

UNITED STATES DISTRICT COURT

for the

Western District of New York

United States of America)

v.)

PAYTON GENDRON)

Case No. 22-mj-124)

Defendant

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 of May 14, 2022 in the county of Erie in the Western District of New York, the defendant violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 249(a)(1) (10 counts)	Hate Crime Resulting in Death
18 U.S.C. § 249(a)(1) (3 counts)	Hate Crime Involving Bodily Injury and Attempt to Kill
18 U.S.C. §§ 924(c)(1)(A)(iii) and 924(j)(1) (10 counts)	Use of a Firearm to Commit Murder During and in Relation to a Crime of Violence
18 U.S.C. § 924(c)(1)(A)(iii) (3 counts)	Use and Discharge of a Firearm During and in Relation to a Crime of Violence

This criminal complaint is based on these facts:

See Attached Affidavit, incorporated herein by reference.

Continued on the attached sheet.

Affidavit and Criminal Complaint submitted electronically by e-mail in .pdf format. Oath administered, and contents and signature attested to me as true and accurate telephonically pursuant to Fed.R.Crim.P. 4.1 and 4(d):

Date: June 15, 2022

City and state: Buffalo, New York

Christopher J. Dlugokinski

Complainant's signature

Christopher J. Dlugokinski, Special Agent, FBI

Printed name and title

H. Kenneth Schroeder

Judge's signature

Hon. H. Kenneth Schroeder, Jr., U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, **CHRISTOPHER J. DLUGOKINSKI**, being duly sworn, depose and state the following:

INTRODUCTION

1. I am a Special Agent with the Federal Bureau of Investigation (“FBI”), United States Department of Justice. I have served as an FBI Special Agent since May 2018 and am currently assigned to FBI Buffalo Division Joint Terrorism Task Force (“JTTF”). As an FBI Special Agent, I am responsible for investigating violations of federal criminal law, including violations of federal civil rights and firearms laws. During my career with the FBI, I have participated in investigations involving violent crime, drug trafficking networks, organized crime and racketeering influenced corrupt organizations (“RICO”), street gangs, and national security matters (including international terrorism). In addition, I have had the opportunity to work with numerous FBI agents and other law enforcement agents and officers of varying experience levels, who have also investigated these crimes in the Western District of New York.

2. This affidavit is submitted in support of a criminal complaint charging PAYTON GENDRON (“GENDRON”) with violations of 18 U.S.C. §§ 249(a)(1) (hate

crime resulting in death and hate crime involving bodily injury and attempt to kill), 924(c)(1)(A)(iii) and 924(j)(1) (use of a firearm to commit murder during and in relation to a crime of violence), and 924(c)(1)(A)(iii) (use and discharge of a firearm during and in relation to a crime of violence).

3. I am familiar with the facts and circumstances of this investigation, such familiarity having been gained through my personal knowledge based upon my participation in this investigation; statements by and/or reports provided to me by law enforcement personnel of federal, state, and local agencies; witness interviews; video footage from a GoPro camera recovered from GENDRON; information developed through public sources to include social media accounts linked to GENDRON; interviews of various witnesses; review of surveillance camera footage; records checks of various public and law enforcement databases; records obtained from Discord, Inc. (“Discord”) pursuant to a federal search warrant; and other information developed by law enforcement officers and intelligence analysts working on this investigation.

4. Because this affidavit is being submitted for a limited purpose, that is, to establish probable cause that GENDRON committed the specified offenses, I have not presented all of the facts of this investigation to date.

RELEVANT STATUTES

5. Title 18, United States Code, Section 249(a)(1) makes it a federal crime for a person to willfully cause bodily injury to any person or, through the use of a firearm, to

attempt to cause bodily injury to any person, because of the actual or perceived race or color of the person. Sections 249(a)(1)(B)(i) and (ii) provide for increased penalties when the offense results in death or when the offense involves an attempt to kill. A violation of section 249(a)(1) is a federal crime of violence.

6. Title 18, United States Code, Section 924(c)(1)(A)(iii) makes it a federal crime to knowingly use or carry a firearm during and in relation to a crime of violence for which the person may be prosecuted in a court of the United States and includes increased penalties when the firearm is discharged. Section 924(j)(1) provides for additional increased penalties when, in the course of a violation of section 924(c)(1)(A)(iii), the perpetrator causes the death of another person, and the killing is a murder as defined in 18 U.S.C. § 1111. Section 1111 defines “murder” as the unlawful killing of a human being with malice aforethought.

FACTS ESTABLISHING PROBABLE CAUSE

7. On May 14, 2022, at approximately 2:30 p.m., GENDRON – an 18-year-old white male from Conklin, New York – committed a mass shooting attack targeting Black people at Tops Friendly Market at 1275 Jefferson Avenue in Buffalo, New York (“Tops”). The mass shooting, which GENDRON live-streamed on the Internet, resulted in the deaths of 10 Black people, and non-fatal gunshot wounds to one (1) Black person and two (2) Caucasian people. GENDRON’s motive for the mass shooting was to prevent Black people from replacing white people and eliminating the white race, and to inspire others to commit similar attacks.

8. At the time of the attack, GENDRON arrived at Tops in a blue Ford Taurus (“Taurus”), drove to the front of the store, and came to a stop. He emerged from the car wearing a tactical-style helmet, camouflage clothing, body armor, and a GoPro video camera, and carrying a loaded Bushmaster XM-15 .223 caliber rifle and multiple loaded magazines. After exiting the Taurus, GENDRON aimed the rifle at a Black person (“Victim 1”) walking in the parking lot and shot and killed Victim 1. GENDRON immediately started shooting at other Black people in the parking lot and near the entrance to Tops. During this rapid succession of shots, GENDRON shot and injured one Black person (“Victim 2”) and shot and killed two Black people (“Victim 3” and “Victim 4”). A Black security guard, who had been standing near Victims 2 and 3, retreated inside the store. After GENDRON shot Victim 4, he fired several shots through the front window of the store and went to the entrance. As he approached the entrance, he shot Victim 3 again while Victim 3 was on the ground to ensure that Victim 3 was dead. Victim 2, who was lying motionless on the ground near Victim 3, survived and was able to flee the scene after GENDRON entered the store.

9. After shooting the first four victims, killing three of them, GENDRON entered the store, and immediately shot and killed two more Black people (“Victim 5” and “Victim 6”), who were on the ground. At that time, GENDRON and the armed Black security guard (“Victim 7”) exchanged gunfire; GENDRON aimed at, shot, and killed Victim 7.

10. After GENDRON killed Victim 7, he turned and aimed his rifle at a white male Tops employee (“Victim 8”), who, at some point during the attack, had been shot in the leg and injured. Rather than shooting him, GENDRON said, “sorry,” to Victim 8, before moving

on through the rest of the store in search of more Black people to shoot and kill. At some point during the attack, one of the shots also struck a white female Tops employee (“Victim 9”) in the pharmacy area of the store, which is located near the checkout lanes. Victims 8 and 9 survived the attack.

11. Next, GENDRON walked through the store’s checkout lane, and shot and killed a Black person (“Victim 10”), who was in that area. GENDRON then moved through the aisles of the store and shot and killed three additional Black people (“Victim 11”, “Victim 12”, and “Victim 13”). GENDRON, still armed with the rifle, ultimately returned to the front of the store.

12. As GENDRON was shooting inside the store, numerous customers and Tops employees ran to the rear of the store and took shelter in a stock room, a conference room, a freezer, and a dairy cooler. Many others fled the store through the rear door.

13. When GENDRON returned to the front of the store, members of the Buffalo Police Department (“BPD”) encountered him and took him into custody. At that time, officers recovered the rifle used in the attack from GENDRON. The rifle had various writings on it, including, but not limited to, the names of others who have committed mass shootings, racial slurs, the statement “Here’s your reparations!,” and the phrase “The Great Replacement.” Law enforcement later determined that GENDRON live-streamed part of the attack on the Internet. Ballistics evidence recovered at the Tops indicates that GENDRON fired approximately 60 shots during the attack.

14. After GENDRON was arrested, BPD officers recovered a loaded 12-gauge shotgun, a loaded bolt-action rifle, and three loaded rifle magazines from the Taurus.

15. On May 15, 2022, the FBI executed a federal search warrant at GENDRON's home in Conklin, New York. During the search, the FBI recovered a handwritten note in GENDRON's bedroom in which GENDRON¹ apologized to his family for committing "this attack" and stated that he "had to commit this attack" because he cares "for the future of the White race." The FBI also recovered from GENDRON's bedroom a receipt for the purchase of a candy bar at the Tops on March 8, 2022, and handwritten sketches of what appear to be the interior layout of the Tops.

GENDRON'S PLANNING AND PREPARATION FOR THE TOPS ATTACK

16. In the months preceding the attack, GENDRON wrote a self-described manifesto² containing a detailed plan to shoot and kill Black people at the Tops at 1275 Jefferson Avenue³ using a Bushmaster XM-15 rifle, a diagram of the interior layout of the store, a discussion of the clothing and equipment that he would use during the attack (including a helmet, body armor, and GoPro camera), and statements that his motivation for

¹ GENDRON signed the note and addressed it to his family.

² Law enforcement recovered a laptop computer in GENDRON's Taurus, which contained a draft working copy of the manifesto. Additionally, law enforcement recovered a version of the self-described manifesto on the internet.

³ The manifesto referred to the planned attack taking place in the zip code 14208, and the Tops located at 1275 Jefferson Avenue is within zip code 14208. In addition, as detailed herein, GENDRON specifically identified the Tops at 1275 Jefferson Avenue as the target of the attack in posts made to his Discord account.

the attack was to prevent Black people from replacing white people and eliminating the white race, and to inspire others to commit similar racially-motivated attacks. Specifically, GENDRON wrote the following in the manifesto:

- a. that he is “ethnically white,” has never been diagnosed with “a mental disability or disorder,” and that he was “perfectly sane”;
- b. that he was “a White man seeking to protect and serve my community, my people, my culture, and my race”;
- c. that he was “the sole perpetrator of this attempted mass shooting”;
- d. that he had been preparing for the attack for a few years, and he “actually got serious” about the attack in the beginning of January 2022;⁴
- e. that the goals of the attack were to “Kill as many blacks as possible,” “Avoid dying,” and “Spread ideals”;
- f. that he was targeting Black people because “[t]hey are an obvious, visible, and large group of replacers . . . that seek to occupy my peoples [sic] lands and ethnically replace my own people . . .”;
- g. that he selected a target in the area code 14208 because it has the highest percentage of Black people close enough to where he lives;
- h. that he selected the Tops store in area code 14208 because it is where a high percentage and high density of Black people can be found;
- i. that he made a map of the inside of the Tops store “and decided the best plan of attack for highest chance of success”;
- j. that he was inspired to commit the attack by other racially-motivated mass murderers; and
- k. that he would livestream a video of the attack and publish the manifesto online “to increase coverage and spread [his] beliefs.”

⁴ On January 19, 2022, GENDRON purchased the Bushmaster XM-15, .223 caliber rifle that he used during the Tops attack.

17. GENDRON also chronicled the progress and development of his plan on his Discord account in the months leading up to the attack.⁵ He stated that his motivation for the attack was to prevent Black people from replacing white people and eliminating the white race, and to inspire others to commit similar racially-motivated attacks. He also wrote about his acquisition of firearms, ammunition, firearm magazines, body armor, a GoPro camera, and other supplies for the attack; his testing of the firearms, ammunition, firearm magazines, and GoPro camera, in preparation for the attack; his drafting of the above-described manifesto; his selection of the Tops as the target of the attack; and his drafting of a “goodbye letter” to his family (which is believed to be the apology letter found in his bedroom).

18. Based on GENDRON’s Discord entries and other evidence gathered during this investigation, I determined that GENDRON traveled to the Tops to scout the location on several occasions prior to the attack. On March 8, 2022, he went to the Tops at least three times. During those trips, he created two sketches of the interior layout of the store (which are believed to be the sketches found in his bedroom), counted the number of Black people present inside and outside the store, observed the presence of two armed Black security guards, and noted the number of Black people in the area of the cash registers. In the afternoon on May 13, 2022, the day before the attack, he went to the Tops and spent time in front of and inside the store. Finally, at approximately noon on May 14, 2022, only two and a half hours before the attack, he went to the Tops and observed a “healthy amount of old and young” Black people in the store and noted where the security guard was positioned.

⁵ GENDRON’s Discord posts were not available to the public until he shared them with other users shortly before the attack.

CONCLUSION

19. I submit that, based on the evidence described in this affidavit, there is probable cause to believe that GENDRON violated 18 U.S.C. § 249(a)(1) by shooting and killing Victims 1, 3 through 7, and 10 through 13, because of their actual and perceived race and color. This complaint alleges 10 counts of hate crimes resulting in death, one for each of Victims 1, 3 through 7, and 10 through 13.

20. I further submit that, based on the evidence described in this affidavit, there is probable cause to believe that GENDRON violated 18 U.S.C. § 249(a)(1) by shooting and attempting to kill Victim 2 because of Victim 2's actual and perceived race and color, and by causing the shooting of Victims 8 and 9, while he was attempting to kill Black people at the Tops because of their actual and perceived race and color.⁶ This complaint alleges three counts of hate crimes involving bodily injury and an attempt to kill, one for each of Victims 2, 8, and 9.

21. I further submit that, based on the evidence in this affidavit, there is probable cause to believe that GENDRON violated 18 U.S.C. §§ 924(c)(1)(A)(iii) and 924(j)(1) as to Victims 1, 3 through 7, and 10 through 13. There is probable cause that GENDRON, during and in relation to the commission of a crime of violence for which he may be prosecuted in a court of the United States, that is, the 10 counts of hate crimes resulting in death alleged in the complaint, knowingly used and carried a firearm. There is further probable cause to

⁶ The doctrine of transferred intent permits the transfer of the intent to kill when a perpetrator shoots at one person with the intent to kill, but inadvertently strikes another person. *See United States v. Rahman*, 189 F.3d 88, 141 (2d Cir. 1999).

believe that GENDRON discharged a firearm during the course of each of the said offenses. I further submit that – based on GENDRON’s extensive efforts to plan and prepare for the attack at Tops, and his stated goal of killing as many Black people as possible during the attack – there is probable cause to believe that GENDRON committed the killings with malice aforethought and, therefore, such killings constituted murders within the meaning of 18 U.S.C. § 1111. This complaint alleges 10 counts of use and discharge of a firearm to commit murder during and in relation to a crime of violence, one for each of Victims 1, 3 through 7, and 10 through 13.

22. I further submit that, based on the evidence in this affidavit, there is probable cause to believe that GENDRON violated 18 U.S.C. § 924(c)(1)(A)(iii) as to Victims 2, 8, and 9. There is probable cause that GENDRON, during and in relation to the commission of a crime of violence for which he may be prosecuted in a court of the United States, that is, the three counts of hate crimes involving an attempt to kill alleged in the complaint, knowingly used and carried a firearm. There is further probable cause to believe that GENDRON discharged a firearm during the course of each of the said offenses. This complaint alleges three counts of use and discharge of a firearm during and in relation to a crime of violence, one for each of Victims 2, 8, and 9.

WHEREFORE, based on the foregoing, I submit there is probable cause to believe that, on or about May 14, 2022, in the Western District of New York, PAYTON GENDRON committed violations of 18 U.S.C. §§ 249(a)(1) (hate crime resulting in death and hate crime involving bodily injury and attempt to kill), 924(c)(1)(A)(iii) and 924(j)(1) (use of a firearm

to commit murder during and in relation to a crime of violence), and 924(c)(1)(A)(iii) (use and discharge of a firearm during and in relation to a crime of violence).

Christopher J. Dlugokinski

CHRISTOPHER J. DLUGOKINSKI
FBI Special Agent

Affidavit and Criminal Complaint submitted electronically by email in .pdf format. Oath administered, and contents and signature, attested to me as true and accurate telephonically pursuant to Fed.R.Crim.P. 4.1 and 4(d) on June 15, 2022:



HONORABLE H. KENNETH SCHROEDER, JR.
United States Magistrate Judge
Western District of New York