

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

THE STATE OF OREGON

C# 21-CR-61225
DA# 2441395-2
Crime Report: PP 21-681328

21CR61225
AF
Affidavit
15024875



Plaintiff,
v.

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR VIOLENT
FELONY DETERMINATION**

TUSITALA JOHN TOESE

Defendant(s).

I, NATHAN T. VASQUEZ, having been first duly sworn, depose and say that the accompanying accusatory instrument is based upon the information set forth below, which is true as I verily believe. That I am employed as a Deputy District Attorney for Multnomah County, Oregon. That in the course of my duties, I have read the incident report(s) that I know to have been prepared by the Portland Police Bureau Officers Joseph Cox and Matthew Jacobsen and the corresponding video evidence concerning this investigation of criminal acts in Multnomah County, Oregon, committed by TUSITALA JOHN TOESE (hereinafter, "Defendant"). The following is taken from those materials, the defendant's prior cases in Multnomah County and a review of the defendant's criminal record:

On August 22, 2021 a political rally was held in the parking lot of an empty K-Mart department store located near the intersection of NE 122nd Ave. and Sandy Blvd. The event originally had been planned to occur at Portland's waterfront, but was moved when it became apparent that a counter protest by an opposing group would respond to the event. Defendant was one of the primary organizers of the rally and acted as the emcee for the event, introducing new speakers and delivering speeches of his own to the gathered crowd. Several members of the crowd were wearing tactical, armored vests and other equipment and were openly carrying paintball guns and other weapons including baseball bats, explosive devices, bear spray, firearms, and other blunt weapons. During his speeches, Defendant made the following statements:

- In reference to perceived disdain for his group's political ideology by Portland's elected officials: "You want to keep on poking a sleeping bear, guess what? It's going to rise up and it's going to be 1776 up in this bitch."
- While speaking on his beliefs with respect to the Second Amendment: "An armed society is a polite society, and guess what? Antifa is taking so long to march here because they know these people love pew-pews [*referring to firearms*]. And you're going to mess around and find out, the wrong way."
- In reference to generalized remarks regarding Defendant's belief that Antifa maintained an agenda to strip him of various unspecified rights: "If you want to have our freedom, you're going to have to put all of us six-feet-under. Take it from me. Because it ain't happening that easy. We're going to give you a run for that money.... We're going to still be waiving this flag because there is (sic.) a bunch of Proud Boys, a bunch of veterans, a bunch of patriots that are standing here on this property that are ready to go battle for this. So try us. Fuck around and find out."

- In reference to a perceived belief that Antifa would appear at the rally: "Well guess what's going to happen to your fascist heroes today if they show up and try to attack somebody. They're going to get an ass whooping."

During the speeches, a small group of counter protesters had assembled on the outside of the parking lot along 122nd Ave. Several of the rally-goers approached the group and began to engage in arguments regarding the two groups' opposing ideologies. As a larger portion of the rally group began to engage with the counter protesters, Defendant approached and told those present from the rally to return to the stage. He specifically stated that the only ones who should remain by the counter protesters were "guys that are geared up, six at least"—referring to members of the rally group wearing tactical gear and carrying weapons including paintball guns, firearms, blunt weapons, explosive devices, and bear spray—and told the others again to go back to the stage area.

Approximately an hour and a half after the rally began, additional counter protesters arrived at the location, approaching on foot as well as pulling into the parking lot in a de-commissioned Metro West Ambulance van. Members of the group from the rally immediately began attacking the van and its occupants with paintballs, mace, and blunt weapons, causing extensive damage to the windows, tires, and vehicle body. The van's occupants fled on foot and the van rolled into a small patch of bushes nearby. Members of the rally-group then pursued the counter protesters south on 122nd Ave. firing paintball guns, using bear spray, and throwing explosive devices and other objects at the counter protesters who were also throwing explosives, smoke bombs, and paint-filled projectiles.

As the initial clash occurred, Defendant, in the rear of the rally-group, gave orders to have other rally-goers return to defend the stage that had been set up for the rally in the parking lot. As a large portion of the rally-group returned to the K-Mart parking lot, Defendant assembled a smaller group armed with paintball guns and tactical gear that moved through an alleyway at the back end of the parking lot, looping around back to 122nd Ave. where they were able to approach the counter-protest group from the side. The smaller rally group, including Defendant, then began shouting "Fuck Antifa" repeatedly as others in the group opened fire with paintball guns on the counter-protesters standing on 122nd. The counter protest group again retreated south on 122nd and Defendant waved to his smaller group, still armed with paintball guns, bear spray, explosives and other blunt weapons, signaling that they should pursue. The two groups exchanged paintball-gun fire and chemical sprays, and threw various explosive and paint-filled projectiles at one another as they moved along 122nd Ave. toward nearby Parkrose High School.

As the two groups reached a parking lot at the southeast corner of Parkrose High School, Defendant noticed a Silver Honda Ridgeline with shields and cases of water in the bed. Defendant identified the truck as a counter-protester support vehicle and shouted to others present "He's Antifa", repeating the call several times. There was one occupant inside the truck. Defendant approached the vehicle and, using a bat he had carried with him from the K-Mart parking lot, broke out the driver's side window. Defendant then signaled to others from the rally group to approach the vehicle, inciting the rally members to attack the truck and assault the driver. Defendant can be heard on video yelling to others present "He's Antifa, he's Antifa" and can be seen gesturing toward the vehicle with his baseball bat. Members of the rally group then began breaking out the remaining windows to the truck, popping its tires, and attacking the driver.

At least three rally group members standing on the passenger side of the vehicle fired paintballs into at the vehicle's occupant as he attempted to hide inside the vehicle. Defendant stood just behind the line of paintball shooters and continued shouting to others in the area inciting them to attack the vehicle's

1 occupant. Another member of the rally group then climbed into the vehicle and directly assaulted the
2 occupant, striking him repeatedly with an armored motorcycle glove and kicking him. Others
3 surrounded the vehicle and sprayed the occupant with mace and bear spray. Eventually, a member of the
4 rally group was able to assist the occupant in getting out of the vehicle. The occupant ran from the
vehicle, was shoved violently from behind by a rally group member, but was able to escape to the
opposite side of the parking lot where the majority of the counter protest group had assembled.

5 After the occupant of the Silver Ridgeline escaped, and on Defendant's command to "fall back", the
6 rally-group began to move back toward the K-Mart parking lot to the north. As the rally group re-
7 grouped, Defendant began a call-and-response style chant of "Fuck around, Find out" and "Fuck Antifa"
8 yelling out the phrases while other rally group members joined in. Prior to departing the Parkrose High
School parking lot, Defendant stopped and spoke to several of the independent streamers and journalists
9 who had followed the two groups from the K-Mart parking lot making the following statement as he
addressed them:

- 10 • "That's our message for you Antifa: the Americans are coming out and they're sick and tired
of this shit. If we have to fight fire with fire we're going to fucking do it. Fuck Antifa."

11 Upon return to the K-Mart parking lot, a portion of the rally group assembled around the support van
12 that the counter protesters had used and abandoned upon their initial arrival at the location. Defendant
approached the van from the inner part of the parking lot and shouted to those in the area "Boys, flip this
13 motherfucker over so they don't get to drive this bitch." Several of the rally group members took up
positions on the passenger side of the van and began to rock it in an attempt to flip it, but were largely
14 unsuccessful. Defendant then walked around the side of the van, shouted that the group needed to "get
low", and then joined in the effort. With Defendant's assistance, the group was then able to tip the van
15 onto its side.

16 At that point, the parking lot began to clear out. Defendant and several other members of the group
17 climbed into the back of a pickup truck which circled the parking lot before departing the area.

18 Approximately two weeks later, on September, 4, 2021, Defendant was involved in another incident
at an anti-vaccine rally held in Olympia, WA. News articles and open-source video of the incident show
19 Defendant and several others chasing members of an ideologically opposed group through the streets of
Olympia. Members of Defendant's group can be heard in the videos from the incident yelling "Fuck
20 Antifa" in a call-and-response style and can also be heard yelling threats such as "You better run you
fucking pussies" as they chased counter protesters down the street. Ultimately, Defendant and a group of
21 others pursued counter protesters to a bus station where Defendant received a gunshot wound to his
22 ankle from an unknown source.

23 Defendant, prior to the above-described incidents, has been involved in a large number of protest
events since 2017 and has been criminally charged in several jurisdictions in Washington and Oregon. In
24 Oregon, Defendant was first charged with Assault in the Fourth Degree, Harassment, and Disorderly
Conduct in the Second Degree in connection with an incident at a rally in which he punched a counter
25 protester in the face, unprovoked, on December 9, 2017. Defendant plead guilty to Harassment and was
placed on a probation in that case. That probation was revoked on October 29, 2019 and defendant was
26 sanctioned with 10 days in jail.

27 Defendant was also charged in Oregon with Assault in the Third Degree and Assault in the Fourth
28 Degree in connection with a 2018 protest event under Multnomah County Circuit Court case number

1 18CR43660. In March of 2018, approximately a week after indictment on those charges Defendant fled
2 the jurisdiction to American Samoa and was not arraigned on the charges until he returned to Oregon in
3 October of 2019 and was arrested at Portland International Airport. Ultimately, Defendant plead guilty
4 to the Assault in the Fourth Degree charge in that case and was placed on probation in January of 2020.
5 In October of 2020 that probation was revoked after Defendant failed to comply with several terms of
6 his probation, including having attended a rally in Downtown Portland in August of 2020. Defendant
7 was sentenced to a six month revocation in that case.

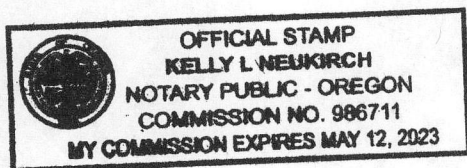
8 Defendant was also convicted on two counts of Bail Jumping and one count of Obstructing Law
9 Enforcement in Clark County, WA on January 8, 2019. More recently, Defendant has been charged in
10 Thurston County, WA with Obstructing Law Enforcement, Criminal Trespass in the Second Degree, and
11 Assault in the Third Degree in connection with an incident wherein a large number of protesters
12 unlawfully entered the grounds of the Governor's Mansion in Olympia, WA on January 6, 2021.

13
14 DATED this 2nd day of February, 2022.

15
16 MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

17 By: [Signature]
18 NATHAN T. VASQUEZ, OSB# 014437
19 Deputy District Attorney

20 SUBSCRIBED AND SWORN TO BEFORE
21 ME ON THE ABOVE DATE:



29 Kelly L. Neukirch
30 X Notary Public for Oregon
31 My Commission Expires: 5/12/2023

32 _____ Deputy Clerk of the Circuit Court

33 _____ Judge of the Circuit Court