

The State of New Hampshire

HILLSBOROUGH, SS.

9th CIRCUIT-DISTRICT DIVISION-MANCHESTER

STATE OF NEW HAMPSHIRE

V.

DANIEL ZERON

#456-2020-CR-1633

ORDER

On June 3, 2020, the Court held an offer of proof hearing on the issue of preventive detention in the above captioned matter. At the conclusion of the hearing, the Court took the matter under advisement.

For more than 8 days the people of the United States have been rocked by the death of a man being taken into custody for a property crime in Minneapolis Minnesota and the civil unrest that followed this tragic death. According to the prosecutor's offer of proof, the circumstances so moved this defendant that according to the family that he was living with in Ashland, told police that he wanted to go to Boston to protest.

At 12:21 AM on May 30, 2020, the defendant registered a Facebook account entitled NH Riots/NH Protests. This was a "fake account" with no personal identifiers to relate this account back to this defendant. The defendant made several posts, one of those posts specifically targeted the Manchester Commons Shopping Center at 410 South Willow Street, Manchester NH; it reads:

#Fuck12 Let's join the other states in protesting blatant racism and police brutality. We cannot stand by and watch. Now is your chance to take action and join a movement that will forever change America for the better.

To start this event we will meet in the masses on Tuesday, June 2nd at 8 PM at The Manchester Commons Shopping Center at 401 S Willow St., Manchester, NH 03103. We will then march all throughout willow street and let our voices

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be heard. Police cars will be tipped. Graffiti is welcome.
Bring masks. Take examples from riots in other cities...

There's a picture of a police cruiser in the middle of the street in flames. The defendant terminated the account at 7:49 PM on May 30, 2020.

When the Manchester Police Detective Brett Fernald who was assigned to the NH Joint Terrorism Task Force learned about the posts he took immediate action. Contacting Facebook, Detective Fernald used some provision concerning a National Emergency Rule to have Facebook remove the posts to this account created by the defendant. Facebook advised 4 people had communicated that they would join the gathering at 8:00 PM on June 2, 2020, 25 people had shared the post and 27 people had shown interest in these posts.

The defendant's counsel argues that it is a "spectacular leap" to believe that the defendant's post led to people appearing at Manchester Commons Shopping Center on Tuesday evening. According to the prosecutor's offer of proof, the New Hampshire Information Bank run jointly by the New Hampshire State Police and the United States Department of Homeland Security received over 200 reports concerning the defendant's Facebook posts. Simultaneously, according to the prosecutor, the Manchester Police Department received over 100 calls concerning the posts. Where the prosecutor concedes that this defendant is not acting in concert with any anarchist group, ANTIFA or a white supremacists organization, the application of deductive logic means that anyone who appeared at 410 South Willow Street on Tuesday was as a result of the dissemination of defendant's post. It is evident that the post was widely disseminated. Hence, the prosecutor's argument in this regard is logically sound.

Defendant's counsel argues that this defendant did not act purposely in this instance. Despite the defendant's calculated efforts to remain unidentified by registering a Facebook account for less than 24 hours which suggested people go to South Willow Street, damage police cruisers and impose graffiti on property, the defendant's counsel reminds the Court that the defendant told the police that his posts were a joke. This is not the sole statement of this defendant concerning his intent in making these posts. The first sentence is one of defendant's posts is "Hello New Hampshire, I'm creating this Facebook Page so as to not use my personal identity to be charged with inciting a riot" (emphasis added). As the former statement by the defendant was made to police after his effort to escape detection had failed and by design minimizes his culpability, this Court finds it not credible when judged against the later referenced statement made in the course of his criminal conduct.

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The defendant's counsel argues that the defendant was only urging property crimes be committed and the commission of property crimes do not warrant pre-trial detention. This argument ignores both life experience and common sense. The building and business owners at Manchester Commons have an investment likely both financial and emotional in their property. Graffiti would devalue their property and, despite defendant's post, common sense dictates it would be unwelcome by them. New Hampshire law empowers property owners to act in defense of their property. See RSA Chapter 627. Indeed, the prosecutor's offer of proof referenced the use of plywood by the owner's assumedly as a passive protection of their investment. It is both foreseeable and understandable that actions taken to prevent vandalism would lead to an escalating use of force. Perhaps as it has in other cities referenced in defendant's post with life altering physical harm to those involved.

Similarly defendant's argument ignores the human agency involved in the operation of a police cruiser. Human beings drive and travel in police cruisers; they are not fully autonomous drones. The people in those motor vehicles are sworn to enforce the laws of the United States and the State of New Hampshire. Should this defendant's invitees to 410 South Willow Street attempt to tip those police cruisers over or burn the cruisers as is implied by defendant's post, those police officers would have a legal duty to enforce the law by arresting perpetrators of criminal mischief and protecting both public and private property. It is both foreseeable and understandable that the use of force authorized by RSA Chapter 627 could be met with physical resistances rather than submission that is required by RSA 597:5. Not only is there the risk of life altering injury to those immediately involved but in the context of a crowd drawing together for the purpose of vandalizing property, the inherent risk of onlookers choosing to become unlawfully physically involved with the police.

This Court concludes this defendant's conduct created an unacceptably high risk of danger to public safety.

Finally, the defendant's counsel argues that the defendant's speech is protected by the First Amendment to the National Constitution. Not all speech is entitled to protection against criminal prosecution. As Justice Oliver Wendell Holmes, Jr. wrote in Shenck v United States 249 U.S. 47 (1919) just over 100 years ago: "falsely shouting fire in a theatre and causing panic highlights that speech that is dangerous and false is not protected..." p. 54. The property and business owners did not welcome vandalism, defendant's statement was both false and dangerous. Moreover, his speech was made for the stated purpose of "inciting a riot". Under such circumstances, this Court is aware of no case law which protects him against criminal prosecution as it created a "clear and present danger".

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The State's Motion for Preventive Detention is granted. The Court will hold an evidentiary hearing on June 9, 2020.

June 4, 2020

Date



WILLIAM H. LYONS
Judge

Cc: Jeremy Harmon, Esq.
Jillian Rizzo, Esq.
Hillsborough County HOC
Capt. Steve Mangone

Date Mailed: 6/4/20