

FILED

UNITED STATES DISTRICT COURT

for the

Western District of Virginia

AUG 27 2018

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERKUnited States of America
v.

Case No.

3:18mj00025

Benjamin Drake Daley

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of August 11-12, 2017 in the county of Charlottesville in the
Western District of Virginia, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. § 2101


Riots

18 U.S.C. § 371

Conspiracy to Riot

This criminal complaint is based on these facts:

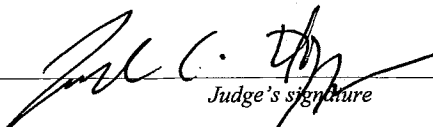
See Attached Affidavit

A TRUE COPY, TESTE:
JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK☒ Continued on the attached sheet.
Complainant's signature

Dino Cappuzzo, Task Force Officer

Printed name and title

Sworn to before me and signed in my presence.

Date: 08/27/2018City and state: Charlottesville, Virginia
Judge's signature

Honorable Joel C. Hoppe, U.S. Magistrate Judge

Printed name and title

SEALED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA

v.

BENJAMIN DRAKE DALEY,
MICHAEL PAUL MISELIS,
THOMAS WALTER GILLEN, and
COLE EVAN WHITE

Case No. 3:18mj 00024-00027

Filed Under Seal

AFFIDAVIT IN SUPPORT OF ARREST WARRANT AND CRIMINAL COMPLAINT

I, Dino P. Cappuzzo, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Task Force Officer of the United States Department of Justice, Federal Bureau of Investigation ("FBI") and have been so employed since September 2016. I am assigned to the Richmond Field Office, Charlottesville Resident Agency, located in Charlottesville, Virginia. My principal duties include the investigation of, among other matters, domestic and international terrorism and threats to the National Security of the United States.

2. I am a sworn law enforcement officer with the Virginia Department of State Police, Bureau of Criminal Investigation, and have been so employed for 22 years. Additionally, I am a Task Force Officer, deputized as a Deputy United States Marshal as a member of the Federal Bureau of Investigation's Joint Terrorism Task Force in Charlottesville, VA. I am charged with the duty of investigating violations of the laws of the United States as stated in

Title 28, Federal Code of Regulations, and to seek and execute arrest and search warrants supporting a Federal Task Force under Title 18 Authority.

3. Your Affiant bases this affidavit upon personal knowledge and observations made during the course of this investigation, and upon my personal review of records, documents, and items lawfully obtained by third parties, public records, and interviews. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part. The Affiant is familiar with the information contained in this affidavit based upon the investigation I have conducted to date and based on my conversations with other law enforcement officers who have been involved in this investigation, some of whom have also been engaged in numerous investigations involving domestic terrorism. Because this affidavit is being submitted for the limited purpose of establishing probable cause for the issuance of an arrest warrant, I have not included each and every fact I know about the investigation.

4. Title 18, United States Code, Section 2101, provides that “Whoever travels in interstate or foreign commerce or uses any facility of interstate or foreign commerce, including, but not limited to, the mail, telegraph, telephone, radio, or television, with intent 1) to incite a riot; or 2) to organize, promote, encourage, participate in, or carry on a riot; or 3) to commit any act of violence in furtherance of a riot; or 4) to aid or abet any person in inciting or participating in or carrying on a riot or committing any act of violence in furtherance of a riot” shall be guilty of a federal offense.

5. Title 18, United States Code, Section 371, provides that “If two or more persons conspire [] to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be [guilty of a federal offense].

BACKGROUND

6. On August 12, 2017, a “Unite the Right” rally (UTR) was scheduled to be held at Emancipation Park in Charlottesville, Virginia. The proclaimed purpose of the rally was to protest the removal of the Robert E. Lee and Thomas “Stonewall” Jackson statues in Charlottesville. Several groups and individuals espousing right-wing nationalist and/or white supremacist views traveled to Charlottesville to attend the rally in support.

7. On the evening of August 11, 2017, the night before the UTR rally of August 12, many of these groups and individuals participated in an unsanctioned torch-lit march occurred on the grounds of the University of Virginia, which is located in Charlottesville and in the Western District of Virginia. Hundreds of participants marched through a portion of the University of Virginia’s grounds, carrying torches and shouting, for example, “Jews will not replace us!” “Blood and Soil!” and “White Lives Matter!” The torch-lit march culminated at a statue of Thomas Jefferson located at the base of the University of Virginia’s Rotunda, where the march

participants surrounded a small group of students and community members who had joined around the statue in counter-protest. Several students held a banner that read: "VA Students Act Against White Supremacy." After surrounding the smaller group of students and counter-protestors, the participants of the torch-lit march pressed in closer towards them. Moments later, violence erupted among the hundreds of people present.

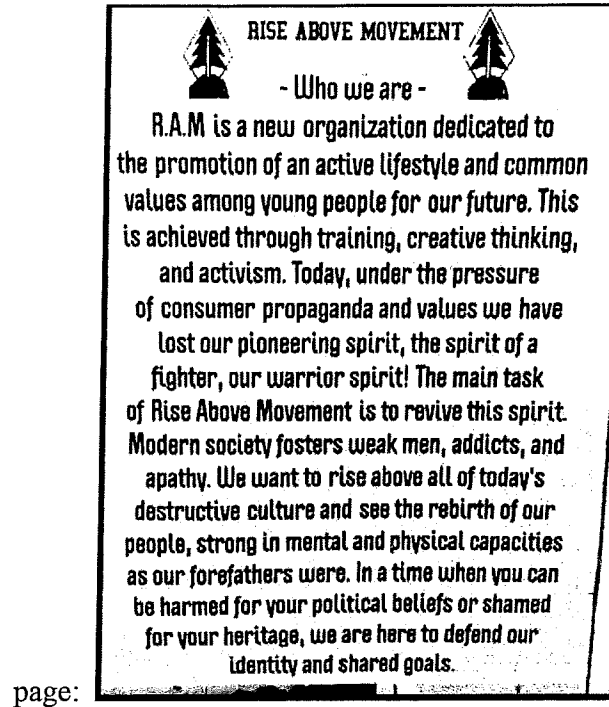
8. The next day, on August 12, 2017, the UTR rally was scheduled to begin at noon. That morning, individuals and groups espousing white supremacist and white nationalist beliefs funneled into Emancipation Park. Numerous counter-protestors attended the rally to oppose the rally and its supporters. Throughout the morning, numerous violent encounters occurred between white-supremacist protestors and counter-protestors. Before the UTR rally could officially begin, law enforcement declared an unlawful assembly and cleared Emancipation Park.

9. Upon information and belief, among the most violent individuals present in Charlottesville on August 11-12, 2017 were at least four members and associates of the "Rise Above Movement," (RAM) a militant white-supremacist organization based in Southern California, who had traveled to Charlottesville with the intent to encourage, promote, incite, participate in, and commit violent acts in furtherance of a riot, as that term is defined by 18 U.S.C. § 2102.

PROBABLE CAUSE

10. Through open-source research by the FBI, it was learned that RAM maintained a publicly viewable Twitter page. RAM represents itself to be a positive influence on those who

join their ranks, as evidenced in the following statement posted to their publicly viewable Twitter



11. Through Twitter and other social-media platforms, RAM promotes “clean living,” physical fitness and mixed martial arts (MMA) street fighting techniques. According to an article published to www.nocara.blacklogs.org on 7/06/2017, entitled “DIY Division: The Violent neo-Nazi Group Central to the California Alt-Right and Alt-Light Protest Movements,” DIY, which later re-branded itself as RAM, subscribes to “equal parts Identity Evropa’s flaccid identitarian discourse...and the fetishization of masculinity, physical fitness, and violence mixed with the shallow anti-corporate and anti-consumerist themes of the film *Fight Club*. Propaganda by the group...contains...fascistic themes of emasculated young white men needing to reclaim their identities through learning to fight and engaging in purifying violence.” Accordingly, the group regularly meets in public parks in the southern California area and trains in physical fitness, boxing, and other fighting techniques. The following photographs were obtained from RAM’s public Twitter page:



R.A.M. @RiseAboveMvmt · Jan 24

Some debate about the future, others work to build it. #altright #nationalist
#riseabove



12. Benjamin Drake Daley (DALEY,) a resident of Redondo Beach, California, figures prominently in the organization, and regularly appears in photographs posted to their

publicly viewable Twitter page. RAM also regularly posts photos of themselves posing shirtless and wearing skull half masks, with the group's name overlaying the photo, as seen below.



DALEY is seen front and center, kneeling on the far left of the first row in the photo.

13. RAM and its members openly identify themselves on various social media platforms as “alt-right” and “nationalist” and frequently posts videos and photographs of its adherents engaged in vigorous physical training and mixed martial arts (MMA) street-fighting techniques in order to prepare to engage in fighting and violence at political rallies.

14. The four defendants, DALEY, along with fellow RAM members/associates Michael Paul Miselis (MISELIS,) Thomas Walter Gillen (GILLEN) and Cole Evan White (WHITE,) traveled to Charlottesville from California on or about August 11, 2017, and participated in violent encounters in Charlottesville in connection with the torch-lit march of August 11, 2017 and the UTR rally of August 12, 2017. In addition, these RAM members have engaged in acts of violence at political rallies in Huntington Beach, CA (3/25/2017), Berkeley, CA (4/15/2017), and other places. In the screen shots below from videos posted to Youtube, the aforementioned individuals are seen engaging in acts of violence directed towards their supposed political opponents and counter protestors at political rallies.



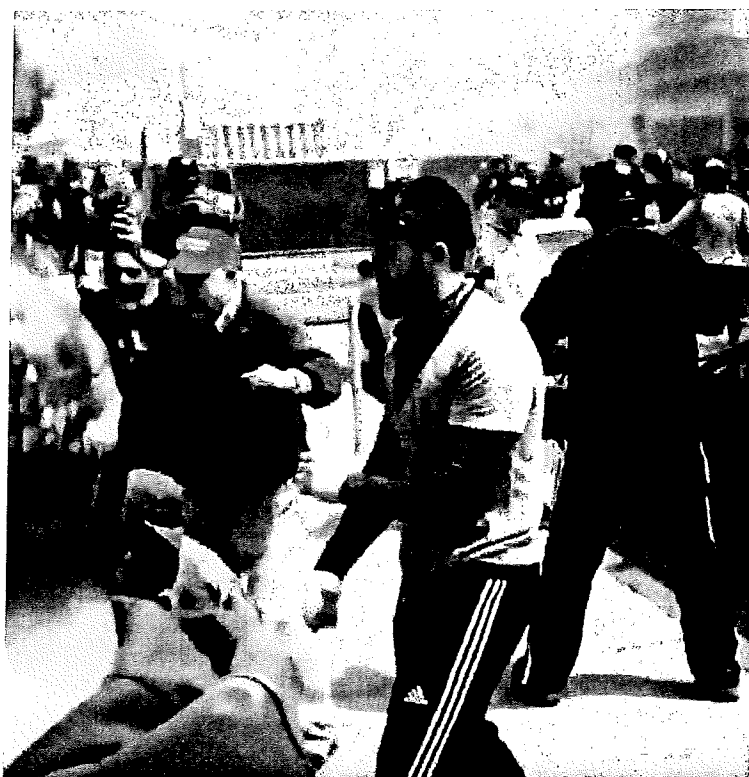
In this video, an individual believed to be DALEY can be seen attempting to kick and/or punch a counter protestor, while wearing a half-skull face mask consistent with those depicted in RAM's group photo previously noted.

15. GILLEN was also present during last year's unrest in Berkeley, California, and can be seen in the same video repeatedly punching a counter protestor who has fallen to the ground.



GILLEN, in an apparent effort to prepare to engage in physical violence, has taped his fists in the manner of boxers or MMA style fighters, as evidenced photo above, right.

16. MISELIS, who along with DALEY, is a prominent member of RAM and was present alongside him during the civil unrest at political rallies in Berkeley, CA and at least two other places. In the following photograph, MISELIS appears with his fellow RAM members and associates during the Berkeley riots, and like GILLEN, has taped his right fist in preparation:



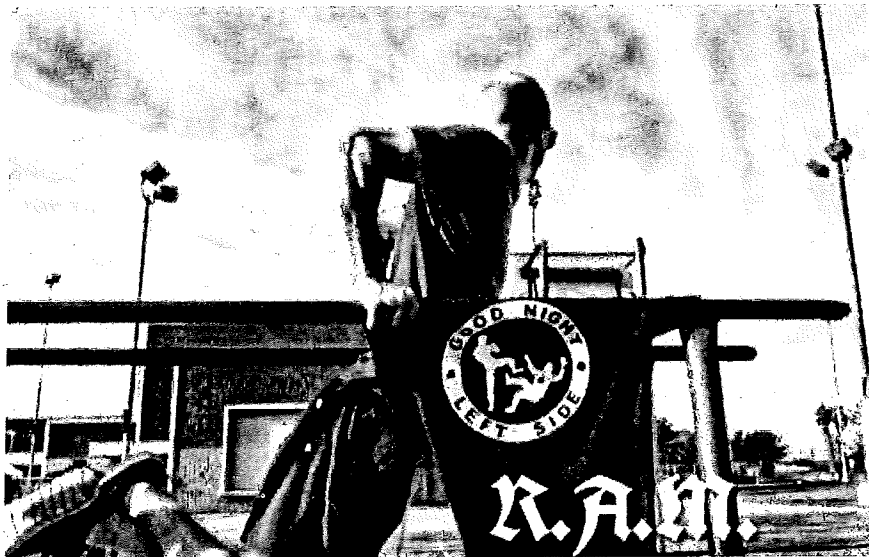
17. Investigators have also identified COLE EVAN WHITE as being present with RAM at the Charlottesville UTR rally, and who has appeared alongside RAM members during the unrest in Berkeley, CA in 2017. White is a San Francisco area resident, and can be seen in the following screenshots of footage from the Berkeley riots in April 2017. White is the individual in a purple sweater with flowing platinum blonde hair, alongside MISELIS, and later attacking a counter protestor:



18. RAM and their associates, in contrast to their purpose referenced previously, openly espouse animosity, anti-Semitism, and violence towards those who hold opposite ideologies to their own, as evidenced by posts to their Twitter page:



R.A.M. · @RiseAboveMvmt · Mar 20
#nationalist #cpt.cs



R.A.M. · @RiseAboveMvmt · Feb 15
Shortly after this pic antifa was btfo in Huntington Beach #defened #America
#nationalist #altright



🗨 1 ❤️ 20 📧



R.A.M. @RiseAboveMvmt · Feb 5

When the squads not out smashing commies #nationalist #lifestyle



19. The FBI has been conducting an investigation into possible violations of federal criminal law committed by individuals allegedly associated with RAM. The investigation was initiated following receipt of information that DALEY, GILLEN, MISELIS and WHITE, attended the August 11-12, 2017 "Unite the Right" Rally in Charlottesville, Va. and committed multiple acts of violence against counter protestors, which in some cases resulted in serious injuries. Photographs and video footage from the evening of August 11, 2017, and from the morning of August 12, 2017, in Charlottesville, Virginia, corroborated the aforementioned information.

20. Photographs and video footage have confirmed that DALEY, MISELIS, GILLEN, and WHITE were present and participated in the torch-lit march that culminated in violence against students and other counter protestors. In the following screenshots, WHITE – with the apparently dyed platinum blonde hair and horizontal striped shirt – can be seen using his torch as a weapon on at least two occasions during the melee.





21. In addition to WHITE, DALEY also engaged in acts of violence that evening. A search warrant of DALEY's Facebook account revealed that he admitted to being present at the torch march. In the conversation, DALEY was critical of another prominent white supremacist for releasing a chemical spray at the march. DALEY stated that such spray was unnecessary because "We had the[m] completely surrounded." DALEY admitted: "I hit like 5 people." In March 2018, DALEY referred to "Friday [the torch march] was good . . . Saturday [the UTR rally] was a HUGE failure."

22. On the morning of August 12, 2017, DALEY, along with other members of RAM, are seen in video footage committing acts of violence, assaulting counter-protestors by punching, kicking and head butting on 2nd Street NE between the High and Jefferson cross streets in downtown Charlottesville, Virginia. DALEY, the white male with short-cropped reddish

blonde hair wearing a white long-sleeved shirt and sun glasses, and with his fists taped, can be seen in a screen shot from the footage punching and kicking a counter protestor:



23. At the same time, WHITE (in a white shirt, two-toned platinum hair, and sunglasses) joins DALEY by grabbing a non-violent counter-protestor – who was merely holding onto a street sign – by the shoulders and jerking him away. (Photo: below left). Afterwards, WHITE head-butted a clergyman – the individual in the yellow shirt with tan hat – and who was wearing a clerical collar. (Photo: below right).



24. GILLEN, as seen in a still from the footage below, has his hands taped as he did during the Berkeley unrest, again demonstrating his preparation for violent activity. GILLEN is

seen in the aforementioned video assisting his fellow RAM members DALEY and MISELIS, as they assault multiple counter protestors on August 12, 2017.



25. In other video footage from the violence, WHITE can be seen headbutting a female counter protestor, while DALEY assists him in the assault. (Photo: below, left). The headbutt results in a severe laceration. (Photo: below, right).



MISELIS, in the following screen shots of video footage used by Propublica.org in an article about MISELIS' alleged membership in RAM, appears to be shoving an African American to the ground and then striking him. MISELIS, like DALEY, again has his fists taped in the manner of boxers and MMA fighters:



Another screen shot from video footage depicts DALEY attacking a man without provocation:



And later in the same video, MISELIS can be seen kicking the same man as he is falling to the ground:



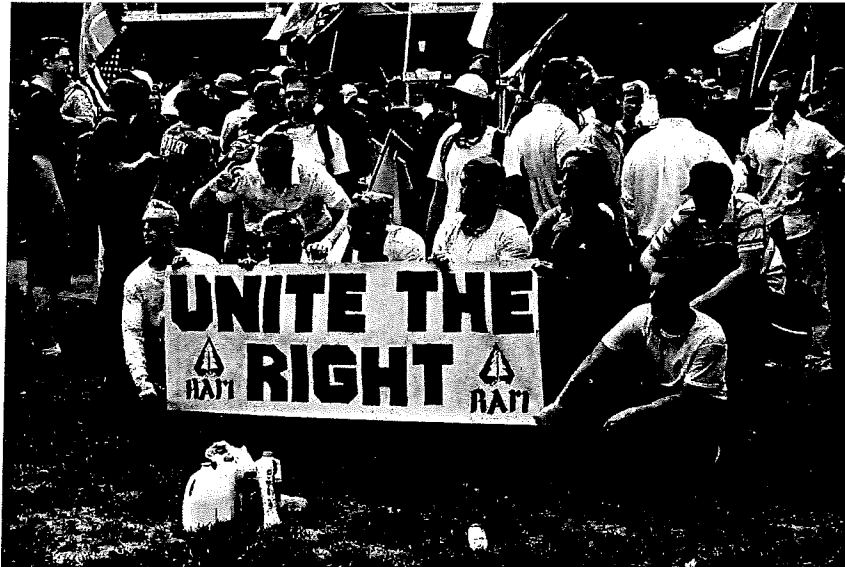
In the following screen shot, DALEY can be seen in the process of grabbing a female counter-protestor by the neck and body slamming her to the ground.



A screenshot from the footage below shows GILLEN, DALEY, WHITE, and MISELIS, acting in concert with each other as they continue to engage in acts of violence towards counter protestors.

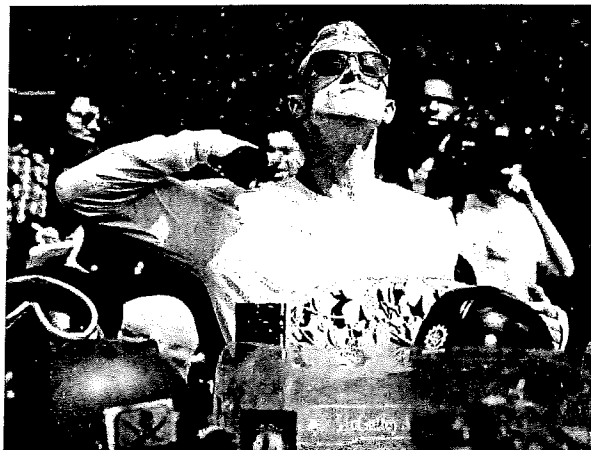


26. The following photograph, taken by the Affiant on August 12, 2017 in Emancipation Park (Market Street Park,) shows DALEY, WHITE, MISELIS and GILLEN, among others, posing behind a banner representing RAM:



27. Later that day, but still before the official 12:00pm start of the rally, the white supremacists in Emancipation Park started to clash with counter-protestors at the entrance to the park located at 2nd Street NE and Market Street NE. During this extended incident, both sides threw water bottles at each other. Miselis and Daley are captured in photos and on video throwing water bottles into the crowd of counter-protestors. After Daley throws the water bottle,

he stands up on sign and makes a “throat-slashing” gesture to the crowd:



28. Bank records obtained by the FBI for DALEY indicate that his credit card made purchases at WalMart store # 1780 in Charlottesville on August 11, 2017. The Affiant obtained copies of those receipts, which revealed that DALEY, upon arriving in Charlottesville, purchased rolls of white athletic tape, black spray paint, and a folding tactical knife.

29. After returning to Southern California, Daley made various admissions about committing acts of violence in Charlottesville and at other rallies in California.

CONCLUSION


30. Based on the information set forth in this affidavit, I submit that there is probable cause to believe:

31. On or about August 11, 2017, Defendant BENJAMIN DRAKE DALEY, MICHAEL MISELIS, COLE WHITE, and THOMAS GILLEN traveled in interstate commerce from California to Charlottesville, Virginia, within the Western District of Virginia, with intent (a) to incite a riot, (b) to organize, promote, encourage, participate in, and carry on in a riot, (c)

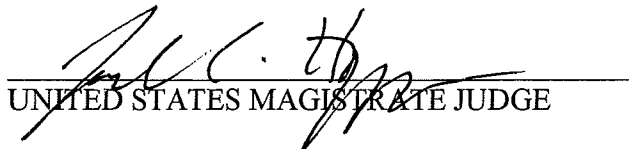
to commit an act of violence in furtherance of a riot, and (d) to aid or abet any person inciting and participating in or carrying on in a riot and committing any act of violence in furtherance of a riot; and during the course of such travel or thereafter performed or attempted to perform multiple overt acts, including but not limited to: inciting, promoting, encouraging, participating in, and carrying on in a riot, committing acts of violence in furtherance of a riot, and aiding and abetting other persons inciting and participating in and carrying on in a riot and committing acts of violence in furtherance of a riot, in violation of Title 18, United States Code, Sections 2101, 2.


Based on the forgoing, I request that the Court issue the proposed arrest warrant.

Respectfully submitted,


Dino P. Cappuzzo
Special Agent/Task Force Officer
FBI

Subscribed and sworn to before me on August 28, 2018


UNITED STATES MAGISTRATE JUDGE

A TRUE COPY, TESTE:
JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK