

COMPLAINT REVIEW CHARGING DECISION

CDA PD Report No. 24C10360	Offense Date: 03/21/2024
Location: 115 S. 2nd Street, Coeur d'Alene	Date Sent to Prosecutor: 04/23/2024
Suspect(s): Anthony Richard Myers	Victim(s): Charmelle Green & Nene Sow <i>et al.</i>
Charge(s): Disturbing the Peace (I.C. § 18-6409) Investigator: Det. Khalil Newbill	

Date of Final Decision: May 3, 2024

Factual Summary: On March 21, 2024, members of the University of Utah Women’s Basketball team, coaching staff, and athletic department, as well as members of the University’s band, cheerleaders, and dance team, were staying at the Coeur d’Alene Resort while they participated in the NCAA Women’s Basketball Tournament in Spokane, Washington. At approximately 9:57 p.m. that evening, Robert Moyer, a financial booster for the team traveling with them for the Tournament, contacted the CDA Police Department to report an incident of racial harassment directed against the U of U contingent.

In that initial report, Mr. Moyer claimed that two lifted pickup trucks had revved their engines and sped by the U of U contingent as they walked to Crafted Tap House + Kitchen on Sherman Avenue for a dinner reservation at approximately 6 p.m.; additionally, he reported that the trucks turned around and drove past again, shouting the N-word at the team, which included several African American members. He further reported that the same trucks waited until the team had finished dinner and had begun walking back to the CDA Resort, at which time they drove past them again in the same harassing manner and again shouted the N-word at the team. Based on that report, CDA Police Department began an exhaustive three-week investigation, during which they interviewed nearly two-dozen witnesses and meticulously poured over hours of surveillance video. That investigative effort ultimately produced the following timeline of documented and verifiable facts.

Beginning at or about 5:15 p.m. on March 21, 2024, the U of U contingent walked in several smaller groups from the CDA Resort eastbound on Sherman Avenue towards Crafted Tap House + Kitchen, where they had a dinner reservation for approximately 90 people at 5:30 p.m. The U of U contingent arrived at Crafted shortly after 5:35 p.m., with no obvious indications captured in surveillance video recordings or corroborated by third-party witnesses that anything was amiss with the group or any of its members. According to surveillance video, three (3)

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different trucks, one light silver in color and two white in color, drove eastbound on Sherman Avenue between 5:31 and 6:06 p.m.; all three trucks appeared modified with lift kits and each made significant noise while accelerating. Additionally, all three trucks drove back westbound on Sherman Avenue between 6:15 and 6:19 p.m. Although that same surveillance video captured multiple instances of loud engine and muffler noise during the following hour, there is no audio evidence captured indicating any vehicles were “revving” their engines (i.e., increasing the RPMs of the engine while stationary to intentional produce noise). Further, there is no audio evidence that the occupants of any of those three trucks—or any other vehicle—shouted the N-word—or anything else—during the time frame in which the U of U contingent was walking to Crafted.

Beginning at approximately 7:00 p.m., members of the U of U contingent began leaving Crafted and walking westbound on Sherman Avenue back towards the CDA Resort in multiple small groups. Just before 7:17 p.m., surveillance video captured a silver passenger car driving westbound on Sherman Avenue and from which someone can be heard shouting, “I hate [N-word]s, but I’ll fuck your butt!” Immediately afterwards, a female voice shouts, “call the police,” and a few seconds later another female voice states, “he had his cowboy boots out the window.” However, there is no record of anyone contacting law enforcement about the incident at that time. Instead, Mr. Moyer made the initial report of this incident to the CDA Police Department at approximately 9:57 p.m., more than two-and-a-half hours after it occurred.

The CDA Police Department’s subsequent exhaustive investigation determined the identities of the four occupants of the silver passenger car and, ultimately, confirmed that one of the individuals in that vehicle, Anthony Richard Myers, an 18-year-old student at Post Falls High School, made the offensive statement containing the racial slur, to which he subsequently confessed during interviews with law enforcement. The investigation also established that Mr. Myers had shouted the N-word as the vehicle passed in front of Crafted just before saying it again as part of the obscene statement directed at members of the U of U contingent. Mr. Myers subsequently tried to retract part of his confession and claimed he had just shouted the N-word while another occupant of the vehicle, Aiden Riggins, had made the obscene statement that also contained the N-word. However, there is very little evidence to support that post-hoc claim, while there is substantial evidence corroborating his original admission.

At this time, there exists no audio or video evidence to substantiate the initial report that several vehicles were revving their engines and speeding by in an intentional effort to intimidate

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and/or harass the U of U contingent as they traveled to or from dinner at Crafted. However, although not captured in an audio recording, five credible eyewitness statements confirmed that someone shouted the N-word at a particular member of the U of U contingent during their walk to Crafted. Still, those accounts varied widely in the description of the vehicle and person(s) involved in shouting that racial slur, with the only uniformity as to the identity of the perpetrator being that it was a white male. Ultimately, there was insufficient information in those eyewitness accounts to identify the perpetrator(s) or the vehicle(s) involved in the initial incident of the N-word being shouted at the U of U contingent. Furthermore, there is no evidence whatsoever to establish a connection between that first incident and the second verified incident of racial harassment by Anthony Myers as the U of U contingent walked back from Crafted towards the CDA Resort.

Prosecutor's Analysis: The CDA Police Department referred this case to the CDA City Attorney's Office for review of whether Anthony Myers's conduct violated any laws and, if so, which ones. Specifically, review was requested for two potential criminal offenses: Disturbing the Peace pursuant to I.C. § 18-6409; and Disorderly Conduct pursuant to Coeur d'Alene Municipal Code § 9.22.010. Additionally, during the course of this review, I also considered whether Mr. Myers's conduct violated a third statute – Malicious Harassment pursuant to I.C. § 18-7902.

First, there is insufficient evidence to establish that the criminal offense of Malicious Harassment occurred based on the plain language of that statute, which requires that the suspect “maliciously and with the specific intent to intimidate or harass another person because of that person's race,” either cause physical harm to another person, damage the property of another person, or threaten to do either of those things in circumstances where there is “reasonable cause to believe” the threatened conduct will occur. As to the first requirement of specific intent to intimidate or harass, there is insufficient evidence that Anthony Myers acted with a specific intent to intimidate or harass any specific person; on the contrary, the sum of the evidence supports that Mr. Myers's intent was to be funny. To be clear, the statements of the other occupants of the vehicle and of Mr. Myers himself all support that he—as a white male—thought it would be funny to shout his willingness to have anal sex with a Black female despite his expressed hate for Black folks, which he made abundantly clear by deploying the N-word. Setting aside the rank absurdity of that claim and the abjectly disgusting thought process required to believe it would be humorous to say something that abhorrent, it nevertheless undermines that he had the required the specific intent to

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intimidate and harass. But the more obvious missing element of this offense is that there is no evidence whatsoever that Mr. Myers coupled his detestable statements with a threat of physical harm or property damage that there was reasonable cause to believe would occur, much less any conduct that actually resulted in either. Accordingly, there is insufficient evidence to support prosecution for the crime of Malicious Harassment pursuant to I.C. § 18-7902.

Next, Disturbing the Peace under Idaho Code § 18-6409 and Disorderly Conduct under the Coeur d'Alene Municipal Code § 9.22.010 are similar in their wording and the harm they are designed to address. As such, in the interest of expediency and conciseness, the analysis will focus on the applicability of the state Disturbing the Peace offense for which there exists a seminal, on-point case from the Idaho Supreme Court that offers guidance in the interpretation of the terms used in both that state statute and the CDA municipal code section modeled after it. Specifically, in *State v. Poe*, 139 Idaho 885 (2004), the Idaho Supreme Court broke down the bases through which a person could Disturb the Peace as provided by I.C. § 18-6409 in the following way:

Every person who maliciously and willfully [1] disturbs the peace or quiet of any neighborhood, family or person, [a] by loud or unusual noise, or [b] by tumultuous or offensive conduct, or [c] by threatening, traducing, quarreling, challenging to fight or fighting, or [2] fires any gun or pistol, or [3] uses any vulgar, profane or indecent language within the presence or hearing of children, in a loud and boisterous manner, is guilty of a misdemeanor.

Id. at 894 (subsections added). The Court went on to explain that the first two subparts of what it designated as section 1 seek to regulate conduct, not pure speech, and are neutral with respect to the content of any expressive element of such conduct that may exist in a particular circumstance.¹

First, it is worth noting that the Court's holding in *Poe* was that the third means of Disturbing the Peace—using “vulgar, profane, or indecent language within the presence or hearing of children”—violated the First Amendment as an unconstitutionally overbroad regulation of the content of speech. That holding highlights that content-based restrictions on speech, including prosecutions that rely on the content of speech, are unconstitutional in virtually all but the most exceptional circumstances.

¹ The CDA Municipal Code 9.22.010 similarly prohibits willfully engaging in “violent, tumultuous or offensive conduct, or by threatening, traducing, quarreling, or challenging to fight another person, or fights with another person in a public place”; making “noise that is unreasonable, considering the nature of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances”; and engaging in “violent, noisy, or riotous behavior that would be frightening or offensive to a reasonable person who might be expected to be in the vicinity.”

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In this case, our office first reviewed whether Mr. Myers’s statement and use of the N-word under the circumstances presented here could meet the legal requirements for any of the narrow categories of unprotected speech, but it quickly became clear that it would not.² Thus, any prosecution in this case would have to proceed solely based on Mr. Myer’s conduct, with no regard for the content of his speech. With that limitation in mind, the only potentially relevant bases to pursue a charge for Disturbing the Peace in this case would be for malicious and willful disturbance of the peace or quiet of any neighborhood or person through “loud or unusual noise,” or “by tumultuous or offensive conduct.” As to the “loud and unusual noise” basis, the conduct at issue here occurred during a time of the evening when multiple vehicles with loud engines/exhaust were driving up and down Sherman Avenue against a backdrop of general business and pedestrian noise that is common for that main thoroughfare and that time of evening. Thus, there would be no way to establish that Mr. Myers’s shouting a phrase from a moving vehicle, without regard for its content, was either “loud or unusual” for that time and place.

Next, it would be equally difficult to establish that Mr. Myers’s conduct in shouting something out of the window of a moving vehicle—again, without any consideration of its content—was “tumultuous or offensive conduct.” One could certainly argue that shouting anything out of a moving vehicle at anyone can be objectively viewed as tumultuous conduct. But again, when placed against the surrounding circumstances in which it occurred—a busy thoroughfare already awash with noise in the early evening—there would be no realistic chance of establishing this as a criminal violation and convincing a jury to convict on this conduct alone without reference to the content of the speech. The same is true for establishing this as offensive conduct; needless to say, what Anthony Myers said was incredibly offensive to any reasonable person and is unequivocally inexcusable. But that assessment relies primarily, if not entirely, on the content of what Mr. Myers said, not when or where or how he said it.

In short, I cannot find probable cause that Anthony Myers’s conduct—shouting out of a moving vehicle at a group of people—constituted either Disturbing the Peace under state law or Disorderly Conduct under the CDA Municipal Code. Instead, what has been clear from the very outset of this incident is that it was not when or where or how Mr. Myers made the grotesque racial statement that caused the justifiable outrage in this case; it was the grotesque racial statement itself.

² The categories of unprotected speech recognized under the First Amendment are obscenity, depictions of child pornography, defamation, fraud, speech integral to criminal conduct, incitement, true threats, and fighting words.

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Thus, any attempt to prosecute Mr. Myers for either Disturbing the Peace or Disorderly Conduct would inevitably rely on the content of what he said to establish either crime, which would clearly violate Mr. Myers's free speech rights as contemplated under both the First Amendment to the United States Constitution and Art. I, sec. 9 of the Idaho Constitution. Moreover, prosecution under these circumstances would inevitably fail, whether through pretrial dismissal due to the clear free speech issues involved or acquittal due to exclusion of the content evidence upon which that prosecution would inevitably have to rely at trial.

Finally, prosecution of an offense that relied on the content of a person's speech, except in the very specific and narrow circumstances recognized by the United States Supreme Court that are inapplicable here, would also violate the prosecutor's special ethical obligation to "refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." *Idaho Rule of Professional Conduct 3.8(a)*. The Coeur d'Alene City Attorney's Office is committed to scrupulous adherence of its ethical obligations at all times, which includes solemn observance of the special responsibilities of a prosecutor as outlined in Rule 3.8. That unwavering commitment demands that we make the legally and ethically correct decision no matter how difficult, distasteful, or unpopular it might be.

Our office shares in the outrage sparked by Anthony Myers's abhorrently racist and misogynistic statement, and we join in unequivocally condemning that statement and the use of a racial slur in this case, or in any circumstance. However, that cannot, under current law, form the basis for criminal prosecution in this case.

Prosecutor's Charging Decision: Prosecution declined due to insufficient evidence to establish probable cause as to every element of any of the potential offense(s) without reliance on First Amendment protected speech.



Ryan S. Hunter
Chief Deputy City Attorney