed that act or acts for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense of obstruction of an official proceeding; and
5. The defendant did that act or acts with the intent that others commit the offense of an obstruction of an official proceeding.

The term “official proceeding” includes a proceeding before the Congress.

COUNT TWO

The essential elements of Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a), each of which the government must prove beyond a reasonable doubt, are:

1. That the defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with any officer or employee of the United States or of any agency in any branch of the United States Government;
2. That the defendant did so with some use of force;
3. That the defendant did so while the officer or employee was engaged in or on account of the performance of official duties; and
4. That the assault involved physical contact with the victim or the intent to commit

another felony.

II. STATEMENT OF OFFENSE

If the case proceeded to trial, the defendant agrees the government would have elicited the following evidence:

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 24 hours a day by U.S. Capitol Police (“USCP”). Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by USCP. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol.

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

3. 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.

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 U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and USCP were present and attempting to keep the crowd away from the Capitol building 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, and officers of the USCP, 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 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 U.S. 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 U.S. 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 U.S. 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 United States House of Representatives and United States 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. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session

resumed.

Brian Gundersen's Participation in the January 6, 2021, Capitol Riot

8. Prior to January 6, Gundersen asked on social media whether anyone else was going to Washington, D.C. and suggested that he and others “might be able to bum rush the [W]hite [H]ouse and take it over.”

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-05 07:56:46 UTC

Body anyone else going to DC on the 6th

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-05 07:57:00 UTC

Body we might be able to bum rush the white house and take it over

9. Gundersen drove from Pennsylvania to attend the rally in Washington, D.C., arriving on January 6, 2021. While at the rally, Gundersen heard that the Capitol had been broken into, which caused him to join the crowd walking towards the Capitol.

10. Gundersen entered the Capitol grounds from the west, walking through the West Plaza. While there, Gundersen saw fallen barricades and rioters fighting with police on the West Plaza. About 2:26 p.m., Gundersen walked under the scaffolding set up for the Inauguration, and joined a mass of rioters climbing the Northwest Steps.



11. At the top of the Northwest steps, Gundersen entered the Northwest Courtyard, an area bordering both the Senate Wing Door and a fire door next to the Senate Parliamentarian's Office. The area is shown in Images 1 and 2 below.

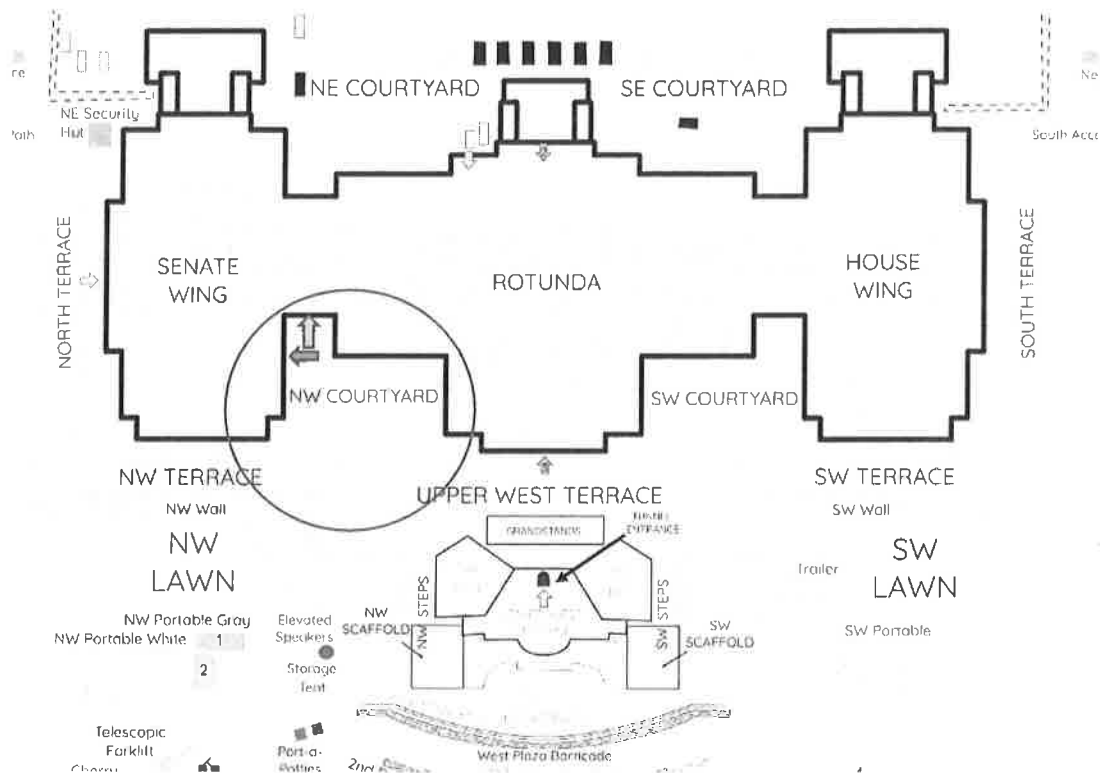


Image 1: Open-Source Rendering of Capitol Building and Grounds as they appeared on January 6, 2021, credited to Twitter users @ne0ndistracton & @sansastark525



Image 2: Northwest Courtyard, Senate Wing Door (green arrow) and Parliamentary Door (blue arrow)

12. About 2:30 p.m., Gundersen arrived at the Senate Wing Door. Gundersen climbed up to a window next to the door. For about 4 minutes, Gundersen remained at the window, shouting at USCP officers inside the building.



13. At about 2:42 p.m., rioters outside the Parliamentarian Door succeeded in breaking through a glass pane and opening the door from the inside. As rioters began surging through the door, Gundersen, who was nearby at the time, jumped over a staircase railing and joined the rioters entering the Capitol.



14. Gundersen was one of the first rioters to enter the Capitol through the Parliamentary door. As he entered, he saw the rioters ahead of him fighting with police.



15. As rioters continued their confrontation with police, Gundersen waived additional rioters in through the open door.



16. Gundersen then moved back to the open door, and continued to encourage rioters into the building, patting them on the back as they entered.





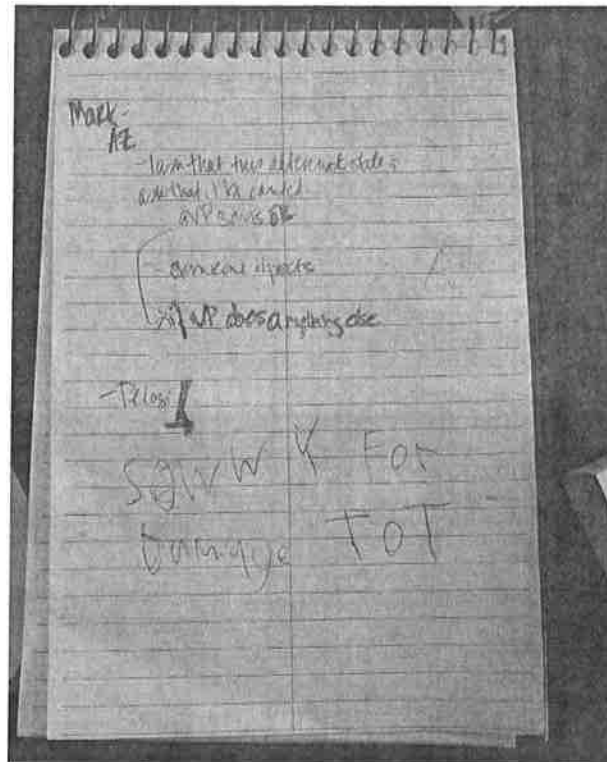
17. About 2:42 p.m., Gundersen entered the nearby Parliamentarian's Office. About 2:44 p.m., Gundersen exited the office briefly, and then reentered through another door. Gundersen remained in the Parliamentarian's office for about 8 minutes. While inside, Gundersen saw rioters ransacking the room, wrecking furniture, stealing, and throwing papers to the floor.



18. Video taken later that evening showed the condition of the Parliamentarian's office after the rioters had been cleared out.



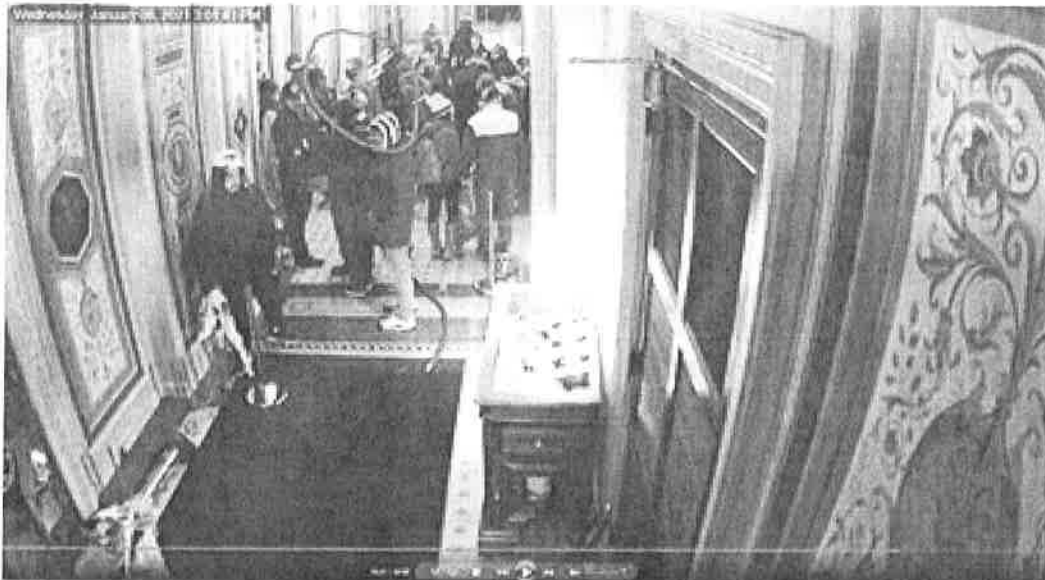
19. While inside the Parliamentarian's Office, Gundersen wrote a note, expressing mock remorse: "sowwy for damage [crying emoticon]."



20. At about 2:50 p.m., Gundersen left the Parliamentarian's Office and moved north through the building. Gundersen entered another office, and looked out at the rioters outside, making a victory sign.



21. About 3:01 p.m., Gundersen walked past the North Door, heading east, with a group of rioters.



22. About 3:07 p.m., Gundersen was forced out of the building by the USCP. Gundersen exited through the North Door.



23. Gundersen walked from the North Door, back through the Northwest Terrace, and returned to the Northwest Courtyard. About 3:16 p.m., Gundersen re-entered the Capitol building by climbing through the same window he had occupied earlier.



24. Shortly after entering the Capitol for the second time, Gundersen was forced out again by USCP and Metropolitan Police Department (“MPD”) officers, who were assisting the USCP, to clear rioters from the Capitol. Gundersen remained in the Northwest Courtyard, outside the Senate Wing Door, for more than an hour, continuing to join with rioters as they tried to get back into the building.



25. At about 4:20 p.m., USCP and MPD officers were clearing rioters out of the Northwest Courtyard. Gundersen was forced to move north, away from the Senate Wing Door, toward the area known as the Northwest Terrace.



26. On the Northwest Terrace, Gundersen joined a group of rioters confronting the police who were trying to clear the area. At one point, Gundersen rushed MPD officer C.B., hitting the officer with his arm, and was pushed back by another officer using a riot shield.





27. After being pushed away, Gundersen beat his chest with his fists, and retreated into the crowd of rioters.



28. Gundersen then moved to a lower level of the Northwest Terrace, where a line of police had formed to push rioters out of the area. Gundersen remained there until the police line moved forward, forcing the rioters to leave the area.



29. On January 7, 2021, Gundersen posted to social media a picture of members of Congress taking cover during the attack on the Capitol. Gundersen wrote, "Look at these scared little bitches."



Photo ID 218205166579627

Author Brian Kristopher (Facebook: 1332145044)
Sent 2021-01-07 21:38:58 UTC
Body look at these scared little bitches

30. Later on January 7, 2021, Gundersen called himself and the other rioters “patriots” who had been “mad enough to attack the government”

Author Brian Kristopher (Facebook: 1332145044)
Sent 2021-01-07 21:44:02 UTC
Body i dont want to be arrested, i dont want any problems with the law, but for me to condemn my fellow patriots for being mad enough to attack the government would make me a spineless pussy

31. Gundersen also posted that “we can check bum rushing the capitol building off the list of potential ways to take over the government”

Author Brian Kristopher (Facebook: 1332145044)
Sent 2021-01-07 21:48:28 UTC
Body we can check bum rushing the capitol building off the list of potential ways to take over the government

32. On January 8, 2021, Gundersen posted, “We all stormed the us capital [sic] and tried to take over the government,” followed by, “We failed but fuck it.”

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 06:21:31 UTC

Body we all stormed the us capital and tried to take over the governmnet

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 06:21:37 UTC

Body we failed but, fuck It

33. On January 8, 2021, Gundersen posted “Our government is fucked, I just can’t anymore” and “Just was at our capital [sic] building in a massive event that rocked the world.”

Body Our

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 03:18:07 UTC

Body Our government is fucked, I just can't anymore.

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 03:18:36 UTC

Body Just was at our capital building in a massive event that rocked the world.

34. Later on January 8, 2021, referring to the members of Congress, Gundersen wrote that “they care about no one except themselves, the couple hundred of them” “hence why we tries to take them down” and “i guess we are the only heroes on this world”

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 06:26:52 UTC

Body they care about no one except themselves, the couple hundred of them

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 06:27:04 UTC

Body hence why we tries to take them down

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 06:27:30 UTC

Body I guess we are the only heroes on this world

35. A few minutes later, Gundersen wrote “they dont listen to us” and “so we had to resort to violence”

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 06:31:23 UTC

Body they dont listen to us

Author Brian Kristopher (Facebook: 1332145044)

Sent 2021-01-08 06:31:29 UTC

Body so we had to resort to violence

36. On January 19, 2021, Gundersen agreed to speak with FBI agents. At first, Gundersen claimed he did not go inside the Capitol Building. During a subsequent interview that day, Gundersen admitted going inside the building, but said he was pushed into the building by the crowd, and did not enter any offices.

37. Gundersen was arrested on January 25, 2021. During a post-*Miranda* interview, Gundersen told law enforcement that on January 6, 2021, he was at the rally when he heard someone say “they breached the Capitol Building.” He then walked to the Capitol. Gundersen said he entered an office that he thought might have belonged to Nancy Pelosi. Gundersen recalled there were things broken when he entered, and described it as “chaos.” Gundersen said that while inside this office, he wrote a message on a notepad saying he was sorry for the damages.

38. Gundersen willfully and knowingly entered the U.S. Capitol Building knowing that he did not have permission or authorization to do so. Gundersen admits that while inside the Capitol, he corruptly obstructed, influenced, and impeded an official proceeding, that is, a proceeding before Congress, specifically, Congress’s certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

39. Gundersen further admits that on January 6, 2021, others committed obstruction of

an official proceeding by committing each of the elements of the offense charged, that he knew that obstruction of an official proceeding was going to be committed or was being committed by others, that he performed an act or acts in furtherance of the offense for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense of obstruction of an official proceeding; and did that act or acts with the intent that others commit the offense of an obstruction of an official proceeding.

40. Gundersen further admits that he assaulted officer C.B., with force and with physical contact, while the officer, who was an employee of an agency in a branch of the United States Government, was engaged in the performance of official duties.

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 and 2 of the Second Superseding Indictment. ECF No. 21

Respectfully submitted,


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D.C. Bar No. 481052

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DEFENDANT'S ACCEPTANCE

I have read the foregoing Statement of Facts for Stipulated Trial, and I have discussed this proffer fully with my attorney, Eugene Ohm, Esquire. I fully understand this proffer, and I accept it without reservation. 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 proffer fully.

Date: 11/4/22




Brian Gundersen
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read every page of this Statement of Facts with my client, Brian Gundersen, and fully discussed it with my client.

Date: 11/4/2022



Eugene Ohm, Esq.
Attorney for Defendant Brian Gundersen