

STATE OF WISCONSIN, CIRCUIT COURT, KENOSHA COUNTY

State of Wisconsin, Plaintiff,

**DEFENDANT'S FIRST
MOTIONS IN LIMINE**

-vs-

Kyle H. Rittenhouse, Defendant.

Case No. 2020CF983

NOW COMES THE DEFENDANT, Kyle H. Rittenhouse, appearing specially by his attorneys, Mark D. Richards and Corey Chirafisi, hereby move the Court for pre-trial orders excluding the following for use at trial in this matter:

1. Evidence related to KPD case 2020-00034368, involving an altercation between Kyle Rittenhouse and an unrelated female which occurred on or about July 1, 2020. The reports in that matter indicate that a video exists of Mr. Rittenhouse striking a female who was involved in an altercation with Mr. Rittenhouse's younger sister, McKenzie Rittenhouse.
 - a. The defendant believes this information is irrelevant under Wis. Stat. § 904.01 and would be considered "other acts evidence" under Wis. Stat. § 904.04(2). The incident occurred almost two months prior to the allegations which Mr. Rittenhouse is on trial for in this matter. There is no indication that any of the parties involved in the July 1, 2020 altercation were involved in the August 25, 2020 incident underlying the charges in this case. The facts of the July 1, 2020 incident do not have a tendency to make it more or less likely that Kyle Rittenhouse acted in self-defense in the matter before this Court.
2. Evidence that the firearm possessed by Mr. Rittenhouse on August 25, 2020 was potentially purchased with stimulus money provided by the government during the global COVID-19 pandemic.
 - a. Where the money used to purchase the relevant firearm was obtained from is irrelevant under Wis. Stat. § 904.01. The only purpose of seeking admission of such evidence would be to denigrate the defendant for not using the stimulus money for a more "altruistic purpose." It has no relevance as to whether the defendant acted in self-defense on August 25, 2020 and should not be admissible at trial.
3. Evidence related to Mr. Rittenhouse's presence at Pudgy's Pub on January 5, 2021 and his activities/attire on that date.
 - a. The allegations against Mr. Rittenhouse in this matter have an offense date of August 25, 2020. On or about January 5, 2021 Mr. Rittenhouse was recorded and photographed at Pudgy's Pub in Racine, Wisconsin. While at Pudgy's, Mr. Rittenhouse was observed

- wearing a t-shirt. A photograph of that t-shirt has been included with this motion. Further, there have been allegations that Mr. Rittenhouse was photographed with adult males at Pudgy's, who have ties to the "Proud Boys." The Washington Post wrote an article on the events, describing the "Proud Boys" as a male-chauvinist group with ties to white nationalism. There is no information that Mr. Rittenhouse knew the males prior to that date, or that he has any association with the "Proud Boys." There has been no evidence provided which in any way ties Mr. Rittenhouse's presence in Kenosha on August 25, 2020 to any group, white nationalist or otherwise.
- b. Mr. Rittenhouse was photographed with the males during various times at Pudgy's making the hand sign associated with "OK." The "OK" symbol is alleged to be a hate symbol signifying white power.
 - c. The defense believes this Court should exclude the information identified above for several reasons. First, the evidence is irrelevant under Wis. Stat. § 904.01. Mr. Rittenhouse's clothing—worn 4 ½ months after the incident underlying these criminal charges—does not have a tendency to make it more or less likely that he acted in self-defense in this matter. The shirt at issue, while arguably worn in poor taste, has zero relevance as to Mr. Rittenhouse's state of mind on August 25, 2020 and whether his actions on that date were subjectively and objectively reasonable under the circumstances which then existed. Any evidence related to the t-shirt should be excluded.
 - d. Further, it can reasonably be argued that an affiliation with an organization such as the "Proud Boys" can be considered similar to that of a street gang or other organization. However, "it is settled law that the government may not convict an individual merely for belonging to an organization that advocates illegal activity." *United States v. Abel*, 469 U.S. 45, 49, 105 S.Ct. 465 (1984), quoting *Scales v. United States*, 367 U.S. 203, 81 S.Ct. 1469 (1961). Rather, "the government must show that the individual knows of and personally accepts the tenets of the organization. Neither should the government be allowed to impeach on the grounds of mere membership, since membership, without more, has no probative value. It establishes nothing about the individual's own actions, beliefs, or veracity." *Abel*, 469 U.S. at 49.
 - e. There are cases where evidence of ties to an organization have been found relevant in assisting the jury to determine credibility, indicating that such evidence requires as a predicate that the witness testify. See *State v. Long*, 2002 WI App 114, 255 Wis.2d 729 (Where evidence that a witness belonged to a street gang was admissible to impeach his testimony by showing bias.) However, in order to introduce such testimony, the government is required to first establish a defendant's specific gang affiliation. See *State v. Burton*, 2007 WI App 237, ¶14, 306 Wis.2d 403, (Where the court reversed conviction based in part on testimony of a "gang expert" who insinuated without any basis that defendant was a gang member.) Accordingly, courts have advised against use of such evidence at trial because:

“Allowing generalized ‘bias’ testimony based on group tendencies invites a flood of dubious evidence about the motives and characteristics of any number of groups and organizations of which a witness may be a member in order to establish the particular witness was more likely to lie—or tell the truth—on a given occasion...

The possibilities of such testimony are almost endless-involving the characteristics and motivations of various racial, ethnic, professional, and religious groups, as well as organizations as different as the Boy Scouts and the Compton Crips. The law has wisely looked askance at evidence of group tendencies and motives to lie—or tell the truth—when making credibility judgments about individual members of those groups. Meantime, the potential prejudice—in favor of certain groups and organizations and against others—is extremely powerful.”

Id. at ¶17, quoting *People v. Roberts*, 65 Cal.Rptr.2d 17 (Ct. App. 1997).

- f. There is no evidence that Mr. Rittenhouse is a member of the “Proud Boys.” There is no evidence that Mr. Rittenhouse is a member of any organization relating to race or political hate groups. Upon information and belief, Mr. Rittenhouse provided law enforcement with his cell phone upon arrest and gave consent to search the contents of that phone. There has been no evidence provided to the defense which could establish that Mr. Rittenhouse has ever sought out, actively searched for, or attempted to communicate in any way with the “Proud Boys” or any other organizations.
- g. The fact that: Mr. Rittenhouse was in Pudgy’s bar 4 ½ months after the offense date in this matter—and that alleged members of the Proud Boys were also present at the bar and wanted pictures taken with him—are irrelevant as it relates to whether or not Mr. Rittenhouse is guilty of the charges in this case. There also has been no evidence offered to the defense that *any* witness involved in this matter is now—or has ever previously been—a member of an organization such as the “Proud Boys.” Without the presence of any facts directly connecting racial or political groups to the case at hand, evidence that alleged members of the “Proud Boys” were in the same location as Mr. Rittenhouse on January 5, 2021 should not be admitted at trial.
- h. Mr. Rittenhouse also seeks exclusion of any evidence that on or about January 5, 2021 he made the “OK” hand signal—a sign that some people in today’s society have equated with “white power.” This evidence should be excluded as it is irrelevant to the incidents which occurred on August 25, 2020. On that date, Mr. Rittenhouse exercised his right to self-defense, which resulted in the shootings of Joseph Rosenbaum, Anthony Huber, and Gaige Grosskreutz. There is no evidence which links Mr. Rittenhouse to any white nationalist or hate groups on or about that time. The circumstances of the incident involve the riots which took place in the City of Kenosha after Jacob Blake was shot seven times in the back by police. There is no evidence that Mr. Rittenhouse made any racial comments to any of the individuals who attacked him

on August 25, 2020. The evidence will be that Joseph Rosenbaum chased Mr. Rittenhouse through a parking lot and attempted to disarm him before being shot. This incident is captured on video recordings. The only sounds heard prior to the shooting are: 1). Joshua Ziminski yelling either “get him, get him” or “get him, kill him;” and 2). What is believed to be either Ziminski or Rosenbaum yelling “fuck you.”

- i. The shootings of Anthony Huber and Gaige Grosskruetz were also captured on video recordings. There is no evidence that Mr. Rittenhouse targeted either of those individuals. Mr. Huber and Mr. Grosskreutz were both part of a mob of people chasing Mr. Rittenhouse down Sheridan Road. Huber struck Rittenhouse in the head with a skateboard after Rittenhouse had his face stomped on by another man. After Huber struck Rittenhouse with the skateboard, he attempted to grab Rittenhouse’s firearm. Video and still photographs confirm this. Further, Grosskruetz was pointing a semi-automatic pistol directly at Rittenhouse when he was shot in the arm. There is no evidence that any of the shootings occurred based on the subject’s race (all are Caucasian) or based on any racial views held by Mr. Rittenhouse. The evidence will show that all three men attacked Mr. Rittenhouse, and that was the reason they were shot.
- j. Mr. Rittenhouse making the “OK” hand sign 4 ½ months after the incident underlying these charges, without more, is irrelevant. *If* there was evidence that Mr. Rittenhouse espoused white power or white supremacist views or beliefs on August 25, 2020—and that those views led him to shoot Mr. Rosenbaum, Mr. Huber, and Mr. Grosskreutz—evidence of the “OK” gesture could possibly be relevant. However, without these predicate conditions, there is no probative value to such evidence and it should be excluded.

Electronically Signed: 7/1/2021

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