



CASE FILE

UNITED STATES v. HARRY MCCARSON





Dear Empire Family:

You have already been introduced to Harry McCarson: a white nationalist who was embroiled in a legal dispute with Empirion State University (ESU) over a speaking engagement that was scheduled for February 19, 2018.¹ You learned that in addition to being the plaintiff in a civil lawsuit, McCarson is the Defendant in a criminal case, arising from an incident that took place on February 20, 2018.

So what happened that day in Empirion? You are about to find out!

Fact Summary²

On February 19, Harry McCarson had an agenda for speaking at ESU: to voice his vehement opposition to the removal of the infamous Colonel C. Griffus Michael statue, situated in Empirion's capital. The statue was scheduled to be removed on the following day and McCarson was incensed.

Harry McCarson is widely known as a "white nationalist." He advocates ideals of white supremacy, while degrading others; in particular, Empirials, Empirion's indigenous people. Empirion is a former French colony turned U.S. territory turned U.S. state, known for its blue sand beaches, "Sapphire Shores," and tropical climate. McCarson attended college at ESU, where he developed a distaste for the Empirials. McCarson routinely referred to Empirials as "Emps," a racist moniker coined by Empirion's French colonizers to distinguish locals from Europeans.

Like other white nationalists, McCarson revered Colonel C. Griffus Michael. "Colonel Griff" secured Empirion's independence from the French in 1920 under the guise of liberation. The Colonel's mass execution of Empirials during his 8-year reign has led to his revulsion in the Empirical community, while some non-Empirials credit him with putting the island state on the road to prosperity. His historical legacy is complex and often debated in Empirion.

The nonprofit organization *Sapphire Means Love* works to promote peace, love and appreciation of Empirical history in Empirion. The group championed the movement to remove the Colonel Griff monument, which had the support of 80% of Empirion residents in a recent referendum. The removal was scheduled for the evening of February 20, 2018.

Fresh off his speech the night prior, Harry McCarson led a group of more than 1,000 protestors to

1 If this is news to you, then please review the 2018 Empire Pre-Trial Oral Argument materials at a later date.

2 This description may not be used as evidence at trial.

INTRODUCTION

CORE Square, where the monument rests. There, he was met by counter-protesters from *Sapphire Means Love*, including its most well-known public figure: Tommy Abel.

You can guess how the rest unfolded. There's chanting back-and-forth. There's some pushing and shoving. And at one point during the rally, a confrontation ensues between McC Carson and Abel that lands Abel in the hospital.

The United States has charged McC Carson with committing a federal hate crime; specifically, they've charged him with assaulting Abel because of his perceived race.

Why We've Selected This Topic

Whether you're a new or returning team, you likely know that Empire's cases are important to our mission. Our objective as an organization is to use mock trial as a way to develop young people into informed, engaged and compassionate members of society. Each pillar is important: *informed* means students are educated and knowledgeable; *engaged* means they are actively thinking about the world around them; *compassionate* means they care about others, and are open to new perspectives. Our cases are a central piece in this mission. They force our students to tackle issues that are challenging, and often impact communities that are not their own.

Over the past two years, we have seen the rise of a movement known as "white nationalism" in the United States and abroad. Just in March, a self-identified white supremacist [**won an election primary**](#) in Illinois (he has been denounced by both Democrats and Republicans). As an American--and as a person with Jewish ancestry--there are no words to describe how I feel seeing fellow Americans waving Nazi flags at rallies. It's both offensive and confounding: millions of people lost their lives at the hands of Nazism and millions more willingly gave their lives to liberate the world from Nazism. This organization and its leadership find white supremacy to be abhorrent and antithetical to the values expressed in the U.S. Constitution and those values that underlie all civilized societies.

Nevertheless, we also recognize the role that free speech plays in democracy. It is easy to advocate in favor of the First Amendment when the Government attempts to restrict speech that you agree with, but what about speech with which you disagree? It can be hard to reconcile the First Amendment when we hear speech that we find hateful and revolting. Countries such as Canada and Germany have laws on the books that regulate certain forms of hate speech, which is very different from America's First Amendment jurisprudence. What is the correct approach? Should someone, like McC Carson, be arrested for espousing hateful things? Through our Pre-Trial Oral Argument, and other materials that we'll share, we'll all be considering those issues.

Finally, we selected this topic to illustrate another tenet of the U.S. legal system: everyone has a Constitutional right to a defense. None of us will like Harry McC Carson nor should we agree with many of the statements that he has made in the past. But due process of the law is entitled to all. Harry McC Carson deserves a fair trial, and a fair defense, just like anyone else. Sometimes the best lawyers are forced to defend clients they do not like--clients who are accused of committing heinous crimes. So when defending McC Carson, you'll be asked to put your personal beliefs aside and advance the appropriate legal arguments on his behalf.

INTRODUCTION

What You Won't Be Asked to Do at Trial

Defense teams will not be asked to defend "white nationalism" (they are specifically prohibited from doing so). Neither will they be asked to portray a "white nationalist" as a witness (McCarson is not a witness in the case and all witnesses disavow his most extreme views). It goes without saying that we would never prescribe a race or gender to a witness.

Furthermore, while McCarson makes statements about white supremacy, he only targets a fictitious group of people: the Empirials. We spent extensive time creating a rich history for the island of Empirion to minimize the risk of offense caused by this case.

What You Will Be Asked to Do at Trial

The Government has to prove that McCarson assaulted Abel and that he did so because of his Empirical race.

McCarson's Defense team has several options. To rebut the assault component, they can deny McCarson committed the assault; or they can say that McCarson did so, but was acting out of self-defense. For motive, the Defense can argue that McCarson's prior words were just words that had never manifested in violence; or that McCarson was motivated by his passion for preserving history.

Either way, there are various case theories that each side can pursue.

Conclusion

When I hear stories like Harry McCarson's, I struggle to process them and remain positive. I think that we all do. But in these moments, I am reminded of a quote from Dr. Martin Luther King Jr. at the height of the Civil Rights' struggle:

"I have decided to stick with love. Hate is too great a burden to bear."

Let us all work together—as a Family bound by respect and love—as we navigate the challenging issues at the heart of this case.

We hope that you enjoy *U.S. v. McCarson*.

With gratitude and appreciation,



Justin Matarrese
Executive Director



2018 Empire Case Committee

This case was a collaborative effort between kind-hearted, talented volunteers and program alumni, who worked together to draft a comprehensive case, on a relevant topic, for a Family that they love. Anyone listed below contributed to the case in some capacity-- whether it be writing an exhibit, proofing a document, or drafting a witness statement. Empire Mock Trial is beyond grateful for the time and energy of our team.

Committee Leadership

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Tom Faiella, Esq.
Empire Judge (NY)

Special thanks to Ms. Stebbins for her work in recruiting recruiting Committee Members and pushing the Case over the finish line.

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A warm and heartfelt thanks to Ms. Wilson, who authored several case documents from scratch after extenuating circumstances left the Committee in need of last minute writers.

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We are especially indebted to Ms. Fast, who formatted every single case document and designed all exhibits from scratch.

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Empire Mock Trial is especially grateful to the following individuals and organizations for their support: Dr. Steven Kanjo who shared his medical insight with the Committee; Dwane Hilderbrand, who assisted in creating the forensic tread analysis materials; Susan Horan and Arthur Young who shared their insight into DNA analysis with the Committee, and Michael Pasinkoff, who consulted with the Committee on the legal process surrounding federal hate crimes.



2018 Case License

Registration entitles your team to a license to use *U.S. v. McCarson* for competition in the 2018 Empire season. It also provides your team with a limited license to use the case for educational purposes. You may not, however, share the case file with any person who is not affiliated with your program, and you may not post it publicly. If you have any questions about what your license entails, please feel free to contact us.

Reproduction and dissemination of any of the materials enclosed herein to any non-affiliated person without the express written consent of Empire Mock Trial is prohibited.

Rules

Case Access

1. LICENSE TO USE CASE. A team's Empire registration fee includes a license for all affiliated members of its team to use the current Empire case to prepare for and participate in the Competition. Teams may access the case on the Dashboard of the Empire site, using their Primary Contact's username and password.
 - a. Affiliated Members. A registered team's coaches, students, non-competing students who are a part of the school's mock trial program, and members of a non-Empire registered team that is scrimmaging the registered Empire school.
 - b. Scrimmaging. The act of participating in a practice trial before an Empire Competition with the purpose of preparing for the Competition.
2. PRIMARY CONTACT'S OBLIGATION. Each school's Primary Contact is responsible for ensuring that the case is only accessed by affiliated members of its teams as defined above. The case materials, and a school's online Dashboard log-in information that would enable case access, may not be posted in any public forum, including but not limited to web sites. Each school's Primary Contact has an affirmative obligation to monitor case access and use at her school, and to inform Empire of any violations.

Limited Educational Purpose

1. WHEN PERMITTED. Current teachers or current primary contacts at a member school may use Empire cases for educational purposes where the school participated in Empire during the year the case was issued.
2. EDUCATIONAL PURPOSES DEFINED. "Educational purposes" include, but are not limited to, use for exhibition rounds, in-school course instruction, or auditions. It does not include any purpose for which a fee is charged, including, but not limited to, fee-based seminars or summer camps.
3. LICENSE REQUIRED FOR OTHER PURPOSES. A school wishing to use an Empire case for a non-educational purpose must receive written permission from Empire.



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Special Instructions

PROSECUTION	DEFENSE
Tommy Abel Protester, founder of "Sapphire Means Love" & alleged victim	Lee McCarson Parent of Harry McCarson
Officer Jamie Carbowers Pasquale Police Department (PPD)	Professor Terry O'Neil History Professor at Empirion State University
Agent Washington Key FBI Agent Forensic Examiner, Criminal Investigative Division	Earl Ravin Bodyguard to Harry McCarson
Joey Amber Crane Operator at Trussworth Construction	Charlie Felder Private Investigator hired by McCarson Family

- 1. Prosecution Witnesses.** The Prosecution must call Abel, who will serve as their Guest Witness. This means that the student who portrays Abel in your Prosecution trials will be from a different school, while the student on your team who portrays Abel will be direct examined in a different trial by an attorney from another school. With your remaining two Prosecution witnesses, you must call any of Carbowers, Key, or Amber.
- 2. Defense Witnesses.** The Defense must call Terry O'Neil, who will serve as their Guest Witness. This means that the student who portrays O'Neil in your Defense trials will be from a different school, while the student on your team who portrays O'Neil will be direct examined in a different trial by an attorney from another school. With your remaining two Defense witnesses, you must call either McCarson, Felder, or Ravin.
- 3. Casting Witnesses.** All witnesses are gender and race neutral. A student of any gender or race may portray any of the witnesses in the case file. We are providing this instruction to eliminate any confusion that could result from portraying a witness of a fictitious race: the Empirials.
- 4. Witness Call Order.** In the Pre-Trial Conference, the Prosecution will announce its three (3) witnesses first, followed by the Defense.

SPECIAL INSTRUCTIONS

5. Trial Box. A trial box will be provided in each courtroom for use during the rounds. The box will include administrative materials and physical exhibits for students to use during the trial.

a. Administrative Materials

- Ballots. Tri-part, carbon paper ballots for each scoring judge will be provided.
- Comment sheets. Tri-part, carbon paper comment sheets for each scoring judge will be provided.
- Spirit of Empire form.
- Timesheet.
- Character Evidence Form.

b. Physical Evidence. The below exhibit is currently pictured in the case materials, and will be provided to all teams at the Competition:

- Protest sign held by Harry McCarson (Ex. 11)

6. Empire Resources. The Rules of Procedure, Empirion Objection Ordinance, and Tab Manual have binding authority; a participant or member of staff may not deviate from its prescriptions, except where the above resources allow for such discretion. The Procedural Guide is persuasive; we advise that you follow its recommendations, but you are not compelled to do so.

7. Indictment: No Prosecution team may choose to disregard any of the Counts listed in its Indictment.

8. Reading Exhibits or Stipulations. A team may read from a stipulation or admitted exhibit during trial; however, any time required for the reading will be deducted from that team's total trial allotment (55 minutes).

9. Abel's Appearance at Trial. A team may not use the size or gender of the student portraying Tommy Abel as evidence that Harry McCarson could not, or should not, have felt threatened on the night in the question (e.g. because Abel is female and shorter than McCarson, she could not have intimidated McCarson).

10. Handwriting. All signatures and handwriting provided in the case materials are authentic. No team may argue otherwise.

11. Case Law: Your case materials include an extensive body of Case Law that will help you navigate the Indictment and Rules of Evidence. Please take note of the following:

a. Scope You may only reference cases at trial that are included in this section of the materials. Similarly, you may only reference excerpts from those cases where they are listed in the Case Law section.

b. Authority. The State of Empirion is under the jurisdiction of the fictitious Thirteenth Circuit. Both U.S. Supreme Court and Thirteenth Circuit decisions are binding in this

SPECIAL INSTRUCTIONS

jurisdiction. All Thirteen Circuit decisions are fictitious, though they are all based on real cases, and those real cases are referenced with footnotes to encourage students to look into them.

12. Witnesses Not Called: A witness statement for an “available witness” may not be referenced in a trial where the witness is not called to the stand, unless it is being referenced to impeach the conclusion of an expert who relied on the statement to form their expert opinion.

13. Fifth Amendment: Harry McCarson has invoked his constitutionally protected Fifth Amendment right not to testify in trial. As such, the Government is prohibited from asking the jury to draw an adverse inference from his decision to do so.

14. Defendant's Has Chosen NOT to Attend His Trial: A team may NOT have a team member sit at counsel table as Harry McCarson. The Defendant's picture has been included in the case file (Exhibit 25), and no may team may attempt to portray him.

15. Party Representative: The United States may have Agent Key serve as a party representative during their trial, and sit at counsel table. The Defendant may not have a party representative.

16. White Nationalism: The Government has labeled the Defendant a “white nationalist,” and Defense teams are tasked with defending him. Empire uses this term in reference to an individual who advocates ideals of white racial superiority (i.e. a white person is somehow superior to a non-white person based purely on the color of their skin). This is a viewpoint that Empire Mock Trial finds abhorrent; it is inconsistent with the values of the U.S. Constitution and any modern understanding of a just society. When defending Harry McCarson, teams cannot, and should not, argue that the Defendant’s statements about white superiority are morally acceptable.

17. Self Defense: The Defense has the option of presenting evidence of Self-Defense at trial. Where a Defense chooses to do so, the Self-Defense instruction that is contained in the Legal Documents section of the case will be constructively read to the jury and may be referenced during closing arguments.



CHAPTER 1

Legal Documents

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

FILED

DATE: 04/30/2018

United States District Court
Northern District of Empirion

By: 
Deputy Clerk

CERTIFICATE OF THE ATTORNEY GENERAL

I, Eric J. Lynch, hereby certify that in my judgment, prosecution by the United States of Harold "Harry" McCarson, for violating Title 18, United States Code § 249(a)(1), is in the public interest and is necessary to secure substantial justice, and the state of Empirion has requested that Harold "Harry" McCarson be prosecuted by the United States. This certification is made pursuant to Title 18, United States Code § 249.

Signed this 30th day of April, 2018



Eric J. Lynch
Assistant Attorney General

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

INDICTMENT



Comes now the Grand Jury empaneled by the United States District Court in and for the District of Empirion that does hereby charge the defendant, HARRY MCCARSON, as follows:

**COUNT 1
18 U.S.C. § 249 (a) (1)**

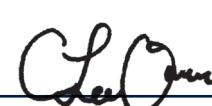
1. On or about February 20, 2018, in Esseph County, Empirion and elsewhere, the defendant, HARRY MCCARSON, did actually and willfully cause bodily injury to a person because of the actual or perceived race, color or national origin of any person in that the defendant, HARRY MCCARSON, did, while or in the immediate aftermath of shouting racial slurs, use a megaphone to strike the face/head of TOMMY ABEL causing bodily injury including a laceration on the face/head of TOMMY ABEL, all in violation of 18 U.S.C. § 249 (a) (1).

**COUNT 2
18 U.S.C. § 249 (a) (1)**

2. On or about February 20, 2018, in Esseph County, Empirion and elsewhere, the defendant, HARRY MCCARSON, while acting in concert with others, did actually and willfully cause bodily injury to a person because of the actual or perceived race, color or national origin

of any person in that the defendant, HARRY MCCARSON, did, while or in the immediate aftermath of shouting racial slurs, kicked and stepped on TOMMY ABEL, causing bodily injury including broken ribs all in violation of 18 U.S.C. § 249 (a) (1).

A TRUE BILL



J.S. Messina
United States Attorney
for the District of Empirion

C. Lee O'Phee
Grand Jury Foreperson

Dated: May 1, 2018
Pasquale, Empirion

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

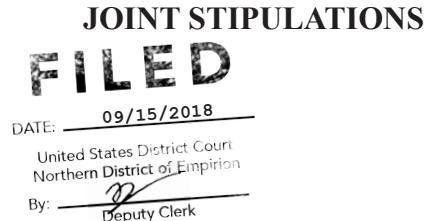
v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson



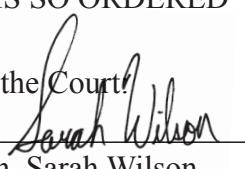
The United States of America (the “Government” or “United States”), as well as Harry McCarson (“McCarson”) submit the following stipulations to narrow or resolve issues for the efficiency of trial. Both parties agree to these stipulations, and no arguments as to their validity will be entertained at trial:

1. On February 20, 2018, Harry McCarson was arrested for assault, stemming from an altercation between McCarson and the alleged victim, Tommy Abel.
2. Tommy Abel was admitted to the hospital for injuries suffered as a result of this altercation, including a broken collarbone, broken ribs, and head trauma. These injuries fulfill the definition of “bodily injury” under 18 U.S.C. § 249. Tommy Abel has suffered no other physical injuries in relation to this altercation since being discharged from the hospital.
3. Tommy Abel has type O-Negative blood.
4. There was a hearing about the voluntary nature of McCarson’s statements to Officer Carbowers on February 20, 2018, following his arrest. The presiding judge found that the statements were indeed voluntary, and properly Mirandized, and no additional Constitutional issues with regards to these statements may be raised at trial.
5. Exhibit 7 is a fair and accurate copy of the interview voluntarily given by McCarson to Officer Carbowers on February 20, 2018, following his arrest.

6. The parties in the pretrial lawsuit *McCarson v. Empirion State University, et al.*, stipulated to a voluntary dismissal without prejudice, based on the fact that McCarson gave his speech at the University on February 19, 2018.
7. The Government and McCarson have agreed to waive all objections to Exhibit 10.
8. Both parties agree that Harry McCarson authored all of the content in Exhibits 13-17.
9. All times listed in the case documents are listed in Atlantic Daylight Time (“ADT”).
10. Chain of custody was properly preserved for all exhibits available in this case. No objections to chain of custody shall be made by the parties or entertained by the court. This does not exclude other objections under the Rules of Evidence.
11. Both parties waive any and all objections arising under the United States Constitution.
12. All parties and witnesses are of at least normal intelligence, and are all fit to testify.
13. Except as arising under F.R.E. 404, all notice requirements and discovery obligations have been fulfilled by the parties prior to trial.
14. All objections and motions to strike, except as to form, are reserved for trial and take place outside the presence of the jury.
15. All witnesses have had at least 30 days to read and sign their affidavits or reports given under oath, and have had the opportunity to update said documents.
16. Both parties agree that Officer Carbowers was familiar with Earl Ravin prior to the date of the altercation, and would be capable of identifying Ravin.
17. All exhibits have been pre-marked, and must be referred to by those pre-marked numbers, regardless of the order they are introduced at trial.

Date: September 14, 2018

IT IS SO ORDERED

By the Court

Hon. Sarah Wilson
Presiding Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

FILED

DATE: 06/03/2018

United States District Court
Northern District of Empirion

By: 
Deputy Clerk

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Defendant, Harry McCarson moves to suppress the statement he gave to police on February 20, 2018 after he was arrested and given Miranda warnings. On that date, Defendant allegedly attacked Tommy Abel in violation of 18 U.S.C. § 249(a)(1). Defendant argues that his statements were involuntary and that the Miranda warnings he received were inadequate. The Court held a hearing on the Defendant's motion to suppress. For the reasons stated below, the Court DENIES Defendant's motion to suppress.

The Fifth Amendment right against self-incrimination prohibits courts from admitting into evidence a Defendant's confession that was not offered voluntarily. In assessing whether a confession is voluntary, courts must inquire whether the will of the Defendant had been overborne so that the statement was not a free and voluntary act.

We determine whether statements are voluntary by considering the totality of the circumstances, including both the nature of the police activity and the defendant's situation. Relevant considerations include the length and nature of the questioning, promises or threats

made by investigators, and any deprivation of the suspect's essential needs. They also include the defendant's personal circumstances, including his age, education, intelligence, and mental condition, as well as his prior experience with the criminal justice system. A defendant's calm demeanor and the lucidity of his statements weigh in favor of finding his confession voluntary.

Numerous facts in the record indicate that McCarson provided his confession knowingly and voluntarily. As a First Amendment litigant in multiple matters in the past, McCarson was experienced with the justice system. Throughout the interrogation, McCarson remained calm and provided a level-headed account of his involvement in the February 20, 2018 altercation. His decision to make a statement was not a sudden or immediate response to any of the agents' questions or threats, indicating the agents' coercive impact, but rather came after a coffee break during which McCarson was relieved of all interrogation. Perhaps most importantly, McCarson himself explained his decision to give a statement because he assessed the situation and decided to be an "open book," to demonstrate that he acted in self-defense.

In the face of this evidence, McCarson claims that agents acted in a coercive manner when encouraging McCarson to make a statement and that the coercion overbore his will in violation of the Fifth Amendment. I find that none of the allegedly coercive tactics identified by McCarson, either individually or together, suffice to show that McCarson's confession was involuntary.

Finally, McCarson disputed the sufficiency of the agents' Miranda warnings. Having heard testimony on this issue, the Court holds and rules that the Miranda warnings were constitutionally sufficient.

The Court holds that Mr. McCarson gave his statements voluntarily and after the police properly gave Mr. McCarson constitutionally sufficient Miranda warnings. The Court therefore

OVERRULES any and all constitutional challenges to the admissibility of Mr. McCarson's statements made to police. During trial, Mr. McCarson may argue other objections based on the Federal Rules of Evidence.

SO ORDERED.

Date: June 3, 2018

/s/ Hon. Sarah Wilson
Hon. Sarah Wilson
Presiding Judge

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

FILED

DATE: 05/05/2018

United States District Court
Northern District of Empirion

By: 
Deputy Clerk

ORDER REGARDING STATE LAW CHARGES

The Court, *sua sponte*, ordered the United States to confirm the status of the state law criminal charges filed against Harry McCarson related to the occurrence on February 20, 2018, during which Mr. McCarson allegedly attacked Tommy Abel. That occurrence forms the basis of the instant criminal charge against Mr. McCarson pursuant to 18 U.S.C. § 249(a)(1).

At a pretrial hearing, the United States satisfactorily demonstrated that the Superior Court of the State of Empirion has STAYED all pending state law charges against Mr. McCarson pending the outcome of this trial. The stay will remain in place until after Mr. McCarson's federal trial concludes.

SO ORDERED.

Date: May 5, 2018

/s/ Hon. Sarah Wilson
Hon. Sarah Wilson
Presiding Judge

THOMSON REUTERS
WESTLAW

All Content Enter terms, citations, databases, anything ... MI, All Fed. Advanced

Document Notes of Decisions (3,272) History (1,296) Citing References (154,332) Context & Analysis (590) Powered by KeyCite

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U.S. Code > Title 18 > Part 1 > Chapter 13 > § 249

18 U.S. Code § 249 - Hate crime acts

(a) In general.

1) Offenses involving actual or perceived race, color, religion, or national origin.

Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person:

- A. shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and
- B. shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—
 - i. death results from the offense; or
 - ii. the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(b) Certification requirement.—

1) In general.

No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that:

- A. the State does not have jurisdiction;
- B. the State has requested that the Federal Government assume jurisdiction;
- C. the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or
- D. a prosecution by the United States is in the public interest and necessary to secure substantial justice.

2) Rule of construction.

Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(c) Definitions.

In this section:

- 1) the term “bodily injury” has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim.

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Great State of Empirion - Consolidated Statutes

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U.S. Code > Title 18 > Part 1 > Chapter 65 > § 1365

18 U.S. Code § 1365 - Tampering with consumer products

H. As used in this section...

4. the term "bodily injury" means:

- (A) a cut, abrasion, bruise, burn, or disfigurement;
- (B) physical pain;
- (C) illness;
- (D) impairment of the function of a bodily member, organ, or mental faculty; or
- (E) any other injury to the body, no matter how temporary.

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**PATTERN CRIMINAL FEDERAL JURY INSTRUCTIONS
FOR THE UNITED STATES DISTRICT OF EMPIRION**

Self Defense

The Defendant has raised the defense of “self defense.”¹

Use of force is justified as self-defense when a person reasonably believes that it is necessary to defend oneself or another against an immediate risk of harm. The defendant must have sincerely believed it was necessary to use force, and forming that belief must have been reasonable under the circumstances.

Whether a belief in the necessity of force was reasonable is an issue you may determine by looking at the information known to the defendant at the time. The use of force was reasonable if an ordinary person in the defendant’s position would have shared the defendant’s belief that the force was necessary under the circumstances. If the defendant did not sincerely believe the use of force was necessary, then the defendant was not acting in self-defense even if it would have been reasonable to believe force was necessary at the time.

A person acting in self defense must use no more force than appears reasonably necessary to prevent the perceived risk of harm under all of the circumstances.

Force that is likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary in order to prevent death or great bodily harm.

The government must prove beyond a reasonable doubt that the Defendant did not act in self defense as described in this instruction.

Modified from 2A Fed. Jury Prac. & Instr. § 45:19 (6th ed.), 2A Fed. Jury Prac. & Instr. § 45:19 (6th ed.)

¹“These instructions would be presented to a jury in the event that a Defendant raises a defense of “self-defense”. Defense teams may raise such a defense, but are not required to do so.”

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

NOTICE OF INTENT TO OFFER CHARACTER EVIDENCE

Given that this jurisdiction does not permit rebuttal witnesses, this document addresses the additional notice requirements which must be met pertaining to character evidence prior to trial. The parties hereby fulfill those notice obligations as they pertain to character evidence, by providing notice of their intention to offer the following:

1. _____ The defendant intends to offer evidence of his/her own pertinent character trait as outlined in rule 404(A)(2)(a), and understands that as a result, the prosecution may offer rebuttal evidence of that character during its case in chief.
2. _____ The defendant intends to offer evidence of the victim's pertinent character trait as outlined in rule 404(A)(2)(b), and understands that as a result, the prosecution may offer rebuttal evidence of that character during its case in chief.
3. _____ The prosecution will offer crimes, wrongs or other acts as outlined in rule 404(B)(2).
4. _____ The defendant intends to offer character of the truthfulness/untruthfulness of witnesses testifying for the prosecution as outlined in rule 608, and understands that as a result, the prosecution may offer rebuttal evidence of that character during its case in chief.

Attorney for the United States

Attorney for Harry McCarson



Relevant Case Law

I CASES ADDRESSING THE CRIMINAL STATUTES

Citation: *Yarnell v. United States*, 710 F.4d 511 (13 Cir. 2016)¹.

Yarnell Facts: In a criminal case, Charles Yarnell, a police officer, was indicted on federal charges of deprivation of rights under color of law, assault with intent to commit murder, and assault with a dangerous weapon, all on the basis of racial animus under 18 U.S.C. § 249(a)(1). The United States accused Officer Yarnell of unlawfully shooting an African American man following a routine traffic stop, when the victim fled his car unarmed. Yarnell was captured on video from his squad car and microphone muttering racist epithets and proceeding to discharge eight rounds of gunfire at the victim, who survived the shooting but suffered paraplegia and other serious injuries. At trial, over Yarnell's objection, the Government offered voluminous evidence of Yarnell's beliefs. Literature and records from Yarnell's home displayed beliefs of white supremacy. Dozens of racist, derogatory messages obtained from his cell phone company and social media accounts included jokes or comments about hurting and killing racial minorities. The messages, exchanged with a circle of associates, were as recent as two days before the incident and as old as three years before the incident.

Yarnell Issue(s): The Federal Circuit Court examined two issues regarding the admittance of literature and speech by the defendant demonstrating racism: (1) whether the prior conduct was protected by the First Amendment's right to free speech and association and inadmissible at trial as a constitutional matter; and (2) whether admission of the evidence violated Fed. R. Evid. 403 or 404.

¹ Based on:

Monschke v. Cross, No. C11-5276 RBL/KLS, 2012 WL 3877724 (W.D. Wash. Sept. 6, 2012)

Smith v. Lockheed-Martin Corp., 644 F.3d 1321, 1341 (11th Cir. 2011)

United States v. Curtin, 489 F.3d 935, 942 (9th Cir. 2007)

Guam v. Shymonovitz, 157 F.3d 1154 (9th Cir. 1998)

United States v. Higgs, 353 F.3d 281, 310-11 (4th Cir. 2003)

United States v. Woodlee, 136 F.3d 1399, 1409-11 (10th Cir. 1998)

State v. Scarsella, 27-CR-15-33503 (Minn. Dist. Ct. 2015)

United States v. Slager, 2:16-cr-00378-DCN (D.S.C. 2016)

Yarnell Holding(s): It was not a constitutional violation to admit evidence at trial that the defendant held racist beliefs or had said racist things. Nor was it a violation of FRE 403 or 404 to admit the evidence and allow the prosecution to argue that these racist beliefs impacted the defendant's state of mind at the time of the shooting and provided a motive for the defendant to commit the offenses.

Yarnell Excerpt(s):

(1) The First Amendment.

"Yarnell complains that the indictment unconstitutionally authorizes punishment for the exercise of free speech and association rights under the First Amendment. He argues that the jury was permitted to consider and punish him for his constitutionally protected beliefs and associations. Here, the record reflects that evidence of Yarnell's hate-based beliefs and his affiliation with groups advocating violence was offered to and did tend to explain his motive for attempting to kill an unarmed black man without just cause.

"The testimony and other evidence admitted at trial included Yarnell's repeated use of racial epithets, both old and new, including at the scene of the incident itself; his possession of white supremacist literature, musical recordings, and paraphernalia, such as flags and books, flyers; his association with white supremacy enthusiasts; and his postings on racist social media communities. This evidence established Yarnell's hatred and hostility toward anyone he deemed inferior and tended to explain his motives for pursuing and shooting a person he believed to be unarmed and not threatening. The evidence made it more probable that his actions were knowing and intentional.

"The laws at issue are not aimed at punishing constitutionally protected conduct. The trial court's decision that the evidence of racism was relevant and admissible rather than unconstitutional was a proper application of Supreme Court precedent governing similar First Amendment claims."

(2) Fed.R.Evid. 403, 404 and *mens rea* evidence of hate crime motive.

"Yarnell also contends that his prior conduct and speech amounted to inadmissible character evidence, introduced only to show propensity in violation of Rule 404(a) of the Federal Rules of Evidence, and that the probative value of the stories was exceeded by their potential prejudice, in violation of Rule 403.

"We hold otherwise. A fact finder may not consider the evidence of prior bad acts as a substitute for proof that he committed the crimes charged in the case. Nor may they consider the evidence as proof that the defendant has a criminal personality, bad character or propensity to commit crimes. Under Rule 404(b), however, the evidence may be considered to establish a defendant's identity, motive, intent, or knowledge at the time of the commission of an offense.

RELEVANT CASE LAW

“Racialized intent is an element of one of the offenses Yarnell was charged with. The statute proscribes willfully injuring “any person *because* of his race.” 18 U.S.C. § 249(a) (emphasis added). Thus the Government was required to prove not only that Yarnell intended to assault and intended to kill his target, but that he did so because of his race. The evidence was admitted for a proper purpose under Rule 404(b).

“Yarnell’s contention that the probative value of the evidence was outweighed by its prejudicial tendencies is also without merit. A trial court has broad discretion to determine whether, under Rule 403, the probative value of evidence is substantially outweighed by the risk of unfair prejudice.

“The trial court in this case was hyper-aware of the significance of admitting this past conduct by Yarnell, and it did its best to guard against the risk of unfair prejudice by issuing a detailed limiting instruction consistent with similar cases throughout other federal circuits and state courts. The limiting instruction said:

‘Evidence regarding racist speech and materials recovered from the defendant’s residence and digital records has been admitted for the purpose of proving motive, intent, and for the circumstances surrounding the alleged crime. You must not consider the evidence for any other purpose, such as convicting Mr. Yarnell because you disagree with those political beliefs. To do so would be unjust.’

“We uphold the convictions for all counts.”

Citation: *Contreras v. United States*, 680 F.4d 258 (13th Cir. 2014).²

Contreras Facts: In a criminal case, the defendant, Jacob Contreras, was accused of attacking a pedestrian on a sidewalk while intoxicated from methamphetamine and screaming anti-Islamic slurs. The victim was not Muslim; he was a member of Sikhism and had been wearing a turban, an item of headwear associated with Sikhism and sometimes confused with Islam. Contreras was charged under 18 U.S.C. § 249(a)(2)(A) with assault motivated by religious animus.

Contreras Issue: Whether the defendant’s conviction for a hate crime can stand when there was only evidence that religious animus played a “significant” role rather than a “but-for” role in the assault.

Contreras Holding: Reversed. “But-for” causation is required to prove a racial motive; the Government must do more than prove “significant factor” causation.

Contreras Excerpt(s):

² Based on: *United States v. Miller*, 767 F.3d 585, 589 (6th Cir. 2014).

"At stake in this appeal is whether Mr. Contreras' hate-crime conviction may stand. No one questions that the assault occurred. The central issue at trial was whether the defendant committed the assault "because of" the religion of the victim. 18 U.S.C. § 249(a)(2)(A). Contreras argued at trial that he committed the attack primarily because of delusions from methamphetamine, and that he believed he was defending another person on the street from a terrorist. The Government argued that this claim was negated by the derogatory language against Muslims uttered by the defendant during the attack, and that any possible confusion of Muslims with Sikhs was of minor relevance to the hate crime statute.

"In instructing the jury on this point, the district court rejected the defendant's proposed instruction (that the faith of the victim must be a "but for" cause of the assaults) and adopted the government's proposed instruction (that the faith of the victim must be a "significant factor" in motivating the assaults). Regrettably for all concerned, a case decided *after* this trial confirms that the court should have given a but-for instruction on causation in the context of this criminal trial.

"But-for causation in this instance is best understood as a necessary condition for the defendant's conduct. The question for the fact finder would have been: Were it not for Mr. Contreras' religious animus against Muslims, or people he mistakenly believes to be Muslims, would he have committed the assault? If the answer is no, then Mr. Contreras is not guilty of a hate crime. There can be other reasons the defendant also had in mind when assaulting the victim, but if the assault could have occurred without the defendant's religious animus component, then there can be no hate crime under 18 U.S.C. § 249(a).

"Instead, the trial court improperly asked the jury merely to decide whether religious animus was a 'substantial part' of the reason Mr. Contreras assaulted the victim. Because this error was not harmless, and indeed went to the central factual debate at trial, we must reverse the conviction."

II CASES ADDRESSING EMPIRION RULES OF EVIDENCE

Character evidence / 404(a)

Citation: *United States v. Abasi*, 360 F.4d 840 (13th Cir. 2003).³

Abasi Facts: In a criminal trial for mail fraud and theft of government funds, the defense elicited testimony on cross examination of government witnesses regarding the defendant's character for honesty and generosity. Defense counsel also made remarks in his opening statement about the defendant's character for honesty. In response, the government elicited testimony from another witness who had known the defendant for many years but who denied that the defendant had a reputation for honesty and generosity. The trial court admitted the testimony.

³ Based on: *United States v. Bonner*, 302 F.3d 776 (7th Cir. 2002).

Abasi Issue: Whether it was error for the district court to admit testimony from the government witness rebutting the character evidence offered by defendant on defendant's character for honesty and generosity.

Abasi Holding: No error. The trial court did not abuse its discretion by admitting the testimony. When a criminal defendant introduces evidence aimed at reflecting his or her own character positively, the government is permitted to rebut that evidence by introducing character evidence on the same trait.

Abasi Excerpt:

"General evidence of the defendant's character is inadmissible in criminal cases. *See Fed. R. Evid. 404(a)*. Such evidence becomes admissible, however, where the defendant has introduced evidence aimed at portraying his own character in a positive light, and the prosecution is merely trying to counter the inferences to be drawn from such statements. *See Fed. R. Evid. 404(a)(1)*. The prosecution may, for instance, introduce evidence of a defendant's bad reputation after a defendant has put her reputation at issue. ...Counsel's opening statement also lauded Abasi's character, thus 'opening the door' to the prosecution's evidence."

Citation: *United States v. Rahman*, 269 F.4d 731 (13th Cir. 1985).⁴

Rahman Facts: In a criminal trial for aggravated battery and resisting a peace officer, the defendant introduced testimony during her case in chief from a character witness regarding the defendant's reputation for peacefulness and being a law-abiding citizen. The defense character witness testified that the defendant's reputation was "very good as far as [he] [knew]." On its cross examination, the government asked the character witness about a prior arrest of the defendant. Defense counsel objected and the trial court overruled.

Rahman Issue: Whether it was error to permit cross examination by the government into defendant's prior arrest after the defense character witness gave an opinion as to defendant's reputation for peacefulness and being a law-abiding citizen.

Rahman Holding: No error. The trial court did not abuse its discretion by admitting the testimony. The defendant put her character at issue by introducing character evidence that put the defendant in a positive light with respect to the traits discussed. Therefore, under rule 404(a)(2), the government was permitted to rebut that evidence with "negative" character evidence, including the defendant's past arrest.

Rahman Excerpt:

"The price a defendant must pay for attempting to prove her good name is to throw open the entire subject which the law has kept closed for her benefit and to make herself vulnerable where the law otherwise shields her . . . her own witness is subject to cross-examination as to the contents and extent of the hearsay on which he bases his conclusions, and he may be required to disclose rumors

⁴ *United States v. Jordan*, 722 F.2d 353 (7th Cir. 1983).

and reports that are current even if they do not affect his own conclusion. When the prosecutor questioned Basti about his knowledge of the defendant's prior arrests, the district court properly denied Rahman's motion for mistrial because she 'had opened the door to this line of inquiry by putting in issue her reputation for the traits of peaceful and law-abiding citizenship.'⁵

Rule 701

Citation: *United States v. Hughes*, 440 F.4d 172 (13th Cir. 2004).⁵

Hughes Facts: In defendants' jury trial, the government elicited the following testimony from the DEA agent regarding defendant Hughes: "As far as our investigation determined, Hughes was a partner with Winters in receiving cocaine from Vandenberg. . . ." Counsel for defendant Hughes objected at trial to the opinion testimony, but the defense objection was overruled by the district court judge.

Hughes Issue: Whether a federal agent who participated in and/or conducted an investigation into the crime(s) charged may offer an opinion ascribing a "partnership role" to a defendant, without having expertise but rather testifying as a lay witness.

Hughes Holding: No, the trial court abused its discretion by admitting the testimony. While federal agents may testify to lay opinions under rule 701 that are based on their personal perceptions, they may not testify to conclusory opinions about a defendant's role in the charged crimes under the guise of a lay opinion that is "based on the agent's investigation and experience." Rule 701 prohibits the admissibility of such testimony that "merely tells the jury what result to reach."

Hughes Excerpt(s):

"We begin by identifying the overarching concern raised by the DEA agent's testimony. By stating that, in his opinion, Hughes was a 'partner with Winters in receiving cocaine from Vandenberg,' the witness was essentially telling the jury that he had concluded that Hughes was guilty of the crimes charged. Indeed, the purpose of the foundation requirements of the federal rules governing opinion evidence is to ensure that such testimony does not so usurp the fact-finding function of the jury

"Precisely because Rule 701 limits the admissibility of lay opinions at trial to those based only on personal perceptions, an opinion such as this witness's, which appears to have been based on the totality of information gathered by various persons in the course of an investigation, was not admissible before a jury."

"A lay opinion may be received in evidence only if it is 'helpful' to the jury's 'clear understanding of the witness' testimony or the determination of a fact in issue.' Fed. R. Evid. 701(b). This witness's opinion did more than provide a 'summary' of Hughes' words and actions - by whomever they were observed. It told the jury that an experienced DEA agent had determined, based on the total investigation of the charged crimes, that Hughes was a culpable member of the conspiracy. Such an opinion cannot be equated with that of an undercover officer who, in testifying to his direct dealings with a group of persons, may offer an opinion as to what the words and actions witnessed conveyed about the relative relationships of the participants."

⁵ Based on: *United States v. Garcia*, 413 F.3d 201 (2d Cir. 2005).

"The foundation requirements of Rule 701 do not permit a law enforcement agent to testify to an opinion based on investigative work and formed if the agent's reasoning process depended, in whole or in part, on his specialized training and experience."

Rule 702 Expert Reliability

Citation: *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).⁶

Daubert Facts: In the plaintiff's response to the drug company's motion for summary judgment dismissing a complaint alleging that the drug company's product caused birth defects, the plaintiff included scientific evidence from eight experts. That expert evidence was not "generally accepted in the field."

The trial court disregarded the plaintiff's expert evidence because it was not "generally accepted in the field." The trial court relied on *Frye v. United States*, a leading decision regarding expert testimony; *Frye* predated the Federal Rules of Evidence by about 50 years.

The trial court granted summary judgment to the drug company.

Daubert Issue: Did the adoption of the Federal Rules of Evidence supersede court-authored case law allowing expert testimony that has been merely "generally accepted in the field"?

Daubert Holding: Yes. Here, Rule 702 specifically covers expert testimony, and, in this case, in conjunction with rules 401 and 402, makes clear that the "generally accepted" standard is neither necessary nor sufficient for admissibility of scientific evidence. Instead, Rule 702 now requires that the evidence be reliable and relevant, which is a question the trial court must decide after reviewing a number of factors before allowing the expert to testify to an expert conclusion in front of the jury.

Daubert Excerpt(s):

"Nothing in the text of Rule 702 establishes 'general acceptance' as an absolute prerequisite to admissibility. Nor [is there] any clear indication that Rule 702 or the Rules as a whole were intended to incorporate a 'general acceptance' standard. The drafting history makes no mention of *Frye* [the seminal 'general acceptance' case], and a rigid 'general acceptance' requirement would be at odds with the 'liberal thrust' of the Federal Rules and their 'general approach of relaxing the traditional barriers to "opinion" testimony.'"

The plain language of Rule 702 establishes the requirement of reliability and relevance. First, "The adjective 'scientific' implies a grounding in the methods and procedures of science....Proposed testimony must be supported by appropriate validation—i.e., 'good grounds' based on what is

⁶ *Daubert* is the actual U.S. Supreme Court case by the same name.

known. In short, the requirement that an expert's testimony pertain to 'scientific knowledge' establishes a standard of evidentiary reliability."

"Rule 702 further requires that the evidence or testimony 'assist the trier of fact to understand the evidence or to determine a fact in issue.' This condition goes primarily to relevance. ... Rule 702's 'helpfulness' standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility."

Citation: *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999).⁷

Kumho Facts: Plaintiff sued the defendant tire manufacturer (and others in the chain of distribution and sale of tires) because a tire blow out led to a fatal car crash. Plaintiff sought to introduce an expert in tire failure analysis' technical testimony under FRE 702.

The trial court excluded the technical expert testimony, after applying the *Daubert* framework flexibly to determine whether the technical evidence from the expert was admissible. Because the trial court found that the technical evidence was relevant but not reliable under a flexible *Daubert* analysis, it excluded the evidence.

On the appeal, the 11th Circuit reversed the trial court and held that the trial court should not have engaged in any *Daubert* analysis because *Daubert* applied only to "scientific" evidence, not to "technical" evidence or other evidence requiring specialized knowledge.

Kumho Issue: When a litigant seeks to introduce "technical" evidence or other evidence requiring specialized knowledge, should the trial court admit that evidence if, after applying a flexible *Daubert* analysis, the trial court determines that the evidence is both relevant and reliable?

Kumho Holding: Yes, the district court's decision to exclude was made after a proper legal analysis. *Daubert* does apply to non-scientific expert testimony, under a flexible framework of factors.

Kumho Excerpt(s):

The language of Fed. R. Evid. 702 "makes no relevant distinction between 'scientific' knowledge and 'technical' or 'other specialized' knowledge...Hence, as a matter of language the Rule applies its reliability standard to all 'scientific,' 'technical,' or 'other specialized' matters within its scope."

A court "determining the admissibility of an engineering expert's testimony *may* consider one or more of the specific *Daubert* factors. The emphasis on the word 'may' reflects *Daubert*'s description of the Rule 702 inquiry as 'a flexible one.' The *Daubert* factors do *not* constitute a definitive checklist or test, and the gatekeeping inquiry must be tied to the particular facts. Those factors may or may not be pertinent in assessing reliability, depending on the nature of the issue, the expert's particular expertise, and the subject of his testimony."

"The trial judge's effort to assure that the specialized testimony is reliable and relevant can help the jury evaluate that ... experience [of the expert which is foreign in kind to the jury's own experience], whether the testimony reflects scientific, technical, or other specialized knowledge."

⁷ *Kumho* is the actual U.S. Supreme Court case by the same name.

"The factors identified in *Daubert* may or may not be pertinent in assessing reliability, depending on the nature of the issue, the expert's particular expertise, and the subject of his testimony. The conclusion, in our view, is that we can neither rule out, nor rule in, for all cases and for all time the applicability of the factors mentioned in *Daubert*, nor can we now do so for subsets of cases categorized by category of expert or by kind of evidence. Too much depends upon the particular circumstances of the particular case at issue."

Citation: *Piper v. Pahlke*, 699 F.4d 915 (13th Cir. 2014).⁸

Piper Facts:

An expert in accident reconstruction was called to testify in a federal personal injury trial about the causation of an accident involving a semi-truck that crashed into a car. The court quickly determined that the expert was qualified in the way of credentials, because he had taken law enforcement courses in accident reconstruction and had been the police department's chief expert on accident reconstruction for the last six years. However, the court found it difficult to apply *Daubert* because of the expert's inability to articulate the actual mathematical principles that confirmed the validity of the specific, cutting-edge equation he used for the first time in this case.

The attorney and expert question and answer exchange on foundation follows:

- Q: "Are your methods reliable?"
- A: "They are. This equation is very new, but it's the best there is. While I cannot quite explain how it works in my own words, I can tell you that I have been trained that these methods are reliable and are used in the field to great effect."
- Q: "Did you have sufficient facts and data to come to your conclusions?"
- A: "Of course."

Ultimately, the trial court allowed the testimony, and the party opposing the expert, the defendant, Piper, appealed.

Piper Issue: Who determines the reliability of an expert's methodology under Rule 702 and *Daubert*? The expert witness, or the judge?

Piper Holding: The trial judge must act as a legitimate gatekeeper to unfounded expert testimony. Under Rule 702(c) and *Daubert*, the proponent of expert testimony is required to prove to the court by a preponderance of the evidence that the expert's conclusions are based on reliable methodology before the jury may be allowed to hear the conclusions of the expert.

Piper Excerpt(s):

⁸ Based on: *Johnson v. BAE Sys. Land & Armaments, L.P.*, No. 3:12-CV-1790-D, 2014 WL 1714487, at *25-26 (N.D. Tex. Apr. 30, 2014)

"The court next considers defendant Piper's *Daubert*-type motion to strike the expert testimony of Dr. McHale. The court decides these motions in its role as gatekeeper under Fed. R. Evid. 702. The court may admit proffered expert testimony only if the proponent, who bears the burden of proof for the expert's validity, demonstrates that the evidence was arrived by reliable methods.

"Reliability is determined by assessing whether the reasoning or methodology underlying the testimony is 'scientifically valid.' *see Rule 702(c)* (requiring that "testimony [be] the product of reliable principles and methods"). Expert testimony must constitute more than subjective belief or unsupported speculation. The court focuses on the expert's methodology, not the conclusions generated by it.

"Let us dispense once and for all with this notion that an expert may testify simply by uttering the magic words: 'My methods are reliable' and 'I had sufficient facts and data.' In no fashion is a witness in a trial the arbiter of these questions. Only the judge presiding over objections in a proceeding may (and more to the point: *must*) make a ruling on this issue, based on the information put forth by the proponent of the expert testimony, before a jury is exposed to the conclusions of the expert.

"This is hardly an insurmountable mountain to crest. We have never required an expert be at the top of his field. Rather, the expert must at least be able to articulate *how* his methods are reliable, using the non-exhaustive factors discussed in Supreme Court precedent: whether the expert can explain the process for how the method works in detail, whether the method has been peer-reviewed, whether it has a known error rate, whether it is generally accepted in the field, whether it can be falsified, tested or otherwise investigated by a secondary opinion provider, or any other number of factors that bear on the quality of technical, scientific or other expert modes of analysis. None of these factors are by themselves required, but no expert can testify to a jury without satisfying the judge that at least some of them apply to a satisfying degree of qualitative rigor."

Rule 702 "Helpfulness" Standard, and Rule 703 Hearsay Conduit

Citation: *Kahler v. Wu*, 546 F.4d 622 (13th Cir. 2000).⁹

Kahler Facts: In a false imprisonment lawsuit, Defendant Jason Wu was sued for abducting Plaintiff Jordan Kahler in an effort to "deprogram" him from the beliefs of an allegedly radical church. Defendant worked for an "anti-cult" organization. Under an "explanatory theory," the court permitted an expert, Dr. Janice Lu, to discuss the history and general practices of this movement. Plaintiff Wu objected under *Kumho* and *Daubert* that this "explanatory" testimony violated Rule 702

⁹ Based on:

Scott v. Ross, 140 F.3d 1275, 1285-86 (9th Cir. 1998).

United States v. Castaneda, 94 F.3d 592, 595 (9th Cir. 1996).

United States v. Rahm, 993 F.2d 1405, 1409 (9th Cir. 1993).

both because it was not “helpful” to the trier of fact, and because it was not based on any application of a reliable method to facts and data in the instant case as purportedly required by 702(d). Finally, Kahler also objected to the expert testimony under Rule 703 because most of the testimony was merely a summary of hearsay records and news reports from other cases.

Kahler Issue(s): May an expert, without applying any expert methodology to facts of the specific case under consideration by the fact finder, provide expert testimony concerning opinions and training on background information for a topic related to the case?

Kahler Holding: Yes. The Thirteenth Circuit held that the trial court did not abuse its discretion by admitting the testimony of Dr. Janice Lu, who was a qualified expert in anti-cult “deprogramming” and who analyzed the historical framework and psychological science surrounding anti-cult deprogramming. It was helpful to the trier of fact to hear testimony on this complicated subject matter, and the expert did reliably apply valid expert methodology under both Rules 702(c) and (d), in testifying to the jury about the history and efficacy of anti-cult deprogramming work. This testimony assisted the jury in understanding (without directly testifying about any motive, which would be speculative) the defendant’s motive in deprogramming a cult mentality because the jury did not have common knowledge or experience about this topic. It was also not a violation of Rule 703 because the otherwise inadmissible hearsay reports specifically underpinned the expert’s conclusion and were necessary to disclose to the jury in order to explain the expert’s opinion.

Kahler Excerpt(s):

(1) Rule 702 and the “Helpfulness” Standard.

“Before us is a case where the Petitioner would like to have his cake and eat it too. Petitioner Kahler proposes on one hand that Dr. Lu should not have been allowed to testify without specifically applying her expert knowledge as a psychologist to the facts of the specific case tried to the jury. And on the other hand he objects to Dr. Lu offering such specific opinions as a violation of Rule 702’s requirement that any expert opinion ‘assist’ the trier of fact.

“Not in dispute was whether Dr. Lu was qualified; she had 19 years of experience studying cult behavior as a psychologist and sociologist. Also not in dispute were the validity of her methods; she was able to testify to precise psychological methods of deprogramming that were peer-reviewed, critiqued, tested and generally accepted in her field. Thus, this issue goes primarily to relevance. Rule 702’s ‘helpfulness’ standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility.” In such a case, there are three to consider: (1) whether the jury has sufficient common knowledge or experience on the subject matter to render the expert testimony superfluous; (2) whether the expert’s proposed testimony conforms to a generally accepted explanatory theory; and (3) whether the probative value of the testimony outweighs its prejudicial effect.

"Dr. Lu's testimony was proper for the jury because she testified regarding matters beyond the general knowledge of jurors. That is, she discussed the history and general practice of deprogramming and the origin and practices of the 'anti-cult movement.'

"Dr. Lu's testimony also conformed to a generally accepted explanatory theory, as indicated by her citation to other authors, primarily collaborators, who have discussed theories consistent with hers. Because Dr. Lu provided the jury with useful information about the anti-cult movement and was available for cross-examination, defeating in large part any concerns of prejudice, the probative value of her testimony also outweighed any prejudicial effect.

"Petitioner next objects to Dr. Lu's testimony of this subject matter without actually applying her explanatory theory to whether Dr. Lu's client—that is, Jason Wu—actually used valid methods of deprogramming on Jordan Kahler. In other words, Petitioner argues that Dr. Lu should only have been allowed to testify to methods of deprogramming if she could link her background knowledge of the subject to the acts comprising the basis for the lawsuit. We do not agree. For Dr. Lu to have attempted to link her own study of the issues to the case in front of the jury may have possibly made her testimony more prejudicial and less helpful to the trier of the fact. If Petitioner had wanted to explore this issue in full, then his attorneys could have opened the door and attempted to cross-examine Dr. Lu on this possible link or lackthereof themselves, thereby waiving any objection to its introduction."

(2) Rule 703 and the Hearsay Conduit Problem.

"In a separate motion, Petitioner moved the court to exclude Dr. Lu's testimony because it was all based on inadmissible hearsay and a violation of Rule 703. We affirm the trial court's denial of this motion.

"Rule 703 allows an expert witness to form an opinion based on facts or data that may be inadmissible, so long as they are 'of a type reasonably relied upon by experts in a particular field.' Kahler argues that Dr. Lu's opinions were based on newspaper articles, certain pretrial testimony and conversations with colleagues, all of which, he contends, fail to constitute evidence 'reasonably relied' on by experts in Dr. Lu's discipline. Petitioner argues that Dr. Lu's testimony lacks any indicia of trustworthiness to merit consideration of hearsay materials. However, Lu's citations to her extensive studies and to her collaboration with other academics as the basis for her opinions suffice to merit admission of her conclusions.

"We next analyze whether it was proper for Dr. Lu to disclose to the jury the underlying, inadmissible hearsay information she relied on in forming her opinions. We must ask, under Rule 703, whether it was substantially more probative than prejudicial for the court to expose the jury to this otherwise inadmissible evidence. We hold that it was so. Almost all of Dr. Lu's opinions were based on the sort of evidence not normally allowed in front of a jury—studies, reports, firsthand accounts, newspaper articles, pretrial materials, and conversations with colleagues in her field. The jury could never have begun to understand the meaning or value of Dr. Lu's if it was not given the information she based her opinion on, and it was not the sort of evidence that would have prejudiced the jury against Jordan Kahler because none of the hearsay was information about his case."

Citation: *Perez v. Iliadis*, 790 F.4d 722 (13th Cir. 2013).¹⁰

Perez Facts: In a wrongful death suit, Defendant's child shot Plaintiff's child while playing unsupervised at Defendant's home and discovering a gun somewhere in the house. Over Plaintiff's objection, the court allowed the Defendant's expert in gun storage safety to testify and offer an opinion that the Defendant's parents did not negligently store their firearm. The primary evidence for this conclusion were affidavits filed in the case by the two Defendant parents, which the expert read and accepted as true when trying to determine where the gun was located and how it was stored. Plaintiff Perez appeals under Rule 703 and *Kahler*.

Perez Issue: Can an expert without personal knowledge of the facts surrounding a case offer both an opinion and disclose the otherwise inadmissible hearsay underlying that opinion about facts in the case, when limited to no expert methodology has actually been applied to analyzing the underlying hearsay evidence?

Perez Holding: No, admitting such evidence is an abuse of discretion. Even though the defense expert was qualified as an expert in gun storage safety, and even though the defense expert testified that he regularly relies on statements from gun owners to determine how safely their firearms are being stored, and even though the underlying hearsay information was almost entirely the sole reason he came to his opinion, it was nonetheless an abuse of discretion under Rule 703 to admit the testimony. The expert had no technical skill relevant to reviewing the underlying hearsay information, which lacked indicia of trustworthiness due to its clear source of bias. Rather, the expert was simply being used as a conduit to admit hearsay statements from affidavit statements written out of court by two witnesses who declined to testify at trial.

Perez Excerpt:

"We have now twice ruled that 'a party cannot call an expert simply as a conduit for introducing hearsay under the guise that the testifying expert used the hearsay as the basis of his testimony.' Granted, those two cases preceded the *Kahler* case, but *Kahler* is highly distinguishable from the case before us.

"In *Kahler*, the expert did not simply read hearsay information and relay it in almost verbatim language to the jury. She instead used her special training as a psychologist and sociologist to interpret hearsay records, reports, studies and conversations and break the information down to the jury in a manner that was more understandable and helpful. She synthesized and then analyzed the hearsay information in a manner that improved the jury's understanding of issues in the case. We also took care to note in *Kahler* that the specific sources the expert relied on did not lack indicia of trustworthiness—those sources were utterly disconnected from the facts of the *Kahler* case. Some of the sources were decades old and had been written before Jordan Kahler was even born. There was no prejudicial concern when the expert relayed the information of these sources.

"Here, the opposite is true on all fronts. The expert simply regurgitated hearsay from highly suspect sources—the defendants themselves—and did no investigation whatsoever to corroborate those claims. The Iliadis parents appear to have simply stated in sworn affidavit statements that they kept their firearm in a locked safe in a closet. The expert took this to mean that their gun must have been

¹⁰ Based on: 130 Am. Jur. Proof of Facts 3d 89 (originally published in 2012).

stored safely. Yet there was no evidence the jury could have used to corroborate this claim at trial. No one who lived in the house testified that the gun was in fact kept in a safe. No one testified how the gun could have come to be outside of the safe and in reach of the Iliadis minor that would go on to cause it to fire.

"The overall effect of an educated, credentialed expert testifying to a degree of certainty that the gun must have been kept in a safe was more prejudicial than it was probative, particularly when the expert revealed that he had read 'reliable' information that lead him to this conclusion and divulged the details of that underlying information to the jury. Thus, here it was improper under Rule 703 to allow the expert to divulge the inadmissible hearsay underpinning his opinion."

Rule 704(b)

Citation: *United States v. Guidero*, 567 F.4d 1128 (13th Cir. 2008).¹¹

Guidero Facts: In a criminal trial for conspiracy to manufacture and distribute cocaine, the government elicited testimony from a DEA agent concerning the meaning of code words used during intercepted communications between the defendants. The witness testified as both a fact witness and an expert. He explained that drug traffickers often use code to hide the fact that they are talking about illegal activity. At trial, the defense objected to these statements as violating rule 704(b), which prohibits expert opinions in criminal cases about whether a defendant's mental state constituted an element of a crime at the time of an offense. The district court overruled the objection.

Guidero Issue: Whether the testimony at issue, relaying the meaning of several code words used by defendants over phone conversations, was admissible under rule 704(b).

Guidero Holding: Yes. Admitting the testimony was not an abuse of discretion. While expert witnesses (and lay witnesses) are not permitted to testify to a direct opinion on a criminal defendant's guilt or innocence, the DEA agent did not do so here. Testifying that traffickers often use code to conceal their illegal activity did not constitute a direct opinion on the defendant's guilt outside the explicit boundaries set in Rule 704(b). The testimony was not an opinion "about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged," which is the narrow area in rule 704(b) would have applied.

Guidero Excerpt:

"Guidero also argues that the DEA agent offered opinions regarding ultimate factual issues in violation of Fed. R. Evid. 704(b), which provides that 'an expert witness may not state an opinion as to whether the defendant did or did not have the mental state or condition constituting an element of the crime or a defense thereto.' An expert witness is not permitted to offer a direct opinion on the defendant's guilt or innocence. According to Guidero, the witness violated Rule 704(b) by describing drug traffickers' general practice of encoding conversations so as to hide the fact that they are engaged in illegal activity. Guidero's argument is without merit. The agent offered no opinion as to whether Guidero possessed the requisite criminal intent to possess and distribute

¹¹ Based on: *United States v. Freeman*, 498 F.3d 893 (9th Cir. 2007).

RELEVANT CASE LAW

cocaine, which is the mental state element of the offense Guidero was charged with. Instead the witness simply described a common practice of those who do have such intent.”

Rule 801(d)(2)

Citation: *United States v. Davis*, 390 F.4d 400 (13th Cir. 1979).¹²

Summary: Any and all statements of an accused person, so far as not excluded by the Fifth Amendment protection against self-incriminating testimony, are usable against the accused as statements by a party opponent and are not hearsay. Such statements may be oral or written, so long as they are made by the accused. In such case, the statements are admissible as non-hearsay under Rule 801(d)(2)(A).

¹² Based on: *United States v. Evans*, 572 F.2d 455 (5th Cir 1978)



Educational Supplement

FEDERAL RULES OF EVIDENCE

The Federal Rules of Evidence govern what evidence is admissible during a trial. Judges use the Rules to decide whether to admit testimony and exhibits. Lawyers use the rules to try to exclude the other party's evidence.

While every rule has a purpose, the most frequently-argued rules are contained in Article IV, which explains what evidence is relevant and what evidence must be excluded (even if relevant); Article VII, which explains which witnesses are allowed to testify about opinions instead of just facts; and Article VIII, which explains which statements made outside the courtroom are admissible and which are inadmissible hearsay. Astute lawyers make sure to prepare arguments for why each piece of testimony and each exhibit is admissible under the Rules. Excellent lawyers also consult the case law to see if there is a decision that helps them interpret certain rules.

This year's case materials include the "Empirion Objection Ordinance" (EOO) which includes objections to the form of the question, or the way a question is worded. For example, a lawyer may object when an opposing lawyer asks a compound question, meaning a question that contains multiple questions (example: "Where were you driving at 6 p.m., and what was the weather like at that time?"). Objections to the form of the question are not always found in the Federal Rules of Evidence. Please see the "Empirion Objection Ordinance" (EOO) for more information.

PRE-TRIAL ORDERS

Typically, weeks or months before a jury trial begins, the court will issue pretrial orders. These orders resolve evidentiary, constitutional, or procedural issues that might otherwise be the subject of objections at trial. By resolving such issues beforehand, pretrial orders can make it easier for the lawyers prepare for trial.

Courts typically issue pretrial orders after a party files a pretrial motion, such as a motion to suppress or some other motion requesting a ruling before trial begins. Sometimes, the court raises an issue *sua sponte*, meaning on its own. In any event, when a judge is considering pretrial order, both parties may file briefs before the judge decides the issue. Particularly in

Empire, once that issue is decided, the court will not change its mind during trial.

ATTORNEY GENERAL CERTIFICATE OF HATE CRIME JURISDICTION

Per the federal hate crime statute, 18 U.S.C. § 249(b), the federal government is not allowed to prosecute a defendant for hate crimes unless the United States Attorney General certifies that one or more special circumstances exist. Those special circumstances are listed in 18 U.S.C. § 249(b). The Attorney General's certificate complies with 18 U.S.C. § 249(b) and allows the federal government to prosecute McCarson for a federal hate crime.

JURY INSTRUCTIONS

The jury applies the law to the facts and decides the facts. However, most jurors have not gone to law school and they do not know the law. The judge instructs the jury on the applicable laws by giving jury instructions. In the jury instructions, the judge simplifies the law so that non-lawyers can understand it and apply it to the facts of the case. Typically, at the end of the trial, the judge reads the jury instructions to the jury.

HATE CRIME STATUTE

Federal law forbids certain "hate crimes." The statute has existed, in varying forms, since 1968, when President Lyndon Johnson signed the first hate crime statute into law. The purpose is to deter people from committing violent crimes that are motivated by the victim's race, color, religion, or national origin. The statute, 18 U.S.C. § 249, explains what constitutes a hate crime and the punishment a convicted defendant will face. Additionally, as explained above, 18 U.S.C. § 249(b) requires the United States Attorney General to issue a certification before the federal government can prosecute a defendant for a federal hate crime.

GRAND JURY TESTIMONY

All persons who are charged with a felony¹ by the United States have a right according to the Fifth Amendment to the United States Constitution to be indicted by a grand jury. A federal grand jury is essentially a non-public jury composed of between 16 and 23 persons from the community. The grand jury does not decide guilt or innocence, nor does it suggest that all of the evidence it hears is strong. The grand jury's task is to hear evidence and decide whether there is probable cause² to believe the defendant may have committed the alleged crime. If so, the grand jury will issue an indictment against the defendant, which is a formal accusation of a crime, and the defendant will be summoned or arrested.

Unlike a typical trial, where the defendant and the defendant's lawyers are present and question witnesses, a federal grand jury is a one-sided process. The lawyer for the United

¹ A felony is a crime punishable by imprisonment for more than one year, up to and including capital punishment (death).

² "Probable cause" is a legal term of art that means "reasonable grounds to suspect." It requires more than a bare suspicion, but less than belief beyond a reasonable doubt, which is required to convict a defendant at trial.

States (typically an assistant United States attorney) presents evidence and examines witnesses in front of the grand jury. There is no judge, and neither the defendant nor the defendant's lawyers are present (often the potential defendant does not even know that he or she is under investigation). The only persons permitted in the room are the government's lawyer, the testifying witness(es), the jurors, a court reporter (grand jury testimony may be used later at trial), and an interpreter (if needed).

INDICTMENT

One of the first documents that greets you in this year's Empire packet is the Criminal Indictment³ against the defendant, Harry McCarson. An indictment is one formal paper that the government may issue to charge an individual with a crime. Both state and federal governments use indictments. Since this case takes place in federal court, this supplement focuses on the federal process.

An indictment is not evidence, and it cannot be used at trial to suggest that the defendant actually committed the crimes alleged. Instead, the indictment provides a roadmap of the government's case. Thousands and thousands of federal laws exist. Thus, in the indictment, the government must tell the defendant and the court what specific laws the government says the defendant violated. The indictment must also state the time, date, and location of the alleged crime.

Once the indictment is issued, the government decides whether to take the defendant to trial on all or some of the counts listed in the indictment; offer the defendant a plea deal; or, after further investigation, dismiss some or all of the counts against the defendant.

PRE-TRIAL ORAL ARGUMENT

The materials in the pretrial oral argument are similar to the materials you would have in front of you as you prepared for a motion argument in federal court. Typically, a defendant will make a motion to suppress certain evidence that the government would like to use if the defendant believes that the evidence was somehow seized illegally. The motion is written and submitted to the court along with a "brief", which is a document that explains the legal and factual reasons why the defendant believes the court should exclude the evidence in question.

The party against whom the motion is made—in this case the government—always has an opportunity to respond with a brief of its own. In this case, you have a brief in opposition of the motion filed by the government. Sometimes (but not in this case) the moving party is allowed to file a reply or rebuttal brief in response to the brief in opposition.

³ If you have worked on a civil case before, you have encountered a complaint and not an indictment. In a civil case, the plaintiff files the complaint to begin the legal action. The plaintiff's complaint lays out the facts and legal reasons for the plaintiff's case (their "cause of action"), much like an indictment in a criminal case. In a criminal case, there is no plaintiff. Instead, the government prosecutes the defendant.

Finally, the judge will decide whether any further briefing or argument is needed before making a decision. The judge in your case has decided that the legal issues require oral argument. In a typical federal criminal case, the motion to suppress would be filed, and the court would hold oral argument several days or weeks before trial. The federal system is not as rushed as the state system. However, because we know you only have a few days with us at Empire, we've decided to hold pre-trial immediately prior to trial.

WITNESS STATEMENTS

Typically, mock trial cases contain affidavits that serve as the source of your witnesses' testimony. You probably know what an affidavit is but we'll define it anyway—it is a written statement of facts that are sworn to and signed by the affiant (the person making the affidavit) before a notary or a justice of the peace. Witnesses can create an affidavit in an informal setting as long as there's a notary present (for example, your kitchen table) and then mail it to the court.

But in non-mock life (translation: real life), affidavits are not the only way a person can provide a statement that is used at trial. Individuals often give depositions, provide grand jury testimony (see "indictment" section above), or write expert reports. Grand jury testimony, as the name suggests, is given by a witness to a grand jury that is considering whether to indict the accused for a crime or crimes (remember: only counsel for the Government is present and this applies only to a criminal trial).

In *U.S. v. McCarson*, we've given you a mix of affidavits, grand jury testimony and expert reports to more accurately reflect a real case file, expand your legal skill set and to keep things interesting!

STIPULATIONS

Stipulations are formal agreements by the parties that certain facts are true. When the parties stipulate to a fact, the jury must accept it as true during its deliberations. For example, if the parties in this case stipulated that the defendant Harry McCarson's Facebook account produced all of the Facebook posts that are attributed to him in this case, then neither party could attempt to attack the authenticity of the account. That is, no party could say, "well, maybe it's a different Harry McCarson." Stipulations are common because they help narrow the triable issues and the scope of the trial, and they allow the parties to avoid wasting time arguing over matters when they know how the court is likely to rule. Parties often stipulate to the admissibility of certain exhibits, photographs, maps, audio recordings, transcripts, and other evidence that is uncontroversial in its authenticity.

You will receive written stipulations in this case and will not be expected to create any stipulations of your own.

CASE LAW

Written court decisions, known collectively as case law, can be helpful tools as lawyers prepare for trial.

In the U.S. legal system, an appellate court is more senior to a trial court (also called a district court). In the federal system, an appellate court is called a U.S. Court of Appeals for particular locations in the country, called a “circuit.” Here, Empirion is located within the Thirteenth Circuit, and the appellate court with power over Empirion is the Court of Appeals for the Thirteenth Circuit. The trial court in Empirion is called the Federal District Court for the District of Empirion.

When an appellate court decides an issue of law, trial courts in the same jurisdiction must follow that ruling in the future. That is called “binding precedent.” For example, here in Empirion, if the Court of Appeals for the Thirteenth Circuit, or the U.S. Supreme Court rules on a legal issue, then a judge in the Federal District Court for the District of Empirion must follow that ruling when the same legal issue comes up.

Thus, lawyers use case law to understand legal issues—like the meaning of a statute, or a rule of evidence—and to predict how the court is likely to rule on those issues in their cases. Lawyers also use case law to try to persuade the judge, by citing cases that have similar facts, and which suggest the judge should rule in their favor. When a lawyer for one party cites a particular case to the judge, the lawyer for the other party will often try to distinguish that case from the case at trial, by pointing out the ways in the facts or legal issues in the case are not similar to their case.

In mock trial, case law can help you understand what you have to prove, and how to prove it. It can provide background information on various statutes that may be at issue, types of evidence that the parties may seek to introduce, and the workings of the court. Case law can provide information about how the government meets its burden of proof, the information required to certify a witness as an expert, and the operation of various rules of evidence.

Case law can also be cited to the judge in the pretrial evidentiary argument and in objections to try to persuade the judge to rule in your favor. You should never cite case law to the jury in your opening statement or closing argument. The judge is an expert on the law, so the judge expects you to cite cases—the judge’s job is to understand them! The jurors, however, are not legal experts (in real trials) and will be confused if you point them to specific legal decisions. Instead of citing cases to the jury, use the substance of the case to help you create a roadmap that the jury can understand.

FEDERAL COURT AND TIMING

EDUCATIONAL SUPPLEMENT

This case has been brought in federal court because Harry McC Carson is accused of violating federal law. The U.S. Constitution grants federal courts the power to hear cases arising under the laws of the United States, and McC Carson is accused of violating a provision of the United States Code. The State of Empirion has also accused McC Carson of violating certain laws passed by Empirion and is pursuing those criminal charges in state court established by Empirion. A person who commits a crime may be accused of violating several laws by the same act, both federal and state laws. However, Empirion has decided to stay, or pause, its case against McC Carson while the federal trial proceeds. A copy of a pretrial order showing that this stay is in place has been included in the package. The stay allows the state to wait and see what happens with the federal trial and then decide whether it still wants to pursue its claim against McC Carson depending on the outcome of the federal trial.

As you can see in your case materials, Harry McC Carson was indicted in April 2018, and his trial will take place in the fall of 2018. This is an incredibly condensed timeline. Cases in federal court can last for years before they are ever heard at trial (though most criminal cases result in plea deals and do not go to trial). It is not unusual for larger, more complex cases (like cases involving international terrorism) to take two, three, or four years before they go to a jury trial. The reason it takes so long for cases to make their way to the trial phase is something called discovery, which is the way the parties gather the facts. After the indictment is filed, both parties are given time to research the case by interviewing witnesses, conducting depositions, searching for evidence, analyzing crime scenes, requesting expert reports, and so forth. The parties also have time to file motions, like the motion to suppress that is a part of this case. Judges then have as much time as they need to decide the motions, and they often grant the parties extensions on the length of their discovery time.

A case's timeline can also depend on where the case is filed. The U.S. District Court for the Southern District of New York regularly handles terrorism cases, and it is common for those cases to take several years between indictment and trial. On the other hand, the U.S. District Court for the Eastern District of Virginia (also known as the "Rocket Docket" because of its quick pace) commonly disposes of entire cases within twelve to fourteen months.



CHAPTER 2

Witness Statements

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

AFFIDAVIT OF TOMMY ABEL

1 I live in Pasquale, Empirion, the same place where my parents lived and their parents
2 before them. I am a proud “Empirial.” If you’re not from here, you may not be familiar with
3 the term: it refers to the indigenous people of Empirion. My heritage is a huge part of who I
4 am today. One benefit to growing up in 21st century Empirion is that you feel like you have a
5 dual identity: you’re proud to be both American and Empirial. We’re like Texas in that way.
6 Our flag and our values are important to us—we were once a sovereign nation, after all—
7 but we also love and embrace being American. We know that we owe so much to the U.S.
8 Although Empirion won independence from the French in 1928, we fell under a repressive
9 regime quickly after that. Without America’s support, we might very well still live in an
10 authoritarian state (which is the term I use to describe the reign of the reviled Colonel C.
11 Griffus Michael) and who knows if there would be any Empirials left?

12 When I was in high school, I started thinking about Empirial politics a lot because of
13 the big ballot initiative—deciding whether Empirion should become a U.S. state or remain a
14 territory. I got really into it. I joined a “Pro-State” club at school and often debated the Pro-

15 Remainers in class (those folks wanted to stay as a U.S. territory). I was so inspired that I even
16 got involved with grassroots efforts in the community, volunteering at pro-state rallies. One of
17 the highlights of my life was going to Washington, D.C. on a school trip to show our support
18 for the upcoming congressional vote on Empirion. We demonstrated in front of the Capitol, and
19 even got to meet many of the lawmakers. It was awesome. On May 8, 2007, I was in DC when
20 President Bush signed the Empirion Admission Act into law, turning us from a territory into a
21 state. I witnessed history! My classmates and I were so excited and celebrated in front of the
22 White House. I like to tell people that it was my presence in D.C. that made the whole thing
23 possible—ha!

24 I wish I could say that my trip was all good. Or even my grassroots experiences in
25 Empirion. It goes without saying that for all of the amazing people you meet in this world,
26 there are always some bad apples. During our push for statehood, and even in the years after, I
27 met some mean people. Some hateful people. Rather than focusing on the value that Empirials
28 could bring to the U.S. both from an economic and cultural perspective, they focused on
29 our identity. They'd say that because we don't share the same ancestry then we're somehow
30 inferior or un-American. The comments were hard to stomach. When I was on that 2007 D.C.
31 trip, a few people got in our faces and said, "I don't care what Congress decides, y'all are
32 EMPosters." I ignored them a few times but when finally someone called me an EMP, I lost it.
33 I punched the guy in his face. I think he ended up getting a concussion. I can't say I regret what
34 I did, but violence is never the answer and I was young. I was arrested and originally charged
35 with assault. But fortunately, they reduced it to a misdemeanor for disorderly conduct.

36 I've tried to learn from this experience. But it's still hard for me to hear someone use
37 the term "Emp." Growing up, it was known as the E-word in my house and it was always off-
38 limits. My parents taught me that you don't use terms that may offend *any* person, especially

39 if they're part of a group that has been historically marginalized (i.e. discriminated against). In
40 middle school, I heard my classmate Greg say, "I can say whatever I want, people need to learn
41 to lighten up these days." When I told my parents about that remark, they said "absolutely not–
42 you respect the dignity of others. You don't know what that person or their ancestors have been
43 through. So always err on the side of caution." They always stressed being empathetic toward
44 the plight of others. I think that's probably why I feel this anger inside of me that makes me
45 want to lash out whenever I hear or see the E-word.

46 After my experience in high school, I thought that politics or activism might be in
47 my future. So I went to Empirion State University, where I double majored in public policy
48 and history. I also had a dual concentration in American and Empirion history. College was
49 a transformative experience for me. I was exposed to fantastic literature, like Howard Zinn's
50 "A People's History of the United States," which presents U.S. history from the perspective
51 of America's women, factory workers, African Americans, Native Americans, working poor
52 and immigrant laborers. As an Empirial, the work really spoke to me. The phrase "history is
53 written by the victors" took on a whole new meaning. It's easy for a nation to "sugar coat" or
54 positively reframe their wrongs or atrocities because they (the nation) are the ones writing the
55 history. I've seen that here, too, in Empirion. Even though we've been free of French rule for
56 decades now, there was still a great deal of French influence in our curriculum. To this day,
57 when I see someone that supports a colonizer, I want to explode on them.

58 In college, I became involved with a nonprofit called Sapphire Means Love ("SML").
59 Our mission is to empower residents of Empirion, the *Sapphire State*, to become engaged and
60 compassionate members of society who treat others with dignity, respect and love. Adages
61 like "we are all children of the same universe" and "treat others the way you would want to
62 be treated" are slogans that we live by. Like in the mainland, racism is too common here.

63 Empirials were killed in large numbers during the Reign of Michael; it was genocide. But we
64 also saw racism peak its ugly head during the Jim Crow era with hateful Empirions trying to
65 emulate some of their racist counterparts from the mainland. Part of what our organization does
66 is seek to bridge the cultural gaps that exist between communities. I'm proud to say that I now
67 work full-time as the organization's Director of Development. Hopefully, this trial will be a
68 great way for us to raise money for SML.

69 Through the engagement pillar of the organization, we seek to teach the community
70 a balanced version of Empirical history. One thing the organization tries to do is combat the
71 narrative of Col. Michael as the savior of Empirion. He's not. Yes, he fought for the island's
72 independence from France and the King. But it was a fake independence. We saw his true
73 intentions when he took power. He slaughtered Empirials by the thousands and attempted to
74 create a state that was free of us, even though we are the original inhabitants of the land. It's
75 hard to believe that he lived here for as long as he did, yet could be so cruel.

76 I am proud of SML's role in getting the infamous statue of Col. Michael removed—
77 really proud. It was a goal of SML's for years. In addition to the atrocities committed by the
78 Colonel, SML also objected to the timing of the statue's construction. The historical record is
79 clear: the statue was erected in the 1960s, during the height of the Civil Rights movement, to
80 send a message that Empirials were inferior human beings. One legislator was quoted in a local
81 paper as saying, "Col. Michael's presence is to remind Empirials that they've always been
82 ruled by a more civilized folk for a reason." I hear the argument all of the time that "you can't
83 erase history." Of course, you can't. But you also don't need to put it on a 30 foot pedestal in a
84 public state park for people to revere rather than revile.

85 We had struggled to gain traction on this issue with the state legislature. People were
86 just so used to the statue, and loved the park, that they didn't want to think or talk about it. The

87 removal would also be costly. But when Confederate statues started being taken down on the
88 mainland, I thought the timing was right for us to push ahead with another removal campaign.
89 SML did everything in its power to ensure the statue's removal: we handed out flyers at
90 supermarkets, posted Facebook ads, held rallies and sent out mailings. And as you know, we
91 were successful. There was a special referendum and over 80% of Empirion citizens voted to
92 have it removed, many of whom were non-Empirials. It was a proud day for our state. I hadn't
93 felt that sense of elation since Empirion's statehood a decade prior.

94 Unfortunately, when word of the scheduled removal got out, prominent members of
95 the "white nationalist" movement in the U.S. started to voice their opposition. Over the past
96 few years, there has been a rise in "white nationalism" in the U.S. (as I'm sure you know).
97 Generally, "white nationalists" believe that the color of a person's skin is a genetic marker of
98 superiority. When I think back to the 2007 pro-state cause, this level of hatred and vitriol in
99 society didn't seem as prevalent—but who knows, maybe the only difference between now
100 and then is social media. Their entire ideology is repugnant to me, SML and most of humanity.
101 Many "white nationalists" have started showing up at protests throughout the mainland where
102 Confederate monuments have been removed, with Charlottesville being a violent and tragic
103 example of that. It is truly heartbreakingly tragic.

104 Harry McCarson uses white nationalist rhetoric and tactics, and spends a lot of his time
105 advocating for anti-Empirical initiatives (even though he doesn't live here anymore). He is an
106 ESU alum. His organization, *Stay True to History*, advocates the pro-Col. Michael version of
107 Empirion history. He wants the Empirials to be put on reservations like Native Americans on
108 the mainland. He talks about America's ancestors being white, and says that Empirions don't
109 share similar lineage (as an aside, if you've never seen an Empirial before, many of us actually
110 look white—we come in all colors, which is part of what makes us beautiful; we're diverse like

111 Americans). McCarson is about 10 years older than me so I don't know him, personally. I've
112 watched a couple of his speeches online previously, but I never had a conversation with him
113 before the night of the 20th. So I was really only familiar with his soundbites online. Whether
114 that's what he really believes, or whether it's a show, is really beyond me. People can be more
115 sensational in public than private, I'll admit that.

116 Everyone at SML was fairly certain that McCarson would show up to oppose the
117 removal, we just didn't realize how many people he'd be able to rally from outside Empirion. I
118 don't know why people listen to anything he has to say. I certainly didn't pay him any attention
119 before his visit—he really meant nothing to me. What helped McCarson was the PR that
120 came from the lawsuit that he filed against ESU. The university, which is public, attempted to
121 block him from speaking on campus the day before the scheduled removal. So there were oral
122 arguments on the issue, and it really incited his fans. He made it seem like the university was
123 trying to block him from speaking because they didn't agree with his views. Even if that's a
124 First Amendment violation, which it might be (I'm not a lawyer), I agreed with ESU's decision.
125 He's a terrible person.

126 This was supposed to be a time of celebration at SML—a year's worth of lobbying
127 was about to finally pay off. But McCarson's planned speech and protests put everything in
128 jeopardy. SML staff and volunteers were conflicted about what to do. We wanted to stage at
129 least one counter-protest, but we didn't want people to get hurt like they had at McCarson's
130 past marches. On February 19, the day of his scheduled speech at ESU, a large group from
131 SML lined up outside the ESU theater where McCarson was speaking. We brought signs
132 arguing for peace and acceptance, and we yelled chants accordingly. The police had separate
133 areas for protesters and counter protesters demarcated. It was well staffed—there were a lot
134 of officers there. There was some yelling and shouting, but no violence. We received positive

135 press and respectfully made our point. The event was covered on SML's Facebook Live page
136 and generated over 1 million likes, many of which came from the mainland. Our cause was
137 being recognized, and we felt empowered, as though we had turned a negative into a positive.

138 The next day, however, was entirely different. I don't know how McCarson rallied so
139 many people overnight. There were 300 or so of them the night before—the number may have
140 been five times that amount on the day of the statue removal. We weren't prepared for it, and
141 the police certainly didn't seem to be. We arrived at around 9 p.m. that evening for the 11:30
142 p.m. scheduled removal. As we got to CORE Square, our group of counter-protesters was
143 getting bigger by the minute, but McCarson's group was huge. We were outnumbered at least
144 2:1. I began leading the SML group in chants, while marching to the base of the statue where
145 McCarson's group was. We tried to out chant them, but it was difficult—they were loud. They
146 were chanting "HIS-TO-REE! HIS-TO-REE!" and horrifyingly, "Blood and soil! Blood and
147 soil!" We responded with "Hey, hey, ho, ho, Colonel Michael has to go!" The police had set
148 up a caution tape barrier around the base of the statue, and McCarson's group was marching
149 in front of the statue in circles. We couldn't even get within 30 feet of the statue because there
150 was so many of them. It seemed as if their goal was to prevent us from getting anywhere close
151 to the stairs.

152 All of a sudden, I saw someone emerge from the crowd. He jumped over the yellow
153 caution tape and ran up the stairs to the statue. It was him. McCarson. He had a megaphone
154 in one hand and a sign in the other. I couldn't read what it said. I could hear him though and
155 sometimes it sounded like he was slurring his words. He yelled that we need to "pay tribute
156 to the colonel by finishing what he started" and that they needed to "show the Emps we are
157 taking our country back." He started to do a call and answer chant repeating questions like,
158 "Who tried to silence us a decade ago?" "What about yesterday?" "What about today?" The

159 crowd always responded with the same phrase, louder each time, “The EMPS!” As we got
160 close enough to see their signs, most of them were just as racist as the slurs they were yelling.
161 Many of them contained the phrase “EMPosters” or other versions of the E-word slur, and I
162 even saw one that read, in part, “The U.S. is WHITE!” I always try to remember the lessons of
163 my parents but, in this moment, it was really difficult. How can you show love and empathy for
164 someone so clearly evil?

165 I decided that if the police weren’t going to confront McC Carson, I should. So I pushed
166 my way to the stairs, jumped over the caution tape and headed up the stairs to where McC Carson
167 was standing. This guy needed to be silenced—not violently, but symbolically. The court and
168 cops wouldn’t do it, but I knew in this moment that I could. No one tried to stop me; I was
169 vaguely worried a McC Carson fan or bodyguard would try and pull me back, but everyone let
170 me through.

171 When I got on the steps, his protesters booed. I walked up to McC Carson slowly—I
172 didn’t want to startle him. I then waved to signal I was there to chat. I was going to let him
173 know his words were wrong and hateful and that his violent rhetoric did nothing to advance
174 his causes. I was going to tell him that it would be illegal to stop government officials from
175 removing the statue, and that working together to peacefully process our history would be
176 much better than threatening or hurting anyone. But I didn’t get the chance to do any of that.

177 I started to say his name to begin that dialogue, but before I could get to the second
178 syllable, he spat in my face and stated, “This statue ain’t going anywhere, but you are... get the
179 heck off these stairs, you EMPoster.” I didn’t move forward or say anything back. I just started
180 to wipe his spit off my face.

181 As I lifted my hand, he lifted his megaphone and smashed it into my forehead, almost
182 like an axe. The force of it knocked me backwards, and I started tumbling down the stairs to

183 the ground. When I finally stopped falling and tried to open my eyes, everything was blurry,
184 and my left eye had too much blood in it for me to see anything at all. I wanted to stand up, but
185 I was too dizzy and disoriented.

186 Just then, McCarson yelled, “GET THE EMP!” and people started crowding around
187 and beating me – kicking me, punching me, stomping on me, and spitting on me, all while
188 yelling racial slurs. There were 10 people around me, while I was laying on the ground. I’m
189 sure McCarson was one of the ones beating me— someone right above me said, “finish what
190 the Colonel started,” and “blood and soil.” It sounded like McCarson.

191 I don’t know how long it took for the police to break everyone up, but by the time they
192 got to me, I was unable to move and in the worst pain of my life. There was blood all over my
193 face, and I had scrapes and bruises nearly everywhere else. I couldn’t stand up or really even
194 speak, and I felt like I would lose consciousness at any second. Someone called an ambulance,
195 and the paramedics rushed me to the emergency room. The doctors ran a bunch of scans and
196 told me that I had a crack in my skull, a concussion, and several broken ribs. As for the ribs,
197 there wasn’t much that they could do except give me some pain medicine and recommend that
198 I ice my chest regularly and restrict movement.

199 After several months of difficult recovery, I am feeling a lot better, but I know that I
200 won’t feel truly safe again until I know McCarson is behind bars for good. I’m scared to go
201 to any protests for fear of what racists like him will do to me again. He has ruined my ability
202 to advocate for my views, so the best I can do is to testify against him and make sure he can’t
203 silence anyone else this way.

204 Of the available exhibits, I am familiar with the following and only the following: 1,
205 2a, 2b, 3, 5, 10, 11 (this looks like the sign that McCarson was holding that night, but I can’t
206 be sure), 12-15, 21. Officer Carbowers showed me Exhibits 2a-2b and I can tell you that my

207 position and McC Carson's look right to the best of my knowledge; I can't speak to anyone else.

208

209

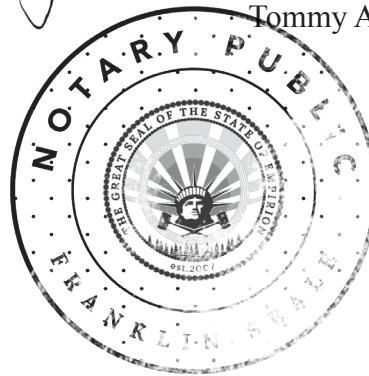
210

211

212 Signed and sworn to this 14th day of August 2018.

Tommy Abel

Tommy Abel



**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

ADDENDUM TO AFFIDAVIT OF TOMMY ABEL

1 I've been reading a lot of coverage on this case so I felt compelled to update my affidavit.
2 I've spent my entire career advocating for treating others with respect and love,
3 regardless of their background, race, who they love, etc. But unfortunately, there are awful
4 publications like BRIGHTSTART that have advocated against me and Sapphire Means Love
5 forever. They prefer to perpetuate hatred and division, which is so sad for me to see.

6 BRIGHTSTART has run a smear campaign against me. They periodically run articles
7 on the 2007 DC incident that I mentioned in my affidavit. Yes, I did strike someone. But I was
8 young. I just don't see how an incident that took place over a decade ago is relevant—I was
9 18 and a senior in high school. Yet they continue to run article after article, painting me as a
10 barbarian. Similarly, they keep running stories about my arrest in college for disorderly conduct.
11 I was on campus protesting with my partner, when someone got in my partner's face and said "It
12 is EMPossible to look at you." Again, I was young, just a sophomore and college, and someone
13 got in the face of my partner—so I shoved them, and these aggressive cops arrested me.

14 That's what happened. That's the truth. But of course, BRIGHTSTART takes creative

15 liberties in order to fire up their base. I've reviewed Exhibit 18 now, and their articles there
16 are all fake news. Ask anyone who knows me, or read reliable news sources: peace and love is
17 what I stand for.

18

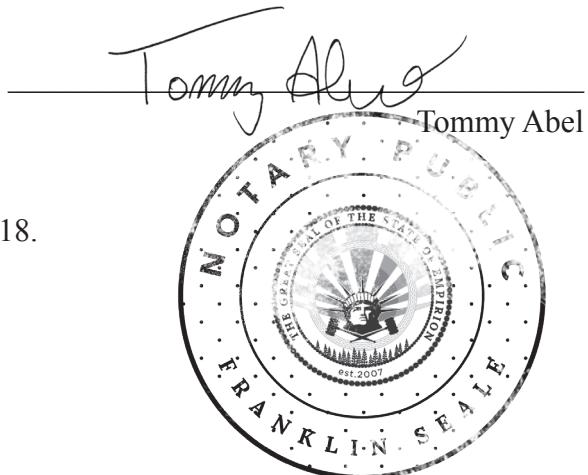
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22

23 Signed and sworn to this 3rd day of September 2018.





UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

1 Date: August 31st, 2018

2

3 For Inquiries Please Refer To File No.

4 DC - 44 - 287 - 1

5

6 Report Made By: Washington Key

7 Agent Title: Forensic Examiner

8 Agent Department: Criminal Investigative Division

9

10 Reporting Office: Pasquale, Empirion

11 Office of Origin: Pasquale, Empirion

12 Incident Date: February 20th, 2018

13 Incident Location: Pasquale, Empirion

14 Reason for Investigation: Suspected Hate Crime - Federal

15

16

17 **Administrative:**

18 On the morning of February 21, 2018, the Federal Bureau of Investigation was contacted by the
19 Empirion Police Force concerning an assault which had taken place on the evening of February 20th, 2018 in
20 their local jurisdiction. My division was assigned to investigate the incident, and I arrived on the scene at 8:00
21 a.m., local time. As there was a potential for the suspect, Harry McCarson, to be charged with a federal hate
22 crime, the FBI took over the investigation once we arrived.

23 Prior to the incident, the Pasquale Police Department alerted the FBI that McCarson was scheduled to
24 speak at Empirion State University. Given that McCarson's rallies have several times resulted in numerous arrests
25 of participants involved, including for violations of federal hate crime law, we anticipated a potential need for FBI
26 involvement. We remained on high alert the week of the speech until early on the morning of February 21, when
27 local police brought us in.

28 The following report contains all information obtained, examined, and analyzed in the course of
29 our investigation. This report, along with the supplemental reports I generated, includes all conclusions the
30 investigation yielded. All conclusions have been reached to a reasonable degree of scientific certainty. I am aware
31 that I have both the authority and the obligation to update this report should new, pertinent information be made
32 known to me.

33

34 **Professional Background:**

35 My name is Washington Key, I have worked with the Bureau for ten years now—three as a special agent,
36 and the past seven as a Forensic Examiner with the Criminal Investigative Division (Empirion Office). Being
37 part of the Criminal Investigative Division means I am qualified to investigate cases anywhere in the United

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38 States, but most of my work focuses on my local field office here in Empirion. I have completed basic training at
39 Quantico, and have received additional training in the fields of forensics, witness interviewing and interrogation,
40 and evidence collection. I regularly investigate suspected hate crimes, both in Empirion and throughout the
41 United States, and have been doing so for the past five years.

For a complete list of my background and qualifications, see my attached C.V.

44 Evidence Collected and Materials Reviewed:

45 The following are the only materials that my team and I obtained as part of this investigation. I did not
46 examine any evidence concerning the Defendant's motive as that could prejudice my analysis of the facts, though I
47 was aware, generally, of Defendant's reputation as a white supremacist. I am of Empirical descent myself.

48 Throughout the course of my investigation, I reviewed the following exhibits: Exhibit 12, the megaphone
49 recovered from the scene; Exhibit 10, the Medical Report for the alleged victim, Tommy Abel; Exhibit 7, a
50 transcript of the interrogation of Harry McCarson; and Exhibits 2a, 2b and 3, photos taken by Officer Carbowers.
51 I received the photo in Exhibit 4 from Officer Carbowers. I also consulted Officer Jamie Carbowers, a received a
52 pair of shoes worn by Harry McCarson on the day in question, and two pairs of shoes (flip flops and boat shoes)
53 handed over to the FBI by Officer Carbowers.

54 I conducted multiple forensic analyses in this case and prepared the following reports: Exhibit 9 [DNA
55 analysis of relevant samples collected], and Exhibit 8 [tread analysis]. In doing so, I used principles and methods
56 that were taught to me at the FBI and are standard in the field. I applied those principles and methods with
57 fidelity in this case.

59 Forensic Investigation:

As a Forensic Examiner, it was my job to use the physical and scientific evidence to reconstruct how the alleged crime was committed. It was not my role, however, to assess the Defendant's potential motive for committing the alleged crimes in question. In this case, I started with the assumption that Officer Carbowers's account of the incident was accurate, and sought to use the physical evidence to corroborate his account. With that said, I kept an open mind and was, of course, willing to follow the evidence, regardless of whether it supported Carbowers's recollection of the events.

66 I learned from Officer Carbowers that there were two potential assaults in this case: one on the staircase
67 leading up to the statue of Colonel C. Griffus Michael and one on the landing below the statue. Carbowers
68 claimed to have observed Defendant strike Tommy Abel, the victim, over the head with a megaphone, causing
69 Abel to fall down the stairs. Carbowers also recalled seeing McCarson run down the stairs and stomp on Abel's
70 body while Abel was not moving. I investigated the two alleged attacks.

Assault #1: Head Injury to Tommy Abel

73 Source of Injury

74 I used the medical report from Tommy Abel's hospital stay to learn what injuries Abel suffered as a result
75 of the alleged assault. Abel was reported to have a gash on Abel's right temple that was approximately 3" long and
76 .4" deep. The wound was consistent with something striking Abel in the head. I set out to determine what weapon
77 or object struck Tommy Abel.

Based on Officer Carbowers's account of events, I examined only one weapon: a megaphone. This megaphone was allegedly used by Harry McCarson on the night of the incident, and the Pasquale Police Department had already bagged and tagged it by the time I had arrived. It was reportedly found at the bottom of the statue's steps after the crowd had dissipated, though I can't say whether or not the crowd moved it.

The megaphone measured approximately 6.3 x 10.1 x 6.4 inches, though the front of part of the device was damaged. The megaphone weighed approximately 10 pounds. The megaphone had a sharp edge located on

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84 the circumference of its bullhorn area, measuring approximately .75". Based on these measurements, I believed the
85 gash on Abel's head was consistent with being struck with the edge of the megaphone.

86 I also found dried blood on the bullhorn component of the megaphone, which I analyzed in our
87 laboratory. I compared it to a sample of blood that had been drawn from Tommy Abel at the hospital, and the two
88 samples matched. Both were O-negative, which is a rare blood type, found in only 7% of the population.

89 There was also blood found on the stairs leading to the base of the statue. The blood was collected
90 according to standard practices, and analyzed at the lab. I concluded that it was also type O-negative, and that it
91 was a match for Tommy Abel.

92 Based on the dimensions of Abel's wound, the damage to the megaphone, and the locations of Abel's
93 blood, I concluded that Abel's head wound was caused by a forceful strike from that megaphone. Knowing that
94 the megaphone caused Abel's injury, I compared the scientific evidence to the stories presented by McCarson,
95 Abel, and Carbowers.

96

97 Sequence of Events

98 McCarron disputes the Carbowers account of how the incident unfolded, but his own account is difficult
99 to decipher. Based on what he told the police, I considered two possibilities alleged by McCarron: first, that Abel
100 tripped and fell without making contact with the megaphone, and second, that McCarron used the megaphone to
101 block a perceived attack from Abel.

102 First, I considered whether or not Abel's injuries could have been caused by Abel tripping and falling
103 without any contact with the megaphone. In my opinion, this is impossible. While this story does explain the
104 blood on the staircase, it does not provide a valid explanation for Abel's wounds. Blunt, heavy objects like the
105 statue's steps, are more likely to leave bruises than large gashes like the one Abel experienced. Stairs lack the
106 sharp edges necessary to cause puncturing or slashing wounds. People who fall down the stairs usually suffer
107 extensive bruising and the occasional scrape, but they generally do not suffer deep cuts like the one in this case,
108 and if they do, they are surrounded by other injuries. If Abel had fallen, I would expect Abel to have more facial
109 injuries—bruising all over the face or even a broken nose or skull. Furthermore, this story does not comport with
110 the presence of Abel's blood on the megaphone or the corresponding megaphone damage. All of the physical
111 evidence I reviewed supports the conclusion that the megaphone struck Abel, causing Abel's head wound. No
112 story presenting an alternate source for that wound is possible, in my opinion.

113 Next, I examined the possibility that, as McCarron claimed, Abel ran into the megaphone he was
114 holding, thus causing Abel to fall backward. McCarron states that he was attempting to block Abel as Abel
115 charged up the stairs in his direction, and that he did so by holding the megaphone up in front of his face and
116 chest. While McCarron provided very few details explaining this account, I felt obligated to evaluate it anyway.
117 Based on the evidence, I can conclude this scenario is possible, though unlikely. For Abel to receive these injuries
118 by running into the megaphone, Abel would need to have been moving towards it with a significant amount of
119 force. If Abel was running quickly enough to cause the severe head wound, McCarron would likely have fallen
120 backwards from the force of Abel's push. Even if he was bracing himself, an impact strong enough to cause that
121 wound would have undoubtedly affected McCarron, and I found no evidence of such an effect. Furthermore, had
122 Abel been charging towards McCarron, Abel's momentum would likely have caused Abel to fall forwards, not
123 backwards down the stairs. Based on the locations of Abel's blood on the stairs, it is my opinion that Abel fell
124 backwards. Based on these conflicts in the evidence, I must conclude that while this account is not impossible, it is
125 very unlikely.

126 In my opinion, the most likely scenario is one more closely matching Officer Carbowers's description.
127 McCarron slamming the megaphone into Abel's head would explain why Abel fell and why McCarron stayed
128 standing. It explains why Abel's wound matches the end of the megaphone perfectly and why Abel fell backwards
129 instead of forwards. While there are other possible explanations, McCarron hitting Abel with the megaphone

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130 most closely matches the physical evidence, and so I believe that McC Carson indeed committed the first assault.
131

132 Assault #2: Chest & Leg Wounds

133 Transfer Impression Analysis

134 I next examined the other injuries sustained by Abel during the incident, specifically Abel's broken
135 collarbone and ribs. As noted in the medical report, Abel suffered acute injuries that caused bleeding, bruising,
136 and broken bones. At first, I thought these wounds could be the result of repeated blows from a blunt force object
137 like a bat or club. However, closer examination revealed several shoe prints on Abel's shirt, and skin irritation in
138 the pattern of show treads. Because kicking or stomping could produce blunt force trauma patterns like those
139 Abel possessed, and because the shoe prints on Abel's body gave clear evidence that someone stepped on Abel, I
140 decided to investigate the prints to figure out if they matched any identifiable protesters, including McC Carson.

141 To determine whether or not the prints matched, I used forensic tread analysis. Forensic tread analysis
142 involves examining a shoe's tread pattern, performing a reconstruction, and using brand, texture, and other class
143 characteristics to determine what shoe left that pattern. Tread patterns are unique to each manufacturer, as every
144 one has a different process and carries different models of shoe. The FBI maintains a database of tread prints
145 created by sneakers from major brands, which we can use to find a match if we haven't been able to collect shoes
146 from suspects. Performing such a reconstruction is a reliable method of determining the source of such tread marks,
147 has been peer reviewed, and is standard in the field. I have received training in this method, and update myself
148 regularly to stay up to date.

149 In this case, however, rather than searching for an unknown type of sneaker, I was able to perform a one
150 to one comparison between the sneakers collected from McC Carson and the tread prints on the victim's body. This
151 would allow me to determine whether these specific shoes could have caused Abel's injuries. This type of one-
152 on-one comparison is standard procedure in the field of forensic tread analysis. I personally have been trained in
153 this and other types of forensic tread analysis, and I have performed this analysis countless times. I should note,
154 however, that there are no reliable statistics available for use in this field as of yet, as it is a relatively new branch
155 of forensic science. I used reliable computer programs and observations, but was unable to match my conclusion
156 about the source of the transfer impression found on the victim to any degree of statistical or mathematical
157 significance.

158 The details of my analysis are contained in a separate report generated at my lab, Exhibit 8. Based on my
159 analysis, I concluded that McC Carson's footwear on the night of February 20 was a match for the prints left on
160 Abel. This means that McC Carson is a likely potential source of the prints on Abel's shirt and the injury to Abel's
161 collarbone area.

162 However, it is important to note that anyone else wearing the same size and model of shoe could also
163 have left these prints. While the likelihood of people in McC Carson's immediate vicinity wearing both of the types
164 of shoes he wore is extremely small, without having the shoes from every protest participant, it is impossible to
165 totally rule out the possibility of someone else leaving the prints. Some factors, like McC Carson's odd choice to
166 wear two different shoes and the degree to which McC Carson's followers seem to seek to emulate him, make it
167 more likely than usual that someone else could have worn the same shoes as McC Carson. Nonetheless, because
168 McC Carson's shoes match the transfer impressions obtained from victim, treads and because there are multiple
169 reports of McC Carson being in the immediate area where Abel was beaten, I believe the most likely explanation
170 for these prints is that McC Carson kicked and otherwise attacked Abel. This conclusion is further supported by
171 the fact that the two protesters who were seen standing near Abel's body during the second assault were wearing
172 footwear (Sperry's and flip flops) that could not possibly have made the tread prints that I examined--it was
173 physically impossible for them to do so.

174

175 DNA Analysis

176 As mentioned, as part of evidence collection, the police collected McC Carson's running sneakers. Those

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177 who handled the sneakers noted small, reddish brown stains resembling dried blood on the tread of the sneakers.
178 In pursuit of further analysis, that evidence was sent to the FBI Laboratory Division so agents could attempt
179 DNA testing.

180 DNA is an incredibly useful tool for law enforcement officers, as it allows us to directly link suspects
181 to victims, and particular crime scenes. Since the 1990's, DNA testing has become largely standardized across
182 jurisdictions, and the FBI has been a leader in the field of DNA forensics. The FBI maintains a national database
183 of suspects' DNA profiles, even those not collected for cases being handled by the Bureau, for use in future
184 investigations. This database, called the Combined DNA Index System (CODIS), is the national standard
185 database for analysis. All suspect DNA profiles handled at the FBI Laboratory are input into CODIS, as are
186 samples sent to the FBI from state crime labs. This allows us to maintain a comprehensive database of past
187 offenders, and offer assistance to local law enforcement in their investigations.

188 All of our cells contain DNA, which is essentially a unique blueprint which dictates how our bodies
189 function. That DNA is comprised of genes inherited from a person's father and mother, and every person's DNA
190 profile is completely unique. Even if a sample of biological material is small, DNA can still be extracted through a
191 process called a polymerase chain reaction (PCR). Using this method, analysts can effectively copy tiny samples of
192 DNA hundreds and thousands of times, until they have enough DNA to test. This PCR test is what was used in
193 the McCarson case. It is considered the gold standard in DNA analysis, and has been peer reviewed. I personally
194 have substantial experience working with and interpreting these types of tests.

195 When DNA tests are run, analysts don't attempt to match every single gene between known and
196 unknown samples. Humans carry vast amounts of genetic material, and this would be utterly impractical. Rather,
197 CODIS uses a standard 20 genetic markers for comparison. The forensic technician examines what alleles (or
198 genes), are present at each of these markers, and then compares those between the known and unknown samples.
199 These are alleles are noted using numbers, and the analyst creates a table showing these allele numbers for both
200 the known and unknown samples. These can then be compared.

201 In running these tests, analysts typically go to great lengths to ensure they remain objective. The
202 technician should never know who the suspects or victims are until testing is complete, in order to prevent bias
203 regarding particular people. Additionally, the genetic markers CODIS uses for comparison are all genes which do
204 not indicate race, ethnicity, or other physical characteristics, keeping the tests free of other types of bias.

205 In this case, agents took swabs from the reddish brown stains on McCarson's sneakers and extracted
206 DNA from the swab samples. The samples were sent to the FBI Laboratory, where I was able to perform the
207 PCR and test the samples against blood from Tommy Abel. After running the test, I concluded that the sample
208 collected from McCarson's sneaker was indeed blood, and that that blood belonged to Tommy Abel. This means
209 that at some point prior to his arrest on February 20, Abel's blood came into contact with McCarson's sneaker. I
210 also tested samples from the megaphone, Abel's shirt, and Abel's neck, and I found that all of these samples were
211 Abel's blood as well.

212 Of course there are limitations to what DNA can tell us. DNA can't tell us why that blood is on those
213 sneakers, and it doesn't have a time stamp on it. It cannot allow us to determine if it was there before or after Abel
214 was kicked. This means it is technically possible that McCarson descended the stairs to help the victim up and
215 that he stepped in Abel's blood while descending the steps or while helping Abel.

216
217 Sequence of Events

218 Based on my analysis of Abel's injury patterns, the transfer impression print found on Abel's shirt, and
219 the DNA recovered from the bottom of McCarson's sneakers, I can conclude to a reasonable degree of scientific
220 certainty that McCarson assaulted Abel by kicking Abel on the date of the incident.

221 While I believe that is the most likely sequence of events, I must acknowledge that other plausible
222 possibilities remain. Abel's blood was in many places at the crime scene, including on the stairs McCarson

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223 descended and the megaphone McCanson was holding. If McCanson stepped in Abel's blood at any of these
224 locations, and if someone else was wearing similar shoes to McCanson, it is possible, albeit extremely unlikely, that
225 McCanson did not kick or assault Abel while Abel lay at the bottom of the stairs. However, the fact that the blood
226 covered the entire tread print of McCanson's sneaker, and the sneaker left usable impressions on the victim's body
227 make this possibility nearly impossible. It is far more likely that that blood was transferred to McCanson's sneaker
228 as McCanson was kicking, stepping on, or otherwise assaulting the victim.

229

230 Ravin

231 Approximately one month after my initial analysis, Officer Carbowers contacted me about an individual, Earl
232 Ravin, who claimed that they were likely responsible for inadvertently leaving the shoe impressions on Abel's neck
233 and shirt on the night in question. After investigating the issue further, I dismissed this possibility as doubtful.

234

235 Carbowers was an eye-witness to the incident and indicated that Carbowers had not seen Ravin in the vicinity of
236 Abel's body at any point. Ravin also never came forward to speak with the police. In fact, Carbowers only learned
237 about Ravin through a video Carbowers saw of Ravin on social media about 3 weeks after the incident.

238

239 Nevertheless, I personally e-mailed and called Ravin several times to follow-up. When I finally reached Ravin,
240 Ravin told me that Ravin was not interested in speaking with me. When I asked about the shoes Ravin was
241 wearing on the night in question, Ravin told me that they were gone—that they were old so they had been
242 discarded. Consequently, I could not conduct a tread analysis on the shoe or examine them for DNA, which is
243 unfortunate. I would have done so if possible; when possible, it is ideal to have scientific evidence to support your
244 conclusions.

245

246 Still, given Ravin's credibility issues (never spoke to the police, discarded potential evidence, works for McCanson)
247 and the strength of the scientific evidence against McCanson, Ravin's story did not change my conclusions in this
248 case.

249

250 **Conclusion:**

251 Based on my analysis of Abel's injury patterns, the megaphone, the tread print found on Abel's body, and
252 the DNA recovered from the bottom of McCanson's sneakers, I can conclude to a reasonable degree of scientific
253 certainty that McCanson assaulted Abel by both hitting Abel with a megaphone, and by kicking Abel on the date
254 of the incident.

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Washington Key, FBI
Certified Footwear Examiner
Certified Latent Print Examiner
Certified Forensic Examiner

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

Case No. 18-CR-2007-SW

**GRAND JURY TESTIMONY
OF JOEY AMBER**

1 The following is a transcript of the Grand Jury proceedings, at
2 the offices of the United States Attorney for the Northern District of
3 Empirion, 5 Fast Lane, Pasquale, State of Empirion, on the 29th day of
4 April 2018.

5 **Q:** Can you please state your name for the record?

6 **A:** How's it going? I'm Joey Amber. A-M-B-E-R.

7 **Q:** I'm good--how old are you?

8 **A:** I am 30 years old.

9 **Q:** Are you currently employed?

10 **A:** You bet! I am a crane operator at Trussworthy Construction, a
11 company based right here in Pasquale, Empirion.

12 **Q:** How long have you worked there?

13 **A:** About a decade - since I was 20 years old. I actually dropped
14 out of college to take this job, and I've never looked back.

15 **Q:** How far did you get in school?

16 **A:** Through two years of college, four semesters. I started studying
17 philosophy at Empirion State University, but when I got this job offer,
18 I realized that was a waste of money. All I had to do was learn how to

19 work a crane, and I could make a good living. I ain't need no thousands
20 of dollars of student loan debt like you probably have as a big fancy
21 lawyer.

22 **Q:** You said you studied at Empirion State University. Tell us a
23 little about your time there.

24 **A:** As a native Empirial, I was excited to go to ESU; a big part of
25 the faculty and student body is native, just like me. But when I got
26 there, I realized that ESU wasn't the Empirial paradise I thought it
27 would be - I experienced a lotta racism and hate. Bad stuff.

28 **Q:** Who, if anyone, do you remember making hateful comments toward
29 Empirials?

30 **A:** Most of them came from, or at least started from, one guy: Harry
31 McCarson. I don't even know why he came to Empirion - maybe because of
32 the palm trees. It certainly wasn't because he respected the Empirials
33 or our culture. The guy never had anything positive to say about
34 Empirion or the people here.

35 **Q:** How did you come to meet the Defendant?

36 **A:** Harry was a year above me in school, and I think he was a couple
37 years older. He took a lot of philosophy courses, especially ones about
38 ethics and politics, and he and I shared at least four or five classes
39 over the course of 4 semesters (2 years) of school; two of them were
40 with Professor O'Neil.

41 **Q:** I am showing you a copy of Exhibit 25. Do you recognize this as
42 the Defendant?

43 **A:** Yuck. Yeah, that's his face. Unfortunately.

44 **Q:** You talked about incidents involving the Defendant and racism a
45 moment ago--I want to talk to you about these incidents. Can you tell us
46 about them?

47 **A:** Sure. He would say stuff like "people who were inferior should

48 be kept in their 'natural' order," and that the people of Empirion
49 may not be bad people but they'll never be "as valuable as whites of
50 European ancestry who are responsible for ruling the world." It gets
51 me disgusted thinking about it, all these years later. I just don't
52 understand why he'd choose [yelling] to come to Empirion, you know? He
53 didn't have to study here.

54 **Q:** Was that the only time you recall the Defendant making a racist
55 remark?

56 **A:** No, I can remember at least one occasion where he was kicked
57 out of class for using the "E-word." It was in a class on "The Ethics
58 of Toleration," he went on a rant about how people needed to be more
59 tolerant of his views, and how people didn't like him because we were
60 all "stupid Emps who couldn't see the truth." The professor tried to
61 calm him down, but he yelled at her, "You're an Emp too! You shouldn't
62 be teaching any class; you should be paddling a boat or trading clam
63 shells like the dumb Emp you are!" She kicked him out of class, and I'm
64 pretty sure he ended up with a failing grade, but it was scary.

65 **Q:** You mentioned the E-word. I am sorry to ask you this, but just
66 for clarity of the record, you're referring to the term, "Emp"?

67 **A:** I am.

68 **Q:** As an Empirical, can you describe what that term means to you?

69 **A:** Of course. It's like a hate thing--a slur. It's no different
70 than awful slurs used to describe other races. The French started using
71 it to mock our people during colonial times when they ruled us, and
72 it has stuck ever since--well, I should say, it's still used by some
73 ignorant people.

74 **Q:** Let me ask you something. When the Defendant would say
75 these awful things, did you ever report them to the university's
76 administration?

77 **A:** Yea, I would. The professors would, too. I'm not a lawyer or
78 anything but I think they were limited because of the First Amendment.
79 ESU is a public school and they can't control what Harry says, if he's
80 not creating a risk of violence--at least that's what they told me. But
81 you're the lawyer here, not me, so you'd probably know best.

82 **Q:** Let's switch gear--were you familiar with a group at ESU called
83 Stay True to History?

84 **A:** I sure was. McCarson was a big part of the organization. They
85 glorified Colonel C. Griffus Michael. Harry would talk about Michael all
86 the time in class and what he did for the island.

87 **Q:** What would the Defendant say about him?

88 **A:** He would talk about all that he's done for Empirion. He'd also
89 say that we need to own all parts of our history, positive and negative.
90 He'd say you can only learn from the past by facing it head on. We all
91 know what he actually meant cause he said to me once in the student
92 union, "If it wasn't for the Colonel, your people would be speaking
93 French or even worse, ruling the island." That was an idiotic comment
94 as our Governor was Empirical then but whatever.

95 **Q:** What was Colonel C. Griffus Michael's reputation in the Empirical
96 community?

97 **A:** He's hated. The guy "freed" us from the French just so he could
98 take over and be in charge. Then he killed our people and tried to only
99 put white people in charge of the island.

100 **Q:** I'm sure I know the answer to this question but I need to ask it
101 for the record--how did you feel about Harry McCarson?

102 **A:** Detested him. Everyone did. Everything he said was deplorable.
103 He was kind of a loner, always typing up a storm on his computer, either
104 on AIM or Myspace. I actually took a few screenshots of some of the
105 crazier things he wrote - they're still stored on my computer. Anyone

106 who knew him in college will tell you he's a nut-job and that no one
107 should listen to the things he says. It's scary that so many people do.
108 Honestly, I hope he goes to prison, just so he won't have access to his
109 computer - maybe that will help him cool down.

110 **Q:** I am showing you what has been marked as Exhibits 16 and 17. Are
111 you familiar with these photos?

112 **A:** Yes. These are the screenshots I have. They're pictures of
113 Harry's AOL and Myspace profiles from when he was in college with me
114 about a decade ago. I know that all seems old school now, but I'm sure
115 he still believes the things he wrote.

116 **Q:** I am showing you what have been marked as Exhibit 19. Do you
117 know what this is?

118 **A:** Yes, this is Harry's current website, Stay True to History. This
119 looks like the homepage.

120 **Q:** I want to talk about the statue removal on February 20, 2018 in
121 CORE Square. Were you there that day?

122 **A:** Yes.

123 **Q:** How did you become involved with the statue's removal?

124 **A:** My company was contracted to provide the crane to do the
125 removal. Because I was such a strong supporter of removal, I was
126 excited, and I volunteered to work overtime just to be sure I was the
127 one who would get to do it.

128 **Q:** Did you know that Harry McCarson would be attending the removal?

129 **A:** I didn't know beforehand that he would be there, but I wasn't
130 surprised when he showed up.

131 **Q:** What was your job in the context of the removal?

132 **A:** I was going to be operating the crane. The removal was set for
133 11pm on February 20, 2018, so I needed to install the crane during the
134 week leading up to the removal and then operate it on that night. I had

135 to get there a bit before 11 to set up.

136 **Q:** I am showing you what have been marked as Exhibits 3 and 5. What
137 are these?

138 **A:** Exhibit 3 is a photo of the statue that I removed. You can see
139 the crane here and I sat there [points to control box on crane]. Exhibit
140 5 is a map of CORE square, where the statue was, and the area around it.

141 **Q:** What time did you arrive to CORE Square?

142 **A:** Around 8 PM. I figured if I got there early, I could avoid any
143 possible protests.

144 **Q:** What happened when you arrived at around 8 PM?

145 **A:** I saw people start gathering. The police had set up a border
146 with yellow caution tape around the base of the hill where the statue
147 was, and they helped me make it up to my box by about 8:30 PM without
148 too much hassle.

149 **Q:** You told us a moment ago that you were sitting in this box
150 [points to box on crane]--how far above the ground were you?

151 **A:** About 60 feet.

152 **Q:** Could you see everything below you?

153 **A:** Oh yeah. You can see here we got these really bright lights that
154 would help me be able to see at night. I also had a pair of binoculars
155 with me.

156 **Q:** Let's get back to the events of the night--did you ever see the
157 Defendant arrive?

158 **A:** Oh yeah. I saw him lead a whole group of people at around 9:45
159 PM. They were holding signs and chanting, "Blood and sand" and "Blood
160 and soil" and "Save the Colonel."

161 **Q:** From where you were sitting, did you see any counter protesters?

162 **A:** Yeah, I saw Tommy Abel, who I recognized from TV, and Abel was
163 with a lot of people dressed in blue. They kept saying things like "say

164 no to hate!" "say no to hate!" I didn't even need to look closely to
165 know that they were from Sapphire Needs Love. It was so good to see them
166 there standing up for the right thing, hopefully containing the racists,
167 making my job a little safer.

168 **Q:** Were you using your binoculars during this time?

169 **A:** I think so but I can't be sure. It doesn't matter though, I
170 could see clearly without them.

171 **Q:** Did you notice any problems with the two groups--the ones in the
172 blue shirts and the ones initially led by the Defendant?

173 **A:** I did, but not immediately. Things actually went pretty well
174 for fifteen or twenty minutes; people stayed outside the caution tape
175 the police had put up, and even though I was still ticked off hearing
176 Harry's racist voice coming through the megaphone, it all seemed
177 harmless. Stuff could have been going on before then - I don't know. I
178 wasn't looking down the entire time.

179 **Q:** When did you start to see problems?

180 **A:** It was just after 10:30, when Harry broke through the caution
181 tape. He was holding his megaphone and a big sign, though I wasn't close
182 enough to see what the sign said. I could hear him conducting more
183 chanting through the megaphone, saying how they needed to Defend the
184 Colonel like he defended them and "finish the job he started" so "the
185 Emps will know we're taking our country back," or something along those
186 lines.

187 **Q:** What happened next?

188 **A:** As Harry continued to speak, one of the protesters in blue
189 jumped the caution tape too, and walked up the stairs close to where
190 Harry was. I couldn't hear very well, but it didn't look or sound like
191 he was yelling.

192 **Q:** What did the person do?

193 **A:** They walked up and stopped right in front of Harry, and
194 I saw the two of them pause for a minute, like they were having a
195 conversation. At this point, I picked up my binoculars again and
196 realized that the person Harry was talking to was Tommy Abel.

197 **Q:** How did the Defendant respond to Abel?

198 **A:** It was crazy. Without any warning, Harry lifted up his megaphone
199 like a Tomahawk and drive the edge of it right into Abel's head. I had
200 no idea why Harry did this; even though he said a lot of scary things,
201 I'd never seen him be violent before. This seemed totally unwarranted;
202 Abel didn't run towards Harry or lunge or do anything to put him in
203 danger; the kid just started talking to him.

204 **Q:** You said you've never seen him be violent before--I just want
205 to clarify, when you say violence, what do you mean by that? Are you
206 referring to physical violence?

207 **A:** He'd say mean things but I never saw him strike anyone in
208 college. He didn't have a reputation around campus for being the type
209 who would 'rough someone up.' He was just hateful, never physical.

210 **Q:** What happened next?

211 **A:** After Abel was hit, Abel tumbled down the stairs and came to a
212 stop on the landing at the base of the stairs. It looked like there was
213 caution tape around the area. I heard Harry yell something the megaphone
214 that ended with the word "Emp!" but I can't tell if he said "help the
215 Emp" or just "Emp!"

216 **Q:** What happened next?

217 **A:** Harry ran down the steps and then he and a couple of other
218 people surrounded Abel on the ground -- I think there were 3 or 4 people
219 around Abel. From where I was, it looked like Harry was stepping on and
220 kicking Abel, even though Abel wasn't fighting back. Another person may
221 have also thrown a kick but I can't be sure; that area was a darker

222 than the top of the steps. Thankfully, the police got involved pretty
223 quickly, and they sent Abel to the hospital in an ambulance.

224 **Q:** What did you do after the police got involved?

225 **A:** I waited for things to look safer, then I climbed down from
226 my box to talk to the police and tell them what I saw, and to ask if
227 they still wanted to go through with the removal. Officer Carbowers
228 interviewed me and had me wait a few hours to take down the statue - at
229 that time, it was an active crime scene, and he had to take pictures to
230 document the scene before I could do anything to alter it.

231 **Q:** Were you ever able to remove the statue?

232 **A:** Yea, but it ended up taking a few days before I did it.

233 **Q:** We talked a bit about Tommy Abel before--had you ever met him?

234 **A:** No.

235 **Q:** How familiar were you with him?

236 **A:** I've heard a lot about Abel's work online and on TV. He works
237 with Sapphire Means Love, a local nonprofit. People share articles about
238 Abel on Facebook and Twitter all the time, so I have read a little bit
239 about Abel. I hope Abel gets better; I think Abel is an asset to our
240 community and that Sapphire Means Love does a lot of good work.

241 **Q:** I am showing you what has been marked as Exhibit 18. Have you
242 seen these before?

243 **A:** No. This is the first time I am seeing these. I don't really read
244 Brightstart news. It's more tabloid than news.

245 **Q:** Is there anything else you can remember about what happened on
246 February 20, 2018?

247 **A:** Not that I can think of. I just really hope Harry gets put away
248 for this; he attacked that kid without warning, and he deserves to go to
249 prison.

250 **Q:** Could you please review the following exhibits, and state for

251 the record which of these you have any familiarity with?

252 [counsel approaches witness stand, provides witness with copies of
253 various exhibits]

254 **A:** Of the available exhibits, I am familiar with the following: 1,
255 2a, 2b (Officer Carbowers showed me this picture. I can tell you that I
256 was up here in the crane just like it shows, and Abel and McCarson seem
257 like they're in the right spots, you know, based on what I saw. I don't
know about these other people though), 3, 5, 12 (I saw Harry holding
this during the protest and hit Abel with it), 16-17 and 25.

Dated: April 24, 2018

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

AFFIDAVIT OF JAMIE CARBOWERS

1 My Name is Jamie Carbowers, and I'm an officer with the Pasquale Police Department
2 (PPD). I was on duty, conducting event security during the Col. Michael statue protest on
3 February 20, 2018. That night, I observed Harry McCarson attack Tommy Abel. I intervened
4 and arrested Mr. McCarson, and later conducted a preliminary interview of Mr. McCarson.
5 In this affidavit I describe those events, as well as PPD's preparation for the protest as I
6 experienced it.

7 I am a lifelong resident of Empirion. In 2012, I graduated from Lupine Valley
8 Community College with an associate's degree in criminal justice and immediately applied to
9 PPD. I was accepted into the Empirion Criminal Justice Training Center, the unified academy
10 for all law enforcement agencies in Empirion (with the exception of the Empirion State Police
11 (ESP)). I completed basic cadet training in early 2013. Since then, I've been assigned to
12 patrol in the Western District, which covers about a third of Pasquale. (There are two other
13 districts, the Central and Eastern, which correspond to the central and eastern thirds of the city,
14 naturally.) I, along with 11 other officers, form one of several squads in the Western.

15 I have been fortunate enough to receive some additional training over the last few
16 years, including classes in collision investigation, narcotics interdiction and investigation,
17 and de-escalation techniques—in light of the tensions between some communities on the
18 US mainland and law enforcement, PPD’s command staff has guided us away from going to
19 our TASERS too quickly. My hope is, in a few years, I’ll transition away from patrol and be
20 assigned to an investigative unit as a detective.

21 On February 12, 2018, at about 4pm., I arrived in our district’s squad room for “pass
22 down,” the briefing we hold at each shift change. Monday pass downs are when we review
23 our performance the previous week, receive information about emphasis patrols that have
24 been scheduled (seatbelts, DUI, etc.), and learn about upcoming overtime opportunities. One
25 of those opportunities was providing security for an event on Tuesday of the following week,
26 February 20.

27 Last fall, there was a proposition on the ballot for residents of Pasquale to decide
28 whether or not to remove a statue in a local park. It’s of Col. Griffus Michael, a historical figure
29 from the colonial era. He’s a lightning rod in Empirion history: people either love him, or hate
30 him, and there really isn’t a middle ground. I would say the statue is approximately 40 feet
31 in height, sitting on a 30-foot-high pedestal on a hill. I didn’t vote in the referendum, though
32 I definitely didn’t mind seeing it removed. On the one hand, I don’t want anyone to think my
33 town is racist, but on the other hand, as someone who sees real violence and injustice happen
34 every day, it’s hard for me to see a statue as an act of violence. Even after what happened on
35 the 20th, I just can’t relate to the amount of outrage all of these groups feel; it seems that no
36 matter what any government does, someone is ready to start a fight over it.

37 At any rate, the removal was scheduled for 11 pm on the 20th, and command wanted a
38 few extra officers on hand, including me. As my squad sergeant, Wilson, explained, there was

39 some “chatter on social media” about holding demonstrations either for or against removal, and
40 command “wanted to make sure the crowd didn’t get too agitated.” I do remember Sgt. Wilson
41 telling us that “At this time [February 12], given the removal is scheduled for 11 pm and the
42 online communication we’ve observed, it doesn’t look like the protests will be violent, if they
43 happen at all. That being said, we can’t be too careful, since some of these things have turned
44 violent in the past.” I don’t ever work the night shift, and I hated my hours getting extended
45 that way, but my sergeant made clear that there was no room for complaining from anyone
46 assigned.

47 I finished my regular on the 20th and got dinner and coffee—a lot of coffee, after being
48 up since 5am—then reported with two of my colleagues to CORE Square. The Col. Michael
49 statue stands in the center of the square. There were maybe 20 other PPD officers already
50 present, as well as a city construction crew with their equipment and a couple flood lights.
51 While there are street lights at the intersections around the square, the only police “lighting”
52 was from the light bars on two squad cars we’d used to block the street. That left the statue
53 itself illuminated, but it was not easy to see around the base of the statue. Our fellow officers
54 had already established a security perimeter around the base of the statue with standard yellow
55 “Police Line” tape. I was hoping that no protesters would show up and I would get dismissed
56 early, but Harry McCarson and Tommy Abel stopped that from happening.

57 At approximately 9:45 pm, a group of protesters started forming, led by Harry
58 McCarson. People wearing white polo shirts and carrying flashlights, tiki torches, and signs
59 started marching around the base of the statue, yelling that they needed to “take back what’s
60 ours.” McCarson was leading them as they marched around the area. He was speaking into a
61 megaphone, urging the crowd forward with chants like “EMPosters, not Americans!” Others
62 had signs with various slogans: “Erase this island, not our history,” “The ocean is blue, blood

63 is red, America is WHITE," and others. As the night went on, this group started getting bigger
64 and bigger, and by 10 pm, there were at least a hundred of McCarson's supporters marching—
65 maybe more.

66 At about 10:15 pm, a second group of around three hundred people started approaching
67 the statue. Based on their signs and their chants ("Hey-hey, ho-ho, Col. Michael's got to go,"
68 and the like) this group was there to support the statue's removal. A number of them were
69 wearing blue shirts with the slogan "Sapphire Means Love." From what I observed at that
70 time, these citizens were behaving in a peaceful and law-abiding manner. None of us on duty
71 believed them to be a danger. In fact, when Officer Taylor had to ask some demonstrators
72 to step back and allow the city crew who'd be removing the statue to pass through, several
73 leaders of the group (at least, they appeared to be the leaders) stepped in to assist us with crowd
74 control. Later I learned one of these leaders was Tommy Abel.

75 Because there were so many protesters on both sides, I radioed Lt. Elise to ask if
76 we were going to receive any backup. None of us had any protective equipment beyond our
77 standard ballistic vests. Lt. Elise said he had requested additional support from within PPD,
78 but that it would "take some time to mobilize." In the meantime, Lt. Elise instructed me to stay
79 at my post, try to "keep the hippies and the fascists separated," and "not to intervene in any
80 altercation unless someone is at serious risk, or it's an attack on a city worker."

81 At around 10:35pm, the anti-removal group, led by Mr. McCarson, stopped marching
82 and started assembling in a crowd, right in front of the statue. Because there were so many
83 people from both groups, and McCarson's group was clearly trying to incite the pro-removal
84 protesters, Lt. Elise ordered half the officers on scene to step forward from the caution tape
85 and place themselves between the two groups. The rest of us were told to remain on the line
86 we'd established at the base of the statue and prevent anyone from reaching the statue. I was

87 on the grass at the front right corner of the statue, maybe 30 feet away from the steps. There
88 wasn't a lot of light exactly where I was standing, but I could still see everything clearly. I
89 marked my location on Exhibit 2.

90 The tactic seemed to work; the groups stayed fairly separate, until Harry McCarson
91 broke through the police line barrier and started climbing the stairs toward the statue. He was
92 carrying a bullhorn in his right hand and a sign in his left that had something about Tommy
93 Abel on it. McCarson started yelling to the crowd, "Who tried to silence us a decade ago?"
94 "What about yesterday?" "What about today?" and each time the crowd responded "THE
95 EMPS" "THE EMPS" "THE EMPS." At one point he said, "Show the Emps that we're taking
96 our country back!" To be honest, it was vile.

97 At first, I thought about going to attempt to move him back behind the barrier. But my
98 orders were to only intervene if there was violence or if someone tried to get on the statue, so
99 I thought any action that I took would be counterproductive: it would just serve to incite the
100 group further. At that moment I saw no risk of violence, and I believed I could provide better
101 assistance from my post at the corner of the grass area. So I stayed where I was. Looking back,
102 I made a mistake. I should have known that this was the start of something much worse.

103 The group of demonstrators in the "Sapphire Means Love" shirts started loudly booing
104 and heckling McCarson, and then one of their protesters, Tommy Abel, stepped out from the
105 crowd. A couple of my colleagues have interacted with Abel in the past, and had warned me
106 about Abel's reputation, but I've never personally interacted with Tommy Abel. It was hard
107 to see exactly what was everyone was doing - the two of them were right between me and
108 the crane lights, and those lights were in my eyes. It reminded me of playing softball when
109 I was younger under the lights and trying to catch a fly ball! It certainly made it difficult to
110 make those catches but it never stopped me from doing so. I didn't have sunglasses because

111 it was the middle of the night, but I could see what was going on, or at least an outline of it,
112 if I squinted. Abel started climbing the stairs to where McC Carson was, and as I took a few
113 steps toward them I began yelling, "POLICE, GET OFF THE STAIRS!" Abel disregarded
114 my orders to halt. When Abel was still several feet away from McC Carson, Abel reached
115 out towards him, as if Abel was waving or something. Once they got close to each other, it
116 appeared they were talking. Even though Abel showed no intent to harm McC Carson, I decided
117 it would be better to try and de-escalate the situation, just to ensure no one got hurt. After all,
118 McC Carson was holding a sign with Abel's name on it, and Abel could have been upset about
119 that.

120 As I was about 20 feet from the steps, I saw McC Carson suddenly lift up his megaphone
121 and strike Abel over the head. Abel went tumbling down the stairs, and I immediately ran to
122 apprehend McC Carson. McC Carson yelled, "Get the Emp!" and ran down to where Abel was and
123 started kicking Abel. While there were other people around Abel, I could clearly see McC Carson
124 kicking Abel - he ran down the stairs to do it! I was about 10 feet away while this was
125 happening, close enough to see what was going on. Admittedly, there were several other people
126 near Abel at the time, and I tracked down two of them and detained them for questioning.
127 McC Carson had tried to leave the scene, and it took me at least five minutes to find him in the
128 crowd, and when I did, I promptly arrested him. I know a bodyguard named Earl Ravin who
129 works for McC Carson has claimed to be at the scene. I have been shown a picture of Ravin and
130 asked if I saw Ravin near Abel's body. The answer is no. I chased down all three of the people
131 I saw near Abel. Ravin didn't come forward to the police to give a statement and I never saw
132 Ravin on the night in question, so I have no reason to believe Ravin was involved.

133 At a later date, about 3 weeks later, a person came forward claiming to have been
134 present at the altercation, and to have information of interest. This person identified themselves

135 as Earl Ravin. I saw a picture of Ravin and Ravin's appearance. They did not match the
136 description of anyone that I observed at the scene, and after initially expressing interest in
137 talking to the police, Ravin later retracted that offer and we have not heard from Ravin since.
138 Nevertheless, I let Agent Key, who was investigating at that point, know that Ravin had come
139 forward so the FBI could investigate Ravin as needed.

140 At about the same time, ESP backup and some off-duty PPD officers arrived to help
141 subdue the crowd. As I was placing Mr. McCarson in my squad car to take him in for booking,
142 I overheard Lt. Anne speaking with an ESP Captain. The captain seemed pretty disappointed,
143 and said to my lieutenant, "We did warn you about this, Anne. There was always a risk these
144 nationalists would use violence—We've seen it before. You should've had this crowd under
145 control from the start. Why can't PPD get its act together?" Lt. Anne just said, "Thanks," and
146 walked away.

147 After sending McCarson to the station in a squad car, I stayed at the scene to collect
148 additional evidence. First, I interviewed anyone still at the scene who I believed could have
149 additional knowledge of what happened. This included Terry O'Neil, a local college professor
150 who was not directly involved in the altercation; Joey Amber, who was operating the removal
151 crane; and the two individuals I apprehended who were around Abel at the time of the beating.
152 The contents of these interviews are summarized in my supplemental report, Exhibit 6. I took
153 pictures of anywhere I saw blood, including on the stairs and on the grass where Abel was
154 surrounded. Based on the potential for tread analysis in this case, I collected the shoes of the
155 two individuals who were around Abel at the time McCarson was kicking Abel. As I had no
156 evidence at that time that these two individuals had attacked Abel in any form, I wrote them
157 citations for trespassing and sent them home. I turned the two pairs of shoes, a pair of Sperrys
158 and a pair of flip-flops, over to Washington Key for analysis when the FBI arrived.

159 After I released the two trespassers, I went back to the station, where I asked if
160 McC Carson would agree to answer a few questions. After I confirmed he understood his rights,
161 he agreed to speak with me: "I got nothing to hide; these people do, let them hide on their
162 island... we don't want them in the real America." I've provided a transcript of that interview
163 (Exhibit 7). McC Carson smirked or chuckled through most of that interview. As an eye-witness
164 to the assault, I find his accounts of the events not credible. There is no way he was trying to
165 defend himself when he saw Abel. Additionally, there is no way that he was trying to help
166 Abel when he saw him on the ground—I saw him kicking Abel. After interrogating McC Carson,
167 I decided to look online to see what I could find about McC Carson. I found his social media
168 posts, which I documented, and which are reflected in Exhibits 13-15.

169 The next day, I visited Tommy Abel in the hospital. Abel had stayed overnight to
170 be treated for Abel's injuries. Nonetheless, Abel was able to give me a description of what
171 happened the night before.. The contents of my interview with Abel are summarized in my
172 supplemental report, Exhibit 6.

173 The prosecutors assigned to the case chose to hand it off to the federal authorities. One
174 of the Assistant U.S. Attorneys requested that I give this affidavit. As I understand it, McC Carson
175 has been charged with a federal hate crime. There has been additional work in the aftermath
176 of the protest for PPD as well: The Chief requested an audit of our performance and event-
177 security training and methods. As a result, all officers have received additional training on how
178 to manage these situations, should another arise. In addition, of course, we reached out to the
179 FBI about a week after the incident in order to collaborate with federal law enforcement to get
180 their assistance in investigating this incident as a potential federal hate crime.

181 Of the available exhibits in this case, I am familiar with the following and only the
182 following: Exhibit 1 is a photo of CORE square on February 20. Exhibits 2a and 2b are photos

183 of the statute the day after the incident, which I labeled based on the witness interviews I
184 conducted; the former shows where all parties were standing during the first assault, while
185 the latter shows their positions during the second assault. Exhibit 3 is the same photo, without
186 the labels. Exhibit 5 is a map of CORE square and the surrounding area. Exhibit 6 is the
187 report I prepared based on the interviews I conducted in connection with this case. Exhibit
188 7 is a transcript of my interrogation of the Defendant after he was arrested. Exhibit 11 is the
189 sign I saw McCarson holding during the protest. Exhibit 12 is the megaphone McCarson
190 used to strike Abel. Exhibits 13-15 are the social media posts I uncovered when I looked at
191 McCarson's profiles, and Exhibit 19 is the website for his organization, Stay True to History.
192 Exhibit 26 is McCarson's mugshot, which was taken when he was processed that night.

193

194

195

196

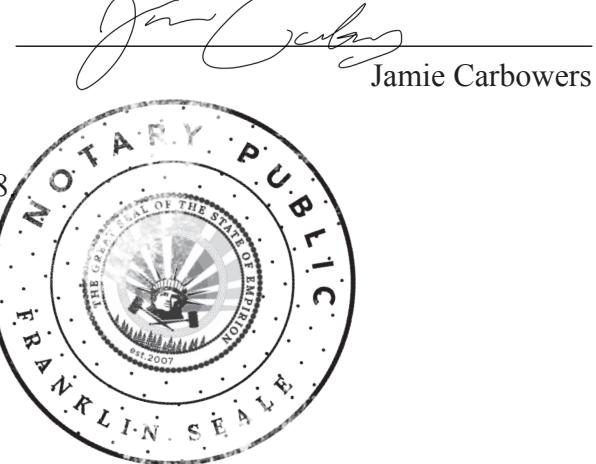
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201 Signed and sworn to this 15th day of August 2018



Jamie Carbowers

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

AFFIDAVIT OF LEE MCCARSON

1 My name is Lee McCanson and I'm 57 years old. I don't have much to say about all
2 of this, so I'm just going to get right to it. I was home when all of this came about, but I know
3 Harry didn't do whatever y'all think he did—Harry is the victim.

4 I grew up in Midlands, which is right on the "Mason-Dixon line," half in the North,
5 half in the South, where our accents are sweet and our tea is sweeter. I love my boy, so I raised
6 my boy in Midlands, too—the right way. I can't believe Harry is accused of this crime. I know
7 he didn't do it. He was peaceful. He loved his country and he wanted nothing but the best for
8 all Americans. When Harry was in grade school, he studied every president, knew every state
9 capital, and could outline the Constitution by the age of 12 (articles, amendments, and all).

10 When Harry got to high school he did Model Government, Mock Trial, and even Lincoln/
11 Douglas Debate for a while. He was a true patriot—he *is* a true patriot.

12 I taught my boy to be respectful to err'body, even those people we don't agree with.
13 Now err'body might not look like us, or talk like us, but I taught Harry not to hold that against
14 anybody. We gotta help people who might be more unfortunate than we are. That's just the way

15 life is sometimes. We can't all be born into the same situations, because life isn't perfect or fair,
16 but successful people are measured by what they do with the life they *do* have. And sometimes,
17 when people need a little help, it's up to good people in their communities to support them if
18 they're willing—like I am.

19 I have to think that, deep-down, Harry believes this too. That's the McCarson way. I'll
20 admit that it became pretty clear to me that Harry's got a problem with Empirials, though. I've
21 seen Harry's networking internet pages¹ before-- the Facebooks, the Tweet, and the Myspace--
22 and what he writes ain't right. That's *not* the McCarson way. I really don't know where he
23 picked up that racist stuff from. There's gotta be some evil people at ESU (that's where he
24 went to college). He didn't really know any Empirials growing up 'cause there aren't many in
25 Midlands. Harry knows better than to say that racist garbage around me 'cause I would throw
26 him outta my house, for real.

27 Anyway, what I'm about to say don't justify Harry's actions. But I'll tell you this: my
28 boy was never violent with no one. Ever. Not even when he was provoked. No matter their race
29 or orientation or any of that other stuff... in that way, he was a good boy. I remember a time at
30 the school yard when Harry was playing dodgeball. He was 8. Some kid smacked Harry right
31 in the face with the ball. After he realized what had happened, his fists were clenched, and he
32 was annoyed, definitely. But, ya know what? He just walked away. Another time, Harry was in
33 junior high school, 'bout 10th grade or so, and I was walking to get him at the school bus stop.
34 Two kids went up to him, pushed him, and said "why don't we help you get to your parent a
35 bit faster." Little bullies. But Harry didn't react. He just kept walking. All throughout middle
36 school, high school, and college even, Harry had a reputation for being peaceful. That's a fact.

37 On February 20, I was home during the little incident watching TV when Harry called

1 Exhibits 13-15

38 me from CORE Square--I could see the statue of Colonel Michael in the background. It was
39 around 10:45 PM. I remember I had just finished a late dinner and was getting ready to go to
40 bed. When Harry video called me -- I think it's called TimeFace -- he was breathing heavily. He
41 looked a bit disheveled and flustered-- not like himself. He was worked up, for sure, sucking in
42 his breaths trying to talk and everything. He said he was scared when Tommy Abel the famous
43 activist came at him. Abel's known for being violent in the past and everyone knows it.

44 Harry told me, "I didn't touch Abel! I did nothing to Abel, the stupid Emp just fell down
45 the stairs!" He was screaming and carrying on. He was holding the camera up above his head.
46 He looked really disheveled, but he didn't have no blood on him or anything, not on his pants
47 or shirt or nothing. Harry pleaded with me, "You gotta believe me! That stupid Emp, what a
48 moron, came at me, I didn't touch anyone. It wasn't my fault...Abel made me..." I asked, "Abel
49 made you what?" but the reception got spotty for a minute and I couldn't hear his response. As
50 soon as it came back clear, I told him "OF COURSE I believe you." I was really trying to calm
51 him down. I know my child and Harry doesn't lie. Harry told me this whole situation is "such
52 nonsense" and I believe him. Harry said that "if they can congregate, then so can we. We're now
53 the oppressed people!" And I asked Harry who "they" were, but the call ended abruptly on his
54 end...stupid spotty reception...I'm assuming he meant the Empirials that were protesting. Who
55 knows!

56 Like I said, Harry is *not* a violent boy. He gets a temper—real bad sometimes—but
57 he's never, ever been violent about it. Passionate, sure, but never violent. He's really learned
58 to manage his anger well—I'm so proud of him. I always knew it was just passion. He gets so
59 passionate about everything that he believes in. Harry will get fired up about the smallest things,
60 especially about stuff he's real interested in, because he believes so genuinely in truth and fact
61 and tradition.

62 See, Harry was in Pasquale in the first place to give a speech. He was doing his civic
63 duty—educating young minds. Harry insists that all statues that commemorate our nation’s
64 history remain standing, no matter who they might offend. He keeps sayin’ that you just can’t
65 erase history cause you don’t like it. I said honey, not everyone agrees with you. Some people
66 feel like them monuments represent bad people who have harmed them people’s ancestors so
67 you gotta at least respect how they feel even if you don’t agree with it. He’d just shake his head
68 and walk away.

69 I know I emailed Harry an article on Abel’s violent history just a couple of weeks
70 before the incident. Harry called me when he got the email and I think he was a little worked
71 up about it. “We don’t really agree on much of anything... what if Abel comes after me...?” I
72 told him he should reconsider protesting anywhere near where Abel would be and maybe stay
73 on the mainland. He seemed determined to go anyway, so I sent him a few more articles about
74 Abel. I think I opened his eyes to Abel’s crazy. But he decided to go anyway, because so many
75 of his friends and supporters had already bought plane tickets. That doesn’t mean he wasn’t
76 on the lookout, though - he kept calling and texting me to tell me he was nervous and that he
77 was praying Abel wouldn’t show up. I musta talked to Harry about that crazy Abel a half a
78 dozen times or so before he decided to disobey his parent and go to Empirion anyway! This is
79 a lesson to all kids out there, you gotta listen to your parents even if you think you know best.
80 We all saw know how this turned out. Abel is a violent person. I knew it, BrightStart made
81 sure the whole world knew it, and I made sure my boy knew it too. I told my boy that he had
82 to LOOK OUT for Abel; I was like “look, that Abel character is a menace, did you see at those
83 rallies in DC! And Pasquale...” and he said “I know, I will, I’ll take care of myself and Abel, if
84 necessary.” And that made me feel better. Because I taught my boy never to start problems, but
85 to *always* clean ‘em up. I was so upset when I saw Abel on the TV a few days later, saying that,

86 "I understand some people disagree with what happened, but I would do whatever is necessary
87 to get my point across". Can you believe that! I was absolutely shocked.

88 Anyway, I really didn't know what to do about this whole situation because I truly felt
89 like Harry was being targeted for his beliefs and I couldn't do much myself, so I hired Charlie
90 Felder to investigate this whole situation. Charlie has been GREAT to work with. Charlie
91 always sees the truth, no matter what. I don't know what Charlie thinks about this whole
92 situation personally, except that Charlie was going to take care of it, and testify on Harry's
93 behalf because these charges are ridiculous. That's why I'm here too. I heard on MDTV that
94 my boy could go to jail for over 10 years if he's found guilty! I almost broke down and started
95 crying. I can't lose Harry for that long-- the world can't lose him for that long! I love him with
96 all of my heart and I would do anything to protect him. That's the vow every parent takes when
97 bringing a child into this world. And it's one that I'll never break.

98 I hope my statement has been helpful. That TV judge -- Judge Tiliis -- always asks the
99 people in his courtroom if they swear to tell the whole truth and nothing but the truth, and
100 that's what I've done. The attorneys on Judge Tiliis always try and tie the witnesses up in some
101 fake lie, but everything I've said here is the truth. I don't think there's anything I'm leaving
102 out. Of the available exhibits I am familiar with the following and only the following: Exhibits
103 13-17 are my son's online posts. Exhibit 18 contains the news reports I sent Harry about
104 Tommy Abel.

105
106
107

108 Signed and sworn to this 20th day of August 2018.



Lee McCarson

CHARLIE H. FELDER

PRIVATE INVESTIGATOR

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2 Pasquale, Empirion, 90999

3 —

4 (221)-555-0145

5 cfelder70@pasqualepi.com

6

INVESTIGATIVE REPORT

8

I. BACKGROUND

10

a. Personal Background

12

13 I am a private investigator based in Empirion. Most of my clients are civil plaintiff attorneys, but
14 I have seen all sides of the legal process. My job is usually to gather additional evidence to assist
15 attorneys as they prepare a case, but I am occasionally hired to review existing evidence and review
16 police investigations to determine if proper protocol has been followed.

17

18 Unlike most PIs, who start their careers as detectives or police investigators and then move into the
19 private sector, I began my career as a lawyer. After I passed the Empirion Bar, I worked as a public
20 defender for almost a year. While working as a public defender I spent a great deal of time around
21 police officers, and I learned there was more money on the other side, so I quickly found a job as a
22 crime scene investigator for the Pasquale Police Department. My training began with an intensive
23 two-week course on forensics, and continued with lengthy on-the-job training (my experience is
24 more fully outline in my attached CV). I found that PI work fit my skill set much better, and I enjoyed
25 a great deal of success, so much so that I started getting generous offers to consult in civil lawsuits.
26 I took this as a sign, and I retired from the police department to work as a PI full time, which I have
27 been doing for over five years now. During my time at the police department, I worked over 25 cases
28 involving violent crime. As a criminal defense attorney, I represented over 50 defendants in court,
29 and have testified 15 times as a PI.

30

B. Case Background & Methodology

32

33 I was hired by the McC Carson family to investigate the circumstances surrounding the altercation
34 between Harry McC Carson and Tommy Abel, which occurred, as I am given to understand, during
35 a protest-counter-protest on February 20th. Specifically, the scope of my investigation was to
36 determine who was responsible for the injuries sustained by Abel. I was paid a total of \$15,000
37 for my work: \$10,000 for my initial review and report at a rate of \$400 per hour, and an additional
38 \$5,000 for my testimony in court. I was not paid by Harry McC Carson directly, but through money

39 orders from the McC Carson family.

40

41 I was also instructed to "double-check" the state and federal investigations. To do this, I was provided
42 with the sworn statement of Terry O'Neil, the sworn statement of Earl Ravin, the report prepared by
43 Agent Key, Exhibit 5 (a map of the square and surrounding area), Exhibit 6 (report made by Officer
44 Carbowers), Exhibit 7 (transcript of McC Carson's voluntary interview with Officer Carbowers), Exhibit
45 8 (tread analysis report prepared by Agent Key), Exhibit 9 (DNA analysis report prepared by Agent
46 Key and the FBI), Exhibit 10 (Abel's medical report), Exhibit 11 (sign held by McC Carson during
47 the protest), Exhibits 13-15 (McC Carson's social media posts), and Exhibit 18 (articles about Abel's
48 history). I also reviewed Exhibits 2a and 2b, and I created Exhibit 2c based on the accounts I read and
49 the conclusions I drew.

50

51 When I work on criminal cases like this one, I usually conduct an investigation to parallel the work
52 done by state or federal agencies, even if their work has already concluded. Given the nature of my
53 role, it is oftentimes possible that I come across evidence which the police department has previously
54 missed during their investigation - usually through witness interviews. After all, it's part of my job
55 to determine if the police did a thorough investigation, and that means following up on all the leads
56 that I find, even if the police chose not to. As outlined below, additional evidence did come into my
57 possession during the course of my review of the FBI and police investigations and review of witness
58 interview notes.

59

60 Because of my background in investigation, and experience and education in forensics, I am able
61 to both review the methodology utilized by the state and federal investigators, and apply my
62 own methods and standards to the evidence that they have collected. While some might argue
63 this makes me just an "armchair quarterback" (or a "glorified second-guesser"), I like to think of
64 myself as someone who "watches the watchers." I keep the police honest by making sure that their
65 investigations are done by the book, and that nothing gets missed. In general, I'm able to confirm that
66 they have done their jobs correctly; however, in some cases, like this one, I'm able to point out holes,
67 and prevent injustice from being done.

68

69 I consider it part of my job, when hired by defendants in criminal cases, to consider alternative
70 possibilities with the goal of finding one or many that are reasonable. What the clients, or in this
71 case, the jury, do with that information is up to them.

72

73 **II. HATE CRIMES, AND SELF DEFENSE**

74

75 I note, initially, that this case has been referred from the state-level investigators to the federal
76 investigators at the FBI, and is being brought as a hate crime charge at the request of the state
77 attorney general. Specifically, that means that the crime must involve some racial animus. I
78 believe there's an important distinction to be drawn here - one that police officers often miss in my
79 experience. Simply because McC Carson held racist views does not automatically mean those racist
80 views caused him to commit a particular action or assault, as I will discuss more in depth below.

81 First of all, alleging that McC Carson had racial bias does not automatically make McC Carson's actions
82 a hate crime, even if that racial bias was towards Empirials. Without evidence of a clear cause and
83 effect relationship between a specific bias and the crime in question, the required element of racial
84 bias/animus does not exist. I did not find any statements by McC Carson, based on the materials that I
85 reviewed, to indicate that McC Carson had any intention of violence towards Tommy Abel at all, much
86 less because of Tommy Abel's race. Without evidence directly connecting any pre-meditation or the
87 *actus reus* (the act of the crime) to Tommy Abel's race, this charge simply does not hold water, and I
88 found no such evidence. Assaults happen all the time for reasons other than race, and it is certainly
89 reasonable to believe that this could have been one of them, without evidence to suggest otherwise.¹
90

91 I want to be clear in this area - I am not claiming that McC Carson does not hold racially biased opinions
92 towards Abel and other Empirials. I personally find such views to be racist, abhorrent, and I will not
93 defend them in court, nor will I attempt to excuse or justify them. However, it's important to note
94 that there is a distinction to be drawn between holding such racist views, acting on those views, and
95 acting *violently* or aggressively on those views. While McC Carson's words and actions clearly indicate
96 that he held strongly prejudiced and indeed racist opinions against Empirials, I found nothing to
97 indicate he had either a history of, or intention to, act *violently* on those opinions. While hateful,
98 holding such views is not a crime in and of itself, and is in fact explicitly protected under the First
99 Amendment, and he should not be punished for exercising his constitutional rights. I found no
100 evidence to support the idea that McC Carson would ever actually attempt to harm Abel, or anyone else
101 of Empirical descent, based on his (admittedly racist) views.

102

103 In the case that Abel did not in fact fall, but rather was struck by McC Carson, the question becomes
104 different - did McC Carson cause Abel's injury with malicious intent? Did McC Carson mean to harm
105 Abel, or was McC Carson acting out of a perceived fear for his own safety? There was no evidence
106 that McC Carson had a history of violence. I reviewed a variety of witness statements, including
107 from witnesses that had known him for a long time, in order to come to the conclusion that despite
108 McC Carson's rhetoric, he did not have any violent tendencies, nor did he have any history of violence.
109

110

111 Therefore, it certainly is possible he did injure Abel and knock him down the stairs, but only with
112 the intent to protect himself. I did find ample evidence that Abel displayed aggressive, threatening
113 behavior towards McC Carson. The witness statements I reviewed mostly seemed to agree that Abel
114 yelled at McC Carson and possibly even ran up the stairs towards him. McC Carson may have acted only
115 in the interest of self-preservation, and those actions may have been well founded. Again, as I was
116 not present at the time, I cannot conclude definitively which possibility is more likely.

117

III. ABEL'S FALL

118

119 All of the evidence I reviewed suggested that Tommy Abel fell down a set of stairs - that in

1 I have seen and am familiar with Exhibits 13 through 15, collectively known as McC Carson's Social Media posts. However, that does not change my opinion with regard to the likelihood that McC Carson committed a hate crime.

121 indisputable. However, based on my review of the available evidence, the reason for that fall is
122 entirely unclear. Certainly it could have been caused by somebody else, but it is also possible Abel
123 fell of Abel's own accord. Abel was in a loud, crowded, stressful situation. A simple loss of balance
124 is a very reasonable possibility, that Abel perceived a threat from McCarson and because startled,
125 causing Abel to fall. Furthermore, there were hundreds of other people protesting, and intervention
126 from any one of them could have caused Abel to fall.

127

128 While Abel did suffer multiple injuries to head and body, I see nothing about those injuries which
129 is inherently tied to the act of being pushed down the stairs. It is entirely possible that Abel fell of
130 Abel's own accord, and once at the bottom of the steps, was beaten by a series of other protesters,
131 causing the broken collarbone, broken ribs, and gash on the face. As noted further below, it is
132 concerning to me that Agent Key appears to dismiss this possibility outright, without giving it fair
133 consideration. All of Abel's injuries were clearly traumatic, but I found nothing that definitively links
134 that trauma to any of McCarson's actions. That being said - I cannot say definitively that this is in
135 fact what happened, and it is equally possible that Abel was in fact pushed down the staircase. In my
136 opinion, the witness statements which I reviewed offered such conflicting evidence, so as not to be
137 clear in allowing for a determination one way or another.

138

139 IV. OVERLOOKED EVIDENCE IN THE POLICE AND FBI INVESTIGATIONS

140

141 A. Tread Impression

142

143 As for the actual cause of Tommy Abel's injuries, I found multiple alternative explanations. Abel
144 fell down a set of stairs into an angry crowd. The broken ribs and collarbone could have very easily
145 been caused by the fall down the stairs, or by the crowd below. To suggest that these injuries must
146 have been caused by McCarson, with no reasonable alternative, ignores the inherent danger of the
147 situation. It is certainly possible that this fall and these injuries were caused by McCarson, but the
148 evidence leaves the door open to alternatives. It is also very possible that those injuries were caused
149 by another protester at the bottom of the stairs, and not by McCarson himself.

150

151 In considering those alternatives, I first considered the tread prints found on Abel's person. I worked
152 with tread impressions extensively during my time as a crime scene investigator. I am familiar
153 with standard practices in the field, and I agree that Agent Key's analysis of the tread impressions
154 followed standard procedure. That form of transfer analysis is the gold standard in the field, it has
155 been peer reviewed, and is something I have substantial experience applying and conducting. These
156 tread impressions were used by the FBI as evidence that McCarson assaulted Abel, as a similar pair
157 was recovered from McCarson's person. However, it should be noted that Agent Key, based on my
158 review of Key's report, completely discounts the idea that any other protester there might have been
159 wearing the same shoes. Any shoe of that brand, would leave a similar or substantially similar tread
160 impression. I no found evidence that the FBI investigated whether or not any other protesters there
161 that day were wearing the same brand and style of shoe, or that they sought information about what

162 other shoes might leave similar impressions. If others wore similar shoes or if many shoes would
163 leave similar impressions that would cast serious doubt on the idea that that impression conclusively
164 links McCarson to Abel's assault. In fact, in reviewing the witness statement of Earl Ravin, I found
165 direct evidence that another protester was in fact wearing substantially similar shoes, and there
166 were numerous other individuals such as Stephens and Parapaldo not considered sufficiently. Agent
167 Key dismissing that possibility outright, despite acknowledging Ravin, which I found concerning.
168

169 **B. DNA Analysis of Blood**

170

171 I also understand that the police believe that the blood on McCarson's shoes was Abel's. This may
172 or may not be true. As a former CSI, I have seen many forensic tests conducted poorly, and there
173 could have been cross contamination, or a false positive. Firstly, I found no evidence that Agent Key
174 conducted the test itself incorrectly. I agree with Key's methodology, and agree that Key conducted
175 the test properly, as is standard in the field. I also agree that this type of testing is the gold standard
176 in DNA matching, and I commend Agent Key for using it. I have extensive experience performing
177 these kinds of tests during my time as a crime scene investigator.

178

179 It's a common misconception to say that DNA evidence is infallible. I did find one thing of note that
180 was concerning in the DNA report. In the matching of sample Q1, there is an "extra" allele found at
181 marker D7S820. Those markers are the genes that the analyst is testing - the specific location in
182 the DNA they're looking to determine if the genes at that location match. The alleles listed are the
183 specific genes found at that location. Alleles are given a number to identify them. The presence of an
184 "extra" allele at marker D7S820 means that there was one gene found in the unknown sample, which
185 was not present in Abel's DNA.

186

187 That may be evidence of sample contamination. To be clear - I am not saying the sample was
188 definitely contaminated, or that the test was invalid. It is possible for even a pure sample to create a
189 false positive, though that is unlikely. However, the fact that only one "extra" allele appears indicates
190 that even if such contamination occurred, it was very minor, and is unlikely to substantially affect
191 the test's results. It is, however, possible. The more likely scenario is that, given that McCarson was
192 at the scene, it is possible Abel's blood got on the sneakers some other way, if Abel bled on the ground
193 it could be picked up on shoes. And even if the cleats did in fact pick up Abel's blood from physical
194 contact, I didn't find evidence that this was done with intent. Accidents happen, and Abel was on the
195 ground in an agitated crowd.

196

197 Moreover, it's a common misconception to say that DNA evidence is infallible. While DNA evidence is
198 indeed strong, it is subject to misinterpretation, and contamination just as everything else is. I found
199 that it's possible that the blood in this case was contaminated, as one of genes tested as part of the
200 analysis actually presented an allele which Abel doesn't possess. This could be a false positive, and
201 doesn't inherently mean the test is inconclusive or incorrect, but is a possibility which should have
202 been examined further by the FBI. In my opinion, it is most likely that the blood did in fact belong

203 to Abel, but given the chaos of the scene, I am not comfortable concluding to any degree of certainty
204 that that blood could only have gotten on to the bottom of McC Carson's shoe through McC Carson's
205 alleged assault of Abel.

206

207 **C. Further Investigation**

208

209 While most of my work in this case consisted of simply reviewing materials, and the McC Carson
210 family who hired me explicitly did not hire me to conduct a full parallel investigation, I became
211 increasingly convinced that McC Carson had been unjustly accused, and so took it upon myself to do a
212 bit of investigating on my own.

213

214 It didn't take me long to find another protester who had been wearing similar shoes, who was seen
215 near the scene of Tommy Abel's injuries, named Earl Ravin. I would have liked to examine the injuries
216 myself to compare with the different types of shoes, it is my understanding they were disposed of.
217 I found no evidence that the police or the FBI had considered that this other person present at the
218 protest, Earl Ravin, could have been an alternative offender responsible for Abel's injuries. In fact,
219 both the local police and the federal investigators seemed uninterested in tracking down additional
220 information relating to potential additional suspects. As noted above, because of the chaos of that
221 evening and the understaffed police department, it seems hard for me to believe that the local police
222 were able to decide so conclusively and so quickly that Mr. McC Carson was the only person who could
223 have caused those injuries to Tommy Abel. More concernedly, Agent Key even notes that Ravin
224 was present, but dismisses the possibility of Ravin being the perpetrator outright, without further
225 investigation.

226

227 To illustrate how egregious law enforcement's conduct was, I prepared a map showing exactly
228 where Ravin was standing on the night in question during the 2nd alleged assault and provided it to
229 counsel; it is Exhibit 2c. This was based on a review of Ravin's affidavit as well as a brief conversation
230 that I had with Ravin in which I verified Ravin's location.

231

232 I acknowledge that Ravin was paid handsomely by McC Carson to protect McC Carson. Bias can
233 certainly be a factor that should be considered by any investigator. Nevertheless, the fact that law
234 enforcement never sought to speak with Ravin or verify Ravin's claims makes this issue particularly
235 inexcusable.

236

237 **VI. CONCLUSION**

238

239 Ultimately, I believe there are many possibilities for how this crime could have taken place. While
240 the story told by the FBI is certainly a reasonable possibility, there are several other reasonable
241 explanations, albeit less flashy. Hate crime accusations are extremely hard to prove, and in this case
242 the evidence certainly isn't there. I believe the narrative the FBI is trying to sell is one they latched
243 onto, which caused them to ignore everything else. Ultimately, I cannot say conclusively what caused

244 Abel's injuries or fall - either McCanson, or other offender are both likely causes.

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A handwritten signature in black ink that reads "Felder". The signature is fluid and cursive, with the letters "F" and "e" being particularly prominent.

250 Charlie Felder

251 **Private Investigator**

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

AFFIDAVIT OF TERRY O'NEIL, PH.D.

1 I have been asked to provide an affidavit in this case because of my personal
2 relationship with Harry McCarson as well as my eye-witness account of the unfortunate
3 events of February 20, 2018. I understand that I must tell the truth when making this statement
4 given that I could be called to testify in a Court of law. With that said, I am perturbed by the
5 Government's treatment of Harry. I witnessed the incident in question; I know Harry well; and
6 the charges are unwarranted. I will make that clear in my statement. Harry is not perfect. None
7 of us are. But this case should be dismissed.

8 I am the Dean of the History Department at Empirion State University. U.S. News
9 & World Report has ranked our Empirical History Department #1 in the nation for the past
10 10 years, which coincides with my taking over the Department in 2008. For context, "an
11 Empirical" refers to an indigenous person of Empirion; her contemporary would be a Native
12 American in the mainland United States or an Aboriginal Australian in Australia; "an
13 Empirion," however, refers to a broader class of persons: anyone who identifies as a resident
14 of Empirion, regardless of ancestry. In the interest of full disclosure, I was born and raised

15 in Empirion but I do not have Empirical ancestry; however, some of my closest friends are
16 Empirical and I feel very connected to their community. At ESU, our specialty lies in teaching
17 Empirion history; specifically, our goal is to teach an unvarnished version of that history. Like
18 the mainland United States, Empirion has some parts of her history that no one is proud of. A
19 historian's job, and indeed that of a history professor, is to educate the populace so that grave
20 mistakes are never repeated.

21 I am an ESU graduate myself. I graduated with degrees in political science and history.
22 I then went on to NYU, where I received my PhD in Comparative History. I taught several
23 seminars while working on my doctorate, which ignited my passion for education. I accepted a
24 professorship position at ESU after graduation. As an academic, they say you have to “publish
25 or perish” and I was no different. I wrote three books during my first 8 years at ESU, before
26 being elevated to the Deanship. While I am responsible for a host of administrative tasks, I
27 still teach one course per semester: *Empirion Strikes Back: the Second Struggle for Empirion*
28 *Independence 1928*.

29 I met Harry McC Carson approximately 15 years ago when he registered for one of my
30 courses. He struck me as bright, but introverted. Like many out-of-state students, he came to
31 Empirion for the laid-back lifestyle that our famous sapphire beaches promise without knowing
32 much about the native culture or history. He started the semester quieter than his classmates.
33 One day, I met with him after class and issued an ultimatum: participate in class or your grade
34 would suffer. Harry never looked back.

35 From that day forward, he not only participated, but led many of our in-class debates.
36 ESU students are required to take at least one course on Empirion history. Often, out-of-state
37 students are apathetic when doing so. But not Harry. He engaged in the coursework like no
38 other student I've had before him or since. He demanded that we put the actions of Empirion's

39 rulers, the French and then Colonel C. Griffus Michael, in context. He'd say, "It's easy for us
40 to sit here in our 2018 Sapphire Tower and second guess their decisions. But imperialism and
41 autocracy were prevalent at the respective times in which the French and Colonel Michael
42 reigned." That is not a popular position for someone at ESU to take, and his classmates pushed
43 back. Sometimes aggressively so. But Harry never backed down. He would press students on
44 how the U.S. could justify the actions of its leaders, who forcefully relocated Native Americans
45 during the Jackson Presidency and interned Japanese Americans during FDR's Presidency.
46 Oftentimes, the students would just dismiss him without responding to his arguments.

47 I was so impressed by Harry's intellect and passion that I recommended that we meet
48 bi-weekly to discuss select topics in Empirion history. Harry was delighted. He was interested in
49 delving into primary source documents about Empirical history and beginning his thesis early in
50 his academic career, all of which I encouraged.¹ Approximately three months into our meetings,
51 Harry came to me and said, "Our discussions are fascinating, but it's not fair that my classmates
52 don't have the same opportunity to engage in rigorous intellectual debate. What if we start an
53 organization that discusses these types of issues?" I said that is a brilliant idea. That is how Stay
54 True to History ("Stay True") was born. The organization wasn't formally affiliated with the
55 university, but it worked with the ESU Library to establish archives of historical artifacts and
56 organize panel discussions on campus.

57 As one would expect, Harry's academic interest evolved during his time at ESU. He
58 began concentrating his studies on Colonel C. Griffus Michael, the famous, but extremely
59 divisive, Empirion independence leader. Michael led the Empirials as they overthrew their
60 French oppressors in the Empirion War for Independence in 1920. Some scholars view

¹ I provided counsel with a copy of Harry's abstract, Exhibit 19. I kept it after all of these years!

61 Michael as a savior for liberating the Empirials from their French colonizers² and bringing
62 about prosperity on the Island. Others, however, view Michael as a power-hungry murderer.
63 Admittedly, the latter is the majority view and the dominant position of the Empirial
64 community. In my opinion, the truth lies somewhere in between.

65 After reviewing primary source documents, Harry felt that history had been unfair
66 to Colonel Michael and that his classmates, many of whom were Empirial, refused to
67 acknowledge Michael's contributions to the island. Harry grew increasingly angry at his
68 classmates, using language in class that was, at points, offensive and incendiary. On at least
69 two occasions, I recall him using the “E-word” (Emp)³ in response to a classmate that mocked
70 him. Harry's classmates often provoked him with taunts and foul language, but his use of a
71 racial slur was unacceptable. Harry and I had discussed the history underlying this word, and
72 he knew what it meant; he knew that it would offend. Harry's hateful language also meant that
73 while I would continue to mentor him, I could no longer appear publicly at Stay True events or
74 openly support the organization. I am familiar with their current website but I am not formally
75 involved with any of their events.

76 My relationship with Harry over the years has been complex. We've kept in touch. We
77 would get coffee or lunch any time he visited Empirion (typically twice per year). With that
78 said, I obviously disagree with much of his behavior; the truth is, I believe that you can care
79 for a person even if you don't always approve of how they conduct themselves. That is how I
80 view Harry. I have seen his social media posts,⁴ and I find his rhetoric at points to be abhorrent;
81 characterizing one race as superior to another is not consistent with my own personal moral

2 Empirion was a French colony for more than two centuries.

3 The “E-word” was conceived by the French in the 18th century as a way of demeaning Empirials. In a 1761 article in the Empirion Gazette, a Frenchman wrote, “the Emp is an *Empty* soul, sharing more with the animals in the jungle than our people in the town square.”

4 Exhibits 13-15.

82 compass or the values of ESU. Harry not only hurts others when he makes hateful statements,
83 but he hurts himself. No one in academia takes a scholar seriously who directs ad hominem
84 attacks at others based on their race. In doing so, he also conflates white supremacy with
85 supporting Colonel Michael, which is unfortunate. One can acknowledge the Colonel's
86 contributions to modern Empirion without subscribing to views of white supremacy.

87 As you're aware, the long-standing statue of Colonel Michael was removed from
88 CORE Square in February of this year. This was a topic that meant a great deal to Harry. He
89 called me from his home in Midlands when the referendum to remove the statue was scheduled
90 to take place. It was November of 2017. He said, "Professor, we need to do everything possible
91 to keep this monument up. How can we learn from history if all we're going to do across
92 America is try to erase it?" I told Harry that he should respect that this is a local issue; that
93 he is not Empirical; that the historical record makes it clear that this monument was erected
94 as a symbol of oppression; and that he doesn't have to see the statue himself so he shouldn't
95 let it impact him. Harry responded with, "Now you sound like that, Emp, Abel." I scolded
96 him for using such language. He fired back with, "Look, I am sorry. This is about history, not
97 Empirials. They just need to realize they are wrong for seeking to suppress history--how can
98 we get them to see that?" Through Stay True to History, Harry tried to sway public opinion but
99 he was unsuccessful: over 80% of Empirion residents voted to have the statue removed.

100 I spoke to Harry about a dozen times between that call and his February 19th speech on
101 campus. Every time we spoke, Harry talked about his plan: travel to campus, give a speech on
102 the merits of Colonel Michael; and organize a mass protest on the day of the removal. He said
103 his intent was to get people to realize that we should try to learn about all historical figures,
104 like Colonel Michael, even if we do not condone their actions. I supported that message as well
105 as Harry's efforts to educate Empirials about their history. So I told Harry that if necessary, I

106 would pay the security fees associated with him speaking on campus.

107 I attended Harry's speech on the 19th. I will be forthright: I was disappointed. Harry
108 remarked that Colonel Michael's belief that white Europeans were "more civilized" than
109 Empirials is something that we "shouldn't criticize, but work to embrace and understand."
110 I believe he meant 'understand given the context of the time in which he lived,' but that's
111 not how it came across. The crowd jeered Harry. It is a shame. One ignorant statement
112 overshadowed a speech that made some terrific points about Colonel Michael.

113 After the speech, I met Harry backstage at the STOA. As we exited the building,
114 someone grabbed Harry by the shirt and said, "you better keep your mouth shut tomorrow
115 otherwise you won't make it out of here alive." Harry didn't flinch. He asked the man to let
116 him go before he called the cops, and the man complied. That incident was consistent with
117 how I've seen Harry behave over the years, both on campus and in news clips. When someone
118 attempts to provoke Harry--whether it's by yelling at him or confronting him physically--he
119 never escalates the situation. He'll either respond verbally or he'll walk away. Harry may
120 harbor views that I revile, but I have never seen him act violently. I've known him for 15 years,
121 and my opinion is that he is a peaceful person.

122 Following the incident, Harry's driver took us to Archives, a bar in his hotel. Harry
123 seemed a bit shaken up by the incident. He asked me if I saw the shirt that the heckler was
124 wearing: "I think he had on one of those Sapphire Means Love shirts... it was a blue shirt, did
125 you see it?" The person was, indeed, wearing a blue shirt, but I didn't see a Sapphire Means
126 Love logo or any sign that the person supported.⁵ I told Harry that was probably nonsense
127 as that organization promotes peace and love in Empirion. But Harry wouldn't let it go. He
128 brought the issue up 3 or 4 more times that night, asking "Do you think they'll try to come after

5 I am familiar with Exhibit 21, which contains their logo.

129 me? Should I be on the lookout for that Abel character?" I kept telling him that he had nothing
130 to worry about. Abel's reputation in Empirion was not violent, to my knowledge (though
131 I can only speak to the perception at ESU as well as my demographic, which is a mid-50s
132 Empirion resident who lives in Pasquale). As the night progressed, Harry's demeanor seemed
133 to change. He became angrier. At around midnight, he said to me, "Abel is a stick in the spokes
134 of progress," and that we should "take him out" because he was "ignorant" and didn't have an
135 "appreciation for history." I told Harry that it was time for him to get to bed and he agreed. We
136 said good night, and I wished him good luck at the rally the following day.

137 The next day, I arrived at CORE Square around 8:00 PM. I headed right to the
138 monument. This was a historically significant day for Empirion so I wanted to be there to
139 appreciate it. There was a group gathered from Sapphire Means Love in the park, all wearing
140 blue shirts. They were holding signs such as, "LOVE, NOT HATE" and "THE COLONEL'S
141 REIGN ENDS TODAY." There were also a few people gathered with Stay True to History
142 shirts and signs. I spoke to supporters from both groups, and they were all very nice to me.
143 Things seemed were peaceful at first.

144 At approximately 9:45 PM, I was standing about 15 feet from the statue when all of a
145 sudden I heard a thunderous rumble. It felt as if the ground was about to shake. When I turned
146 around, I saw Harry leading a mass of people toward the monument, entering by the southside
147 of the park. Marching to the statue, the group was chanting, "blood and sand" and "blood and
148 soil." I was standing next to someone from Sapphire Means Love who said, "we need to put an
149 end to this quickly, Abel better do something about this." I've been to events at CORE Square
150 before, but I've never seen it this full. Harry had hundreds of people following him.

151 Over the next 30 minutes, the groups came closer and closer to one another. I heard
152 police trying to yell at them to stand back. There was a lot of commotion. There was pushing

153 and shoving and shouting. Expletives were hurled. I realized that this wasn't a great place to
154 be. So I decided to duck under the caution tape that was blocking off the stairs, and head up to
155 the base of the monument. I thought I could both take one final photo of the statue before it was
156 removed and exit behind the statue without getting caught up in the chaos that was happening
157 below. There was really no other way out of the park at that point given the sea of people.

158 At approximately 10:20 PM, I was standing near the base of the statue.⁶ My back
159 was to the crowd when all of a sudden I heard Harry's voice. Harry led the crowd in chants of
160 "SAVE THE COLONEL" and "EMPosters." It definitely wasn't Harry's finest moment. I was
161 about to leave when all of a sudden someone charged up the stairs toward Harry screaming. It
162 was Tommy Abel. Abel said, "You belong in the dark ages with Colonel Michael -- you're both
163 traitors." At this point, I instinctively put my hand over my face because I was concerned that
164 this remark would set Harry off, and knocked off my glasses as a result. My vision is 60/20
165 so I cannot see perfectly without them. Nevertheless, I could still see some of what happened
166 as I was only 30 or so feet away from their interaction. I saw Harry hold up his megaphone as
167 Abel got close to him, but because of where I was standing, I can't be sure exactly what he was
168 doing. I thought Abel may have lunged at him or gotten too close, but I can't be sure: it was too
169 blurry. Regardless, I could see Abel fall down the steps after Harry lifted up the megaphone.
170 I don't know if Abel lost balance or if Harry hit Abel or what happened. I don't think Harry
171 hit him over the head with his megaphone because I don't think he raised his arm like you'd
172 expect a person to do when slamming an object over another. But I can't be sure.

173 I immediately picked up my glasses and ran down the stairs to see if Harry was okay.
174 As I was crouching down, I heard someone yell "Get him! Get the Emp!" followed by cheers.

6 Later that night I told Officer Carbowers where I was standing, and he correctly marked it on Exhibit 2a

175 It was a male voice. It could have been Harry's, but I am not sure. By the time I picked up my
176 glasses, put them on, and walked down the stairs, I saw a group of a 4 or 5 people standing
177 around something. I realized as I got closer that it was someone on the ground: Abel. Harry
178 was crouching down over Abel's body saying, "What's the matter? Get up! Come on. You're
179 fine. No one hurt you!" I was about 3 feet behind Harry when I heard this. I never saw Harry
180 kick Abel. But truthfully, given where I was standing, and how quickly it all happened, it
181 would have been nearly impossible for me to tell who kicked him.

182 As much as I disagree with Harry, I would hate to see him go to prison for this. His
183 words can be revolting at times, but we don't imprison people in this country for their words.
184 Only their actions. Based on what I saw, and my conversations with Harry, I feel confident in
185 stating the following: (i) Harry was at CORE Square on February 20 to peacefully exercise
186 his First Amendment right because of he is passionate about history and Colonel Michael's
187 place in it; (ii) Harry is not a violent person; and (iii) Harry did not strike Abel on the night in
188 question.

189 I was asked recently whether I saw Harry's bodyguard, Earl Ravin, around Abel's body
190 when he fell at the base of the stairs. I cannot say that I recall seeing him, but I certainly don't
191 deny that he was likely there. Ravin followed Harry around at almost every public event. It is
192 a shame that Ravin couldn't keep Harry off of those stairs: perhaps this entire situation could
193 have been avoided.

194 Of the available exhibits, I am familiar with the following and only the following:
195 Exhibit 1 is a photo of CORE Square on the night of February 20. Exhibits 2a and 2b are
196 labeled pictures that Officer Carbowers showed me; I can confirm the accuracy of my position
197 on the diagram as well as Abel's and McCarson's. Exhibit 5 is a map of CORE Square and the
198 area surrounding it. Exhibit 11 is a sign that I saw Harry holding on the night of February 20.

Exhibit 12 appears to be the megaphone that Harry was holding, but I cannot be sure if it is the
199 same one; I am also familiar with exhibits 13-15, 19-21 and 24.

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204 Signed and sworn to this 21st day of August 2018.



Terry O'Neil, PH.D.



**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

UNITED STATES OF AMERICA

v.

HARRY MCCARSON,

Defendant

CASE No. 18-CR-2007-SW

Hon. Sarah Wilson

AFFIDAVIT OF EARL RAVIN

1 My name is Earl Ravin. I have been contracted as Harry McCarson's body guard since
2 2015. Before taking on Harry as a client, I was working with some other B-List celebrities in
3 Hollywood--lots of child-stars and 90s pop singers who are still outrunning life-long stalkers. I
4 even had a brief gig, "keeping up" with a certain well-known Los Angeles family. My time in
5 the Hollywood scene ended pretty abruptly when a very important client of mine got hit with a
6 bag of flour at the red carpet premiere of her new fragrance. No one was hurt, of course, but the
7 public embarrassment was enough to get me blacklisted from the entertainment world.

8 The "flour incident" of 2012 inspired my transition into the world of political ("pol")
9 security. I was looking for a new job when a buddy of mine set me up with a position working
10 with an LGBTQ activist group. They were getting death threats regularly so I was part of a
11 team that ensured safety at their events and accompanied the leadership to meetings or high-
12 visibility appearances. The salary wasn't exactly what I was used to, but it paid the bills and it
13 was refreshing to get out of the red carpet world. I accepted the position with Harry McCarson
14 a few years later to change things up (and for the considerable pay raise). I currently make

15 \$250,000 a year serving as Mr. McCarson's full time bodyguard and head of security. It's such
16 a great gig--I've been able to quit my other jobs and put my kids through college with it. No
17 way I'd ever want to lose this. It's worth noting, especially for people who aren't as familiar
18 with the industry, that a lot of bodyguards are paid by the show or company that their client
19 works for. But Mr. McCarson pays me out of his own pocket.

20 Sometimes people think being someone's security guard is like being their biggest fan-
21 loving them so much you'd risk your life. In reality, it's exactly the opposite. First of all, your
22 number one job is to keep your client safe; that means, out of harm's way, out of trouble, and
23 out of jail. The only way you can maintain professionalism while being around another person
24 for so many hours a day is to remove yourself completely from any opinion of your client
25 or emotions towards your client, while making sure they stay protected. That's why we're
26 called "bodyguards," not "buddyguards." That being said, I am aware of Harry McCarson's
27 political views and his statements about white nationalism. I am a private person when it
28 comes to anything even remotely related to politics (you have to be in my profession) but I
29 absolutely disagree with the notion that any race is superior or "more American" than another.
30 Unfortunately, I follow Mr. McCarson on social media and a lot of what he says is racist, plain
31 and simple. I don't condone any of his views or comments, and I'd certainly never defend his
32 statements in court.

33 I arranged Mr. McCarson's security detail for February 20, 2018 and personally
34 witnessed the altercation between Tommy Abel and Harry McCarson. Honestly, I wish I could
35 have intervened earlier. I anticipated the day would be chaotic, but I didn't account for how
36 many people would actually show up to the rally. I should have had 2 or 3 other guys with
37 me. Really the biggest mistake I made was not realizing that Mr. McCarson would act like a
38 fool. I was with Mr. McCarson when he arrived at CORE Square around 10:00 PM. The place

39 was mobbed, with people everywhere. Even so, I was able to keep Mr. McCarson in my view
40 and keep people at arms' length from him. But at 10:15 PM, Mr. McCarson got the bright idea
41 to break through the police caution tape and run up the stairs to address the crowd. I debated
42 chasing after him. But I decided to let the guy do his thing. Who was I to rain on his parade?
43 Most of the people there knew the statue was coming down anyway, so really Mr. McCarson was
44 the main attraction. He started yelling things like, "Who needs our help?" And the crowd would
45 yelled back, "Colonel Griff" and "Who must never die?" "Colonel Griff" and "What can't you
46 erase?" and they yelled back "history." The counter-protestors kept chanting, "Hey-hey ho-ho
47 Colonel Michael has to go!" It was a nice little back-and-forth they had there. If you're asking
48 me, it was an example of the First Amendment in action.

49 About 10 minutes later, so at around 10:30, I saw Tommy Abel emerge from the crowd.
50 Abel actually ran right past me--I was standing right outside of the caution tape. I grabbed Abel's
51 left arm as Abel ran past me but Abel broke free. I should have apprehended Abel at this point
52 but truthfully, I knew both of their reputations and didn't think anything would happen. They're
53 just not known for being violent. Tommy Abel is the head of Sapphire Means Love. I've seen
54 their website and they're all about love and peace and mushy stuff like that-- I've seen Abel
55 show up in YouTube clips for years, talking about Empirion and how wonderful and peaceful
56 all the people are, and how diversity makes us stronger; all that jazz. And for all his flaws-- and
57 there are many-- I cannot say I've ever seen McCarson act violently at a rally. I've been guarding
58 him for almost three years now. Well, there was one incident where he shoved a protester that got
59 in his face but that's it. He usually lets his words-- often ignorant words, unfortunately-- speak
60 for themselves. So I just didn't think there was a risk.

61 Even though I thought I was doing the right thing at the time, I do regret my decision
62 to not get involved. I work for Mr. McCarson and he had warned me that Abel was a potential

63 threat, so I shouldn't have let Abel anywhere near him. Mr. McCarson seemed to think that
64 Abel was a violent person and we'd need to steer clear of Abel, and he talked about getting
65 extra security for the event. Mr. McCarson thought this based on some stuff he'd read in the
66 news, though I'm not sure where he read it. I never heard any of the things he said about Abel
67 from anyone but him, if I'm being honest. I tried to tell him it would be fine, but it is what it is.
68 I guess I was wrong.

69 When I saw Abel run up those stairs, Abel looked enraged-- didn't look like the
70 love and peace hippie I had seen in all those Youtube videos. I was really worried for Mr.
71 McCarson's safety in that moment. I knew that Mr. McCarson had never been in a fight and
72 I doubted he even knew the basics of self defense. When Mr. McCarson originally hired me,
73 he told me I needed to be around him at all times because he's terrified of physical violence.
74 Anyway, I got lucky because before that Abel kid had the chance to lay a hand on Mr.
75 McCarson, Abel tripped or something. I saw Abel charge up the stairs and stop. I heard Abel
76 say something about "taking down McCarson, just like Abel took down the Colonel". But then
77 Abel just fell back, like Abel tripped or something. I appreciated Abel doing my job for me, not
78 even making Mr. McCarson have to raise a finger to defend himself. There were a few people
79 standing in front of me at the time, but I could see Mr. McCarson and Abel clearly.

80 After falling down the stairs, Abel landed just a few feet from me. There was a lot of
81 pushing and shoving right outside of the caution tape. I yelled at the group to "STAY BACK!
82 STAY BACK!" but a few people started gathering around Abel, I think there were a dozen.
83 There was a lot of chaos and I saw Mr. McCarson run down the stairs to help Abel. "Let's help
84 him! Help him!" he yelled. I didn't see Mr. McCarson harm Abel at all. If anything, I may have
85 stepped on Abel a few times myself when I was trying to pull Mr. McCarson from the chaos.
86 My instincts and mind were focused on protecting Mr. McCarson at all costs-- it comes with

87 the job, ya know?

88 As soon as the entire thing was over I went through the whole evening in my head
89 to make sure that I had my story straight. Anytime a shift is out of the ordinary, I replay the
90 scenes and think through the events just to make sure I've got everything straightened out in
91 my head. I try and give finality to everything that I do, say, or see so that there is little to no
92 confusion for me or anyone else. That's mainly why I didn't come forward that evening and sit
93 down for an interview with the police.

94 I've been shown a photo of Officer Carbowers. I saw Carbowers on the day in question
95 and Carbowers saw me. I am certain of that. I waved to Carbowers and said hello. Sure,
96 I didn't volunteer what I saw, but that's not my job. If the police had any questions, they
97 definitely could've come and asked. To be honest, I'm still kind of surprised I never heard
98 from the police. From what I gather, they weren't too diligent about resolving this issue. Mr.
99 McCarson did not do what he's accused of doing. I would've said that in an interview then, and
100 I'll say it in court it now.

101 About 3 weeks after the incident, Harry McCarson put me in touch with Charlie
102 Felder. Felder is a private investigator who was the only quasi-law enforcement official to
103 ask me questions in this case. I told Felder exactly what I saw. Felder showed me Exhibit
104 2c, a photo of the statue, and I pointed out exactly where I was standing during the incident.
105 My label on the diagram is right on. I told Felder that I had a clear view of the incident and
106 that Mr. McCarson did nothing wrong. Mr. McCarson had told me that there was some issue
107 in his case about whether his shoes matched some prints that were found on Abel's shirt.
108 Mr. McCarson asked me to provide the shoes that I wore on the night in question to Charlie
109 Felder for analysis. I couldn't find the shoes, so I wasn't able to give them to Felder. I still
110 don't know where they went; I must have misplaced them during all of the chaos. I was really

111 disappointed, too, because those were some of my favorite shoes. Mr. McCarson and I used
112 to joke that while we couldn't talk politics, we could talk fashion: we owned similar pairs of
113 shoes, and I was definitely wearing Reeboks that were similar to his on the night in question.

114 At the end of the day, while I don't agree with Mr. McCarson's views, and I think
115 he's getting a raw deal in this case, I am grateful for the opportunity that he has provided
116 me. Looking for new work isn't fun and I wouldn't want to see the guy go to jail. That's not
117 bias, it's just fact. Would you want your employer to close down? Sure, there are no shortage
118 of demagogues to protect in Empirion or stateside, but I'm not trying to start a job search if I
119 don't have to.

120 I am familiar with the following and only the following exhibits: 1, 2c, 5, 11 (that is the
121 sign McCarson was holding when Abel came at him), 12, 13-15, and 21. I swear or affirm to
122 the truthfulness of everything stated in this affidavit. Before giving this statement, I was told
123 it should contain everything I knew that may be relevant to my testimony, and I followed those
124 instructions. I also understand that I can and must update this affidavit if anything new occurs
125 to me until the moment before opening statements begin in this case.

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131 Signed and sworn to this 25th day of August 2018.





CHAPTER 3

Exhibits



Exhibit List

E#	TITLE
1	Photo of CORE Square on the Night of the Incident
2a	Photo of Colonel Michael Statue Day after Incident; Labeled (Count 1)
2b	Photo of Colonel Michael Statue Day after Incident; Labeled (Count 2)
2c	Photo of Colonel Michael Statue Day after Incident; Labeled & Modified
3	Photo of Colonel Michael Statue Day After Incident
4	Photo of Blood on Staircase and Landing
5	Map of CORE Square and the Surrounding Area
6	Officer Carbowers's Police Report
7	Transcript of Defendant's Interrogation
8	Forensic Tread Analysis Report
9	DNA Analysis of Blood Evidence
10	Medical Report of Tommy Abel
11	Sign Held by Harry McCarson During Protest
12	Harry McCarson's Megaphone
13	McCarson Social Media Posts: Facebook

EXHIBIT LIST

E#	TITLE
14	McCarson Social Media Posts: Twitter
15	McCarson Social Media Posts: Instagram
16	McCarson MySpace Page
17	McCarson AOL Profile
18	BRIGHTSTART Articles
19	Stay True to History Website
20	Abstract of McCarson College Thesis
21	Sapphire Means Love Website
22	Curriculum Vitae of Washington Key
23	Curriculum Vitae of Charlie Felder
24	Curriculum Vitae of Terry O'Neil
25	McCarson Mugshots

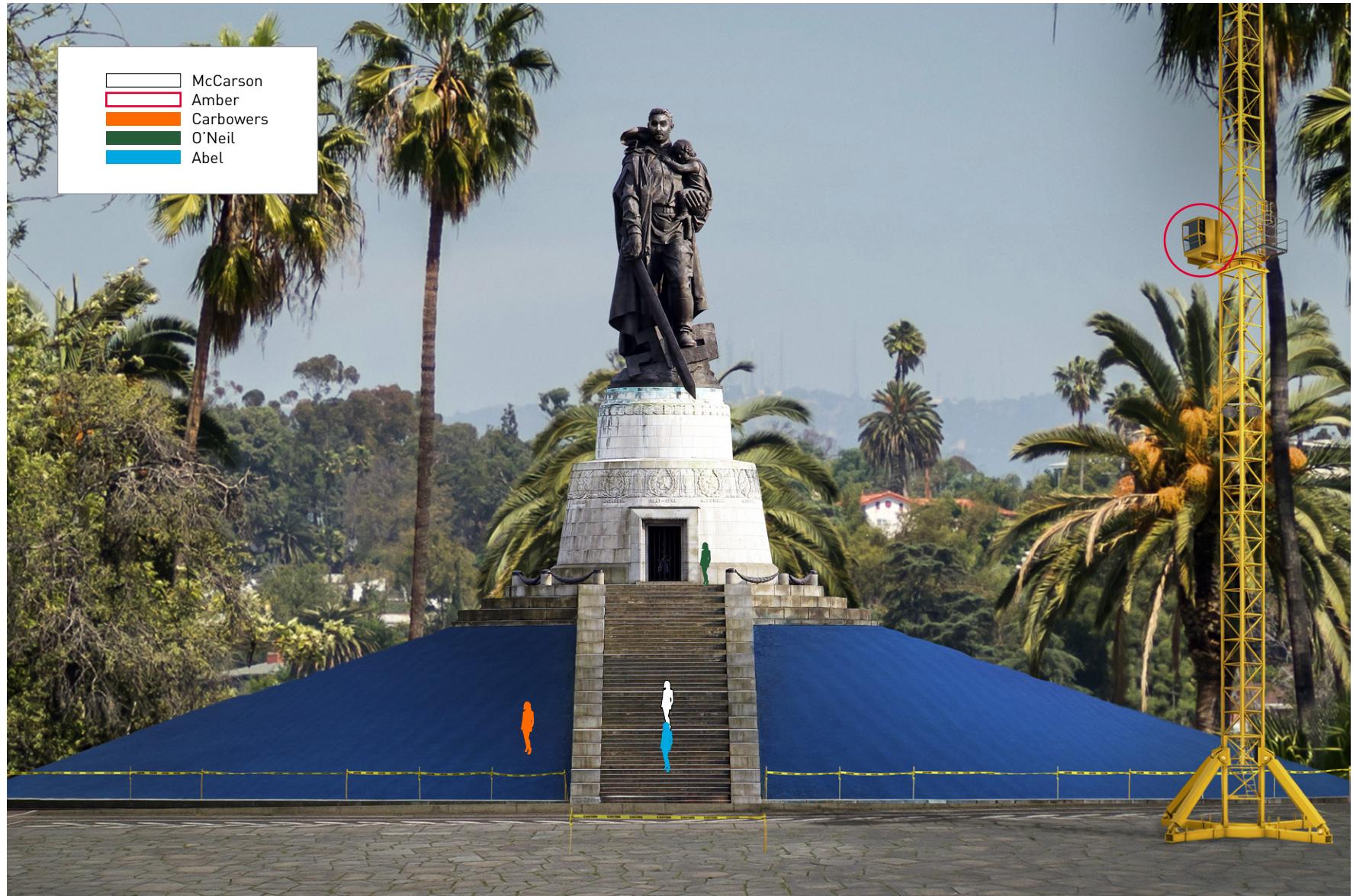




COUNT 1

Prepared by Officer Carbowers

EXHIBIT
2a



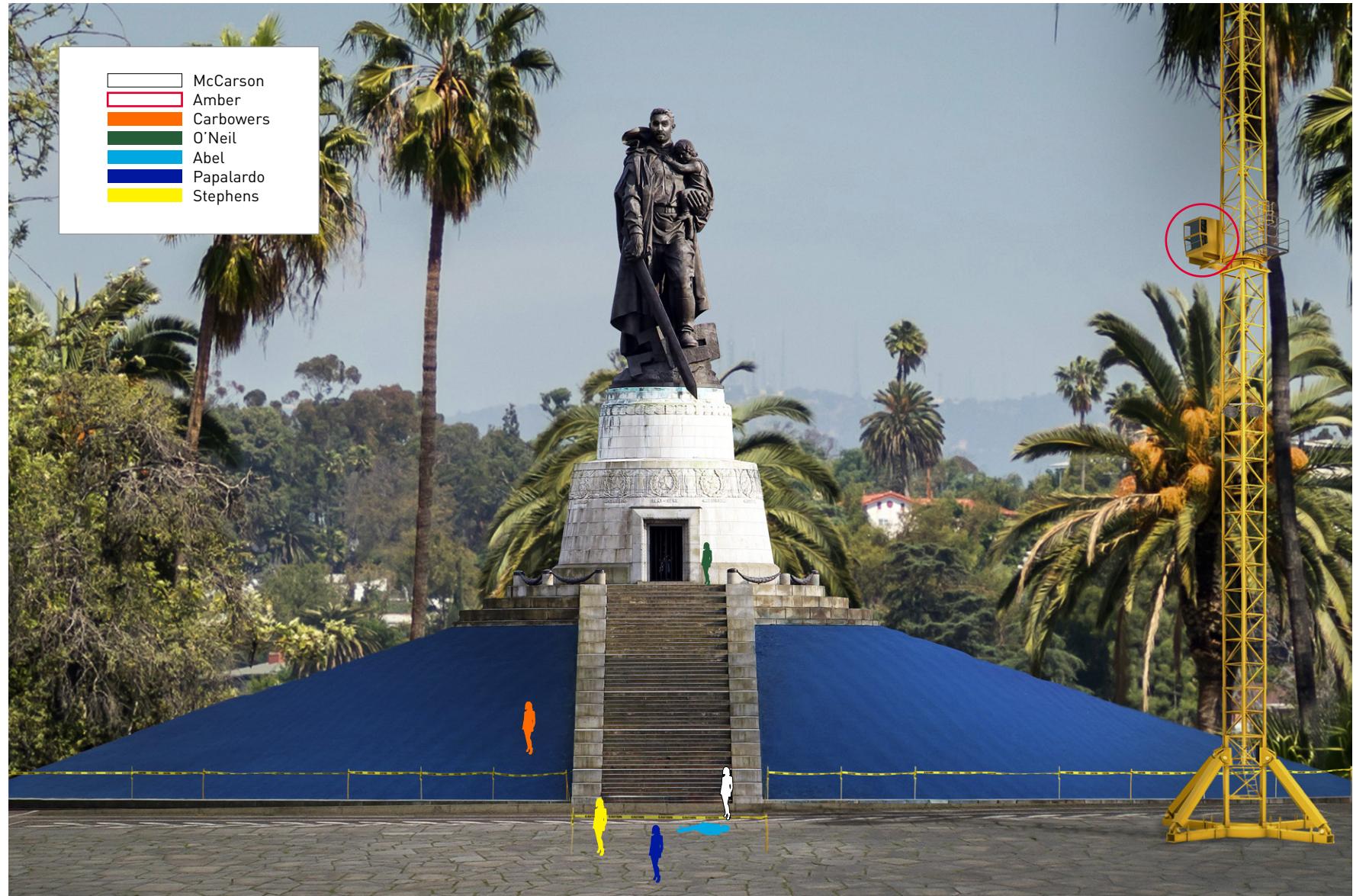


COUNT 2

Prepared by Officer Carbowers

EXHIBIT

2b





COUNT 2

Prepared by Officer Carbowers, Modified by Charlie Felder

EXHIBIT
2c

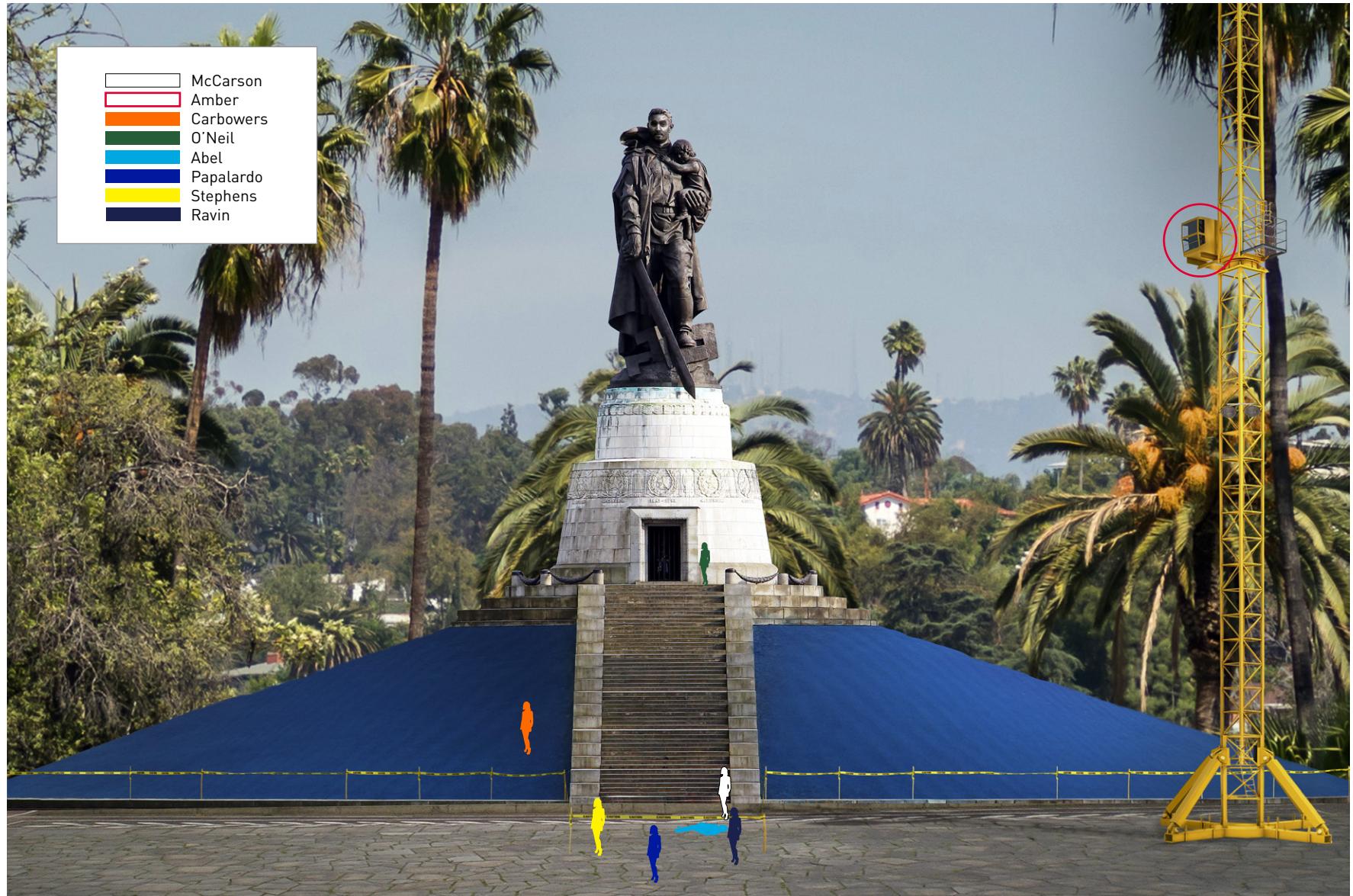
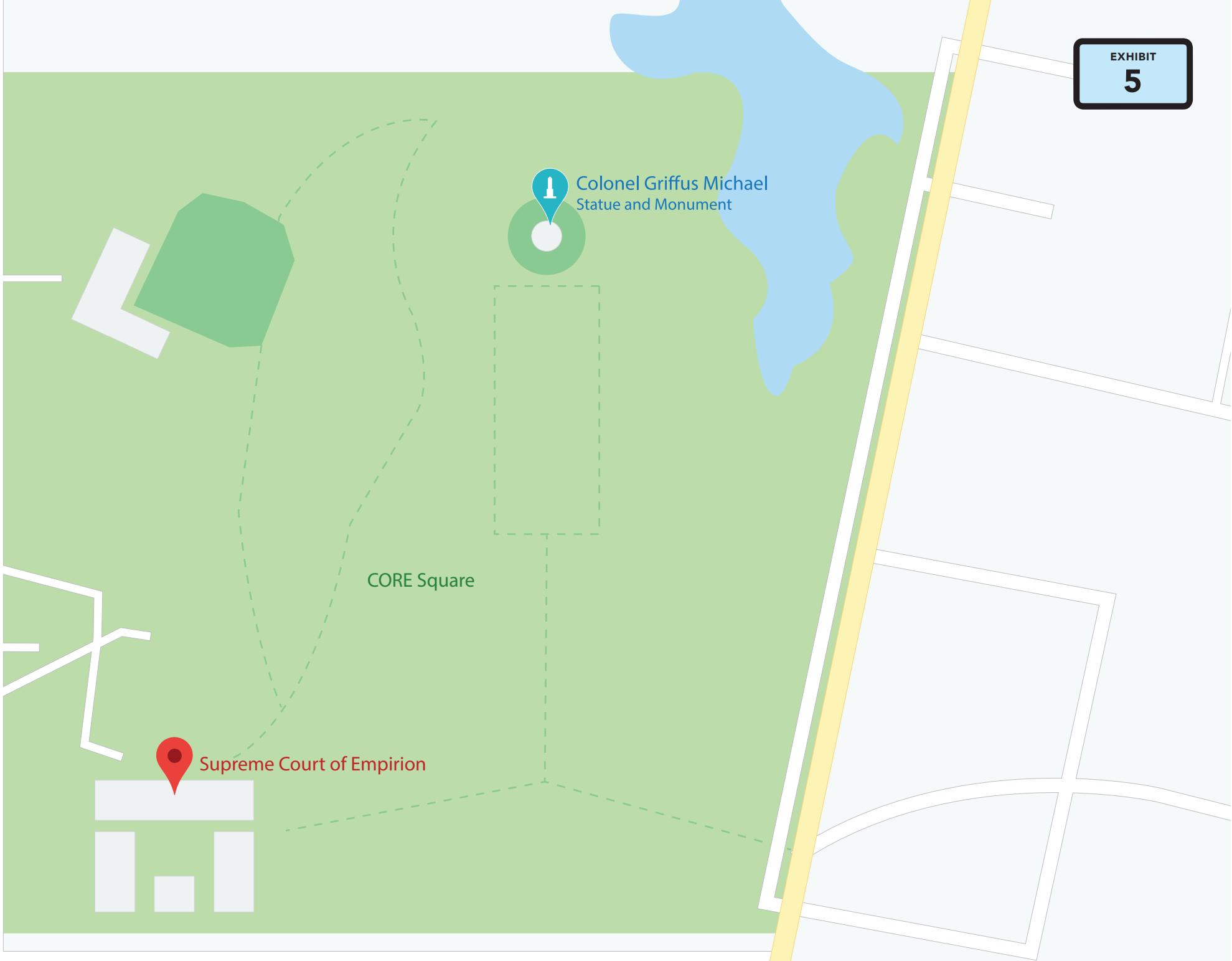






EXHIBIT
4







PASQUALE POLICE DEPARTMENT

INVESTIGATING OFFICER	JAMIE CARBOWERS
DATES OF INTERVIEWS	SEE BELOW
NAMES OF INTERVIEWEES	SEE BELOW

SUMMARY OF INTERVIEWS CONDUCTED

FILED

Terry O'Neil: Interview conducted at CORE Square, 11:15pm, February 20, 2018

Terry O'Neil is a college professor, and an associate of Harry McC Carson's. O'Neil had spent the evening the day before the protest with McC Carson. O'Neil stated that while McC Carson was not fond of Abel and did not agree with Abel's views, McC Carson would not have harmed Abel unless Abel threatened McC Carson. O'Neil reported that Abel made threatening remarks towards McC Carson, though O'Neil did not see either of the two engage in aggressive conduct. O'Neil reported facing away from the statue at the time Abel fell, so O'Neil could not state whether or not McC Carson struck Abel at all. O'Neil reported trying to ask McC Carson what happened after Abel fell, but stated McC Carson offered no useful information. After recording O'Neil's contact information, I allowed O'Neil to leave the scene at 11:31pm.

John Papalardo: Interview conducted at CORE Square, 11:25pm, February 20, 2018

John Papalardo is a protester associated with Harry McC Carson. After seeing Abel fall down the stairs, and hearing McC Carson call out, John Papalardo broke through the police barrier in an attempt to "Help Harry McC Carson do whatever he needed to do." John Papalardo does not report kicking or beating Abel himself, and refused to answer questions about whether or not McC Carson was involved in kicking or beating, saying simply that "if McC Carson was doing anything, it was the right thing to do." Because I noticed footprints on the ground, I collected John Papalardo's shoes. I collected John Papalardo's contact information, issued him a citation for Trespassing, and instructed him to leave the scene.

Milton Stephens: Interview conducted at CORE Square, 11:30pm, February 20, 2018

As with John Papalardo, Milton Stephens gave little information of value to this case. Milton Stephens also broke through the police barrier after seeing Abel fall, though Milton Stephens insisted he didn't see what happened and only wanted to help whoever had fallen. I collected Milton Stephens's shoes, took down his contact information, issued him a citation for Trespassing, and instructed him to leave the scene.

Joey Amber: Interview conducted at CORE Square, 11:38pm, February 20, 2018

Joey Amber is a Crane Operator employed by Trussworthy Construction. Amber was in the operator booth for the crane that was supposed to remove the statue, about 60 feet off the ground, at the time of the incident. Amber reported seeing McC Carson raise his bullhorn "like a Tomahawk" and bludgeon Abel. Amber states Amber clearly heard McC Carson yell, "Get the Emp!" and saw McC Carson, along with others crowd around Abel. Amber states that Amber could clearly

see McC Carson stepping on Abel while Abel was on the ground. Amber is unsure of whether or not Amber saw others in the crowd kick Abel. After taking down Amber's contact information, I released Amber so that Amber could proceed with removing the statue.

Tommy Abel: Interview conducted at Empirion Hospital, 1:30pm, February 21, 2018

I interviewed Tommy Abel, the victim in this case, at the hospital. Abel had recently woken up from surgery and reported being under the influence of narcotic painkillers. Abel stated that Abel could give me the story of what happened in spite of Abel's injuries and medication. Abel reported climbing up the statue's stairs because he was annoyed McC Carson's hateful rhetoric, and said that Abel didn't notice Abel's name on the derogatory sign McC Carson was carrying. Abel stated that as soon as Abel got on the stairs, McC Carson started swearing at and spitting on Abel, and that McC Carson bludgeoned Abel with his bullhorn before Abel could say or do anything. Abel stated Abel made no threatening motions or gestures, and did nothing to create an impression that Abel was aggressive. Abel reported that McC Carson yelled to, "Kill Abel!" and began taunting and beating Abel while Abel was on the ground. When asked how Abel knew it was McC Carson, Abel simply repeated, "Because I know it! I know it was him!" Abel's nurse came in to administer more medications, so I got Abel's contact information and left Abel in the custody of the hospital.

Dated: February 21, 2018



JAMIE CARBOWERS



PASQUALE POLICE DEPARTMENT

CASE NUMBER	530886	CHARGE(S)	DATE
DEFENDANT	Harry McC Carson	Assault/ Battery	02/20/2018
INTERVIEWER	Officer Jamie Carbowers, Pasquale PD		

[START OF TRANSCRIPT]

CARBOWERS: As I've already explained, Mr. McC Carson, this is a voluntary interview and we're being recorded. Do you still wish to proceed?

MCCARSON: Yes. If you listen, you might learn something about our country.

CARBOWERS: I hope to learn a great deal. Let's begin with your background. You're the leader of an organization called "Stay True to History?"

MCCARSON: One of the leaders, yeah.

CARBOWERS: And do you consider yourself an inspiring and respected leader of that organization?

MCCARSON: The people respect me because I speak truth to power. You wouldn't understand, but there are millions of real Americans waiting for someone to tell it like it is.

CARBOWERS: I see. So do you believe that telling the truth and admitting your actions are traits of a respected leader?

MCCARSON: Sure.

CARBOWERS: And you're committed to telling the truth, and taking responsibility for your actions?

MCCARSON: What are you saying?

CARBOWERS: Mr. MCCARSON, I want to know why you chose to be present for the removal of the statue.

MCCARSON: Because it's a monument to our heritage, a heritage people like you are trying to destroy. We built Empirion into what it is today.

CARBOWERS: "We?" Your driver's license says you reside in Midlands, Mr. MCCARSON.

MCCARSON: Sure, but you know what I mean. Americans built this place.

CARBOWERS: Let's talk about that. What did you hope to achieve when you shouted out your comments to the crowd? What about your accusations that some of the citizens were "Impostors, not Americans" – What did you mean by that?

MCCARSON: What I said. It was Americans like Col. Michael who put in the work to keep this island afloat. If it was left to the native race, this place would still be a backwater.

CARBOWERS: I understand that's your view, but don't you think some of your supporters might be motivated by your comments to commit violence?

MCCARSON: I believe in freedom of choice.

CARBOWERS: So – So you believe you had a right under the First Amendment to voice your opposition to the removal of the statue.

MCCARSON: Absolutely.

CARBOWERS: And what about Tommy Abel? Do you also believe Tommy Abel has a right to voice support for the removal of the statue?

MCCARSON: Nobody wants to hear from that Emp.

CARBOWERS: Sir, I'm just asking if you think Abel had an equal right to voice support for the removal.

MCCARSON: Sure, whatever. Anyone can say whatever they want. Unless they disagree with the people in power, it seems.

CARBOWERS: Thank you, sir. Now prior to this incident, were you acquainted with Tommy Abel.

MCCARSON: I'd heard the name.

CARBOWERS: Can you explain?

MCCARSON: Abel's one of these anti-American socialists who comes out to attack us all the time. Stay True to History isn't about race – It's about our country. Abel doesn't get that. Abel doesn't have a country. Just another freeloader living off our hard work, trying to siphon away a little publicity.

CARBOWERS: So please describe, in detail, your contact with Tommy Abel. Did you

see how Abel sustained those injuries?

MCCARSON: Earlier tonight?

CARBOWERS: Yes sir.

MCCARSON: Abel tripped. That's all I saw.

CARBOWERS: And when Abel advanced up the stairs towards you, did you feel threatened?

MCCARSON: You're damn right I did.

CARBOWERS: Okay, please explain.

MCCARSON: Well like you said, Abel was threatening.

CARBOWERS: What I mean, Mr. MCCARSON, is it would be helpful if you provided, in detail, any signs which would convince a reasonable person that Abel intended to assault you.

MCCARSON: Um... Look, it happened fast. I don't know. I felt threatened. I was pretty fired up, it happened pretty fast. Plus, this is what he does. Attack Americans.

CARBOWERS: What do you mean by "attack Americans"?

MCCARSON: He did it in DC. He did it when he went to college. He pretends like he's about love but that's just fake news.

CARBOWERS: Are you left or right-handed, Mr. MCCARSON?

MCCARSON: Huh?

CARBOWERS: Are you left or right-handed?

MCCARSON: Right. I'm right-handed.

CARBOWERS: Did you strike Abel?

MCCARSON: What? No.

CARBOWERS: Are you sure?

MCCARSON: Yes, I'm sure.

CARBOWERS: But you said you were fired up, it happened fast.

MCCARSON: Right, but—

CARBOWERS: So during such an emotional and rapid evolution of events, is it possible you hit Abel with your megaphone but can't recall the details?

MCCARSON: No. Are you going to ask Abel all these questions?

CARBOWERS: I'm not interested in Abel right now, sir. I'm interested in what you have to say. We recovered your broken megaphone at the scene. Are you saying that it broke at some other point in the night?

ABEL: I don't know. I dropped it. I was scared.

CARBOWERS: Isn't it more likely you broke your megaphone by bashing Abel in the head, and not by dropping it on the ground?

MCCARSON: Maybe, I don't know.

CARBOWERS: I get that, but look: I don't buy that Abel fell down the steps — Abel was hit with something. You can go ahead and take credit for that, and I'm sure your supporters will admire you for it. So Mr. McCarson, can you recall hitting Abel with your megaphone?

MCCARSON: I don't know. I don't know. But if—if I did, I was just defending myself. Abel was coming at me.

CARBOWERS: If?

MCCARSON: Exactly. If.

MCCARSON: Huh, okay then. But Abel was coming at you?

MCCARSON: That's right. If I did anything it was just to fend Abel off?

CARBOWERS: I see. Well did Abel deserve to get hit in the face?

MCCARSON: Yes. Ruins everything, tries to attack me, of course Abel deserves it.

CARBOWERS: So you saw the injuries Abel sustained after the fall. Were you

pleased to see that?

MCCARSON: Yeah. I did. Gotta say, it was pretty funny watching Abel go head-over-heels down the stairs. It's not like Abel died or anything. How much longer is this going to take?

CARBOWERS: Just a few more questions, sir. Let's talk more about your supporters. After Abel fell, did you encourage your supporters to assault Abel?

MCCARSON: Nah. But so what if they roughed Abel up a little? I was attacked. We have a right to defend ourselves.

CARBOWERS: Did you actually believe Abel was a threat at that point?

MCCARSON: Maybe not.

CARBOWERS: Did you kick Abel in the ribs?

MCCARSON: I took my time walking down the stairs.

CARBOWERS: If you believed Abel was a threat, why did you chase him down the stairs?

MCCARSON: I don't feel like talking anymore.

CARBOWERS: Did you kick Abel in the ribs?

MCCARSON: No.

CARBOWERS: Do you think you could be mistaken about that?

MCCARSON: No.

CARBOWERS: What about the blood on your shoes?

MCCARSON: What?

CARBOWERS: There was blood on your shoes. That's why we had you take them off.

MCCARSON: I don't know anything about that.

CARBOWERS: Isn't it most likely that Abel's blood was transferred to your shoes when you kicked him?

MCCARSON: Who knows.

CARBOWERS: Well, you do, Mr. McCarson. That's why I'm asking.

MCCARSON: No.

CARBOWERS: Multiple witnesses were there to see everything, Mr. McCarson, including many of your supporters. You wouldn't want to make them out to be liars, would you? So here's your chance: Why did you kick Abel?

MCCARSON: My supporters understand the battles I have to fight. Sometimes there are casualties in war.

CARBOWERS: So you did kick Abel.

MCCARSON: I didn't. Next question.

CARBOWERS: So you wanted to talk more about Abel. Is Tommy Abel an American?

MCCARSON: Uh, no Empirial is a true American.

CARBOWERS: And it's your understanding that Abel has indigenous ancestry?

MCCARSON: Must be. Abel's lazy and a liar.

CARBOWERS: Does Abel deserve to be treated any differently than a "true American?"

MCCARSON: Empirials already get treated differently. All this special treatment, affirmative action nonsense.

CARBOWERS: Does Abel, or any other person of Empirial ethnicity for that matter, have the right to be treated with the same level of dignity and respect as white Americans?

MCCARSON: You just don't get it. We're the oppressed, in our own country. That's why we have to fight to keep it, and take back what you've tried to steal from us.

CARBOWERS: So let's say that a non-white person, an Empirial, were to assault a white American. What should happen to that person? What are the consequences?

MCCARSON: Whatever happened to Abel.

CARBOWERS: So did you punch and kick Tommy Abel because Abel is an Empirial?

MCCARSON: I'm not answering that.

CARBOWERS: Okay. Let's talk about your megaphone?

MCCARSON: Wait, we're back to that?

CARBOWERS: When did you drop it?

MCCARSON: I... What? I can't remember

CARBOWERS: Was it before or after Abel fell down the stairs?

MCCARSON: I don't know, it all happened so fast. I was scared.

CARBOWERS: Was it before or after Abel was beaten?

MCCARSON: I don't know.

CARBOWERS: How did you drop it? Did you throw it to the ground, with force?

MCCARSON: I don't know, I don't remember.

CARBOWERS: Did you continue to use the megaphone after Abel started falling?

MCCARSON: Maybe?

CARBOWERS: Either you did or you didn't.

MCCARSON: I don't think so, I think I dropped it. I don't know.

CARBOWERS: So if we were to search the scene, we would find the megaphone on the stairs?

MCCARSON: I don't know, probably?

CARBOWERS: Would it be in the grass near where Abel was beaten?

MCCARSON: I don't know. I don't know when or where I dropped it, I just know that's what happened.

CARBOWERS: Were you still holding the megaphone while you kicked Abel?

MCCARSON: I'm not answering that. I'm done. I want my lawyer.

CARBOWERS: You sure?

MCCARSON: Yeah.

CARBOWERS: Okay then. Let's get you processed.

[END TRANSCRIPT]



FBI Laboratory

2510 Investigation Parkway
Quantico, Virginia 22135

LABORATORY REPORT

Date: July 14, 2018
Case ID Number: DC - 44 - 287 - 2
Lab ID Number: LPXN - 19835 - 4

Examiner Name: Washington Key
Unit: Federal Bureau of Investigation - Laboratory Division
Agency Reference(s): Pasquale Police Department
Discipline: Tread and transfer impression analysis

On February 22, 2018, I received the following images to perform an analysis between the questioned impressions and the known shoes.

EVIDENCE INVENTORY:

Figure #1 - Four digital images of an apparent impression in blood on a tee-shirt reported to have belonged to the victim, Tommy Abel.

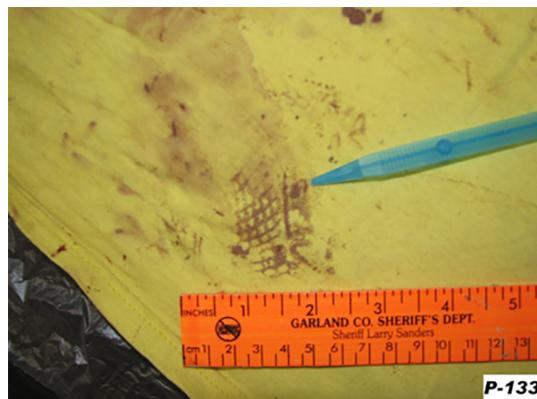


Figure #2 - Three digital images of the upper portion of an ASICS brand athletic shoe report to have belonged to the defendant, Harry McCarson, and reported to have been worn on his right foot on February 20. The first is the original image; the second has been mirrored to show what an impression of the shoe might look like; the third has been altered to show which parts of the shoe protrude the most and would likely create an impression.

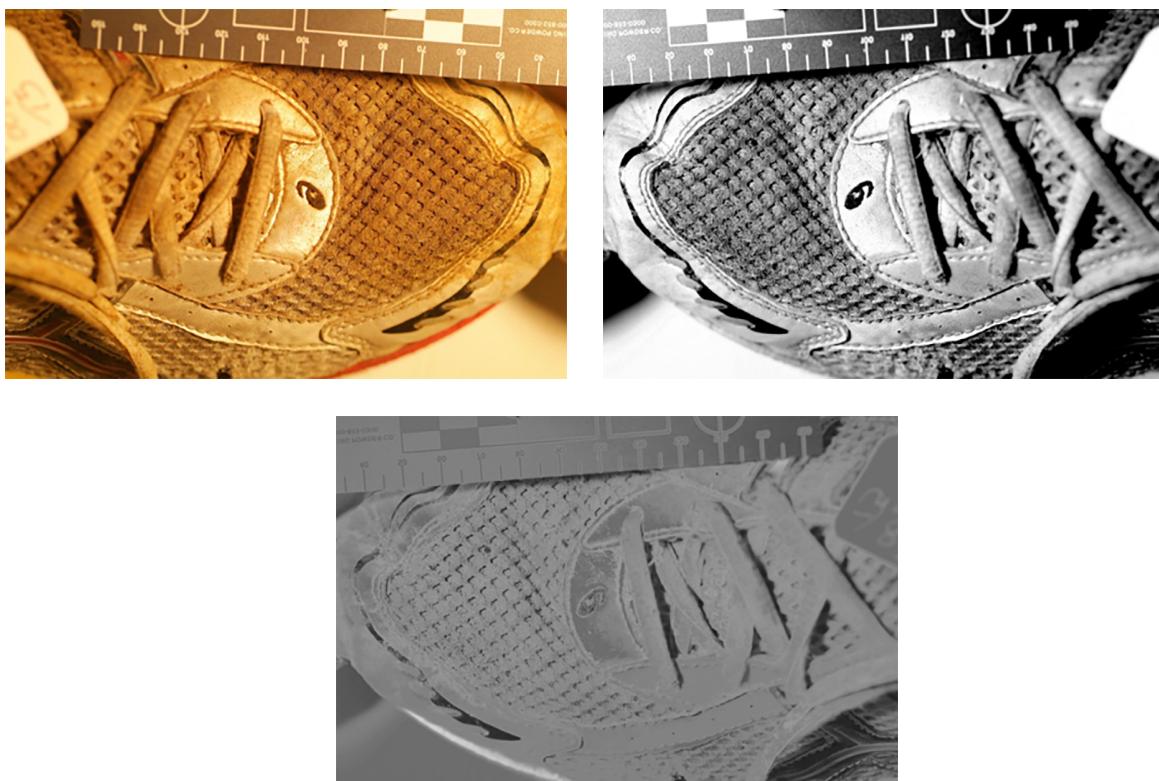


Figure #3 - One digital image of an impression on the neck of the victim.

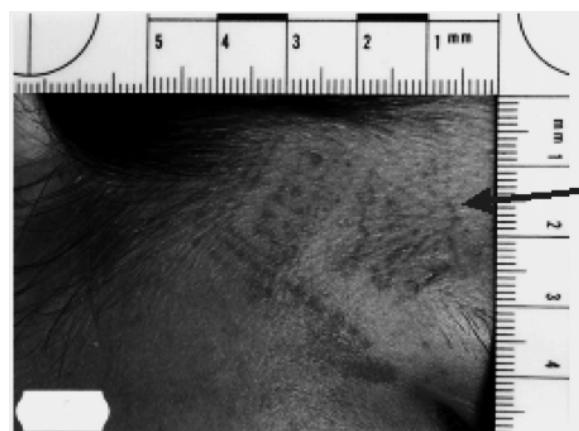


Figure #4 - One digital image of the upper portion of a Reebok brand athletic shoe reported to have belonged to McCanson, and reported to be on his left foot the night of February 20.



EXAMINATIONS CONDUCTED:

Based on the observation of arresting Officer Jamie Carbowers, Harry McCanson was wearing two different shoes at the time of the arrest; an ASICS sneaker on his right foot and a Reebok on his left.

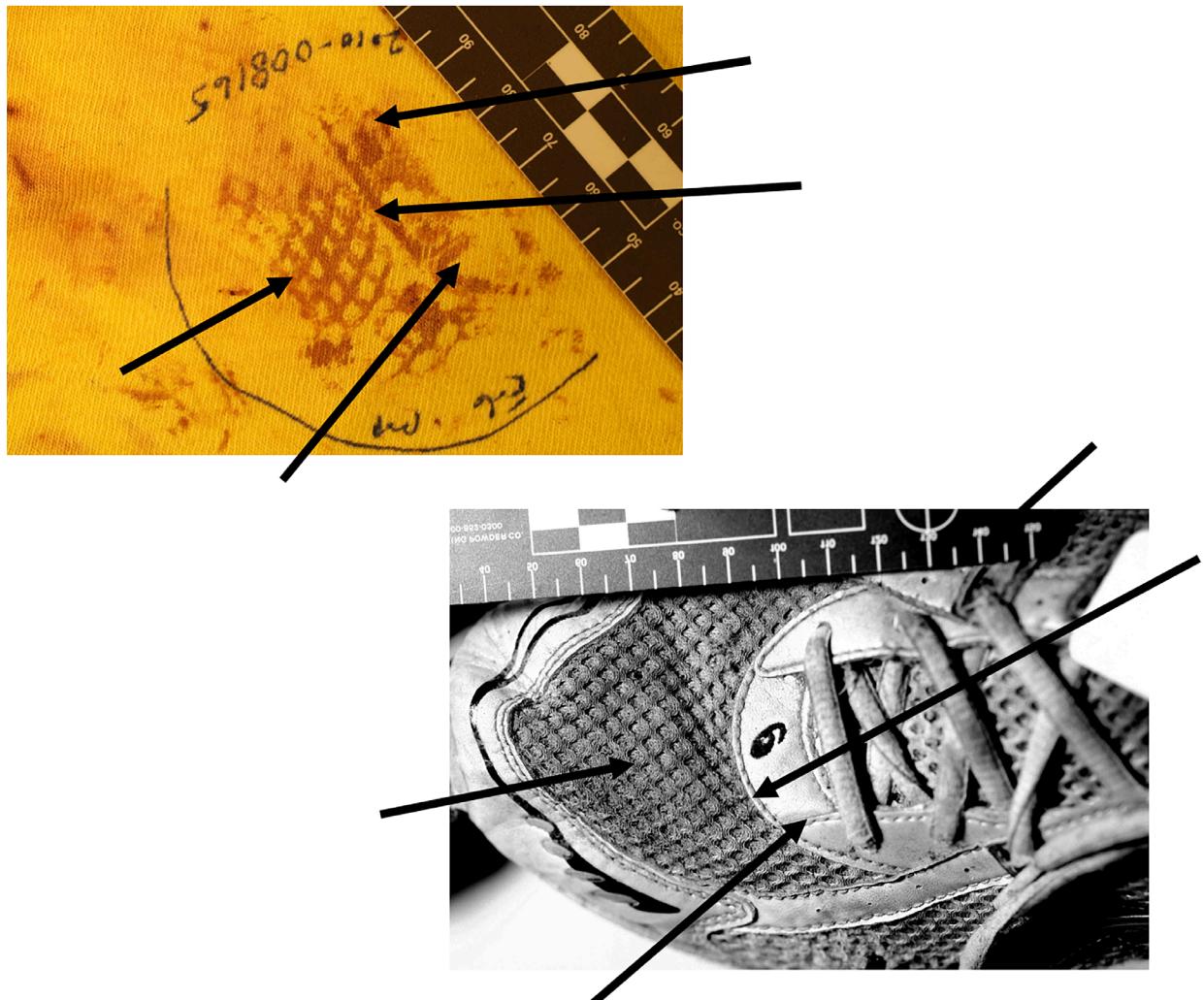
Figure #1 compared to Figure #2

Upon analysis of Figure #1, a red substance that appeared to be blood was noticed on the upper mesh section of the toe area of the ASICS shoe. This substance was collected and turned over to the DNA laboratory for analysis.

In analyzing the bloody pattern on the victim's tee-shirt under Figure #1, I found there to be a pattern consistent with a mesh type pattern. A mesh pattern is similar to a web or net design. This mesh pattern is also present on the upper portion of the toe area of the ASICS shoe submitted as Figure #2. The bloody pattern on the tee-shirt appears to have been made by a transfer from the upper portion of the mesh section of the toe area of the defendant's shoe. The physical pattern and the physical size of the pattern were compared to the defendant's ASICS shoe in order to determine if this shoe could have made this impression.

When an item of footwear comes into forceful contact with a part of the body, a mark characteristic of the upper pattern and physical size can be left on the object it strikes, especially when the upper mess section is covered with a substance.

A comparison was performed between impression depicted in Figure #1 and the known shoes of Harry McCarson, as well as the other shoes collected from protesters seen near Tommy Abel at the time of the alleged assault. Only the shoes identified as being potential matches were included in this report; the other collected shoes (a pair of flip flop sandals and a pair of boat shoes) that were determined not to match the identified prints are not discussed in detail.



The ASICS logo appearing on the impression is the same direction on both right and left shoe, (meaning they are not reversed or mirrored images).

In my expert opinion, the impression depicted within Figure #1 was made by an ASICS shoe based on the presences of the ASICS logo.

Based on the overall tread design of the mesh pattern and the physical shape and sizes of the pattern, McCarson's ASICS shoe is a possible source of the questioned impression on the t-shirt and therefore could have produced the impression. However, other footwear with the same class characteristics (mesh lining and an ASICS logo in the center of the shoe) observed in the impression could have also produced the print.

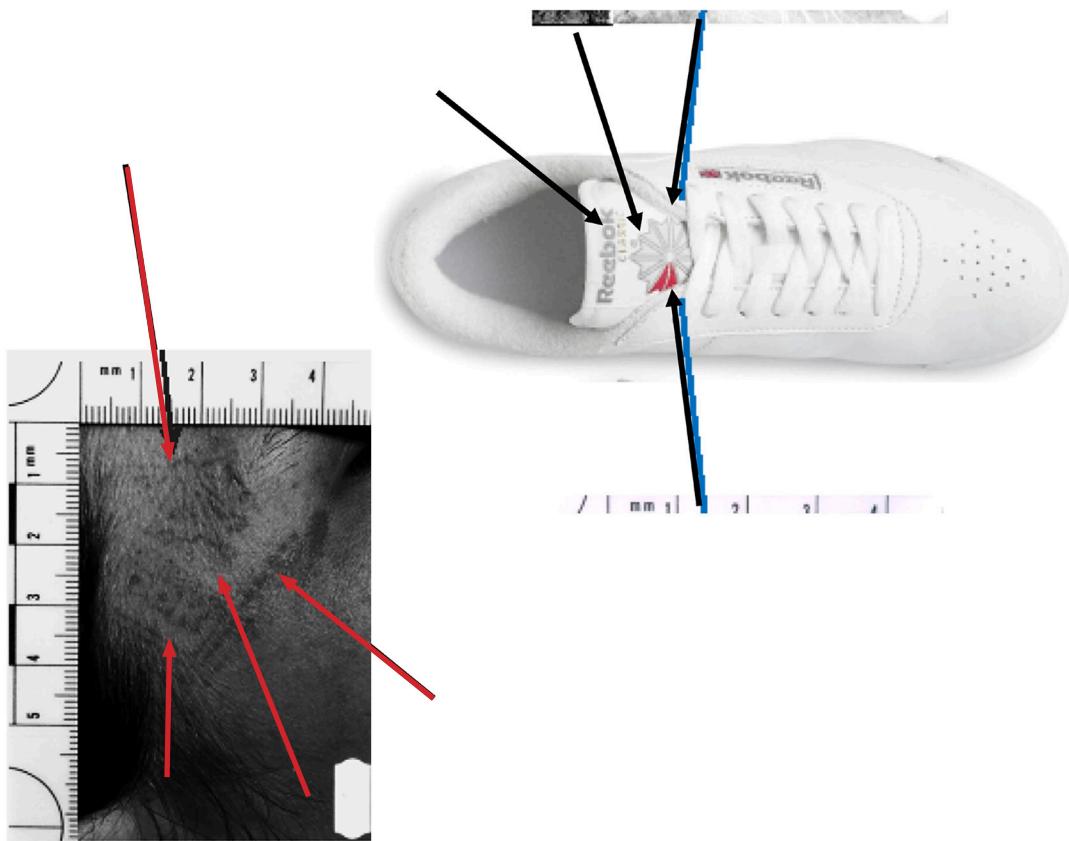
Figure #3 compared to Figure #4

I received a photograph of an injury to Abel's neck area from the hospital. I examined this injury to determine if McC Carson's Reebok shoe could have caused this injury. As noted in the medical report, the victim suffered a broken collarbone after the events of February 20.

Figure #3 is a photograph of the injury to the defendant's neck area.

The pattern depicted in this injury was found to be consistent with a Reebok shoe. Within the photograph the letters "REEBOK" (reversed in position) can be clearly seen. These letters are consistent with the Reebok brand name. Also present is the Reebok logo just under the lettering. This pattern and lettering is present on the upper portion of the tongue area of the defendant's Reebok shoe. The impression on the neck area of the victim appears to have been caused by a striking motion from the upper portion of the Reebok to the neck area. The physical pattern and the physical size of the pattern were compared to the defendant's Reebok shoe in order to determine if this shoe could have made this impression. When an item of footwear comes into forceful contact with a part of the body, a mark characteristic of the upper pattern and physical size can be left on the object it strikes, especially when the upper portion strikes the area with such force.

A comparison was performed between impression depicted in Figure #3 and the known shoe of Harry McC Carson.



The Reebok logo appearing on the impression is in a reversed position.

In the opinion of this examiner, the questioned impression depicted within Figure #3 was made by a Reebok shoe based on the presence of the lettering of the Reebok brand name and the Reebok logo.

In the opinion of this examiner, the characteristics observed with the questioned impression depicted within Figure #4 do exhibit strong association with the known Reebok shoe; however, the quality and/or quantity were insufficient for identification. However, other shoes with the same class characteristics observed in the impression (Reebok brand shoes) are included in the population of possible sources only if they display the same wear and/or randomly acquired characteristics observed in the questioned impression.



Washington Key, FBI
Certified Footwear Examiner
Certified Latent Print Examiner
Certified Forensic Examiner

UNCLASSIFIED



FBI Laboratory

2510 Investigation Parkway
Quantico, Virginia 22135

LABORATORY REPORT

Date: June 25, 2018
 Case ID Number: DC - 44 - 287 - 3
 Lab ID Number: LPXN - 19835 - 4

Examiner Name: Sarah Stebbins
 Unit: Federal Bureau of Investigation - Laboratory Division
 Agency Reference(s): Pasquale Police Department
 Universal Control Number: RA17NX591
 Discipline: DNA

The specimens listed below were received in the Laboratory Division under cover of communication dated February 23rd, 2018:

Q1 - Swab of reddish brown stains obtained from sneaker
 Q2 - Swab of reddish brown stains obtained from transfer impression on yellow shirt
 Q3 - Swab of reddish brown stains obtained from transfer impression on neck
 Q4 - Swab of reddish brown stains obtained from megaphone
 Q5 - Swab of reddish brown stains obtained from outdoor staircase
 K1 - Blood swab from VICTIM 1

This report contains the results of the serological and nuclear DNA analyses.

RESULTS OF EXAMINATIONS:

Blood was identified on specimens Q1, Q2, Q3, Q4, and Q5. That blood was determined to be type O-negative.

Deoxyribonucleic acid (DNA) was isolated from specimens Q1, Q2, Q3, Q4, Q5 and K1 (VICTIM 1) and subjected to DNA typing by the polymerase chain reaction (PCR) at twenty (20) short tandem repeat (STR) loci of the AB GlobalFiler™ Express (Part Numbers 4474665 & 4476609), in compliance with FBI standards. The DNA typing results are detailed below:

Specimen Q1

Specimen	CSF1PO	FGA	TH01	TPOX	VWA	D3S1358	D5S818	D7S820	D8S1179	D13S317
Q1	6.3, 11.1	15	4,13	5	23, 14.1	9[5], 10[5]	10.1	6.3, 15	7, 12.3	6, 13.3[3]
K1	6.3, 11.1	15	4, 13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]

Chart cont.

UNCLASSIFIED

Specimen	D16S539	D18S51	D21S11	D1S1656	D2S441	D2S1338	D10S1248	D12S391	D19S433	D22S1045
Q1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.1[2]	12
K1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.2[2]	12

Specimen Q2

Specimen	CSF1PO	FGA	THO1	TPOX	VWA	D3S1358	D5S818	D7S820	D8S1179	D13S317
Q1	6.3, 11.1	15	4,13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]
K1	6.3, 11.1	15	4, 13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]

Specimen	D16S539	D18S51	D21S11	D1S1656	D2S441	D2S1338	D10S1248	D12S391	D19S433	D22S1045
Q1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.1[2]	12
K1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.2[2]	12

Specimen Q3

Specimen	CSF1PO	FGA	THO1	TPOX	VWA	D3S1358	D5S818	D7S820	D8S1179	D13S317
Q1	6.3, 11.1	15	4,13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]
K1	6.3, 11.1	15	4, 13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]

Specimen	D16S539	D18S51	D21S11	D1S1656	D2S441	D2S1338	D10S1248	D12S391	D19S433	D22S1045
Q1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.1[2]	12
K1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.2[2]	12

Specimen Q4

Specimen	CSF1PO	FGA	THO1	TPOX	VWA	D3S1358	D5S818	D7S820	D8S1179	D13S317
Q1	6.3, 11.1	15	4,13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]
K1	6.3, 11.1	15	4, 13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]

Specimen	D16S539	D18S51	D21S11	D1S1656	D2S441	D2S1338	D10S1248	D12S391	D19S433	D22S1045
Q1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.1[2]	12
K1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.2[2]	12

Specimen Q5

Specimen	CSF1PO	FGA	THO1	TPOX	VWA	D3S1358	D5S818	D7S820	D8S1179	D13S317
Q1	6.3, 11.1	15	4,13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]
K1	6.3, 11.1	15	4, 13	5	23, 14.1	9[5], 10[5]	10.1	6.3	7, 12.3	6, 13.3[3]

Specimen	D16S539	D18S51	D21S11	D1S1656	D2S441	D2S1338	D10S1248	D12S391	D19S433	D22S1045
Q1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.1[2]	12
K1	4	11.2[5], 12.3	25.1	10, 11	8	25.2	19	16	6.2[2], 10.2[2]	12

UNCLASSIFIED

Based on the STR typing results, and to a reasonable degree of scientific certainty, the contributor of specimen K1 (VICTIM 1) is the source of the DNA obtained from specimens Q1, Q2, Q3, Q4, and Q5. 7% of the United States population carries type O-negative blood. The probability of selecting an unrelated individual at random having an STR profile matching the DNA obtained from the questioned specimen is approximately 1 in 2.3 billion in the combined United States demographic population.

The STR typing results for specimens Q1, Q2, Q3, Q4, and Q5 obtained from this test are not eligible for entry into the Combined DNA Index System (CODIS). These results will be maintained by the FBI Laboratory for possible future comparisons.

No further serological or nuclear DNA examinations were conducted.

EMERGENCY CARE & TREATMENT <i>(Medical Record)</i>	TREATEMENT FACILITY: Empirical Medical Center Pasquale, Empirion	FACILITY CONTACT (990)-555-5309
ARRIVAL DATE/TIME: 02/20/18 2357	TRANSPORTATION TO HOSPITAL: Empirical Medical Emergency Vehicle	TRIAGE LEVEL: 1

PATIENT NAME: Abel, Tommy	AGE: 27	DOB 01/14/1991
MEDICAL RECORD NUMBER ME-89349997-4		ALLERGIES: NKDA

SOURCE OF INFORMATION: **patient**

HISTORY OF PRESENT ILLNESS:

27 year-old patient with no known past medical history presenting to the ER via EMS, complaining of diffuse pain of the head, collarbone, and chest secondary to trauma suffered earlier in the day (approx 1 hour prior to arrival). Patient was in regular state of health until reportedly being assaulted on the stairs of a local monument during an evening protest/counter-protest. Specifically, patient reports being hit in the head with a megaphone, falling down stairs, and then being kicked/stepped on repeatedly.

Currently, patient reports severe pain radiating from head wound (10/10 on pain scale), dizziness, and several discrete moments of "blacking out" shortly after the assault. Patient also reports severe pain of left collarbone area (9/10 on pain scale), which worsens with movement, and severe pain in rib cage area (9/10 on pain scale), which worsens with breathing.

Of note, patient was not initially lucid, but regained consciousness during intake, and as a result, history was obtained from the patient directly.

HOME MEDICATIONS:

none

SOCIAL HISTORY:

Tobacco: denies

Alcohol: 1-3 drinks/week

Illicit: denies

Occupation: Sapphire Means Love

OBJECTIVE:

Vitals: BP 110/60, HR 96, RR 26 Pulse Ox 94%

General Appearance: mild to moderate distress, tattered clothing, exhausted appearing

Eyes: irritated sclera bilaterally, worse in left eye; no papilledema

HENT: 8cm long x 1 cm wide x 1cm deep laceration along left forehead; profound contusion over L clavicle with excessive mobility along sternoclavicular joint (see attached diagram)

Lungs: shallow breaths, clear breath sounds bilaterally

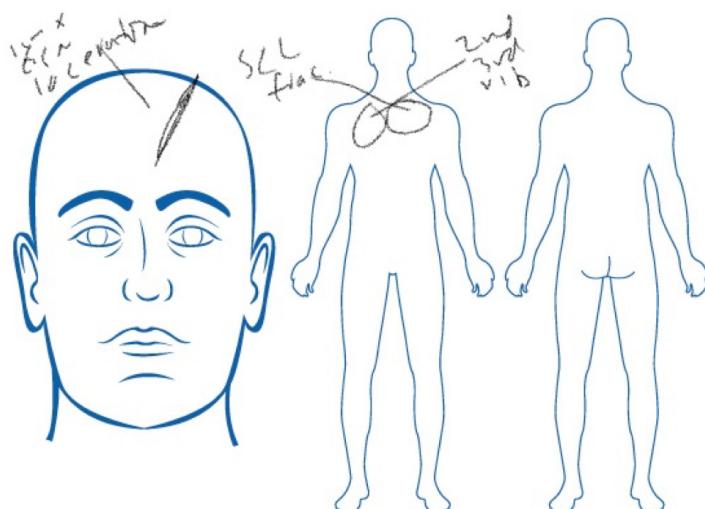
Chest: contusion and point tenderness over R rib cage, concentrated over ribs 2 through 4
CV: HR 90s, regular, no murmurs
Abdomen: soft, non-tender, no masses; good bowel sounds
Extremities: multiple minor contusions on bilateral calf, thigh and bicep/forearm region
Neuro: gross motor and sensation intact, CNII-XII grossly intact

IMAGING:

CT Head (non-contrast): evidence of traumatic injury of soft tissue; no evidence of acute intracranial bleed

Chest Xray: nondisplaced right 2nd and 3rd fractures with associated soft tissue swelling concerning for hematoma; no evidence of airspace disease or pneumothorax

Clavicular Xray: displaced left clavicular fracture along sternoclavicular joint



ASSESSMENT/PLAN

27 year-old patient presenting to ED s/p reported assault with findings consistent with non-displaced 2nd/3rd rib fractures, displaced L clavicular fracture, diffuse soft tissue contusions. In addition, given changes of consciousness, questionable syncope, ongoing headaches, direct head trauma, patient also likely suffering from concussion. No signs of intracranial bleed.

--admit to emergency department 24-hour monitoring unit for close respiratory monitoring

--IV morphine now and q4hours PRN for acute pain related to rib fractures

--incentive spirometry to prevent lung collapse

--consult orthopedics for evaluation of displaced clavicular fracture

--consult neurology for evaluation of concussion

--NPO for now pending respiratory improvement

--pending clinical improvement, will discharge with 5-day course of Vicodin as needed for pain as needed (Hydrocodone and Acetaminophen, USP 5 mg/300 mg)

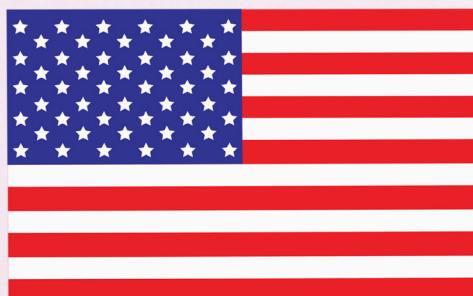
ADMIT. TO HOSP. UNIT/SERVICE:
2/20/18

SIGNATURE OF PROVIDER

NOT ABEL



**TO LIVE W/
EMPosters**





 **Harry McCarson**
March 3, 2009 · 

Why preserve a culture not worth preserving? Sometimes it feels like the Emps aren't even people at all. My ancestors conquered and tamed this land. The country is in desperate need of people like them (and us!) again! The future of this country is White, and the rest need to either get with the program, get out of the way, or get run over.

 Like  Comment  Share

 315 Most Relevant ▾

50 Shares

 **Harry McCarson**
September 4, 2010 · 

Great article about the Colonel's role in liberating Empirion from the French. If only the natives were smart enough to keep him in charge! #NeverForget #ColonelGriff



EMPTIMES.COM

From France to Freedom – Taking a closer look at Colonel C. Griffus Michael's role in Empirion's fight for independence

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22 Shares



Harry McCarson

April 26, 2011 ·

•••

It is Colonel Michael Day! Join #StayTrueToHistory for a day to celebrate the accomplishments of #ColonelGriff



FRI, APR 26, 2011 AT 9 AM

Colonel Michael Day!

CORE Square

567 Going · 954 Interested

Like

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655

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Harry McCarson

February 2, 2013 · MeTube ·

•••

History is full of great leaders who have made mistakes. So even if you think the Colonel was wrong to kill the traitors who sought to undermine his regime, it does not invalidate his place in history. We all know that without his courage, Empirion would still be under the control of the French (though, perhaps that would be better for everyone).



METUBE.COM

Like It Or Not: Friday, February 1

On this week's show: Empirion has the Colonel to thank, for a lot of things. Good? Bad? Let's discuss. Plus, "House of Cards" hitting Netflix has our hopes...

Like

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Harry McCarson
November 9, 2016 · 🌎

...

I don't know why, but it's starting to feel like a brighter day in the United States. Citizens are starting to wake up, to realize that we need to be united as one People. I feel like the work that **StayTrueToHistory** and I have been doing over the previous years has started this roll of momentum. People are getting educated, getting ACTUALLY #woke, and seeing how far we've come, but also how far we need to go. People are still trying to drag us back into the dark ages (looking at you, Sapphire Lovers) but we won't let them. Let's keep this train rolling!

Like

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216

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47 Shares



Harry McCarson
February 13, 2017 · 🌎

...

So much for "tolerance." The Emps censor any voices that don't like. Fortunately, our men and women stood up for their right to be heard, and they were. And they'll be heard (and felt) even more strongly if the Empirials keep trying to change history!

Like

Comment

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87

Most Relevant ▾

20 Shares



Harry McCarson

February 20 ·

•••

CALLING ALL PATRIOTS. We are rallying at CORE Square to show that our history WILL NOT BE ERASED. FIGHT FOR OUR HISTORY. #SaveColonelGriff



WED, FEB 20, 2018 AT 9 PM

SAVE Colonel Griff!

CORE Square

765 Going · 486 Interested

Like

Comment

Share

390

Most Relevant ▾

74 Shares



Harry McC Carson @unEMPressed_ · 17 Mar 2012

"Hate to break it to you, Emps! Our blood is RED, the Sapphire Shores are BLUE, and America is WHITE!"

4

21

79



Harry McC Carson @unEMPressed_ · 5 May 2013

How could anyone have EMPathy for such EMPy people?



Empirials mourn those lost in Colonel Michael's killings.

Last night, candles lit the night skies as Empirials gathered to remember those who lost their lives during the controversial killings of Empirical history.

emptime.com

9

29

106



Harry McC Carson @unEMPressed_ · 2 Dec 2017

ARE YOU KIDDING ME! 🤦 SOMEONE MUST PAY FOR THIS! YOU CANNOT
#ERASEHISTORY #SAVECOLONELGRIFF



Sapphire Means Love Leads the Way for Statue Removal

Major controversy has arisen over whether or not the statue of Colonel Griffus Michael located in CORE Square should be removed. SML says yes.

emptime.com

2

114

834



 **Harry McCarson** @unEMPressed_ · Feb 10
These nuts think you can just destroy your history and it just goes away.
[#SmoothBrain](#)



Where's the line for free speech?
McCarson files for injunction after ESU blocks him from speaking on campus.
emptimes.com

8 38 152

 **Harry McCarson** @unEMPressed_ · Feb 8
Emps just dont get what it is to care about history. [#SaveColonelGriff](#)
[#StayTrueToHistory](#)

8 39 152

 **Harry McCarson** @unEMPressed_ · Feb 11
Just saw that fool on TV talking about protesting my speech! But Sapphire Lovers won't be Abel to stop what we have coming! 

11 170 260

 **Harry McCarson** @unEMPressed_ · Feb 20
GET THIS EMP OFF THE TV!! [#GoHideInYourSafeSpace](#) [#FakeNews](#)
[#PunchableFace](#)

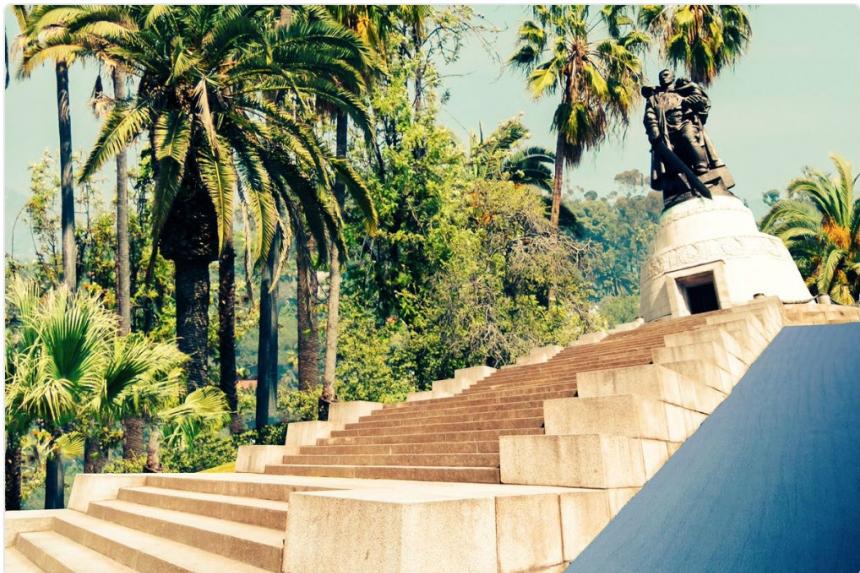
Empirion News Network @ENN
Thanks to Tommy Abel for being on today's show! We always love having you.

4 2 58



Harry McCarson @unEMPressed_ · Feb 20

You need to be a special kind of stupid to believe the Emps would have amounted to anything without Colonel Griff to drag them into the modern age. He'll be lookin' down on the Emps now AND ALWAYS.



39

257

400

✉



Harry McCarson @unEMPressed_ · Feb 21

AHAHA 😂 Once an Emp, always an Emp. Guess you're a lover, not a fighter 🙌

Tommy Abel @t.able113

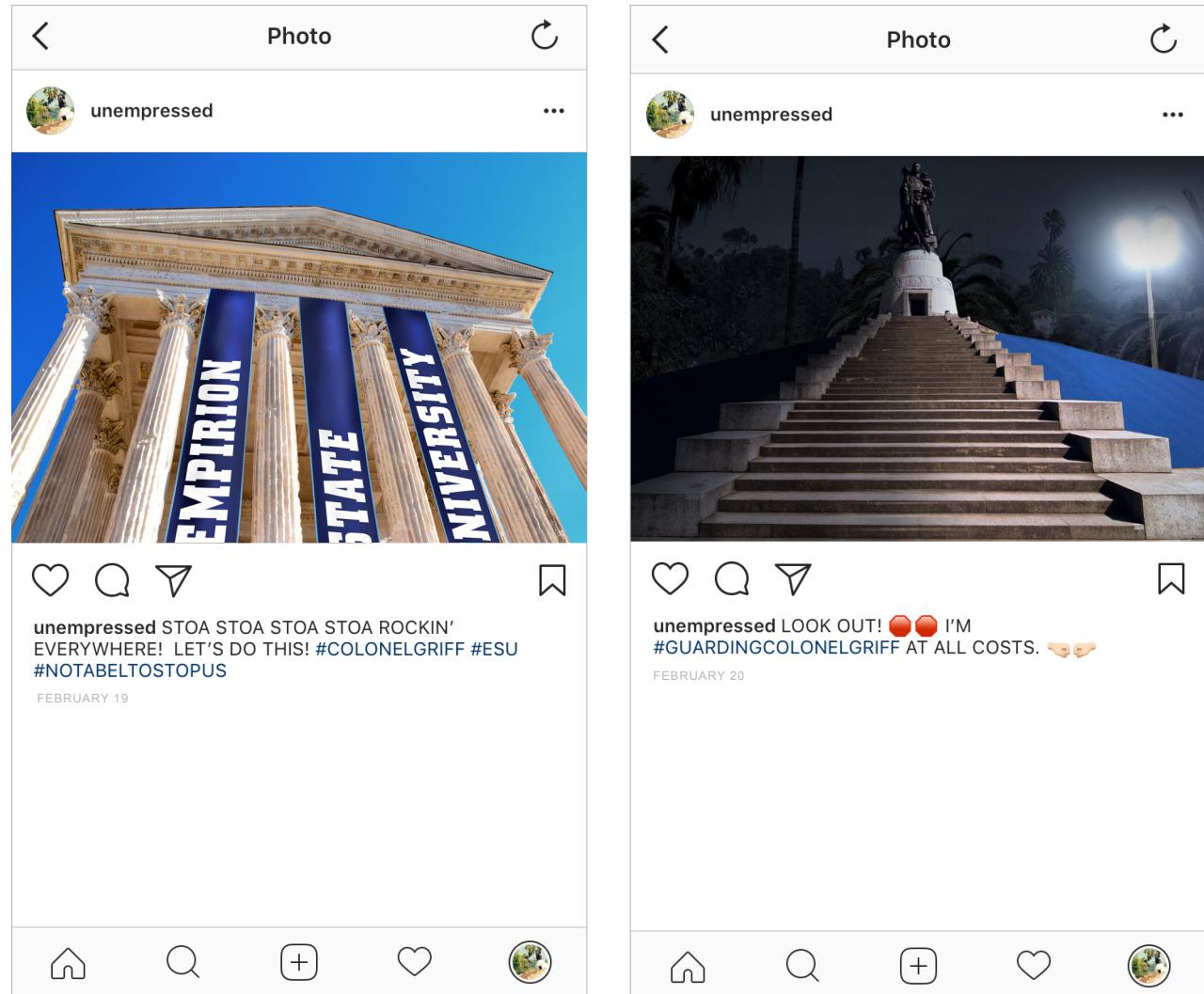
Thanks to everyone for the well wishes. I'm okay after yesterday's brutal assault. I continue to preach #love 💙 to all, even my #haters. Nothing but love here on the sapphire shores 💙

10

26

106

✉



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harry mcCarson



"Emps hate me cause they aint me"

Male
22 years old

PASQUALE,
EMPIRION
United States

Last Login:
05/12/2005

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real americans ([view more](#))

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harry's Blurb

About me:

EMP University class of '04. Real American (unlike most of the emps out here). Cant w8 2 get back 2 REAL america where every1 isnt trying 2 kill me 4 not being an EMP LOVER. Nothin' more I love than US History. This gr8 country was founded with the idea that only true Americans should be running things- no Emps, no foreigners, no savages. Just a country 4 the REAL americans who made the US what we r. Need 2 get back 2 their vision – no room in MY country 4 anyone else. Dont like it? U can leave IDC. I DON'T EVEN UNDERSTAND WHY WE OWN THIS ISLAND. GIVE IT BACK.

Who I'd like to meet:

The idiots who keep sayin' empirion should be made a state so i could punch em in the face. BUSH43 better not think about it. Need 2 get back on the WHITE track.

 Member Profile

Profile for: unEMPressed

Parental Controls 
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Member name:	Harry McC
Location:	EMPirion University
Birthdate:	5-8-82
Sex:	Male
Marital status:	Looking 4 old fashioned vanilla honey who knows her place
Hobbies:	Keeping America white, telling Emps to STAY on their island, violating TOS by spreading TRUTH about the EMPS
Computers:	Whos askin?
Occupation:	EMPeror
Personal quote:	Blood is red, the ocean is blue, and the PEOPLE R WHITE!

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WANNA-BE-ACTIVIST ASSAULTS INNOCENT BYSTANDER & DISRESPECTS NATION'S CAPITOL



by [TY RUMAN](#) | May 2007

On May 8, President George W. Bush signed the [Empirion Admission Act](#) into law, turning Empirion from a U.S. territory into a state—the first time this has happened since the admission of Hawaii in 1959. Though President Bush characterized the Empirion people as respectful and upstanding in his remarks, wanna-be-activist Tommy Abel wasn't ABEL to help himself, and managed to worsen the reputation of all Empirials before President Bush's ink was even dry on the EAA.

The Pasquale High School Government and History teachers escorted a group of 50 students to Washington D.C. on an educational field trip to witness and show support for the Congressional vote.

Though the PHS Administration was hoping the trip would be educational, informative, and perhaps even inspiring for the students, Abel, one of many Pro-State Club representatives on the trip, took the opportunity to lead a demonstration at the Capitol, and managed to convince a group of students to come along. As if one disruption was not enough, Abel also ambushed numerous congressmen and women outside of their House and Senate Office Buildings (Rayburn and Russell, specifically).

While there were plenty of respectful Pro-Remainers in DC that weekend for these students to model their conduct after, Abel chose to antagonize. One Pro-Remainer attempted to discuss Abel's Empirial ethnic history, in an effort to further an understanding of the Pro-State perspective-- Abel punched the respectful and kind old man in the face.* Abel, a VIOLENT animal, was thrown in a cage where he belonged (he was arrested for assault). But the DC police must have felt badly for him and let him come back to Empirion. WHY? THEY SHOULD HAVE KEPT HIM.

47-year-old Brad Parks, the unfortunate victim of Abel's violence, could not be reached for comment, nor could the Pasquale High School Administration.

Abel offered a concession, stating that violence should never be the answer [to a problem], but did not express any regret for punching Mr. Parks.

Ty Ruman is a senior writer for BrightStart News, Follow him on Twitter [@Ty_Ruman](#).

**BrightStart is not aware of any disciplinary action taken nor charges pressed against Abel.*

EMPIRIAL RAINDROP "ACTIVIST" BECOMES LEADER OF SAPPHIRE MEANS LOVE



by [ALLIE STEWART](#) | May 2011

Sapphire Means Love (SML), a Pasquale-based 501(c)(3) non-profit organization, selected Tommy Abel, former Pro-State Activist (see [WANNA-BE-ACTIVIST ASSAULTS INNOCENT BYSTANDER & DISRESPECTS NATION'S CAPITOL](#)) as its new DIRECTOR OF DEVELOPMENT.

SML claims its mission is to empower residents of Empirion, the *Sapphire State*, to become engaged and compassionate members of society who treat others with dignity, respect and love. SML selects Abel despite his aggressive past. Don't forget that this was the same Abel that was arrested in college for fighting on campus AND in HIGH SCHOOL for punching a man in the face! Ironic that an organization that claims to advocate for citizens to become engaged seems to only want them to engage with the side they agree with.

The organization lives by the motto: "We Are All Children of the Same Universe," as many of its members subscribe to the practices of the Universal Life Church, Rev. Dr. Über J. Dee, Head Minister. Doesn't seem that Abel agrees with that, given Abel's assault of a peaceful protester who didn't agree with Abel's opinion!

So if you see Abel, and you don't agree with his views, you better STAY AWAY!

Many SML members are somehow offended at Empirion's factual history, to the point that they want to remove one of few commemorations of the Empirion Hero, Colonel C. Michael Griffus, who fought long and hard for its independence from France and the King.

The SML Member Roster is full of delicate, easily-offended, raindrops who need a strong dose of reality. They live by the supposed 'Golden Rule,' "Treat Others the Way You Would Want to be Treated," but run crying to their parents the minute their demonstrations get too tough.

Allie Stewart is a feature writer for BrightStart Politics, Follow her on Twitter @Allie-StewartBSP.

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ATTENTION-SEEKING SML LEADER UN-ABEL TO RESPECT OPPOSITION OPINIONS



by [SIMON HUNT](#) | June 2016

On June 14 - 17, [Turn Around USA](#), a 501(c)(3) non-profit organization geared towards educating and organizing young students to promote the principles of financial responsibility, open markets, and small government, hosted its annual Young People's Leadership Summit (YPLS) in New York, New York. Though the TAUSA organizers worked to inspire attendees to lead amidst adversity, Tommy Abel, Sapphire Means Love leader (see [EMPIRICAL RAINDROP "ACTIVIST" BECOMES LEADER OF SAPPHIRE MEANS LOVE](#)), reminded the students in attendance that this would be no easy feat.

Abel interrupted the Opening Remarks of TAUSA Founder & Executive Director, Matt O'Neal, and the mid-day #BeRevolutionary speech given by Myah Baeza on behalf of Convention of States Action.

Abel was escorted off the premises after both outbursts, and TAUSA Security Personnel threatened to involve the police if Abel returned after the second removal. It's a good thing they did because otherwise Abel may have attacked them like he did in DC and in college, where he was ALSO ARRESTED.

Abel could not be reached for comment. TAUSA Leadership offered their support of First Amendment Free Speech, but suggested Abel find another, more respectful arena to voice Abel's concerns.

Simon Hunt is a feature writer for BrightStart Politics, Follow him on Twitter @SimonH_BSP.

 TWEET

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HYPOCRITE CAN'T KEEP HIS MOUTH SHUT



by [TY RUMAN](#) | January 3, 2018

Tommy Abel is at it again. The Sapphire Means Love rockstar is making speeches, calling on all of us to accept the recent referendum to remove the Colonel C. Michael Griffus statue. He says that we should work together to "Celebrate this moment as we work to peacefully eradicate these symbols of oppression."

PEACEFULLY!? Who is this guy to preach peace? Has he forgotten about his high school days? 'Oh hey, I know that I am on a school trip across on the mainland, but LET ME PUNCH A STRANGER IN THE FACE BECAUSE I DON'T AGREE WITH YOUR VIEWS.' That is model peaceful behavior!

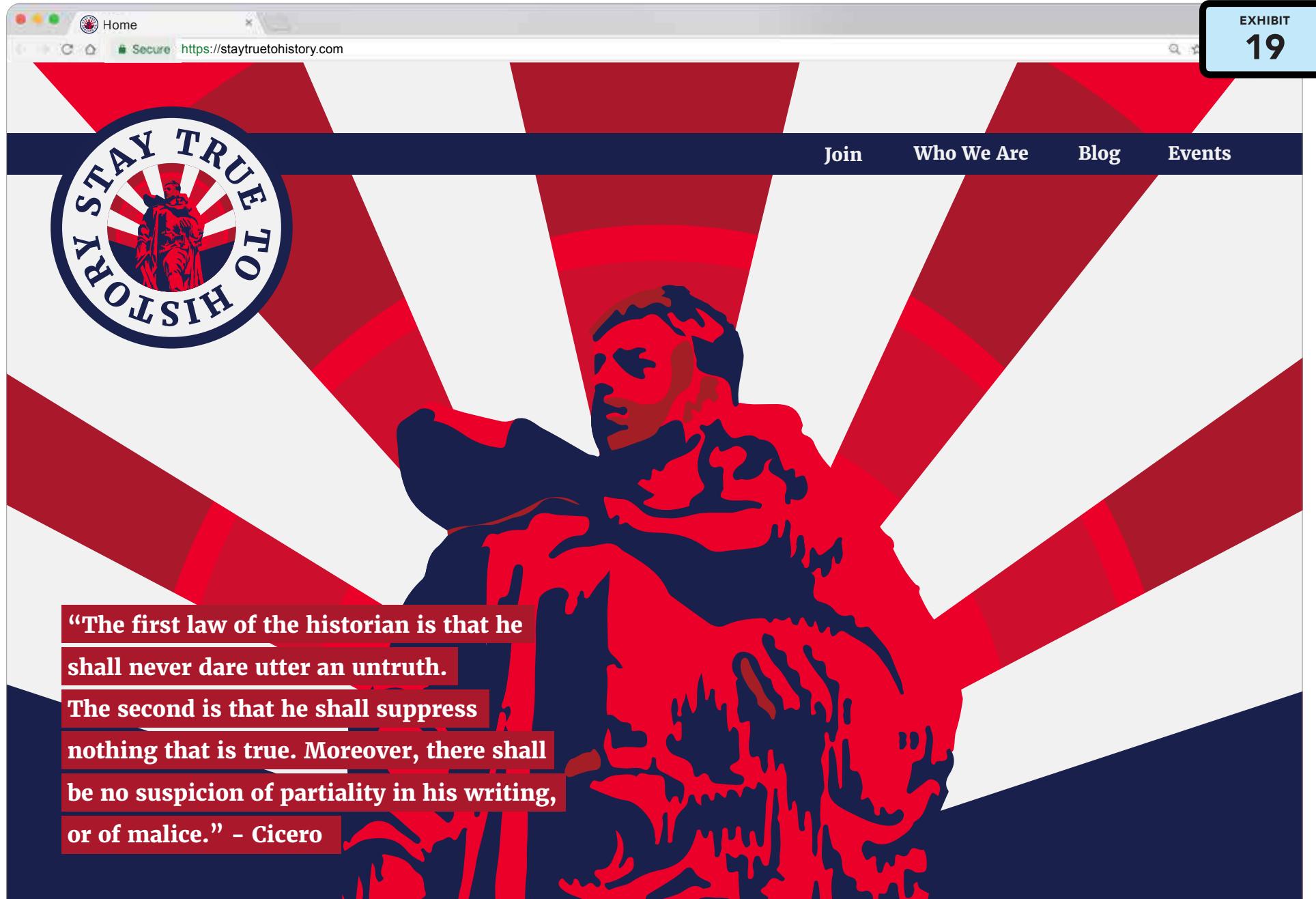
Or how about his college years? Remember when he got into a barroom brawl with classmates from Stay True to History. They supposedly said something about #ColonelGriff that Abel didn't like so he took matters into his own hands. REAL PEACEFUL, huh?

Do us a favor, Tommy. Don't tell us how to behave until you learn how to. Because Empirion doesn't have time for hypocrites.

Ty Ruman is a senior writer for BrightStart News, Follow him on Twitter @Ty_Ruman.

TWEET

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**"The first law of the historian is that he
shall never dare utter an untruth.
The second is that he shall suppress
nothing that is true. Moreover, there shall
be no suspicion of partiality in his writing,
or of malice." – Cicero**

Upcoming Events:

Join Harry McCarson to help us save #ColonelGriff, and preserve Empirion's Legacy. Rally to happen TONIGHT!!! Click [here](#) for more information!

Who We Are

Secure https://staytruehistory.com/who-we-are



Join Who We Are Blog Events

Who We Are

Stay True to History (“STTH”) is a voluntary association of individuals who revere Empirion, C. Griffus Michael, and our shared heritage.

Throughout Empirion, monuments, street names, county names, and countless other landmarks are under constant and increasing attack from Anti-History, Anti-American Heritage Haters. If any memory of C. Griffus Michael, or the True Empirical history, is to exist in Empirion or the rest of America, it is up to us.

STTH is working tirelessly to counterpunch these Empirical "erase-ists" and to preserve and promote the true legacy of Empirion. We hold events, including scholarly talks and conferences, but also including protests, counter-protests, and rallies. In addition, we provide resources related to the study and preservation of Empirical Heritage, and Michael's legacy.

Our group does not condone racism and as such we do not support any group or person that does. We respect the rights and privileges of all as bestowed on them by our Founders and our Creator, and expect those who are associated with STTTH to respect and treat others as they themselves would wish to be treated.

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Updated February 1, 2018

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Blog



Fascists Attempt to shut down Harry McCarson; Heckler's Veto DENIED



McCarson's Statement on ESU's Censorship



Professor O'Neil to be Published in University of Ohio Press!

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Updated February 1, 2018

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Harry McCarson
History 435
Prof. O'Neil
October 26, 2006

Thesis Proposal

Colonel C. Griffus Michael shaped the course of Empirion history, and this great state would not be the land it is today without him. Col. Michael won independence from the French, opened the borders to international trade, and set the island on the path to becoming a US state. If Col. Michael had not brought order and stability to the island of Empirion, it would not have industrialized, and its resources and people would have continued to be overlooked by the outside world. It would never have become the paradise that it is today. Native Empirials and immigrants alike continuously reap the benefits of Michael's rule, especially the economic prosperity and social advancement he brought. In spite of this, many citizens of the state of Empirion continue to disparage Col. Michael's name. People believe his contributions should be shunned as villainous and not celebrated as heroic.

I believe this is not the case – that citizens of any land have an obligation to acknowledge their history and to stay true to it. On an island with as rich and complex a history as Empirion, a large part of people's cultural identity comes from their shared history, from the stories and values they all experience together. No historical figure is perfect and Col. Michael is no different. But erasing his name and presence from this island, therefore, not only erases history, but it erases part of people's identity. My thesis will explore the history of Col. C. Griffus Michael's involvement with the native Empirical people and argue that his contribution to Empirical history was, overall, positive. It will also address reasons people choose to vilify Col. Michael, and explain why none of these reasons are so important as to justify erasing this remarkable man's achievements.

Sapphire Home [Secure https://sapphiremeanslove.org](https://sapphiremeanslove.org)

SAPPHIRE MEANS LOVE

X

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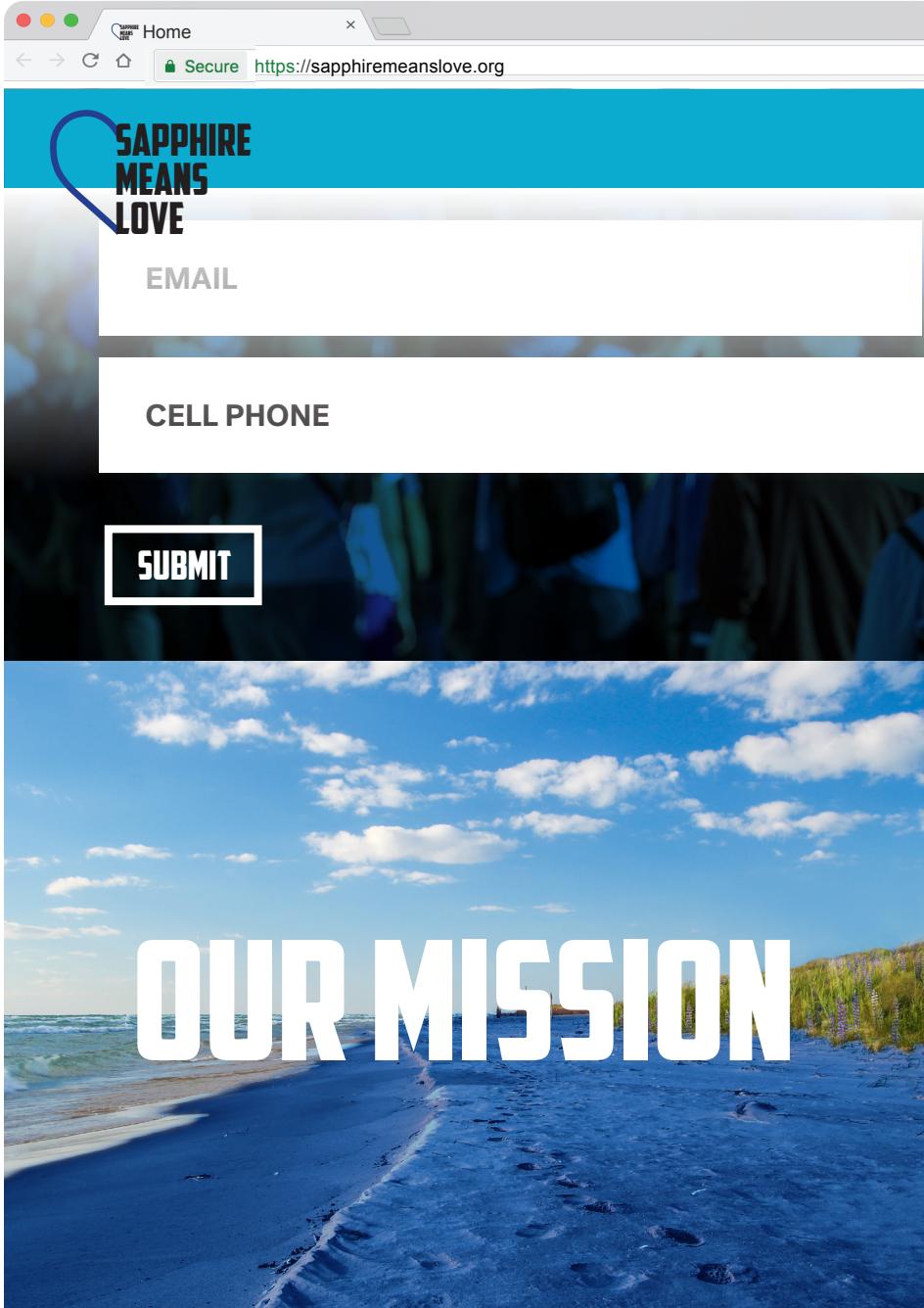
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MEANS
LOVE**

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OUR MISSION

Sapphire Means Love is dedicated to preserving the history and culture of native Empirials, while promoting education and political participation throughout the Sapphire State. Since the organization's founding in 2007, we have registered over 3,000 Empirical citizens to vote, hosted over 50 lectures on Empirical history, and partnered with dozens of other organizations to protest injustice, sponsor legislation, and spread peace and love throughout our state.

FOLLOW US    

SUBSCRIBE TO OUR NEWSLETTER

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**UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**

AGENT ADMINISTRATIVE SHEET

Agent: Washington Key

Agent Badge Number: 8305827

The following details the above Agent's rank, as well as professional history, training received, and relevant areas of experience and expertise within the Federal Bureau of Investigation.

Agent Title (Current): Supervisory Special Agent (SSA)

Agent Department (Current): Criminal Investigative Division

Education

Syracuse University 2004 - 2006

Master of Science in Forensic Analysis, specialty in impressions evidence

Pennsylvania State University 2000 - 2004

Bachelor of Science in Criminalistics

Positions Held at the Bureau

Supervisory Special Agent - Criminal Investigative Division 2015 - Present

Special Agent - Criminal Investigative Division 2008 - 2015

Training Received at the Bureau

Basic Field Training - Crime Scene Investigation - Witness Interrogation - Investigative Techniques - DNA Extraction, Quantitation, and Amplification - Law Enforcement Principles - CODIS Principles - Fingerprint Analysis - Tread and Transfer Impressions - Firearms - Forensic Biology - Communications in Forensics - Crime Scene Reconstruction

Professional Certifications

Certified Footwear and Latent Print Examiner - *International Association for Identification*

Certified Evidence Collection Specialist - *Center for Security and Emergency Management*

Comprehensive Criminalistics Certification - *American Bureau of Criminalistics*

Molecular Biology and DNA - *American Bureau of Criminalistics*

Firearms Certification - *Federal Bureau of Investigation*

Professional Affiliations

Member - International Association for Identification

Member - The American Investigative Society of Cold Cases

Member - International Association of Crime Analysts

CHARLIE H. FELDER

PRIVATE INVESTIGATOR

1666 Elmview Drive
Pasquale, Empirion, 90999

(221)-555-0145
cfelder70@pasqualepi.com

SUMMARY

Private Investigator with legal expertise and decades of experience collecting evidence and conducting forensic testing. Committed to helping every client present the best case possible.

EXPERIENCE**Private Investigator (2010-Present)**

- Consult on civil and criminal cases
- Collect evidence and conduct surveillance
- Assess evidence collection and handling procedures
- Testify about evidence collected and reviewed

Field Supervisor (2005-2010)

Pasquale Police Department

- Oversee teams of crime scene investigators

Crime Scene Investigator (1996-2005)

Pasquale Police Department

- Collect forensic evidence
- Utilize proper handling techniques to prevent contamination
- Conduct forensic tests in a laboratory setting
- Testify about test results

Assistant Public Defender (1995-1996)

Pasquale Public Defender's Office

EDUCATION

Georgia State University College of Law, Juris Doctor (1995)
University of Georgia, B.S. Ed. Science Education (1992)

Curriculum Vitae

Terry O'Neil

February 2018

EDUCATION

2005 - 2008 **New York University, Ph.D.**

Thesis: "Empirion Strikes Back: A History of Empirical Oppression and Revolution"

Thesis Advisor: Spence Richardson, Ph.D.

2002 - 2005 **Empirion State University, M.A.**

Focus: History, focusing in Development of Western Political Systems

Advisor: Thomas Pyszczynski, Ph.D.

1998 - 2002 **Empirion State University, B.A.**

Major: History, Political Science

Advisor: Corbett Davidson, M.A.

ACADEMIC EMPLOYMENT

2016 - Present *Dean of History*, Head of Department Academic Advising, **Empirion State University**

2011 - 2016 *Full Professor*, Assistant Dean of History, Academic Advisor, **Empirion State University**

2009 - 2011 *Assistant Teaching Professor*, **Empirion State University**

2006 - 2009 *Graduate Research Assistant*, **New York University**

Project: National Historical Foundation project entitled: "Examining local attitudes and customs as an socio-political exploration of race relations in colonized nations"

2003-2005 *Graduate Teaching Assistant/Assistant Instructor* (Political Science, History),
Empirion State University

Classes Taught: "Evolution of Empirion's Political Systems"; "America's Fascination with Authority"; "Parallel Histories: America & Empirion"

1999-2002 *Tutor/Writing Center Instructor* (History) **New York University**

HONORS AND AWARDS

2011, 2017 **Outstanding Teaching Award**

Awarded by Empirion State University, Office of Graduate Studies.

2008	Outstanding Research Award Awarded by National Historical Foundation for Graduate Student Committee for research
2008	Honors Distinction Awarded for Dissertation entitled: "Empirion Strikes Back: A History of Empirical Oppression and Revolution"

PROFESSIONAL AFFILIATIONS AND SERVICES

Ad-hoc Reviewer

American Journal of History
Empirion State University School of Law, International Law Journal European

Professional Organization Member

American Historical Association (AHA)
National Historical Foundation
Stay True to History (STTH)

PUBLICATIONS

PEER-REVIEWED JOURNAL ARTICLES AND INVITED BOOK CHAPTERS

O'Neil, T., (2018). Forgotten But Not Gone: Colonel Michael and the Native Empirials. *Journal of Socio-Politics and History* 50.

Justice, J., Delf, R., **O'Neil, T.**, & Bradshaw, T (2016). Who's to blame? A study of racist attitudes throughout America. *Journal of Socio-Politics and History* 47, 1237-1242.

CONFERENCE PRESENTATIONS

TALKS

O'Neil, T., (2011). Blame, Racism, and Colonel Michael: Exploring the roles of scapegoating and hero-worship in Empirical history. Talk presented at the Stay True To History annual conference, Pasquale, EM.



