

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No. **24-cr-320-RMR**

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DERRICK PATRICK BERNARD, JR.,
a/k/a “Phoenixx Ugrilla,”
2. ASHLEY DANIELLE BLACKCLOUD,
a/k/a Ashley Hernandez, a/k/a “Trinity Black Cloud,”
3. DEANNA CRYSTAL WEST,
a/k/a “Vital Sweetz,” a/k/a “Sage West,”

Defendants.

INDICTMENT

THE GRAND JURY CHARGES:

At all times relevant and material to this Indictment, unless otherwise indicated:

COUNT 1

Background

1. Colorado Springs was the second largest city in Colorado. An election for mayor of the city was held on April 4, 2023.

2. No mayoral candidate received a majority of the votes cast on April 4,

2023. A run-off election between the two leading candidates was scheduled for May 16, 2023. As relevant to the allegations in this Indictment, CANDIDATE 1 was Black and CANDIDATE 2 was white.

3. DERRICK PATRICK BERNARD, JR., a/k/a “Phoenixx Ugrilla,” ASHLEY DANIELLE BLACKCLOUD, a/k/a “Ashley Hernandez,” a/k/a “Trinity Black Cloud” and DEANNA CRYSTAL WEST, a/k/a “Vital Sweetz,” a/k/a “Sage West,” were all residents of Colorado Springs, Colorado. Each was associated with a non-profit entity known as Family Flavors the Slide WBN (“FFTSWBN”), which maintained an office in Colorado Springs. FFTSWBN marketed itself as a minority-owned independent broadcasting and multi-media organization.

The Conspiracy to Maliciously Spread Disinformation About a Cross Burning

4. On or about and between April 5, 2023, and May 16, 2023, both dates being approximate and inclusive, the defendants DERRICK PATRICK BERNARD, JR., a/k/a “Phoenixx Ugrilla,” ASHLEY DANIELLE BLACKCLOUD, a/k/a “Ashley Hernandez,” a/k/a “Trinity Black Cloud” and DEANNA CRYSTAL WEST, a/k/a “Vital Sweetz,” a/k/a “Sage West,” did knowingly and voluntarily conspire and agree together and with each other to commit an offense against the laws of the United States namely, a violation of 18 U.S.C. § 844(e), through the use of instrumentalities of interstate commerce — the internet and email — and in and affecting interstate commerce by willfully making a threat and maliciously conveying false information knowing the same to be false concerning an alleged

attempt being made to intimidate an individual, CANDIDATE 1, by means of fire in the form of a burning cross placed in front of a campaign sign for CANDIDATE 1 defaced with the word “nigger.”

The Purpose of the Conspiracy

5. The purpose of the conspiracy was to use instrumentalities of interstate commerce to maliciously convey false information during an election about an alleged attempt to intimidate CANDIDATE 1 by means of the threat conveyed by a burning cross.

The Manner and Means By Which the Conspiracy was Carried Out

6. The interdependent manner and means by which the defendants sought to accomplish the purpose of the conspiracy included, among other things, the following:

(a) On or about April 5, 2023, the day after the mayoral election, BERNARD texted BLACKCLOUD that he wanted to talk “in person” because he was “not talking on the phone bout nothing that’s bout to happen” and that “Ima just talk to you bout a few plans.”

(b) On or about April 13, 2023 BERNARD sent a Facebook message to CANDIDATE 1: “I know it’s crunch time sir but look . . . I spoke with some of my friends in other places and theirs [sic] a plot amidst . . . I’m mobilizing my squadron in defense and for the final push. Black ops style big brother. The klan cannot be allowed to run this city again.”

(c) On or about April 13, 2023 BERNARD sent a series of Facebook messages to BLACKCLOUD. Among other things, BERNARD told BLACKCLOUD “I can’t let the klan retake the city,” “[CANDIDATE 1] really won already. They doing some B’s [sic] run off now bc they ain’t tryna let an African win,” and “I got a plan”

(d) During the election, supporters of CANDIDATE 1 placed a campaign sign encouraging others to vote for CANDIDATE 1 in a grassy area on the northwest corner of the intersection of North Union Boulevard and East Fillmore Street, two of Colorado Springs’s major traffic arteries. On or about April 23, 2023, between approximately 2:30 a.m. and 3:30 a.m. BERNARD, BLACKCLOUD, and WEST worked together to place a wooden cross in front of that campaign sign. Red spray paint, similar in kind to a can later found in the passenger compartment of BLACKCLOUD’s car, was used to write the word “nigger” on the sign. The wooden cross was then set on fire. An iPhone 13 was used to take a short video of the scene and to take a photograph, shown below.



(e) On or about that same day, later in the evening on April 23, 2023, BLACKCLOUD and WEST worked together to send an email (hereinafter referred to as the Angiem11587 email) to, among others, local broadcast news outlets. Attached to the email was the above photograph and the video. Several

news organizations published news stories on the cross burning.

(f) On or about April 23, 2023 at approximately 7:30 p.m., BERNARD texted CANDIDATE 1: “I guarantee the finish” in response to a message about needing support to get to the “finish line” of the mayoral election.

(g) On or about April 25, 2023 BERNARD texted CANDIDATE 1: “Brother some foul stuff came up I’m [sic] our email. I’m not about to play with racist cowards brother.”

(h) On or about April 26, 2023 at approximately 10:55 p.m., BERNARD spoke with CANDIDATE 1 for approximately 5 minutes via telephone.

(i) On or about May 16, 2023, CANDIDATE 1 won the run-off election for Mayor of Colorado Springs. BERNARD texted CANDIDATE 1 “sir . . . time upon us all, and we got you through it all brother,” “Well done again . . . I have the info you requested before. Another time though, we’ll handle business.”

(j) On or about May 16, 2023 BERNARD texted BLACKCLOUD a link to apply for job positions with the city of Colorado Springs. He then told BLACKCLOUD “on backend I got a plan” and “I want favors quicker than later.”

Overt Acts in Furtherance of the Conspiracy

7. In furtherance of the conspiracy’s objective, acting interdependently, one or more of the conspirators committed one or more of the following acts in the State and District of Colorado:

(a) On or about April 23, 2023, between approximately 2:30 a.m.

and 3:30 a.m., BERNARD, BLACKCLOUD and WEST travelled to the area around the intersection of North Union Boulevard and East Fillmore Street.

(b) On or about April 23, 2023, at approximately 3:52 a.m.

BLACKCLOUD used Instagram to send a message to WEST: “Hey did u get back ok?”

(c) On or about April 23, 2023, between approximately 1:53 p.m.

and 7:42 p.m., BLACKCLOUD researched online 15 of the 24 organizations that received the Angiem11587 email and performed searches such as “kkk email,” “contact news about a story,” and “news colorado springs.”

(d) On or about April 23, 2023, between approximately 7:18 p.m.

and 7:24 p.m., WEST performed web searches such as “complaint letter against racist acts” and “candidates racist acts during campaign.”

(e) On or about April 23, 2023, at approximately 7:24 p.m., WEST

used the internet to access a document entitled “Hate in Elections” with the subtitle “How Racism and Bigotry Threaten Election Integrity in the United States” and then copied the sections below into an email:

Introduction

As the 2020 general election approaches, reported hate crimes across our country continue, spreading terror and distrust, as white supremacists are emboldened by hate-filled rhetoric coming from public leaders. Recent FBI data on hate crimes shows an increase in hate violence, with African Americans the most frequent victims of hate crimes.¹

A Elections are becoming increasingly marred by bias-motivated attempts to intimidate, confuse or otherwise deter voters from casting their ballot and candidates from making their voice heard. Many times, harassment and intimidation tactics target voters

C

A hate crime is generally defined as a crime against a person or property that is motivated by bias, prejudice, or hatred toward the personal, or perceived personal, characteristics of a victim, including race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.

A hate incident is based on the same behaviors and motivations as a hate crime, but does not rise to the level of a crime. For example, you may be a victim of hate speech, which, depending on the circumstances, may not constitute a crime (and may be protected under the First Amendment), but which may constitute a hate incident.²

and candidates based on categories and identities that receive special protections under federal and state law, such as race.

B Hate crimes in the election context are unique compared to other crimes. Hate crimes are “messaging crimes”—meaning that the

Hate in Elections | 1

When hate crimes or hate incidents occur during elections, they can send a message that it is dangerous to vote and deter members of historically marginalized groups from participating in the democratic process.

D target of any one hate crime is not just the direct victim, but also anyone who shares the victim’s targeted identity, whether that be race, gender, sexual orientation, or another protected category. Perpetrators of hate crimes and hate incidents attempt to send a message that anyone who shares that victim’s identity is unwelcome. When hate crimes or hate incidents occur during elections, they can send a message that it is dangerous to vote and deter members of historically marginalized groups from participating in the democratic process. By discouraging communities of color and others from voting, perpetrators of hate incidents attempt to stifle the voices of historically marginalized groups, resulting in skewed elections.

This report provides an overview of the relationship between hate incidents and elections. The report examines hate incidents in the 2018 midterm elections and other recent elections with the hope that, by better

understanding hate in recent elections, candidates, voters, tech platforms, and other stakeholders can be better prepared for future elections, including the 2020 presidential election.

Section II of this report discusses relevant laws—including both criminal and civil laws at the federal and state levels, and legal frameworks in the hate crimes and voting rights contexts. Section III first takes a look at voter suppression and hate-motivated behavior perpetrated by election officials (e.g., poll workers) and, second, at hate incidents in the election context perpetrated by the general public, other voters or third parties. Section IV examines trends in bias-motivated voter suppression organized through online tools. Finally, the report includes resources, recommendations and best practices for voters, candidates, and the general public wishing to protect the right to engage in the electoral process free from hate and intimidation.

(f) On or about April 23, 2023, at around 8:40 p.m., BLACKCLOUD and WEST drove to the parking lot of a large retail store in Colorado Springs. The free Wi-Fi at that store was then used to create the Gmail account “Angiem11587@gmail.com.”

(g) At approximately 9:01 p.m. on April 23, 2023, the email address Angiem11587@gmail.com sent an email to CANDIDATE 1’s campaign, multiple media outlets, non-profit organizations, civic groups, Colorado government officials and an email account associated with FFTSWBN. The photograph above was attached to the email, along with a 4-second video file showing that the cross was actively on fire. The email contained the message below. Portions copied from the “Hate in Elections” document are highlighted:

To whom it will concern,

My family and I are completely outraged by the jesters made towards running candidate Yemi Mobalade. I'm a native here and I've seen a lot of racism in this city and I never thought that in 2023 we would be still be subjected to extreme acts. We were sent this footage today from an anonymous tip. The footage is hard to see and uncalled for. To my surprise and disgust it was a cross on fire in front of running candidate's sign for Mayor. Looking past the flames I see it's Yemi Mobalade's sign with the word sprayed painted across in red "NIGGER"! What has this city come to?!

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As a resident in Colorado Springs this is disheartening to see today. Each year, elections are becoming increasingly marred by bias-motivated attempts to intimidate, confuse or otherwise deter voters from casting their ballot and candidates from making their voice heard. Many times, harassment and intimidation tactics target voters and candidates based on categories and identities that receive special protections under federal and state law, such as race. This is another one of their tactics to keep Yemi out. I see this time and time again. We must speak out!!

B

Hate crimes in the election context are unique compared to other crimes. Hate crimes are "messaging crimes"—meaning that the hate crime is generally defined as a crime against a person or property that is motivated by bias, prejudice, or hatred toward the personal, or perceived personal, characteristics of a victim, including race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.

C

A hate incident is based on the same behaviors and motivations as a hate crime, but does not rise to the level of a crime. For example, you may be a victim of hate speech, which, depending on the circumstances, may not constitute a crime (and may be protected under the First Amendment), but which may constitute a hate incident target of any one hate crime is not just the direct victim, but also anyone who shares the victim's targeted identity, whether that be race, gender, sexual orientation, or another protected category.

D

Perpetrators of hate crimes and hate incidents attempt to send a message that anyone who shares that victim's identity is unwelcome. When hate crimes or hate incidents occur during elections, they can send a message that it is dangerous to vote and deter members of historically marginalized groups from participating in the democratic process. By discouraging communities of color and others from voting, perpetrators of hate incidents attempt to stifle the voices of historically marginalized groups, resulting in skewed elections.

How are we going to stop this and stop these people from spreading hate crimes throughout the community? It's clear who's sending this message and the people of this city need to know!! Candidate Wayne Williams is pushing hard to win this candidacy and I'm completely appalled by how his following and members are carrying out this nonsense. I'm sending this email and footage to all broadcasting networks and organizations so they can see what they're doing towards Yemi Mobalade's campaign. We have to come together and unity to stop the hate crimes and acts to detour citizens from voting.

I'm asking that you share this information to the masses to help STOP these acts throughout our city.

-Citizens of Colorado Springs

(h) On or about April 23, 2023, at approximately 9:04 p.m.,

BLACKCLOUD texted BERNARD "Ok bby" and "We going back now."

(i) On or about April 25, 2023 between approximately 3:30 p.m. and 4:00 p.m., WEST travelled to the parking lot of a large retail store in Colorado Springs to use its publicly-available free Wi-Fi to check the Angiem11587 email account for responses to the email that had been sent on April 23, 2023.

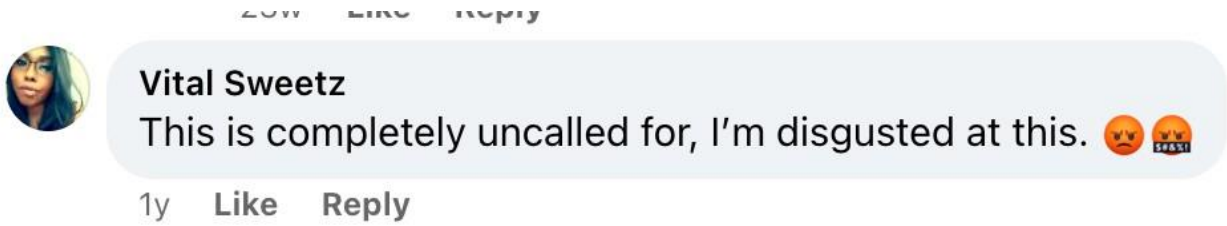
(j) On or about April 25, 2023, at approximately 7:56 p.m. BERNARD used Facebook Messenger to send BLACKCLOUD a link to a local broadcast news report on the cross burning.

(k) On or about April 25, 2023, at approximately 7:56 p.m. BERNARD texted BLACKCLOUD: “Look at ya messenger ASAP” and “we got traction.”

(l) On or about April 25, 2023 at approximately 7:57 p.m., BLACKCLOUD responded to BERNARD via text message: “Bing bong” and “Yep it’s up.”

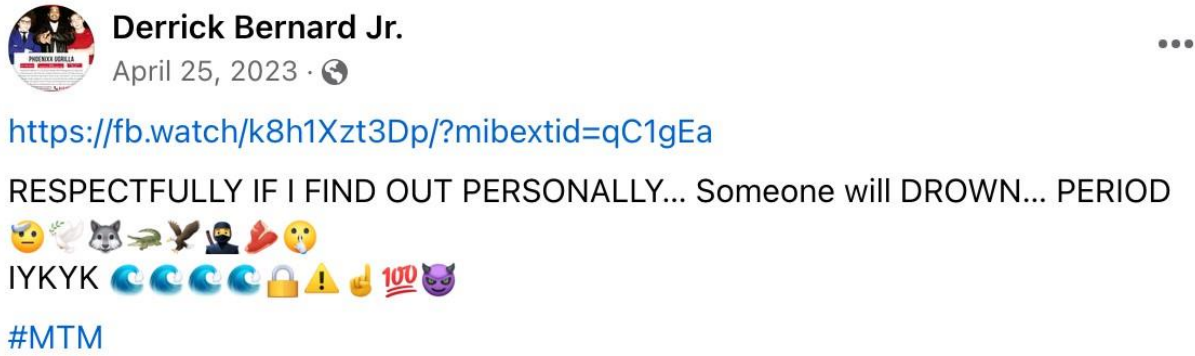
(m) On or about April 25, 2023, at approximately 8:02 p.m., BLACKCLOUD responded to BERNARD via Facebook messenger: “Last night @ 10pm. I bet it was on the 10o clock news” and “shits wild.”

(n) On or about April 25, 2023 at approximately 8:59 p.m., WEST responded to a Facebook post about the cross burning on the FFTSWBN Facebook page:



(o) On or about April 25, 2023, at approximately 8:21 p.m.,

BERNARD posted the following to his personal Facebook page in response to the FFTSWBN Facebook post about the cross burning:



(p) On or about April 25, 2023, at approximately 8:22 p.m.

BERNARD sent a Facebook Message to BLACKCLOUD stating “we lit!!!”

All in violation of Title 18, United States Code, Section 371.

COUNT 2

8. On or about April 23, 2023, in the State and District of Colorado the defendants DERRICK PATRICK BERNARD, JR., a/k/a “Phoenixx Ugrilla,” ASHLEY DANIELLE BLACKCLOUD, a/k/a “Ashley Hernandez,” a/k/a “Trinity Black Cloud” and DEANNA CRYSTAL WEST, a/k/a “Vital Sweetz,” a/k/a “Sage West,” through the use of instrumentalities of interstate commerce — the internet

and email — and in and affecting interstate commerce did willfully make a threat and maliciously convey false information knowing the same to be false concerning an alleged attempt being made to intimidate an individual, CANDIDATE 1, by means of fire in the form of a burning cross placed in front of a campaign sign for CANDIDATE 1 defaced with the word “nigger.”

All in violation of Title 18, United States, Sections 844(e) and 2.

A TRUE BILL:

Ink signature on file in Clerk’s Office
FOREPERSON

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