

FILED
01-13-2021
Clerk of Circuit Court
Kenosha County
2020CF000983

STATE OF WISCONSIN CIRCUIT COURT KENOSHA COUNTY

DA Case No.: 2020KN003907

STATE OF WISCONSIN

Plaintiff,

Court Case No.:
2020CF000983

vs.

KYLE H. RITTENHOUSE

DOB: 01/03/2003

Defendant.

**MOTION TO MODIFY
CONDITIONS OF BOND**

Hon. Bruce E. Schroeder

For Official Use

TO: Attorney Mark D. Richards
 Richards & Dimmer, S.C.
 209 Eighth Street
 Racine, WI 53403

PLEASE TAKE NOTICE that the State of Wisconsin, by Assistant District Attorney Jason R. Zapf and Assistant District Attorney Thomas C. Binger, will hereby move the Court, the Honorable Bruce E. Schroeder presiding, on the _____ day of _____, 2021, at ___:___ a.m. / p.m., to modify the conditions of bond in the above-captioned matter.

Specifically, the State respectfully requests the addition of the following conditions of bond:

1. The defendant shall be prohibited from possessing or consuming alcohol.
2. The defendant shall not be present in any establishment where alcohol is served.
3. The defendant shall be prohibited from making any public display of any "white power" or "white supremacy" signs, symbols, or hand gestures.
4. The defendant shall have no contact with any known militia members or known members of any violent white power/white supremacist groups or organizations, including but not limited to the group identified as the "Proud Boys."

The State brings this motion pursuant to Wis. Stat. §§ 969.01(1), 969.03(1), 969.03(1)(b), and 969.01(e) and *State v. Braun*, 152 Wis.2d 500, 515, 449 N.W.2d 851 (Ct. App. 1989).

Factual Background

The defendant, Kyle Rittenhouse, was arraigned in the above-captioned matter at approximately 1:00 p.m. on January 5, 2021, before Court Commissioner Loren Keating.

Approximately 90 minutes later, the defendant, along with his mother Wendy Rittenhouse and several other adults, arrived at Pudgy's Pub, a bar located at 7800 Washington Avenue in Mount Pleasant, Wisconsin. Local law enforcement was later notified of the defendant's presence in the bar, and surveillance video and still footage of the visit was later retrieved and reviewed.

The defendant was present at the bar with his mother and several other adults for approximately 90 minutes. See Affidavit of Thomas C. Binger, ¶ 2. The defendant was wearing a t-shirt that read "Free as F*ck". Id., ¶ 6. Immediately upon arriving at the bar, the defendant posed for photographs with two other adult males in his group. Id., ¶ 3. In these photographs, the defendant and the other adult males flashed the "OK" sign, which has been co-opted as a sign of "white power" by known white supremacist groups. Id., ¶ 3. The defendant then entered the bar and was immediately and directly served a beer by the bartender. Id., ¶ 4. The defendant consumed a total of 3 beers in the 90 minute period that he was inside the bar. Id.

Within a few minutes of entering the bar, the defendant was loudly serenaded by 5 of the adult males in his group with the song "Proud of Your Boy", which is an obscure song written for the 1992 Disney film "Aladdin". Id., ¶ 5. The violent white supremacist group called the "Proud Boys" was named after this song, which is sung by its members as an anthem and for self-identification. The defendant later posed for several photographs with these adults in the bar. Id., ¶ 6. In each of these photographs, the defendant and the other adults flashed the "OK" sign used by known white supremacists. Id., ¶ 6. The defendant then remained with these "Proud Boys" for the entire time he was in the bar.

Legal Authority for Bond Modification

Wis. Stat. § 969.01 states that a defendant "is eligible for release under reasonable conditions designed to assure his or her appearance in court, protect members of the

community from serious bodily harm, or prevent intimidation of witnesses.” A defendant charged with a felony may face specific restrictions, including “restrictions on the travel, association or place of abode of the defendant during the period of release.” Wis. Stat. § 969.03. A defendant who is charged, as this one is, with First Degree Intentional Homicide may even be denied pre-trial release if certain conditions are met. Wis. Stat. § 969.035(2). The defendant in this case was released after \$2 million was posted for him by Attorney John Pierce. This money was raised by an internet funding campaign. Upon information and belief, neither the defendant nor his family have any financial stake in the defendant’s bond.

The defendant should not possess or consume alcohol

The defendant turned 18 on January 3, 2021. He is an Illinois resident. Under Illinois law, it is a Class A Misdemeanor for anyone under the age of 21 to possess or consume alcohol in a public place. 235 ILCS 5/6-16. In Wisconsin, however, an 18 year old may consume alcohol in a bar as long as he is accompanied by his parent. Wis. Stat. § 125.07(4).

The State requests that the defendant be prohibited from possessing or consuming alcohol or being present in bars and taverns. The defendant just turned 18 years old, and was 17 at the time of the offenses. The defendant is charged with multiple violent felony offenses, including the most serious criminal offense in the Wisconsin statutes. The State of Wisconsin prohibits those under the age of 21 from possessing or consuming alcohol (with some limited exceptions) because underage drinkers are not mature enough to handle alcohol responsibly. Furthermore, the consumption of alcohol increases the likelihood of violent criminal acts. The use of alcohol “increases aggression by causing changes within the person that increase the probability of aggression (e.g., by reducing intellectual functioning).”¹ More recent studies show that the “drinking level of the population is an important predictor of violence-related mortality,

¹ “Effects of alcohol on human aggression. Validity of proposed explanations.” B.J. Bushman. <https://pubmed.ncbi.nlm.nih.gov/9122497/>, 1997.

particularly in cultures with intoxication-oriented drinking patterns,” and that a reduction in alcohol consumption is “likely to result in...reduction in violence...”²

**The defendant should be restricted from associating with
known militia members or known members of any
violent white power/white supremacist groups or organizations**

The Proud Boys is a national, male-only organization operating in the United States and Canada that has been designated as a hate group by the Southern Poverty Law Center and the Anti-Defamation League³. Currently, Canada is considering designating the Proud Boys as a terrorist organization⁴. The Proud Boys organization was founded in 2016 by Gavin McInnes⁵. The group, initially through McInnes, has advocated violence, stating violence “is a really effective way to solve problems” and “we don’t start fights...but we will finish them.”^{6,7,8} The Proud Boys have been involved in several extremist rallies and movements, and multiple Proud Boys members have been arrested for various assaultive crimes.⁹ Indeed, members of the Proud Boys group have been tied to the breach of the United States Capitol Building on January 6, 2021 and at least one of their leaders has been arrested and charged in connection with the event.¹⁰

² “The Relationship between Alcohol and Violence – Population, Contextual and Individual Research Approaches.” Kathryn Graham and Michael Livingston. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3170096>. 2011.

³ “Proud Boys’ back in Canada military after crashing indigenous ceremony.” BBC News. <https://www.bbc.com/news/world-us-canada-41116175>, 2017; “Who are the Proud Boys? Far-right group has concerned experts for years.” USA Today. <https://www.usatoday.com/story/news/nation/2020/09/30/who-proud-boys-group-mentioned-debate-has-violent-history/5868406002/>, 2020; “Far-Right Group That Trades in Political Violence Gets a Boost.” The New York Times. <https://www.nytimes.com/2020/09/30/us/proud-boys-trump.html>, 2020; “Proud Boys.” Southern Poverty Law Center. <https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys>; “Proud Boys.” Anti-Defamation League. <https://www.adl.org/proudboys>.

⁴ “Canada considers adding Proud Boys to terrorist list alongside Isis and al-Qaida.” The Guardian. <https://www.theguardian.com/world/2021/jan/11/canada-considers-adding-proud-boys-terrorist-list-alongside-isis-al-qaida>, 2021.

⁵ “The Proud Boys, the bizarre far-right street fighters behind violence in New York, explained.” Vox. <https://www.vox.com/2018/10/15/17978358/proud-boys-gavin-mcinnis-manhattan-gop-violence>, 2018.

⁶ *Id.*

⁷ “NYPD Looks to Charge 9 Proud Boys with Assault for Manhattan Fight.” The Daily Beast. <https://www.thedailybeast.com/nypd-looks-to-charge-9-proud-boys-with-assault-for-manhattan-fight>, 2018.

⁸ “Proud Boys Founder: How He Went From Brooklyn Hipster to Far-Right Provocateur.” The New York Times. <https://www.nytimes.com/2018/10/16/nyregion/proud-boys-gavin-mcinnis.html>, 2018.

⁹ “Swiping Right: The Allure of Hyper Masculinity and Cryptofascism for Men Who Join the Proud Boys.” Samantha Kutner – International Centre for Counter-Terrorism. <https://www.jstor.org/stable/pdf/resrep25259.pdf>, 2020.

¹⁰ <https://thehill.com/homenews/news/533579-most-of-120-arrested-or-identified-at-capitol-riot-were-longtime-trump>; <https://www.pbs.org/wgbh/frontline/article/several-well-known-hate-groups-identified-at-capitol-riot/>; <https://abc7news.com/proud-boys-hawaii-founder-arrested-nichola-ochs-us-capitol-siege-leader-honolulu/9529917/>

The Proud Boys is organized in local branches and chapters throughout North America.¹¹ Membership in the Proud Boys requires a four step, gang-like initiation process. The first stage is taking a loyalty oath, stating “I’m a proud Western chauvinist, I refuse to apologize for creating the modern world.” Second, the applicant is repeatedly punched until they correctly answer pop culture trivia. The third stage is getting a Proud Boys tattoo. The fourth and final stage is committing an act of violence “for the cause.”¹²

The Proud Boys are often seen wearing clothing with the Proud Boys slogan in yellow and black, along with a symbol of a rooster on a weather vane facing west with the words “The West is the Best.”¹³ Additionally, some Proud Boys associated apparel displays “6MWE” (an acronym meaning ‘6 million wasn’t enough,’ referring to Jewish Holocaust victims).¹⁴

The name Proud Boys comes from the song “Proud of Your Boy,” originally written by Howard Ashman and Alan Menken for the 1992 Disney film Aladdin.¹⁵ While not included in the movie, the song was included in the stage musical adaptation beginning in 2011.¹⁶ Proud Boys founder McInnes stated he became aware of the song in 2015 while at his daughter’s recital. Misinterpreting the meaning of the song, McInnes believed it was a song about a “boy apologizing for being a boy, when actually we should let boys be boys.” McInnes named his

¹¹ “Proud Boys.” Anti-Defamation League. <https://www.adl.org/proudboys>.

¹² “Your Handy Field Guide to the Many Factions of the Far Right, From the Proud Boys to Identity Evropa.” Wired Magazine. <https://www.wired.com/2017/05/field-guide-far-right/>, 2017; “New ‘Fight Club’ Ready for Street Violence.” Southern Poverty Law Center. <https://www.splcenter.org/hatewatch/2017/04/25/new-fight-club-ready-street-violence>, 2017.

¹³ “Fred Perry stops selling polo shirt associated with the ‘Proud Boys.’” CNN. <https://www.cnn.com/2020/09/28/business/fred-perry-proud-boys-intl-scli-gbr/index.html>, 2020; “Who Are The Proud Boys, The Group Behind The Controversial Portland Rally?” Forbes. <https://www.forbes.com/sites/jemimamcevoy/2020/09/26/who-are-the-proud-boys-the-group-planning-a-controversial-portland-rally/?sh=502fd75e654a>, 2020; “The FBI has officially declared the ‘Proud Boys,’ a far-right ‘Western chauvinist’ group with a penchant for street fights, as ‘extremist.’” Business Insider. <https://www.businessinsider.com/proud-boys-extremist-group-fbi-2018-11>, 2018.

¹⁴ “White, male and millennial: Hate groups tap bro culture to recruit members.” Center for Public Integrity. <https://publicintegrity.org/politics/white-male-and-millennial-hate-groups-tap-bro-culture-to-recruit-members/>, 2020; “Is 6MWE an Anti-Semitic Proud Boys Slogan?” Snopes. <https://www.snopes.com/fact-check/proud-boy-6mwe/>, 2020.

¹⁵ “The Proud Boys, the bizarre far-right street fighter behind violence in New York, explained.” Vox. <https://www.vox.com/2018/10/15/17978358/proud-boys-gavin-mcinnis-manhattan-gop-violence>, 2018.

¹⁶ “10 Things You Didn’t Know About Disney’s ‘Aladdin.’” ScreenCrush. <https://screencrush.com/things-you-didnt-know-about-disneys-aladdin/>, 2019.

group due to the song, and therefore chose the song to be the anthem of the Proud Boys, saying it was the most annoying song in the world, and that he could not get enough of it.¹⁷

Traditionally, the “OK” hand gesture has been used to simply mean “affirmative” or “OK”. Recently, however, it has been co-opted as a symbol of white supremacy/white power. In 2017, anonymous users of the online message board 4chan began a hoax called “Operation O-KKK” to see if they could trick the “wider world” into believing the gesture was a symbol of white power.¹⁸ Unfortunately what began as a joke or a hoax became reality. By 2019, the gesture was routinely used by “Neo-Nazis, Ku Klux Klansmen, and other white nationalists...in public to signal their presence and to spot potential sympathizers and recruits.”¹⁹ The sign has been adopted by the white supremacy extremist movement, and the letters formed by the hand gesture no longer stand for the letters “O” and “K,” but for “W” and “P,” for “white power.”²⁰ Several individuals accused of racially motivated crimes have used the sign on camera.²¹

The State requests that the Court prohibit the defendant from publicly displaying symbols and gestures that are associated with violent white supremacist groups and from associating with known members of those groups, particularly the Proud Boys. Wis. Stat. § 969.03(1)(e) states nonmonetary conditions of bond may be imposed if they are deemed “reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses...” The defendant’s continued association with members of a group that prides itself on violence, and the use of their symbols, raises the significant possibility of future harm. Further, this association may serve to intimidate potential witnesses,

¹⁷ “Gavin McInnes and his Proud Boys want to make white men great again.” Bedford + Bowery. <https://web.archive.org/web/20190209020443/https://bedfordandbowery.com/2016/07/gavin-mcinnis-and-his-proud-boys-want-to-make-white-men-great-again/>, 2019; “What Do the Proud Boys and ‘The Little Mermaid’ Have in Common?” Edge Media Network. <https://www.edgemedianetwork.com/story.php?297789>, 2020.

¹⁸ “How did the OK sign become a symbol of white supremacy?” The Independent. <https://www.independent.co.uk/news/world/americas/ok-sign-white-power-supremacy-alt-right-4chan-trolling-hoax-a9249846.html>, 2019.

¹⁹ Id.

²⁰ “Okay Hand Gesture.” Anti-Defamation League. <https://www.adl.org/education/references/hate-symbols/okay-hand-gesture>.

²¹ “How did the OK sign become a symbol of white supremacy?” The Independent. <https://www.independent.co.uk/news/world/americas/ok-sign-white-power-supremacy-alt-right-4chan-trolling-hoax-a9249846.html>, 2019.

who may be unwilling to testify in this case because they may fear that the defendant's associates with harm them or their families

For the foregoing reasons, the State of Wisconsin respectfully requests the Court grant this motion to modify the defendant's conditions of bond.

Date Signed: 01/13/21

Electronically Signed By:

Jason R Zapf

Assistant District Attorney

State Bar #: 1088718