

THE FBI WAS STILL COLLECTING EVIDENCE YESTERDAY THAT MIGHT EXPLAIN BRIAN SICKNICK'S DEATH

I want to make some observations about timing that may help to explain why the government wasn't prepared to charge Julian Khater and George Tanios in Brian Sicknick's death, if indeed they ever will be able to, when they arrested the men yesterday.

The investigation really seems to have come together in recent weeks and the FBI seems to have spent much of the last ten days investigating Tanios, who brought the substance Khater allegedly sprayed at Sicknick to the Capitol.

The arrest affidavit suggests it would have been difficult to have IDed Khater (much less establish probable cause) without the footage from MPD Officer Chapman's body camera.

On the video, KHATER continues to talk animatedly with TANIOS. At approximately 2:20 p.m., KHATER walks through the crowd to within a few steps of the bike rack barrier. KHATER is standing directly across from a line of law enforcement officers to include U.S. Capitol Police ("USCP") Officers B. Sicknick and C. Edwards, and Metropolitan Police Department ("MPD") Officer D. Chapman, who was equipped with a functioning body worn camera ("BWC") device.

Officer Chapman's BWC shows that at 2:23 p.m., the rioters begin pulling on a bike rack to Chapman's left, using ropes and their hands to pull the rack away. Seconds later, KHATER is observed with

his right arm up high in the air, appearing to be holding a canister in his right hand and aiming it in the officers' direction while moving his right arm from side to side. Officer Chapman's BWC confirms that KHATER was standing only five to eight feet away from the officers.

That's some of the video that has taken longest to exploit (or longest for the FBI to be willing to share publicly), not least because there wasn't a publicly curated set like the Parler videos released by ProPublica that allowed open source investigation.

Chapman's BWC video would permit the FBI to ID Khater (the guy who actually used the spray). Still, he's got a fairly late FBI Be On the Lookout number: 190, meaning it took some time for the FBI to isolate a still to release.

Once the FBI IDed Khater, though, they would have seen that he was clearly working in tandem with Tanios (which is effectively what the arrest affidavit says). Not only was Khater working with him, but Tanios was the guy carrying the bear spray, and so is more likely to be the guy who'd have another can of the substance in his backpack at home or receipts to identify precisely what was used.

The FBI tweeted out Tanios' B0L0 on March 4 (they released it with the pictures of two other guys; I'm not sure what to make of that).

NEW PHOTOS: #FBI is seeking info from the public about ppl involved in various assaults on federal officers on Jan 6. Call 1-800-CALL-FBI or visit <https://t.co/t8G7L04hXu> to submit tips. Below are AFO photo #s 253, 254 & 255. Additional photos available at <https://t.co/5JkcA1qjCU> [pic.twitter.com/4dp3NBeUI2](https://t.co/5JkcA1qjCU)

— FBI Washington Field (@FBIWFO) March 4, 2021

The arrest warrant for the two men was approved on March 6, which would be quick work if they really were working off a BOLO released March 4 (though they likely got a warrant as soon as they obtained probable cause in case they had to arrest the men quickly).

That said, the arrest warrant wasn't executed until March 14. That's not that surprising—the FBI would have wanted to get this arrest right, coordinating teams so that both men would be arrested at the same time. This warrant for Tanios' house, business, car, and devices, shows that the FBI was physically surveilling Tanios from March 5 through March 8 to identify his movements, his home, his business, and his car.

As late as March 14, the day FBI obtained the warrant, they were still waiting to receive returns from a warrant served on AT&T for Tanios' phone records. Interestingly, Tanios called Khater at 2:42PM on January 6, less than twenty minutes after Khater allegedly sprayed Sicknick and others (another cop sprayed Khater, so he may have been recovering from pepper spray himself, but Tanios didn't stick around to help Khater – they were separated by then).

Still, the FBI has been working *all* of these January 6 cases on an arrest first, further investigate later basis, partly because of the timing of the attack, and partly because FBI had done so little investigation into almost all the subjects of investigation. As Chris Wray said in testimony recently, the arrest of these subjects (sometimes just for trespass crimes) is often just the beginning of the investigation into them. With virtually all the defendants, the FBI is getting enough to arrest them, then doing the kind of investigation that normally precedes in an arrest, such as subpoenaing social media, to say nothing of searching the smart phones where subjects store much of the evidence about intent.

All of which is to say that the FBI likely only obtained evidence that would be needed to charge Khater and Tanios in Sicknick's death yesterday

– including, possibly, identifying what substance Khater allegedly sprayed at Sicknick – and that will take some weeks to fully exploit.

So it's too soon to know whether the FBI will be able to tie that bear spray to Sicknick's death.