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Travis County
D-1-GN-18-001605
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CAUSE NO. D-1-GN-18-001605

MARCEL FONTAINE, *Plaintiff*	§ § §	IN DISTRICT COURT OF
VS.	§ §	TRAVIS COUNTY, TEXAS
ALEX E. JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC, and KIT DANIELS, *Defendants*	§ § § §	459th DISTRICT COURT

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS UNDER THE TEXAS CITIZENS PARTICIPATION ACT

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Comes now, Plaintiff Marcel Fontaine, and files this Response to Defendants Alex Jones, Kit Daniels, InfoWars LLC, and Free Speech Systems LLC's (collectively, "InfoWars") Motion to Dismiss under the Texas Citizens Participation Act.

INTRODUCTION

InfoWars' conduct in this case was a mockery to the concept of journalism. Yet the world has come to expect no less from InfoWars. It is a business shamelessly designed to profit by publishing false information, run by a man who is indifferent to the harassment of his innocent victims.

Here, InfoWars printed a reckless and dangerous article in the hours following the shooting at Douglas High School in Parkland, Florida. In the article, InfoWars published a photograph of Plaintiff Marcel Fontaine and claimed that it depicted the alleged Parkland shooter. It did so based on an anonymous message posted to 4chan.org, a disturbing and infamous website which is notorious for its hoaxes.

Not only was the source extraordinarily untrustworthy, but even the most basic diligence would have revealed that the anonymous message was a cruel and stupid joke, and that Mr. Fontane had been subject to harassment on the 4chan website for days prior to the shooting. Anonymous neo-Nazi internet users had been making fun of a photograph of Mr. Fontaine wearing a novelty t-shirt which made a visual pun on the phrase "communist party" by depicting communist historical figures drinking at a party:

For InfoWars, the prospect of publishing of an image of the Parkland shooter wearing a communist-themed t-shirt was so tantalizing that it used Plaintiff's picture despite knowledge that it was false or with reckless disregard for the truth. After InfoWars legitimized Plaintiff's image to its enormous audience, it rapidly spread across the internet during the evening of the shooting and for weeks afterward.

Not only was Plaintiff's image spread across the world as a mass murderer,[1] but internet users soon revealed his personal details using the same image search tools InfoWars failed to employ before publishing. InfoWars' later allegations that the event was a staged "false flag" led some to believe that Mr. Fontaine was somehow involved in a conspiracy.[2] Mr. Fontaine has been sent violent threats, including a threat that referenced his place of employment.[3] Given the harassment, death threats, and violence suffered by other individuals who were drawn into InfoWars' conspiracies, Mr. Fontaine remains in fear for his safety.

[1] *See* Plaintiff's Original Petition, p. 12-13.
[2] *Id.* at p. 13-16.
[3] *See* Exhibit A, Affidavit of Marcel Fontaine.

FACTUAL BACKGROUND

I. Understanding InfoWars

InfoWars was created in 1999 by Alex Jones, who has controlled its operations since its inception and up to the present day. InfoWars' history is littered with the fallout from its reckless false accusations posing as hard news. InfoWars is known for claiming that the 9/11 attacks were an inside job and for insisting for years that the Sandy Hook massacre was a government hoax using actors.[4] InfoWars is currently defending two other defamation suits in Travis County stemming from its assertions about Sandy Hook, as well as additional defamation suits in Virginia and Connecticut. InfoWars' history of spreading fake stories leading to the harassment of innocent victims is fully described in Plaintiff's petition.[5]

Despite becoming notorious for its fake news, the InfoWars brand now reaches an astounding audience. The InfoWars website alone receives more than 30 million page-views per month, to say nothing of its social media accounts, radio show, and third-party video channels.[6] Despite the size of its audience, InfoWars refuses to implement the most basic journalistic safeguards, leading to the consistent publication of false information and ensuing harassment.

II. The Events of February 14, 2018

On February 14, 2018, a heavily-armed young man entered Marjory Stoneman Douglas High School in Parkland, Florida and killed seventeen people. It was one of the deadliest school massacres in history, and it attracted massive public attention.

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[4] *See* "Alex Jones Refuses to Apologize for Sandy Hook Conspiracy Theory." *Newsweek.* June 19, 2017. Last available at: http://www.newsweek.com/alex-jones-megyn-kelly-sandy-hook-infowars-627129

[5] *See* Plaintiff's Original Petition, p. 3-6.

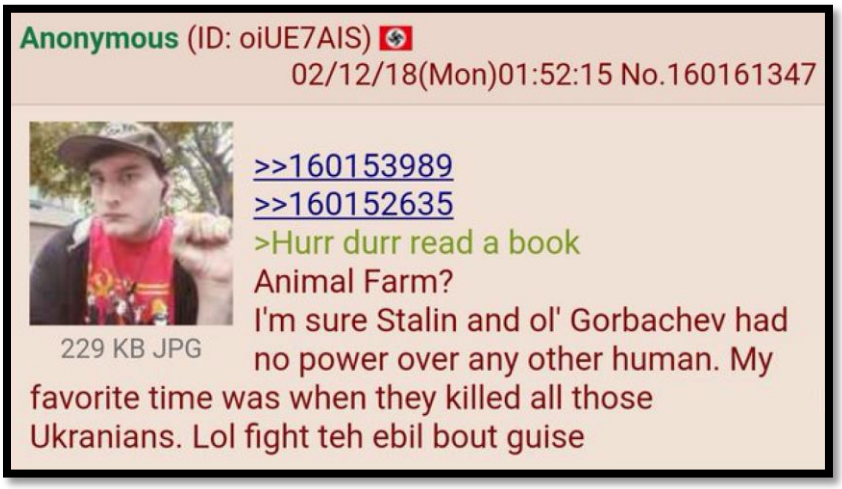
[6] *See* https://www.quantcast.com/infowars.com.

There was never a real allegation that Plaintiff Marcel Fontaine was the Parkland shooter. An anonymous user on the notorious internet forum "4chan.org" posted Mr. Fontaine's picture as a form of mockery. According to the affidavit of Fred Zipp, who was the twenty-year managing editor of *The Austin American-Statesman*, 4chan is "an anonymous discussion forum with a history for fakery and internet trolling."[7] 4chan is difficult to describe to those unfamiliar with the website's sordid history. It began as a discussion forum where users could post comments and images anonymously. It soon grew into ground zero for the internet's most disgusting filth, whether it be neo-Nazi hate speech, child pornography and pedophilia, or online harassment and fakery of every kind. As the Sixth Circuit noted, "a key component of the culture of 4chan consists of anonymous posters making claims that are not in fact true." *United States v. Kernell*, 667 F.3d 746, 752 (6th Cir. 2012). The Sixth Circuit warned that "[e]ven more so than most anonymous tips, statements made on 4chan have no indicia of reliability." *Id.* at 751.

In this case, InfoWars republished an image of Mr. Fontaine which editor Kit Daniels claims to have found on 4chan. In its Motion, InfoWars provided the following archived copy of a message posted on 4chan on February 14, 2018:

[7] *See* Exhibit B, Affidavit of Fred Zipp, p. 5.

As Fred Zipp shows in his affidavit,[8] the 4chan message was not a genuine allegation, but part an act of ongoing mockery directed at Mr. Fontaine that had been taking place on the website. In the four days before the shooting occurred on February 14, 2018, users on 4chan had been posting Mr. Fontaine's picture with mocking comments.[9] On February 10, Mr. Fontaine's image was posted in response to a person asking users to "show me your worst unironic lefty dimwits, commies, etc., you've found while surfing the internet/social media."[10] In another thread posted to the website on February 12, an anonymous 4chan user with a Nazi icon posted Mr. Fontaine's image again in a mocking message:



Mr. Zipp notes that almost immediately after InfoWars' article was published, social media users and commenters on InfoWars.com were pointing out that the use of a "reverse image search" – the most basic tool of photo verification – revealed that Mr. Fontaine's photo had been mocked by users on 4chan for days before the shooting even happened.[11]

[8] *Id.* at p. 5-6.
[9] *Id.*
[10] *Id.*; *see also* https://archive.is/snpGJ
[11] *Id.* at p. 6.

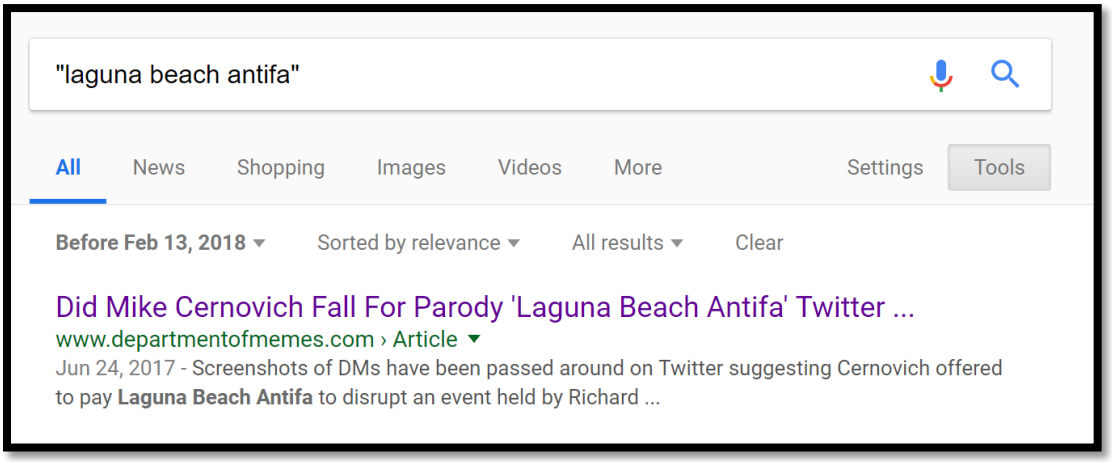
In other words, a reverse image search would have shown that the appearance of Mr. Fontaine's image on 4chan was part of ongoing harassment by neo-Nazi trolls. "Trolling refers to the practice, common on 4chan and other internet sites, of deliberately posting incorrect or inflammatory content for the purpose of eliciting a reaction from other users." *Kernell,* 667 F.3d at 753. In short, this was not a bona fide accusation, and a simple search would have revealed as much.

Mr. Daniels also stated that he saw the image from 4chan shared on social media. InfoWars points to this message posted to Twitter by anonymous user @LagBeachAntifa7:

According to Mr. Zipp, the anonymous Twitter account "Laguna Beach Antifa" is a known internet troll with a documented history of hoaxes.[12] Mr. Zipp notes that a Google search would have revealed this fact, since four of the top of results on February 13, 2018

[12] *Id.* at p. 7-8. This anonymous Twitter account pretends to be a local "chapter" of the Antifa movement. Antifa is a term for the conglomeration of autonomous, self-styled anti-fascist groups in the United States, known primarily for their physical confrontations with Neo-Nazi demonstrators. This anonymous Twitter account posts inflammatory content or hoaxes in an attempt to discredit or mock anti-fascist protestors. The abbreviation "RT" stands for "re-tweet," meaning to share the message on Twitter.

for "Laguna Beach Antifa" were articles noting the account posted false information. A cursory review of its prior content would have made this obvious as well.



Above: The first Google result as of February 13, 2018

As Mr. Zipp states, "the 'Laguna Beach Antifa' tweet was not a serious message or genuine allegation. It was an obvious bad joke by an anonymous internet troll."[13] Nonetheless, InfoWars made the choice to publish Mr. Fontaine's image to its enormous audience while asserting that it was an alleged photo of the Parkland shooter.

The title of the InfoWars article read: "*Reported Florida Shooter Dressed as Communist, Supported ISIS*." The InfoWars article did not attribute the image to any third party, nor did the article report any statements made by a third party. The use of Mr. Fontaine's image in the InfoWars' article is shown below:

[13] *Id.* at p. 8.

REPORTED FLORIDA SHOOTER DRESSED AS COMMUNIST, SUPPORTED ISIS

MSM already covering it up

Kit Daniels | Infowars.com - FEBRUARY 14, 2018 746 Comments

And another alleged photo of the suspect shows communist garb:

R: **0**

Shooter is a commie:
REEEEEEEEEEEEE

One troubling aspect of InfoWars' Motion is that it never actually reveals where the image used in its article came from. The image used in the article features the text "Shooter is a commie," but this text does not appear in the 4chan message or the @LagBeachAntifa7 tweet cited by InfoWars. Simply put, the image in the article came from somewhere else. The origin of the image is further complicated by InfoWars' retraction, which conflicts with Mr. Daniels' declaration. InfoWars' retraction states that "[InfoWars] had received" the image. Mr. Daniels claims in his declaration to have found it on his own.

In any case, the next morning InfoWars found its reckless reporting was being criticized online, and it quietly removed the image from the article. In its Motion, InfoWars

claimed to have made a retraction, and "[d]espite these prompt remedial efforts, the Plaintiff has filed this action."[14] In truth, Plaintiff's request for a retraction was utterly ignored until Plaintiff served a copy of this lawsuit on InfoWars' attorney. It took the filing of a lawsuit to secure even that basic acknowledgment, which was motivated out of damage control rather than any sense of decency.

Nonetheless, InfoWars' retraction is important to this Motion because it admits falsity as required by statute. *See* Tex. Civ. Prac. & Rem. Code 73.057(b)(1) ("publication of an acknowledgment that the statement specified as false and defamatory is erroneous"). The retraction published on April 2, 2018 admits that InfoWars "stated incorrectly that it was an alleged photo of the suspected shooter." Having admitted falsity in order to claim the benefit of the retraction statute, InfoWars cannot now claim the defense of truth.

At its core, InfoWars' Motion argues that accusing an innocent man of mass murder based on an anonymous message from the gutter of the internet while never revealing its source is part of its "constitutionally protected rights to comment about a matter of public concern."[15] InfoWars' argument would eviscerate all existing defamation law. Any statement or image could be published so long as it was posted to an anonymous message forum prior to publication. Indeed, there would be nothing to stop an InfoWars writer from submitting his own anonymous message to 4chan and then republishing that statement to millions with no attribution. While InfoWars would welcome this sort of anarchy, the law of defamation will not abide it.

[14] *See* InfoWars' Motion, p. 2
[15] *Id.*

ARGUMENT

To survive a motion to dismiss under the TCPA, a defamation plaintiff must show *prima facie* evidence of the following:

(1) a publication of a false statement of fact to a third party that was defamatory concerning the plaintiff,

(2) with the requisite degree of fault, and

(3) damages.

Exxon Mobil Corp. v. Rincones, 520 S.W.3d 572, 579 (Tex. 2017). *Prima facie* refers to the "minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true." *In re Lipsky,* 460 S.W.3d 579, 590 (Tex. 2015). Here, Plaintiff can produce *prima facie* evidence on each element.

I. InfoWars' Publication of Plaintiff's Photograph is Reasonably Capable of a Defamatory Meaning.

"Whether a publication is capable of defamatory meaning is initially a question of law for the court." *Allied Marketing Group, Inc. v. Paramount Pictures Corporation,* 111 S.W.3d 168, 175 (Tex.App.-Eastland 2003, pet. denied). The court must determine if the article is "reasonably capable" of conveying a defamatory meaning. *Dallas Morning News, Inc. v. Tatum,* 2018 WL 2182625, at *8 (Tex. May 11, 2018). "If a defamatory meaning may exist, then the publication is considered to be ambiguous and must be determined by a jury." *Allied Marketing Group, Inc.,* 111 S.W.3d. at 176. "Where a publication is capable of two interpretations, one of which is defamatory," the issue presents a triable fact. *Harmon v. Corinthian Broadcasting,* 1986 WL 9844 *2 (Tex.App.-Houston [14th Dist.] Aug. 21, 1986).

When examining a publication's meaning, the court must determine if the plaintiff's interpretation is "a reasonable construction of the article's gist." *D Magazine Partners, L.P. v. Rosenthal,* 529 S.W.3d 429, 441 (Tex. 2017), *reh'g denied* (Sept. 29, 2017). Here, a reasonable interpretation of the article's gist is that that InfoWars had obtained a photograph of the Parkland High School shooting suspect. Yet Mr. Fontaine was not involved or actually suspected in the Parkland shooting.[16] And there had never been a bona fide allegation that he was the shooter, only an anonymous internet prank that was deliberately misrepresented by InfoWars with no attribution. As Fred Zipp stated in his affidavit, "Publishers understand that using the image of an innocent person as a mass murderer can expose that person to hatred, contempt, ridicule, or harassment."[17]

Defendants rely on the fact that they never "used [Plaintiff's] name or otherwise identified him in connection with the Challenged Publication."[18] Yet it is a basic tenant of Texas defamation law that "[i]t is not necessary that the plaintiff be named in the publication," and "it is not necessary for the plaintiff to prove that the defendant intended to refer to the plaintiff." *Allied Mktg. Group, Inc.,* 111 S.W.3d at 173; *see also Vice v. Kasprzak,* 318 S.W.3d 1, 13 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) ("It is not necessary that the plaintiff be specifically named in the communication to be defamatory.") This principle has been repeatedly applied to "wrong photo" cases. As shown below, courts have universally recognized that a cause of action will lie when "the newspaper used the wrong picture but correctly identified the name of the [actual suspect]." *Cheney v. Daily News L.P.,* 654 Fed. Appx. 578, 581 (3rd Cir. 2016).

[16] *See* Exhibit A, Affidavit of Marcel Fontaine.
[17] *See* Exhibit B, Affidavit of Fred Zipp, p. 3.
[18] *See* InfoWars Motion, p. 5.

This has been the law in Texas for over one hundred years, starting with *James v. Fort Worth Telegram Co.*, 117 S.W. 1028 (Tex.Civ.App.1909). In *James*, the defendant published an article describing a murderer, Daniel Herring, but which used a photograph of the plaintiff James. The court held that the article "should be construed as imputing the homicide to the man whose picture, forming a part of the publication, was identified by references to it as that of the man who did the killing." *Id.* at 1029. The court went on to hold that because it was undisputed that the photograph was of James, the publication defamed him:

> It was not necessary to show he would have been referred to had the editor understood all the facts. The proposition is maintained generally that, though the publication of a libel was due to mistake, the publisher is answerable, and we see no reason why libeling a person on account of mistakenly identifying him with someone else should be an exception.

Id. In a later opinion, the Austin Court of Appeals cited *James* when discussing the use of a wrong photo, noting that "[i]f the name of [the real suspect] had appeared underneath appellee's picture and then the printed article following, the publication would undoubtedly have been libelous." *Express Pub. Co. v. Isensee,* 286 S.W. 926, 927–28 (Tex. Civ. App.—Austin 1926, no writ), *citing James,* 117 S.W. at 1029.

Examining the issue in 1999, the Arkansas Supreme Court also cited *James,* and joined Texas in holding that "a jury may reasonably determine that the placement of a plaintiff's photograph in a potentially defamatory article was a false statement of fact of and concerning that plaintiff." *Little Rock Newspapers, Inc. v. Fitzhugh,* 330 Ark. 561, 568–70, 954 S.W.2d 914, 918–19 (1997). Regarding the use of the incorrect photo, the Arkansas Supreme Court "conclude[d] that there was sufficient proof for the trial court to submit to

the jury the issue of whether the article could be construed as being a false statement of and concerning Appellee." *Id.* at 570.

The same result was reached in Oklahoma, when a newspaper published a front-page story about the ongoing rape trial of Willie Coakley, "but used a photo of plaintiff Leodis Strong." *Strong v. Oklahoma Pub. Co.,* 1995 OK CIV APP 89, 899 P.2d 1185, 1186. In that case, the defendant argued that the article was not defamatory because "the reader would have to possess the additional knowledge that the man depicted in the photograph was not Willie Coakley." *Id.* The court disagreed, holding that "the objectionable publication, considered in its entirety, and without reference to any other fact, is reasonably susceptible of only one interpretation, that the man therein depicted is a suspected serial rapist and burglar. Such an interpretation cannot but expose the man to public hatred, contempt, ridicule, or obloquy." *Id.* at 1187.

In *Wallace v. Media News Group, Inc.,* 568 Fed. Appx. 121, 124 (3rd Cir. 2014), the Third Circuit examined "the placement of a plaintiff's photograph in an article regarding another person." The court held that "[w]e think it self-evident, however, that placement of a plaintiff's photograph in such an article could constitute a 'description or circumstance identifying' the plaintiff. Indeed, other jurisdictions—including the United States Supreme Court in a diversity action—have so concluded under facts similar to those alleged here." *Id.*

The Third Circuit was referring to the Supreme Court's decision in *Peck v. Tribune Co.,* 214 U.S. 185, 189, 29 S.Ct. 554, 53 L.Ed. 960 (1909), in which Justice Holmes wrote that a publication containing the plaintiff's photograph, but captioned as one of a different person, was "of and concerning" the plaintiff because "many might recognize the plaintiff's

face without knowing her name," not to mention the practice of operating "under an alias." *Id.* at 188. "Therefore, the publication was of and concerning the plaintiff, notwithstanding the presence of another fact, the name of the real [subject]." *Id.* The Supreme Court explained that mistake is no excuse for defamation:

> There was some suggestion that the defendant published the portrait by mistake, and without knowledge that it was the plaintiff's portrait, or was not what it purported to be. But the fact, if it was one, was no excuse. If the publication was libelous, the defendant took the risk.

Id. at 189.

Likewise, in *Brown v. Tallahassee Democrat, Inc.,* 440 So.2d 588 (Fla.App. 1983), an article described the murder defendant Larry Joe Johnson, but contained a photograph of the appellant George Brown with the caption "Johnson" beneath it. The court held it was error for the trial court to have granted summary judgment to the newspaper because the "juxtaposition may have put ordinary readers in the sense that plaintiff George Thomas Brown, pictured in the article, was guilty of or on trial for murder." *Id.* at 590. The court warned that "we cannot disassociate the photograph of George Thomas Brown from the import of the story without dictating that the ordinary reader circumscribe his interpretation of the publication by doubt and disbelief. This we cannot do in law." *Id.* at 590.

These cases are but a sample of the vast body of law confirming that the publishing of an image of an innocent person as an alleged photograph of a criminal carries a defamatory meaning. *See, e.g., Jones v. New Haven Register, Inc.,* 46 Conn. Supp. 634, 637, 763 A.2d 1097, 1099 (Super. Ct. 2000) (Defendant did "not seriously contest the proposition that a jury could find the publication of the plaintiff's photograph in

juxtaposition with the article in question to have been defamatory."); *Peay v. Curtis Pub. Co.,* 78 F. Supp. 305, 307 (D.D.C 1948) (Jury "would be justified in inferring that the text of the article applied to the plaintiff, in the light of the fact that her photograph was one of the illustrations."); *Washington Post Co v. Kelly,* 38 F.2d 151, 152 (D.C. Cir. 1930) ("Publication of the portrait of one person with statements thereunder as of another, by mistake, and without knowledge of whom the portrait really is, is not an excuse."); *Jackson v. Consumer Publications,* 256 A.D. 708, 709–10, 11 N.Y.S.2d 462, 464 (App. Div. 1939) ("While it is true the article does not use the plaintiff's name or otherwise identify him except by the picture, one may be libeled by having his picture printed in such fashion as to expose him to public ridicule and contempt as effectively as one may be libeled by words directly referring to him by name."); *Nappier v. Jefferson Standard Life Ins. Co.,* 322 F.2d 502, 504 (4th Cir. 1963) ("We recognize faces, or know persons by reputation, when we do not know them by name."). The erroneous use of Plaintiff's image as a mass murder suspect was reasonably capable of defaming him because, as stated by Mr. Zipp, "[p]ublishers understand that using the image of an innocent person as a mass murderer can expose that person to hatred, contempt, ridicule, or harassment."[19]

II. InfoWars' Publication of Plaintiff's Photograph was Malicious.

InfoWars does not contest that Plaintiff is a private figure. As private figure, he is only required to show negligence, but InfoWars was more than merely negligent. InfoWars' conduct supports actual malice because InfoWars published the image with reckless disregard. "To establish reckless disregard, [Plaintiff] must provide sufficient evidence that

[19] *See* Exhibit B, Affidavit of Fred Zipp, p. 3.

the publisher entertained serious doubts as to the truth of his publication." *Warner Bros. Entm't, Inc. v. Jones,* 538 S.W.3d 781, 805 (Tex. App.—Austin 2017, pet. filed).

In assessing actual malice, a court should "begin by noting the gravity of the accusations made against [plaintiff]." *Id.* The article in *Warner Bros.* concerned an allegation of attempted murder based on unattributed statements of an unnamed third-party. The court noted that "[c]harges as serious as the ones leveled against [plaintiff] in this article deserve a correspondingly high standard of investigation." *Id.* at 806. Here, the charges are even more serious. Indeed, it is difficult to imagine any allegation more serious than accusing an individual of mass murder in a school shooting. Fred Zipp explained the issue based on his decades of experience at *The Statesman*:

> Publishers must take into account the significance of a news event when considering the consequences of a false accusation. The consequences of a false accusation are enormous when the event is subject to global attention. The desire to report as rapidly as possible on a breaking news event does not change a publisher's obligation to report only the facts and to avoid making false accusations of criminal conduct.[20]

Mr. Zipp's affidavit discusses the process of photo and content verification in journalism. During this discussion, Mr. Zipp cited an industry publication entitled *Verification Handbook: An Ultimate Guideline on Digital Age Sourcing for Emergency Coverage*, which outlines the steps reporters take to ensure they "confirm the image is what it is labeled/suggested to be showing."[21] Mr. Zipp also discusses the specific steps a publisher must employ when dealing with "user-generated content," which is "content produced by a member of a social network for other members of the network."[22]

[20] *Id.* at p. 3.
[21] *Id.*
[22] *Id.* at p. 4.

While Plaintiff will not belabor all of these steps here, Mr. Zipp notes that a publisher must "start from the assumption that the content is inaccurate or been scraped, sliced, diced, duplicated and/or reposted with different context."[23] Reporters must take steps to "identify and verify the original source and the content."[24] They must "triangulate and challenge the source."[25] When verifying user-generated content, they should "always gather information about the uploaders, and verify as much as possible before contacting and asking them directly whether they are indeed victims, witnesses or the creator of the content."[26] None of that happened here.

Yet even all of these reckless failures could have been avoided had Mr. Daniels performed the most basic step of photo verification – a reverse image search using "a service like Google Reverse Image Search or TinEye."[27] Citing the *Verification Handbook*, Mr. Zipp notes that "pre-existing images that have been misattributed (perhaps the most common form of 'fake') can often be debunked in a few seconds through a reverse image search."[28] Mr. Zipp also notes that Kit Daniels "was aware of reverse image searching, as he included a link to a reverse image search in a story he wrote on November 5, 2016, entitled *Read Hillary Emails to Find Child Rape Evidence*."[29] In addition, Mr. Zipp discusses a prior incident when InfoWars was criticized for not performing a reverse image search before publishing a similar erroneous photo.[30]

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[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.* at p. 6.
[30] *Id.* at p. 7.

The fact that InfoWars did not perform any verification steps or even a reverse image search "supports an inference that [Defendants] purposefully avoided inquiring into the details." *Warner Bros.,* 538 S.W.3d at 808. InfoWars' conduct goes beyond mere negligence, as even the most basic precautions were utterly disregarded. Moreover, "[s]tatements made on information that is obviously dubious may show actual malice." 8A Tex. Jur. Pl & Pr. Forms § 157:6 (2d ed.). Such is the case here, where InfoWars relied on an anonymous 4chan message, a source of information which is obviously dubious. As the Sixth Circuit warned, "a key component of the culture of 4chan consists of anonymous posters making claims that are not in fact true." *Kernell*, 667 F.3d at 752. "Even more so than most anonymous tips, statements made on 4chan have no indicia of reliability." *Id.* at 751.

To aid the Court in understanding the outrageously reckless nature of relying on 4chan, Plaintiff has submitted the affidavit of Brooke Binkowski, the managing editor of Snopes.com. Snopes is "the oldest and largest fact-checking site on the Internet," and it "has come to be regarded as an essential source for research on rumors and misinformation."[31] As part of her work, Ms. Binkowski has "become very familiar with the website 4chan.org," and she is "also very familiar with InfoWars, who often propagate the false stories debunked on our website."[32] Ms. Binkowski described 4chan as follows:

> 4chan.org is a website that has come to represent the worst of Internet culture. Its visitors frequently create and disseminate violent racist and misogynistic content that they use for purposes of "trolling" and "shitposting" (two Internet culture words that are employed in a variety of ways but in this content means using disinformation and smears to harass and bully people online…Its most notorious channel, /pol/, has

[31] Exhibit C, Affidavit of Brooke Binkowski, para. 3-4.
[32] *Id.* at para. 6; 11.

> become a gathering place for white supremacists to discuss or plan events and create and spread hoaxes. 4chan's reputation for hoaxes and false information is well known among journalists and online culture.[33]

According to Mr. Zipp, that reliability problem is at its worst during national tragedies:

> In fact, 4chan's reputation for fakery during national tragedies became so bad that Forbes published an article on October 3, 2017, entitled "Google Needs to Blacklist 4chan During National Crises." Noting how 4chan is "the Internet's own Lord of the Flies island," the article explains how "[t]heir community actively seeks to spread misinformation, especially during mass shootings." The article notes that the users of 4chan "have been engaging in this type of online sabotage for over a decade."[34]

Mr. Zipp also states he "reviewed materials which indicate that Mr. Daniels personally understood 4chan's reliability problem."[35] For example, on August 24, 2017, Mr. Daniels wrote an article for InfoWars entitled "BBC Falls Victim to 4chan Trolling – MSM Caught Sound Like Idiots."[36] Mr. Daniels mocked the BBC, writing that the "BBC claims visiting 4Chan constitutes 'investigative journalism.'"[37]

BBC FALLS VICTIM TO 4CHAN TROLLING – MSM CAUGHT SOUNDING LIKE IDIOTS

BBC claims visiting 4Chan constitutes "investigative journalism"

Kit Daniels | Infowars.com - AUGUST 24, 2017 226 Comments

[33] Exhibit B, Affidavit of Fred Zipp, at para. 7-8.
[34] *Id.* at p. 5.
[35] *Id*.
[36] *Id.*
[37] *Id.*

Likewise, Ms. Binkowski testified that "InfoWars articles and videos frequently refer to 4chan. I have no doubt that InfoWars reporters are aware of 4chan and aware of its reliability problems."[38] Ms. Binkowski also testified that "[e]ven ignoring 4chan's notorious history of fakery, publishing an image from any anonymous message board with no meaningful corroboration of its accuracy violates absolutely every standard of care I have applied throughout my 23-year career in journalism."[39]

InfoWars attached a declaration from Mr. Daniels claiming that he acted in good faith, but the Texas Supreme Court wrote that proof of actual malice cannot be defeated with the defendant's self-serving protestations of sincerity. *See Bentley v. Bunton,* 94 S.W.3d 561, 596 (Tex. 2002). A defendant cannot "[e]nsure a favorable verdict by testifying that he published with a belief that the statements were true." *Id.* In *Bentley*, the Court noted that a defendant's "[p]rofessions of good faith will be unlikely to prove persuasive, for example, where a story…is based wholly on an unverified anonymous telephone call." *Id.* "Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation." *Id.* Both circumstances are present here.

Mr. Zipp concluded that InfoWars was "motivated by a desire to avoid the truth,"[40] and chose to publish the image due to its eagerness to tie the Parkland tragedy to left-wing ideologies:

> Not only does the article use the recklessly sourced photo of Mr. Fontaine, but it also contains voter registration information for a certain "Nicolas Cruz," an individual with a differently spelled name than the accused Florida shooter,

[38] Exhibit C, Affidavit of Brooke Binkowski, para. 12.
[39] *Id.* at para. 14.
[40] *See* Exhibit B, Affidavit of Fred Zipp, p. 8.

> Nikolas Cruz. The InfoWars article also makes the dubious claim that "the shooter's garb is very similar to the style worn by ISIS fighters." The overall content of the article is an attempt to connect the shooter to left-wing ideologies or Muslim terror through use of bogus evidence.[41]

In addition, InfoWars has published countless articles and videos with alarmist rhetoric about a communist threat. Mr. Zipp "reviewed numerous articles and social media posts by InfoWars and Mr. Daniels which feature alarmist statements about a communist threat to America."[42] Mr. Zipp concluded that it was "likely that InfoWars' eagerness to publish anti-communist content to its audience caused it to disregard the accuracy problems with the photograph."[43] The following is small selection of articles InfoWars has recently published:

- Communism Crept in While America Was Sleeping
- Proof Communism is Cancer!
- Red Terror Comes to America
- China Makes Communism Push on College Campuses
- 'Islamism, Liberalism, and Pseudo-Communism Threaten Civilized World' Warns Russian Senator
- Mainstream Economists Whitewashed Evils of Communism
- MIT Pushes Plan to Literally Teach Children Communism
- Victim of Communism Exposes the Leftist Agenda
- Soros-Linked Communists Behind Milwaukee Unrest
- The Communist Origins of the Antifa Extremist Group

[41] *Id.,* p. 8.
[42] *Id.*
[43] *Id.*

- Millennials and Their Scary Support of Socialism & Communism
- Millennials Are Clueless About Communism. Here's Why That's a Problem
- The Horrors of Communist China
- The New York Times and the Lost Cause of Bolshevism
- The Reason the Left Gives Communism a Pass
- The Roots of Communism Exposed
- The Satanic Origins of Communism Exposed
- The Truth About The Red Scare

In sum, InfoWars' conduct was driven by a fervent desire to publish anti-communist content to its userbase. Like the defendants in *Bentley*, InfoWars "failed to meaningfully seek corroboration." *Bentley v. Bunton,* 94 S.W.3d 561, 593 (Tex. 2002). Indeed, their only corroboration was an anonymous Twitter message that was obviously a joke. InfoWars was not merely negligent; it "ignored elementary precautions." *Id.* Even worse, the conduct appears to be motivated by a desire to avoid the truth. Because there is ample evidence to support a finding of actual malice, these facts more than support Plaintiff's burden to survive a motion to dismiss on mere negligence.

III. Plaintiff has Suffered Damages.

Historically in Texas, defamation *per se* claims allow the jury to presume the existence of general damages without proof of actual injury. *Bentley v. Bunton,* 94 S.W.3d 561, 604 (Tex.2002); *see also* Restatement (Second) of Torts § 621 cmt. a (1977). Here, in a case with accusations of criminal conduct, damages are presumed.

Nonetheless, the record shows that Plaintiff has clearly suffered mental anguish from being accused of mass murder to millions of people. Mental anguish is compensable "if it causes a 'substantial disruption in...daily routine' or 'a high degree of mental pain and distress.'" *Hancock v. Variyam,* 400 S.W.3d 59, 68 (Tex. 2013), *quoting Parkway,* 901 S.W.2d at 444**.** In *Beaumont v. Basham*, 205 S.W.3d 608, 617 (Tex. App.—Waco 2006, pet. denied), mental anguish damages were found when the Plaintiff testified that there was a lot of whispering about her, she changed some of her daily routine, suffered anxiety attacks and insomnia, and was constantly thinking about what had occurred. There is also evidence of mental anguish where Plaintiff "sought medical treatment." *Hancock,* 400 S.W.3d at 69.

All of these circumstances are present in this case. Mr. Fontaine testified to the following in his affidavit:

> The extreme shock, stress, embarrassment, and fear from this incident caused a major disruption in my daily routine. For the first several weeks, everyone who knew me was talking about it. Even though many of them meant well, I couldn't go anywhere or talk online without the incident coming up. Because of this, I started avoiding social settings, and my life became more isolated.
>
> I generally tried to avoid looking at the things being said online as my picture was being passed around after the InfoWars article. But it was everywhere. I've seen hundreds of violent, hateful messages posted online. I have seen messages from people wishing me dead even after being told of my real identity. And I've personally been sent violent and harassing messages which continued even weeks later, including a threat which referenced my place of employment.
>
> After my photo spread across the internet, I have seen blogs, social media messages, and images posted online by individuals who appear to believe I am part of a conspiracy to stage the Florida shooting. I saw an individual online post a facial comparison to claim that I am an actor who "played" Nikolas Cruz. I am terrified that InfoWars fans may come to similar conclusions, and that they may seek to confront me or

> do me harm over the coming years. I am aware this has happened to other individuals who became a part of a conspiracy theory popularized by InfoWars.
>
> As a result of these fears, my sleep became highly irregular, and I continue to suffer from severe insomnia. This also disrupted my usual routine. I've been having frequent nightmares about a confrontation with an InfoWars fan. When walking in public places, I found myself having severe panic attacks at the thought of those nightmares coming true.
>
> I feel like having my image exposed to the world as a mass murderer has forever changed me. My demeanor has become more anxious and less trusting. It is also interfering with my personal relationships. Because my severe anxiety and fear over this incident shows no sign of going away, I decided to seek therapy to help address these issues.[44]

Mr. Fontaine's affidavit, which describes the high degree of mental pain and distress he suffered after being identified as a mass murderer, creates *prima facie* evidence in support of his claim of mental anguish.

IV. InfoWars is Estopped from Asserting the Defense of Truth.

InfoWars published a retraction so that it could claim the benefit of Tex. Civ. Prac. & Rem. Code Sec. 73.055. A retraction is an admission that the complained of publication was not truthful. A defendant is therefore precluded by its retraction from pleading truth as a defense. On May 18, 2018, InfoWars served notice of its intent to rely on its retraction. The retraction admits that InfoWars "stated incorrectly that it was an alleged photo of the suspected shooter." Therefore, the retraction was a "publication of an acknowledgment that the statement specified as false and defamatory is erroneous." Tex. Civ. Prac. & Rem. Code 73.057(b)(1).

[44] Exhibit A, Affidavit of Marcel Fontaine.

If InfoWars had intended to rely on a third-party allegation defense, it would have been required to issue a different retraction under Sec. 73.057(b)(3). For a third-party allegation defense, a retraction must be "a statement attributed to another person whom the publisher identifies and the publisher disclaims an intent to assert the truth of the statement." In this case, InfoWars' retraction did not identify any third party, and it did not disclaim an intent to assert the truth of the statement. Rather, the retraction admits that InfoWars made its own incorrect statement, and the statement was removed. Even the first sentence of InfoWars' Motion states that this lawsuit is based on InfoWars' "inadvertent publication of an image," not a true report on a third-party making an allegation.[45] Since InfoWars has already admitted the falsity of its publication and claimed legal benefit, it is estopped from asserting the defense of truth.

V. Texas Civil Practice and Remedies Code § 73.005 does not the Protect the Publication of Dubious Anonymous Statements with no Attribution.

InfoWars argues that Plaintiff's claims are "barred under Texas Civil Practice and Remedies Code § 73.005."[46] That statute creates a limited exception applying the affirmative defense of truth to "an accurate reporting of allegations made by a third party regarding a matter of public concern." *See* Tex. Civ. Prac. & Rem. Code § 73.005(b). InfoWars claims that it "accurately reported the allegations of the original poster on 4Chan."[47] Yet in order to claim the defense, the article must "attribute the allegations to a third-party source." *Scripps NP Operating, LLC v. Carter,* 2016 WL 7972100, at *13 (Tex. App.—Corpus Christi Dec. 21, 2016, pet. filed). InfoWars' article did not attribute the

[45] *See* InfoWars' Motion to Dismiss, p. 1.
[46] *Id.* at p. 9.
[47] *Id.* at p. 10.

allegation to any third-party. Instead, it merely printed anonymous hearsay as its own defamation.

Last year, the Austin court decided an illustrative case on this topic. In *Warner Bros. Entm't, Inc. v. Jones,* 538 S.W.3d 781, 810 (Tex. App.—Austin 2017, pet. filed), the court examined a TMZ article about Robert Jones, a Dallas Cowboys linebacker. *Id.* at 790. The article stated that Mr. Jones was alleged as a suspect in a plot to hire a hitman. *Id.* "TMZ's source for the article was Theodore Watson, Jones's first cousin and a convicted felon." *Id.* at 789. Based on statements Watson made to TMZ, which were not attributed to Watson in the article, TMZ asserted Mr. Jones was "the primary suspect in a police investigation." *Id.* at 790.

In response, "the TMZ Defendants assert[ed] that they were merely reporting the allegations made by Watson." *Id.* at 807. However, the Austin court noted "that the Texas Supreme Court has reaffirmed the well-settled legal principle that one is liable for republishing the defamatory statement of another." *Id.* at 810. When a publication is based on the allegations made by an unnamed third-party, the court held that "recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *Id.* at 806, *citing Harte-Hanks*, 491 U.S. at 688. In *Warner Bros.*, "[t]he TMZ Defendants [did] not dispute that no one investigated Watson to determine whether he was a credible source." *Id.* at 807. The reporter "testified that she did not know whether Watson was a stalker or whether he was mentally unstable." *Id.* at 808.

In this case, the situation is even worse. InfoWars knows literally nothing about its unnamed source on 4chan. And as pointed out by the Sixth Circuit, "[e]ven more so than most anonymous tips, statements made on 4chan have no indicia of reliability." *Kernell,* 667

F.3d at 751. This is case is no different than an InfoWars reporter walking into a gas station restroom, seeing graffiti that reads "For a Good Time, Call Jane Smith," and then reporting to millions that Jane Smith is alleged to be a prostitute. Indeed, gas station graffiti is probably more reliable than the malicious anonymous trolls on 4chan.

Publishing anonymous accusations without attribution is not a defense; it is evidence of actual malice. *See, e.g., Bentley,* 94 S.W.3d at 596 (finding actual malice when statement was "based wholly on an unverified anonymous telephone call."); *see also* 1 Law of Defamation § 3:62 (2d ed.) ("[R]eliance on an anonymous source…is admissible as evidence of actual malice."). Even now, InfoWars cannot name any individual whose statement it claims to have reported. InfoWars merely cites "the original poster of the 'thread' on the 4Chan Website."[48] For all we know, the "original poster" could be Mr. Daniels himself.

InfoWars emphasizes "Daniels' use of the term 'alleged' in the text" as some kind of shield or disclaimer of liability.[49] However, "merely printing 'it is alleged' did not absolve the defendant of liability: An accusation purporting to rest on hearsay is none the less defamatory." *Rouch v. Enquirer & News of Battle Creek*, 137 Mich. App. 39, 57, 357 N.W.2d 794, 804 (1984), *aff'd and remanded*, 427 Mich. 157, 398 N.W.2d 245 (1986); *see also Lancour v. Herald & Globe Ass'n*, 111 Vt. 371, 380, 17 A.2d 253, 257 (1941) ("The fact that the charge was qualified by the words 'it is alleged' or their equivalent, does not absolve the defendants from responsibility for publishing it. An accusation purporting to rest on hearsay is none the less defamatory…The principle is of long standing. It was applied in *Meggs v. Griffith*, 1595 Cro.Eliz. 400.")

[48] *Id.* at p. 4.
[49] *Id.* at p. 10.

InfoWars claims the word "alleged" carries an unspoken implication. But as the Texas Supreme Court stated this year, "we have never held, nor do we today, that a true implication—as opposed to a true gist—can save a defendant from liability for publishing an otherwise factually defamatory statement." *Dallas Morning News, Inc. v. Tatum,* 2018 WL 2182625, at *8 (Tex. May 11, 2018). In any case, what implication should the reader draw from the word "alleged" in the InfoWars' article? Who was it being alleged by? The police? Media outlets? A crazed man on the corner shouting at the sky? The only allegation the reader carries away is the allegation from InfoWars. In short, the InfoWars article was not a neutral journalistic report on a third-party and their allegations. Instead, it was the publication of a dubious hearsay rumor from an anonymous source with no attribution.

VI. A *Prima Facie* Showing of Defamation Satisfies its Derivative Torts such as Civil Conspiracy.

Civil conspiracy is "a derivative tort." *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996). As the Austin court wrote last year, civil conspiracy and other derivative forms of recovery are not analyzed in a motion under TCPA:

> The tort is derivative because "a defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable." Consequently, courts "do not analyze the trial court's refusal to dismiss plaintiffs' causes of action for conspiracy separately from its refusal to dismiss their other causes of action." In other words, if the trial court did not err by refusing to dismiss the defamation claim, then it did not err by refusing to dismiss the conspiracy claim related to the defamation claim. Accordingly, we conclude that the trial court did not err by refusing to dismiss Jones's conspiracy claim, which is dependent on his defamation claim.

Warner Bros., 538 S.W.3d at 813–14. (citations omitted). In short, a plaintiff need only prove the *prima facie* elements of his underlying case, not his derivative theories of recovery.

VII. Plaintiff has made a *Prima Facie* Showing that the Doctrine of *Respondeat Superior* Applies to his Claim.

With respect to *respondeat superior*, InfoWars makes much of its claim that Mr. Jones and other InfoWars' management had no input or ratification of Mr. Daniels' article. But in Texas, "[a]n action is sustainable against a corporation for defamation by its agent, if such defamation is referable to the duty owing by the agent to the corporation, and was made while in the discharge of that duty. Neither express authorization nor subsequent ratification is necessary to establish liability." *Warner Bros.,* 538 S.W.3d at 802, *quoting Texam Oil Corp. v. Poynor*, 436 S.W.2d 129, 130 (Tex. 1968); *see also Minyard Food Stores, Inc. v. Goodman*, 80 S.W.3d 573, 577 (Tex. 2002) (holding that general rule that employer is liable for its employee's tort "when the tortious act falls within the scope of the employee's general authority in furtherance of the employer's business" applies in defamation context).

Here, Plaintiff can recover based upon *respondeat superior* if (1) he was injured as a result of an independent tort, (2) the tortfeasor was an employee of the defendant and (3) the tort was committed while the employee was acting within the scope of his employment. *G&H Towing Co.* v. *Magee*, 437 S.W.3d 293, 296 (Tex. 2011). InfoWars has already satisfied Plaintiff's burden by producing an affidavit from Kit Daniels admitting these elements. Mr. Daniels admits that he published the defamatory article, and he further admitted that publishing such articles was part of his duties as InfoWars.

VIII. InfoWars' Outrageous Conduct is *Prima Facie* Evidence of Intentional Infliction of Emotional Distress

Even if Plaintiff were unable to prove one of the elements of his defamation claim, InfoWars' conduct would be subject to liability for intentional infliction of emotional distress. Intentional infliction is a "gap-filler" tort designed to provide a cause of action for egregious conduct "that its more established neighbors in tort doctrine would technically fence out." *Standard Fruit & Vegetable Co. v. Johnson*, 985 S.W.2d 62, 68 (Tex. 1998). A plaintiff must make a *prima facie* showing that:

(1) the defendant acted intentionally and recklessly

(2) the defendant's conduct was extreme and outrageous

(3) the defendant's actions caused the plaintiff severe emotional distress

Kroger Tex. Ltd. P'ship v. *Suberu,* 216 S.W.3d 788, 796 (Tex. 2006).

The evidence set forth above satisfies the elements of intentional infliction of emotional distress. There is *prima facie* evidence that InfoWars acted intentionally and recklessly in using Plaintiff's photograph and asserting he was the alleged Florida shooter. InfoWars' conduct was extreme and outrageous. InfoWars shared Plaintiff's image with millions of people while accusing him of mass murder, and it do so with no evidence or actual allegation by anyone. It utterly disregarded all journalistic standards while understanding the probable consequences. InfoWars conduct was "utterly intolerable in a civilized community." *Fishman v. C.O.D. Capital Corp*., 05-16-00581-CV, 2017 WL 3033314, at *5 (Tex. App.—Dallas July 18, 2017, no pet.). Here, where an innocent man was smeared to millions under disgusting circumstances, the Court is presented with a case "in which a recitation of the facts to an average member of the community would lead him to exclaim,

'Outrageous.'" *Clayton v. Wisener,* 190 S.W.3d 685, 692 (Tex. App.—Tyler 2005, pet. denied). Here, the outrageous events set forth above satisfy a *prima facie* showing for Plaintiff's claim of intentional infliction of emotional distress.

IX. InfoWars' Frivolous Motion Justifies an Award of Attorney's Fees to the Plaintiff.

InfoWars' Motion to Dismiss was frivolous, and it was intended to delay these proceedings and drive up the costs of litigation for Plaintiff. InfoWars maliciously published an innocent man's photograph as a mass murder suspect based on an unattributed anonymous source from the gutter of the internet. No serious defendant could believe that "I saw it on 4chan" was a defense worthy of immediate dismissal. Publishing the article was a reckless act that unquestionably subjects InfoWars to a plausible cause of action for defamation.

This Court should deny Defendants' Motion and award Plaintiff reasonable attorneys' fees and costs related to his response. *See* Tex. Civ. Prac. & Rem. Code § 27.009(b) ("If the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party."). Here, there was no objectively reasonable basis to seek dismissal.

Unlike InfoWars, Plaintiff seeks a reasonable amount in attorney's fees. InfoWars seeks nearly $30,000 in fees, despite having performed very little work beyond filing an Answer followed by a bare-bones TCPA motion. Plaintiff's counsel has expended far more

effort in responding to this Motion and seeks only $20,926 in fees.[50] Moreover, unlike InfoWars, Plaintiff's claim of attorney's fees is properly itemized.

CONCLUSION

InfoWars printed a reckless and dangerous article, and it did so with absolutely no journalistic verification. Those facts would be bad enough, but here it relied on a source so patently unreliable that it justifies an interference that InfoWars simply did not care about the truth. Plaintiff has demonstrated every element of his claims, and InfoWars has no valid defense. For these reasons, Plaintiff prays this Court denies InfoWars' Motion.

Respectfully submitted,

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[50] Exhibit D, Affidavit of Mark Bankston

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2018 the forgoing document was served upon the following in accordance to Rule 21 of the Texas Rules of Civil Procedure:

Via E-File

Mr. Eric Taube
Waller Lansden Dortch & Davis, LLP
100 Congres Avenue, Ste. 1800
Austin, Texas 78701

MARK D. BANKSTON

AFFIDAVIT OF MARCEL FONTAINE

STATE OF TEXAS §
§
TRAVIS COUNTY §

Before me, the undersigned notary, on this day personally appeared MARCEL FONTAINE, a person whose identity is known to me. Upon being duly sworn, Affiant states:

1. My name is Marcel Fontaine. I am over the age of 21 and competent to make this affidavit.

2. On February 14, 2018, my photograph was published by Infowars along with an allegation that I was the Parkland High School shooter. As a result, my image went viral on social media.

3. The extreme shock, stress, embarrassment, and fear from this incident caused a major disruption in my daily routine. For the first several weeks, everyone who knew me was talking about it. Even though many of them meant well, I couldn't go anywhere or talk online without the incident coming up. Because of this, I started avoiding social settings, and my life became more isolated.

4. I generally tried to avoid looking at the things being said online as my picture was being passed around after the InfoWars article. But it was everywhere. I've seen hundreds of violent, hateful messages posted online. I have seen messages from people wishing me dead even after being told of my real identity. And I've personally been sent violent and harassing messages which continued even weeks later, including a threat which referenced my place of employment.

5. After my photo spread across the internet, I have seen blogs, social media messages, and images posted online by individuals who appear to believe I am part of a conspiracy to stage the Florida shooting. I saw an individual online post a facial comparison to claim that I am an actor who "played" Nikolas Cruz. I am terrified that InfoWars fans may come to similar conclusions, and that they may seek to confront me or do me harm over the coming years. I am aware this has happened to other individuals who became a part of a conspiracy theory popularized by Infowars.

6. As a result of these fears, my sleep became highly irregular, and I continue to suffer from severe insomnia. This also disrupted my usual routine. I've been having frequent

nightmares about a confrontation with an InfoWars fan. When walking in public places, I found myself having severe panic attacks at the thought of those nightmares coming true.

7. I feel like having my image exposed to the world as a mass murderer has forever changed me. My demeanor has become more anxious and less trusting. It is also interfering with my personal relationships. Because my severe anxiety and fear over this incident shows no sign of going away, I decided to seek therapy to help address these issues.

FURTHER YOUR AFFIANT SAYETH NOT

MARCEL FONTAINE

SWORN to and SUBSCRIBED before, the undersigned authority, on the 25th day of May, 2018, by Mr. Marcel Fontaine.

ERIC TELLEZ
Notary Public State of Texas
My Commission# 124709495
My Comm. Exp. Apr. 06. 2021

Notary Public, State of Texas

My commission expires: 4-6-21

AFFIDAVIT OF FRED ZIPP

STATE OF TEXAS §
§
TRAVIS COUNTY §

Before me, the undersigned notary, on this day personally appeared FRED ZIPP, a person whose identity has been established to me. Upon being duly sworn, Affiant states:

PERSONAL BACKGROUND

I have spent 39 years in daily newspaper journalism and journalism education.

From 1979 to 1984, I was a reporter and assistant city editor at the Beaumont Enterprise in Beaumont, Texas. From 1984 to 1987, I was a sports copy editor, assistant sports editor and assistant city editor at the Austin American-Statesman in Austin, Texas. From 1987 to 1998, I was assistant metro editor, deputy metro editor, news editor and metro editor the Palm Beach Post in West Palm Beach, Florida. In 1998, I returned to the American-Statesman as assistant managing editor, managing editor, and retired as editor. Over the course of my career, I gained extensive experience and expertise in the responsible delivery of news content to a mass media audience.

In 2012, I began teaching at the University of Texas at Austin. At the University of Texas, I supervise a digital media initiative known as *Reporting Texas* which functions similarly to a newsroom; students are the reporters, and I am their editor. I help them conceive, report and write stories that are posted on the reportingtexas.com website. *Reporting Texas* focuses on often hidden stories, using text, photos, audio and video to provide views of people and places rarely seen in the news. As such, I continue to apply my expertise in story verification on a daily basis while instructing students.

I have been a director and officer of the Freedom of Information Foundation of Texas and the Headliners Foundation of Texas, an organization that promotes journalism excellence in the state.

SCOPE OF REVIEW

In arriving at my opinions in this case, I have used the same principles and analysis as I have used throughout my journalism career to determine whether particular images and assertions could be responsibly published. This review included an examination of the article at issue as well as relevant background materials. I have reviewed numerous background items, including:

- News articles and internet publications about the spread of Plaintiff's image.
- Social media posts relating to Plaintiff's image.
- Various articles and social media posts from InfoWars.
- Industry reference materials on general journalism practices and the ethical publishing of images.

BACKGROUND KNOWLEDGE OF INFOWARS

Having been involved in media in Austin for 23 years, I am aware of Alex Jones and InfoWars, although I felt no need to pay close attention to either one before agreeing to review the article in this lawsuit. Nonetheless, I was aware of InfoWars' extremely poor reputation in the media industry with respect to the reliability of the information it publishes. I have considered InfoWars' history only to the extent of concluding that InfoWars should be conscious of the criticism over its reliability.

After I asked to review the events of this lawsuit, I have spent a significant amount of time reading articles on InfoWars.com and reviewing audio and video recordings posted on the site. While the site purports to be a news and information operation, it is actually a propaganda outlet for Mr. Jones' theories about a global conspiracy to control and enslave the world's population. In Mr. Jones' views, communists are active participants in the conspiracy, and depriving citizens of access to firearms is a tactic used in enslaving the population.

EXERCISING REASONABLE CARE IN MASS MEDIA

According to the American Press Institute, "Journalism is the activity of gathering, assessing, creating, and presenting news and information. It is also the product of these activities."

"Journalism can be distinguished from other activities and products by certain identifiable characteristics and practices. These elements not only separate journalism from other forms of communication, they are what make it indispensable to democratic societies." [1]

Further, API states, the value of journalism "flows from its purpose, to provide people with verified information they can use to make better decisions, and its practices, the most important of which is a systematic process – a discipline of verification – that journalists use to find not just the facts, but also the 'truth about the facts.'"[2] What sets journalism apart from other forms of communication, then, is the deliberate, disciplined practice of verification that the information it provides the public is accurate.

Identifying a person as a suspect in a mass shooting is perhaps the most serious and damaging accusation that could be leveled against an individual. Most news organizations would report such an accusation only if it came from a clearly identified source involved in the investigation of the shooting. Similarly, most news organizations would publish an image of a person identified as a suspect in a mass shooting only if the image came from a clearly identified source involved in the investigation. Identifying a suspect or publishing an image of a suspect based on sources unrelated to an investigation would require the highest level of diligence in verifying accuracy. A publisher should take appropriate steps to verify the following:

[1] https://www.americanpressinstitute.org/journalism-essentials/what-is-journalism/
[2] https://www.americanpressinstitute.org/journalism-essentials/what-is-journalism/makes-journalism-different-forms-communication/

- Has a bona fide allegation been made against the individual?
- Who made the allegation?
- What is the basis for the allegation?
- Are the accuser and the basis for the allegation credible?

Publishers must take into account the significance of a news event when considering the consequences of a false accusation. The consequences of a false accusation are enormous when the event is subject to global attention. The desire to report as rapidly as possible on a breaking news event does not change a publisher's obligation to report only the facts and to avoid making false accusations of criminal conduct. Publishers understand that using the image of an innocent person as a mass murderer can expose that person to hatred, contempt, ridicule, or harassment.

Among the references I reviewed in this case is an industry publication entitled *Verification Handbook: An Ultimate Guideline on Digital Age Sourcing for Emergency Coverage*, edited by Craig Silverman. The guidelines discussed in this publication confirm my opinions in this case, and they accurately state the appropriate standard of care.

As a general rule applied to any kind of content, the Handbook states, "Verification employs a mix of three factors:

- "A person's resourcefulness, persistence, skepticism and skill."
- "Sources' knowledge, reliability and honesty, and the number, variety and reliability of sources you can find and persuade to talk."
- "Documentation."[3]

More specifically, in Chapter 4: Verifying Images, the Handbook states "the basic principles of image verification remain the same" in the digital age.[4] These steps include:

- "Establish the author/originator of the image."
- "Corroborate the location, date and approximate time the image was taken."
- "Confirm the image is what it is labeled/suggested to be showing."[5]

[3] *Verification Handbook: An Ultimate Guideline on Digital Age Sourcing for Emergency Coverage,* p. 17.
[4] *Id,* p. 36.
[5] *Id,* p. 36

More specifically still, in a section on user-generated content (that is, content produced by a member of a social network for other members of the network), the Verification Handbook offers these guidelines:

- "Start from the assumption that the content is inaccurate or been scraped, sliced, diced, duplicated and/or reposted with different context."

- "Follow these steps when verifying UGC:

    - Identify and verify the original source and the content (including location, date and approximate time).

    - Triangulate and challenge the source.

    - Obtain permission from the author/originator to use the content (photos, videos, audio).

- "Always gather information about the uploaders, and verify as much as possible before contacting and asking them directly whether they are indeed victims, witnesses or the creator of the content."[6]

During this process, "an important step is to use a service like Google Reverse Image Search or TinEye."[7] This is because "pre-existing images that have been misattributed (perhaps the most common form of 'fake') can often be debunked in a few seconds through a reverse image search."[8]

Kit Daniels identifies himself as an "editor, video journalist and social commentator" for InfoWars.com.[9] In his declaration related to this case, he describes how he came to publish the photo of Marcel Fontaine on InfoWars in an article titled "Reported Florida Shooter Dressed as Communist, Supported Isis." Mr. Daniels claims that the image was "obtained from the popular image and web board entitled 4Chan." He also claims he saw the image on social media, and points to "a Twitter post by "Laguna Beach Antifa." According to Mr. Daniels, "the publication of the Challenged Image on 4Chan confirmed the reports."

Mr. Daniels admits that he did not perform any of the verification steps outlined above; apparently, he made no effort at all to verify that the image accurately portrayed the Parkland shooter. He entirely skipped the "assessing" stage of journalistic practice as articulated by the American Press Institute. It is reckless to ignore basic verification and publish an image without eliminating serious doubts about its accuracy. A reporter should take the necessary steps to "confirm that the image is what it purports to be."[10]

---

[6] *Id.* at 98.
[7] *Id.* at 37.
[8] *Id.* at 45
[9] *Declaration of Kit Daniels, Marcel Fontaine, Plaintiff, v. Alex E. Jones, InfoWars, LLC, Free Speech Systems, LLC and Kit Daniels, Defendants*
[10] *Verification Handbook: An Ultimate Guideline on Digital Age Sourcing for Emergency Coverage*, p. 39.

OPINION REGARDING INFOWARS' FEBRUARY 14, 2018 ARTICLE

My review shows that Mr. Fontaine was not the Parkland shooter and that he had no involvement with the Parkland shooting. I have been unable to locate any party making a genuine allegation that Mr. Fontaine was the Parkland shooter.

InfoWars admits that it found the image on the website 4chan.org, though it did not attribute the image to 4chan in its article, as standard journalism practice would dictate. 4chan is an anonymous discussion forum with a history for fakery and internet trolling. Any competent journalist would know there are obvious reasons to doubt the veracity of an anonymous 4chan post as a news source.

In fact, 4chan's reputation for fakery during national tragedies became so bad that Forbes published an article on October 3, 2017, entitled "Google Needs to Blacklist 4chan During National Crises."[11] Noting how 4chan is "the Internet's own Lord of the Flies island," the article explains how "[t]heir community actively seeks to spread misinformation, especially during mass shootings."[12] The article notes that the users of 4chan "have been engaging in this type of online sabotage for over a decade."[13]

I have reviewed materials which indicate that Mr. Daniels personally understood 4chan's reliability problem. For example, on August 24, 2017, Mr. Daniels wrote an article for InfoWars entitled "BBC Falls Victim to 4chan Trolling – MSM Caught Sound Like Idiots."[14] Mr. Daniels mocked the BBC, writing that the "BBC claims visiting 4Chan constitutes 'investigative journalism.'"[15]

I conclude that more likely than not, Mr. Daniels and InfoWars entertained serious doubts about the accuracy of the photograph found on 4chan.

Moreover, a routine reverse-image search would have revealed to Mr. Daniels that the same photograph had been posted two days before the shooting by a 4chan troll with a Nazi flag on his personal profile. That anonymous 4chan troll had used the image to make fun of Mr. Fontaine.

---

[11] https://www.forbes.com/sites/fruzsinaeordogh/2017/10/03/google-needs-to-blacklist-4chan-during-national-crises/#3a66430f3dcd
[12] *Id.*
[13] *Id.*
[14] https://www.infowars.com/bbc-falls-victim-to-4chan-trolling-msm-caught-sounding-like-idiots/
[15] *Id.*

Within hours of the posting of Mr. Daniel's story, numerous individuals online pointed out that a reverse-image search would have revealed this 4chan post from two days earlier. A search of the 4chan archives also would have revealed that on February 10, four days before the shooting, Mr. Fontaine's image was posted in response to a person asking users to "show me your worst unironic lefty dimwits, commies, etc., you've found while surfing the internet/social media."[16]

Above: Commenter on the disputed article discusses the reverse-image search result. I have reviewed multiple examples of users drawing attention to this fact.

As noted above, an image search is a basic step in photo verification. Mr. Daniels was aware of reverse image searching, as he included a link to a reverse image search in a story he wrote on November 5, 2016, entitled "Read Hillary Emails to Find Child Rape Evidence."[17]

[16] https://archive.is/snpGJ
[17] https://staging.infowars.com/bombshell-hillary-linked-to-child-rape-network-emails-suggest/

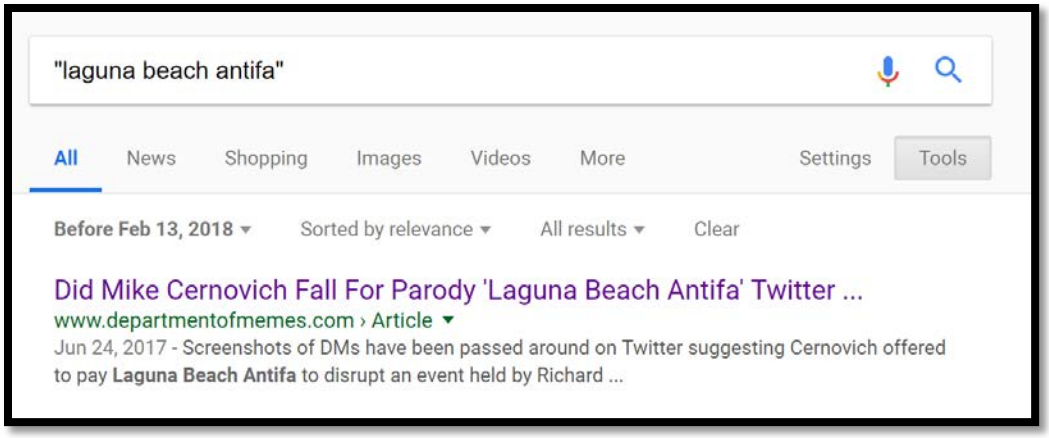
This is not the first time InfoWars ignored proper attribution and verification of an image. As reported by the Washington Post, InfoWars has been criticized in the past for relying on dubious information rather than performing a reverse image search:

> In what may be one of the more bizarre attacks on the controversial Common Core curriculum, Alex Jones's Infowars — best known for its propagation of wonderfully imaginative conspiracy theories — published a series of "shocking images out of a classroom in Jacksonville, Florida" that show "a teacher demonstrating how to use a strap-on sex toy" to 11-year-old students. The story has since disappeared, perhaps because a quick reverse image-search makes it pretty clear that the images came from an LGBT event at a college in Canada … and that the story itself originated on *Modern Woman Digest*, a bad "satire," *i.e.* fake-news, site.[18]

Mr. Daniels also stated that he saw the image from 4chan on social media, but he pointed to a similar "satire" fake news source: an anonymous Twitter user known as "Laguna Beach Antifa," who was clearly making a bad joke:

The anonymous Twitter account "Laguna Beach Antifa" is a known troll account with a documented history of hoaxes. A Google search would have revealed this fact, since four of the top of results on February 13, 2018, for "Laguna Beach Antifa" were articles noting the account was fake. Even a cursory review of its prior content would have made this obvious as well.

[18] https://www.washingtonpost.com/news/the-intersect/wp/2014/09/19/what-was-fake-on-the-internet-this-week-sidewalks-for-texters-the-antichrist-and-charging-your-phone-by-microwave/?utm_term=.daf038d93bdc



Above: The first Google result as of February 13, 2018

In short, the "Laguna Beach Antifa" tweet was not a serious message or genuine allegation. It was a bad joke by an anonymous internet troll.

Not only did InfoWars fail to take basic steps to verify the photograph, but also, according to the evidence I reviewed, it was likely motivated by a desire to avoid the truth. Not only does the article use the recklessly sourced photo of Mr. Fontaine, but it also contains voter registration information for a certain "Nicolas Cruz," an individual with a differently spelled name than the accused Florida shooter, Nikolas Cruz.[19] The InfoWars article also makes the dubious claim that "the shooter's garb is very similar to the style worn by ISIS fighters." The overall content of the article is an attempt to connect the shooter to left-wing ideologies or Muslim terror through use of bogus evidence.

In addition, I have reviewed numerous articles and social media posts by InfoWars and Mr. Daniels which feature alarmist statements about a communist threat to America. It appears likely that InfoWars' eagerness to publish anti-communist content to its audience caused it to disregard the accuracy problems with the photograph.

In sum, it is my opinion that the InfoWars failed to use reasonable care to ascertain the accuracy of the photograph or the credibility of the allegations. Moreover, it is my opinion that the InfoWars entertained serious doubt about the truth of their publication. I conclude that the photo was published with reckless disregard for falsity.

FURTHER YOUR AFFIANT SAYETH NOT

[19] https://www.usnews.com/news/best-states/florida/articles/2018-02-16/florida-shooting-suspect-is-not-a-democrat

ERIC TELLEZ
Notary Public State of Texas
My Commission# 124709495
My Comm. Exp. Apr. 06, 2021

Fred Zipp

Eric Tellez

My commission expires 4-6-21

archive.today
webpage capture
Saved from https://www.infowars.com/report-florida-shooter-inspired-by-isis-allahu-akbar/ search
15 Feb 2018 00:25:31 UT
history
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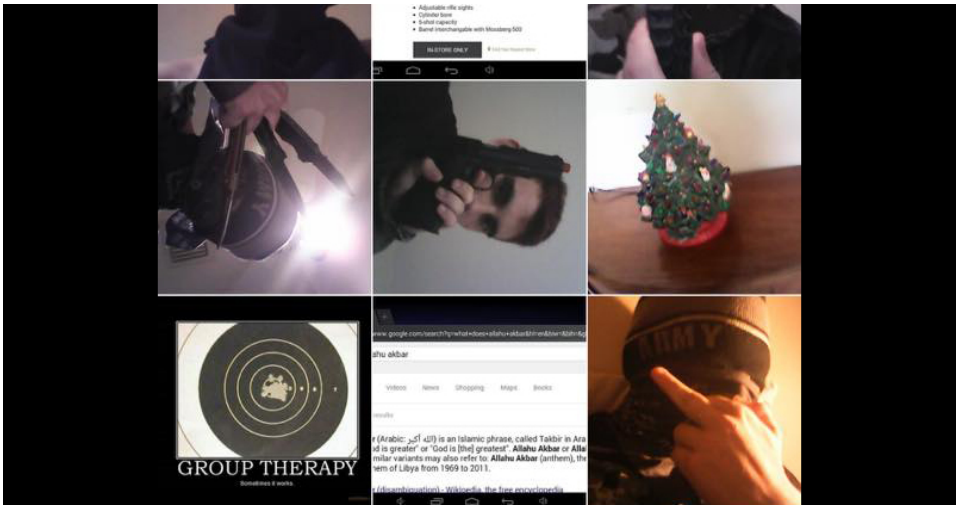
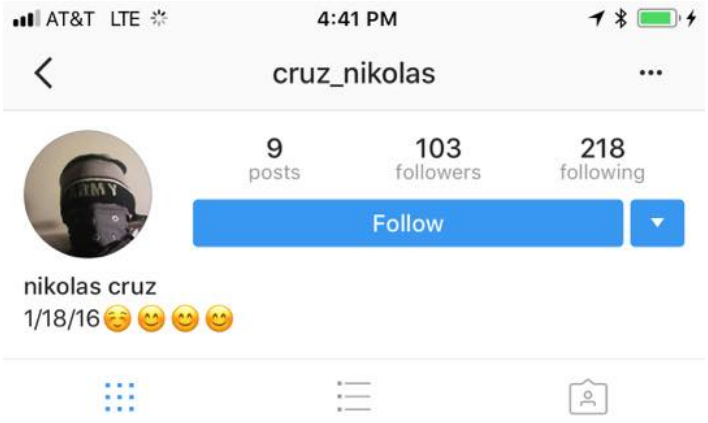
REPORTED FLORIDA SHOOTER DRESSED AS COMMUNIST, SUPPORTED ISIS

MSM already covering it up

Kit Daniels | Infowars.com - FEBRUARY 14, 2018 746 Comments



Alleged photos of the suspected Florida high school shooter make reference to various ideologies including communism and perhaps ISIS, and voter records suggest 19-year-old Nicolas Cruz was a Democratic voter.



TODAY ON THE ALEX JONES SHOW

Wednesday, Feb. 14th: Americans Fall in Love with Trump - The president's popularity is on a massive upswing as more people - including former Hillary voters -...

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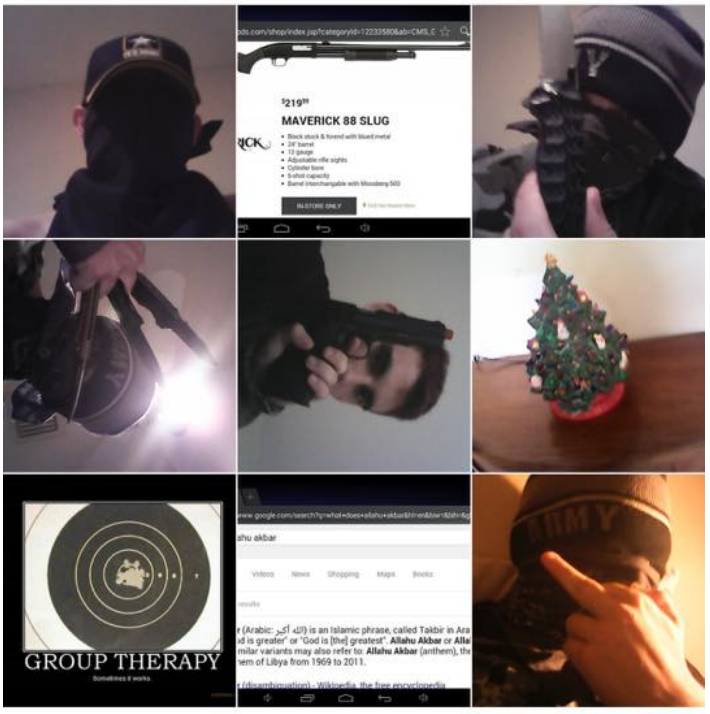

Additionally, the shooter's garb is very similar to the style worn by ISIS fighters in Syria.

> Parkland Killer, Nicolas Cruz, was a known security threat & was not allowed to carry a backpack to school last year. Also belonged to Middle East Resistance groups on social media. A) How did he get in being a known-threat? B) Was this terror-related?
>
> — PolitiDiva™ (@realPolitiDiva) February 14, 2018

The Instagram account was taken down soon after the suspect was arrested.

The shooter was also suspected of having planted bombs, according to the police scanner.

Internet sleuths have suggested the following screenshot reveal Cruz may have had an anti-Islam slant back in 2015, but interestingly, there's also a 19-year-old Nicolas Cruz who's listed as a Democratic voter in Oakland Park, Florida, which may be the suspect (address blurred out to protect the innocent otherwise):

Why Is Jeff Sessions Violating Donald Trump's Marijuana Position

Pedophile Becomes Fire Chief, Cannabis Activist Gets Life

Reported Florida Shooter Dressed as Communist, Supported ISIS

DACA Insanity: Another Judge Blocks Trump

Shock Footage: Student Films Shots Fired Inside Florida High School

The New Genesis: How To Save Humanity

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NYT Investigates If White Children Can Wear Black Panther Mask
1393 Comments

"Fuck Trump" T-Shirt Wearer Says He is Fighting Institutional Racism
1114 Comments

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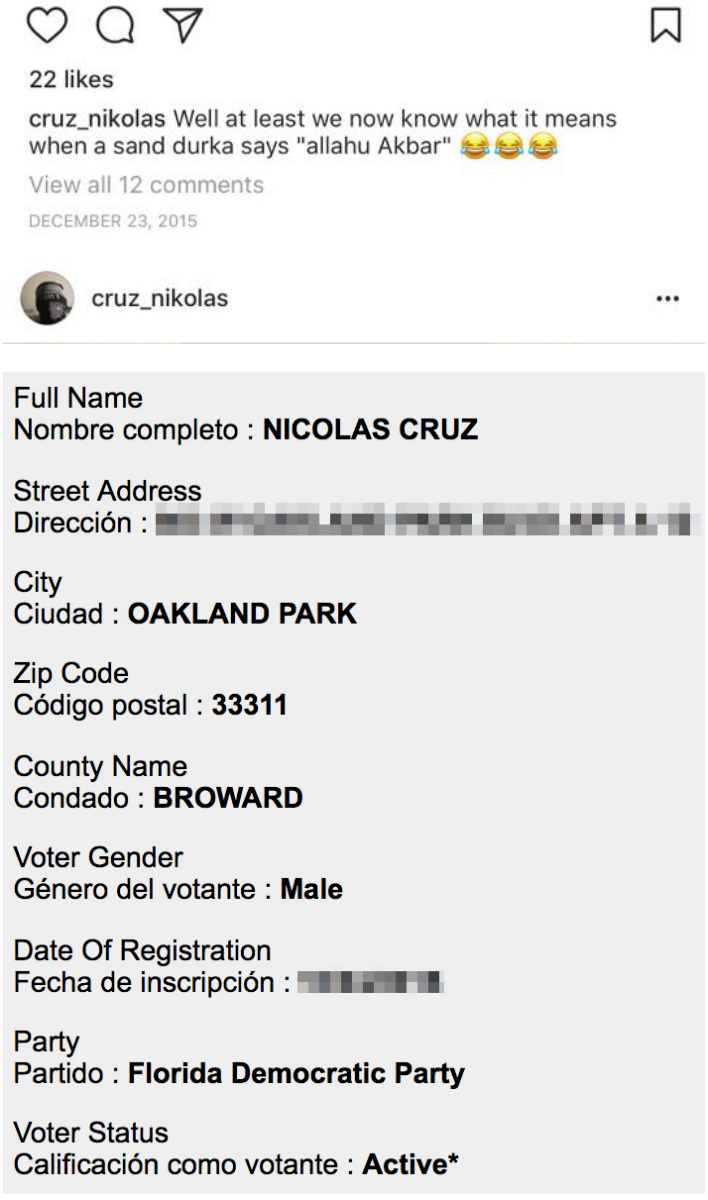
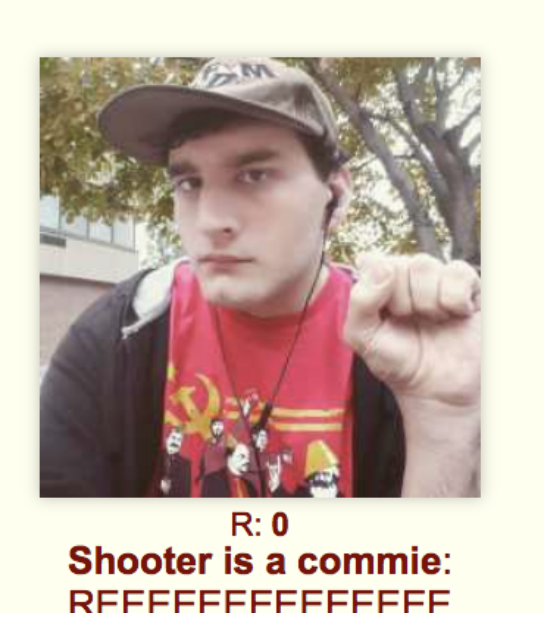


And another alleged photo of the suspect shows communist garb:



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THE ALEX JONES SHOW. AI SUPER COMPUTERS WILL DECIDE WHO LIVES AND WHO DIES

REAL NEWS WITH DAVID KNIGHT. REVEALED: THE "DEEP THROAT" OF RUSSIAGATE

1 2 3 4 5

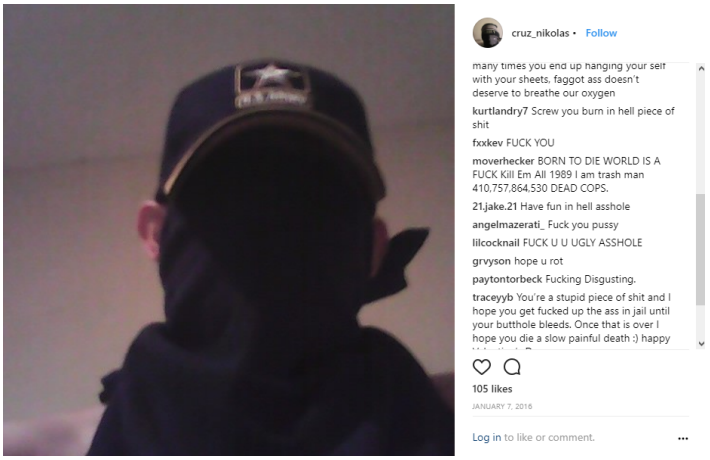
FEATURED VIDEOS

The Fight For Free Speech - See the rest on the Alex Jones YouTube channel.

Does Tucker Carlson Despise Alex Jones? - See the rest on the Alex Jones YouTube channel.

ILLUSTRATION

This screenshot, found on a Japanese cartoon image board, was apparently taken right after the suspect was apprehended – and right before Instagram nixed the account:



It's possible the suspect is simply mentally disturbed and latched onto various ideologies to fill a sense of emptiness.

Facebook: https://www.facebook.com/RealKitDaniels

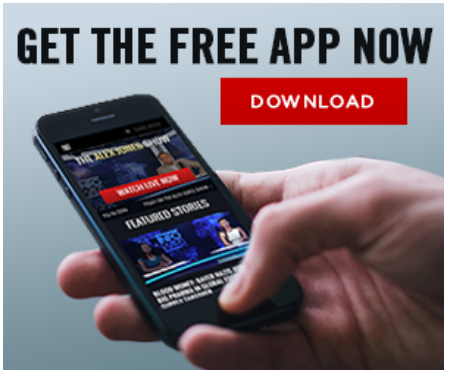
Twitter: Follow @KitDaniels1776

POLLS

How much money would CNN need to pay you to watch?

- $1000
- $10,000
- $1,000,000
- My time is too valuable.

Vote View Results



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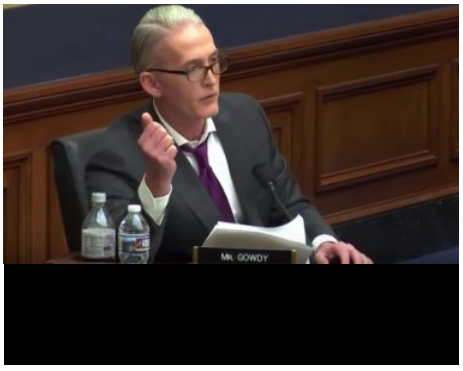

GOWDY: LEAVING CONGRESS TO WORK SOMEWHERE 'WHERE FACTS MATTER'

U.S. NEWS 33 Comments

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U.S. NEWS 201 Comments

REPORT: ROMNEY TO SHOOTING OUTSIDE FEINSTEIN FLASHBACK:

REPORT: ROMNEY TO ANNOUNCE SENATE RUN ON SOCIAL MEDIA

U.S. NEWS

55 Comments

SHOOTING OUTSIDE NSA HQ IN FORT MEADE, ONE INJURED

U.S. NEWS

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U.S. NEWS

118 Comments

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Healthtactics

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Christian Doctor Slams Atheist With 1 Sentence

Health Revelations

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Publishers Clearing House

X

The One Thing All Cheaters Have in Common

TruthFinder

X

Millions of People Are Canceling Their Cable Because of This New Site

PlatinumTVBox.com

X

This Crazy Method "Ends" Ear Ringing (Tinnitus) - Watch

Silencis Complete

X

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Coconut Oil and Alzheimer's

Memory Repair

x

Sandra Bullock's Son Used To Be Adorable, But How He Looks Now Is Insane

Stantondaily

x

The Brutal Scandal That Ended Duck Dynasty

Trendchaser

x

Optometrist: Glasses Are Gone, This Restores Vision Clarity

Outback Vision Protocol

x

7 Time Lotto Winner Says "You're All Playing the Lotto Wrong!"

Smart Advice Daily

x

New "Legal Steroid" Turning Men into Beasts

World Health Labs

x

One Cup (Before Bedtime) Burn Belly Fat Like Crazy!

Healthier Patriot

x

Barron Trump's Leaked IQ Rocks the Nation!

Dailystuff

x

Better Than Prescription Meds? New "Silicon Valley" Drug is Now 100% Legal

Enhanced Mind IQ

x

Rare Photos from History: Historical Photos Will Leave You Lost for Words

Dailystuff

x

Do You Still Support President Trump?

Great American Daily

x

COMMENTS

Sorry, the browser you are using is not currently supported. Disqus actively supports the following browsers:

- Firefox
- Chrome
- Internet Explorer 11+
- Safari

NotMyFaultEver • 0 minutes ago

Gender:Male. Just like every other time. See, I can play childish guilt by association too.

G G • 0 minutes ago

Antifa Social Justice Warrior? Sure looks like one, and his cowardly action fit the profile. The parents, school and police ALL failed with all these red flags?

Freebird • 1 minute ago

Check his Antifa connections just like the Las Vegas shooter

liberalsarethedevil • 2 minutes ago

Democrat (Public) Schools should be abolished. Parents should get a voucher for their equal share of district funds for their children, to use at the private school of their choice.

WhenTheRightIsRight • 2 minutes ago

I can't wait until the Libertarian Party takes the Democratic Party's place as the primary competitor of the Republican Party. I do believe that "yellow" is the color for "Libertarian." If the next Presidential Election is mainly red/yellow states, as opposed to red/blue states, then I'll be jumping for joy. Raise your glasses. "Here's to the fall of the Democratic Party! Cheers!"

Dhfgg • 2 minutes ago

The shirt is making fun of Communism. Here it is: https://www.teepublic.com/k...

Marx has a lampshade on his head, and they're all drinking beer.

VIEWER DISCRETION IS ADVISED • 2 minutes ago

The Demolition of Truth

https://www.youtube.com/wat...

Einstein 12.0 • 3 minutes ago

American exceptionalism hard at work here!👌

daaa • 0 minutes ago

Especially since he was a Hispanic dreamer with Communist leanings. Where do you plan to shoot ?

dan from ohio • 3 minutes ago

Just another democrat leftist inspired by the left to commit violence for the revolution.

bgbs • 4 minutes ago

He looks like a commie antifa punk

Something stinks • 4 minutes ago

US Army hat? Wtf is that all about?

guest • 2 minutes ago

It was reported that Cruz was in Jr ROTC

Einstein 12.0 • 5 minutes ago

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Good-Bye-Man • 1 minute ago

I saw a guy at the mall yesterday who looked just like Peter Griffin....true.

Dmitry Krotchlikmeoff • 0 minutes ago

Michael Moore?

Dmitry Krotchlikmeoff • 2 minutes ago

Beautiful! Magnifique! I would like to purchase your Peter Griffin portrait,sir.

Dave • 6 minutes ago

Not surprised not a mention of the Democrats trying to kill DACA in Congress. Dems will,use this to try and shame republicans.

Big Red • 6 minutes ago

DEMOCRATS = COMMUNISTS

davidscott999 • 6 minutes ago

There has been a pretty heavy censoring of Rand Paul's attacker/neighbor and his political affiliation. Imagine if the roles were reversed.

Flatlandr • 6 minutes ago

Is it possible that Trump orchestrated this shooting to hijack the news cycles so Stormy Daniels never gets to tell her story???

Dmitry Krotchlikmeoff • 1 minute ago

my butt says more intelligent things

Flatlandr • 0 minutes ago

Wow... nice butt.

WDIK • 2 minutes ago

And the magic eight ball says, "Highly Unlikely." I do give you points for the conspiracy angle on this site :-).

CAPTAIN DEPLORABLE • 4 minutes ago

You can’t blame any red blooded man for wanting a night in bed with that.

Flatlandr • 3 minutes ago

Yes, but what if you're orange blooded?

davidscott999 • 5 minutes ago

Of course: As my father used to say - anything is possible. It's possible that you're the only conscious creature in the universe, and everything and everyone around you is in your mind, including this message. Lonely?

Flatlandr • 4 minutes ago

I wish I was lonely. I crave loneliness.

RS • 6 minutes ago

Kudos to Infowars for showing us the perp when the rest of the media is refusing to show. Hope

the rest of us don't lose out rights for the evil deeds of one. That effectively allows criminals to force the debate on our rights.

fearnotruth • 7 minutes ago

once again - every mass shooting till Trump took power was a false flag as per INFOWARS analysis, you know, staged by "gun grabbers" - now it's all commies and terrorists - and all the more reason to stock pile weapons, ammo and always carry - what a bunch of phonies

Michael Moore-on • 1 minute ago

You don't think that it's strange that he's a registered Democrat?

joe schmo • 7 minutes ago

Liberal logic= Instead of allowing the people to be armed who can make the biggest difference and serve as a stronger deterrent than law enforcement, namely teachers, nurses, social workers, security guards, et al..LET'S CREATE "GUN FREE ZONES" where the only people who ARE allowed to enter the scene armed, the cops, can show up after the fact just to draw chalk lines around the bodies..YEAH, THAT'S THE TICKET!!

CAPTAIN DEPLORABLE • 8 minutes ago

Private schools are the answer. A Catholic School is best for your kids. Public Schools can not save your child.

MisterGoldiloxx • 0 minutes ago

I attended Catholic school (I apologize for Francis, I did not vote for him).
Amazing how many non-Catholic parents paid to send their kids there too...

Punnywise • 8 minutes ago

Here we go again ..... blaming ISIS for radical left wing American terror just like Las Vegas ... see a pattern here ?

Andrew Koch • 8 minutes ago

Lolol of course infowars didnt show the picture of him wearing a MAGA hat

Karl • 3 minutes ago

Nor will they mention any relationship between him and Ted Cruz.

lol • 6 minutes ago

because the MAGA hat was Photoshopped..... lol. He was a violent Communist Democrat with an interest in ISIS.

Michael Moore-on • 7 minutes ago

Hillary supporters would often dress up in Bernie Sanders T-Shirts right before committing acts of violence against Trump supporters....It's an old tactic used by Saul Alinsky.....He is a registered Democratic voter after all.

Classical Lover • 5 minutes ago

People that get caught doing that stuff need to be locked up in mental institutions. It's terrible

Karl • 4 minutes ago

They get put in institutions only they are our colleges and universities.

Michael Moore-on • 4 minutes ago

He'll probably get killed by the same deep state people that sent him.

Classical Lover • 3 minutes ago

True, but yet everyone thinks they are all that and then some. Not going to happen to them.

Big Red • 8 minutes ago

Is he a DREAMER?

CAPTAIN DEPLORABLE • 9 minutes ago

White folks take your kids out of these Liberal Public Schools. Obviously, your kids are no longer safe in these schools. They pretty much have become hell holes.

Michael Moore-on • 9 minutes ago

Amen!

WHO IS ENEMY #1 • 9 minutes ago

I suggest you watch "how the CIA controls ISIS" if this blows your sheeple mind.

https://www.youtube.com/wat...

JoJosephson • 9 minutes ago

Shooter's full name is Nikolas Jesus de Cruz

911 box cutter LOL • 8 minutes ago

That would implicate all Christians to be TERRORISTS.

Steve Cross • 10 minutes ago

he found gun under a bench and it accidentally went off .isnt fla. a sanctuary state NOT GUILTY

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AFFIDAVIT OF BROOKE BINKOWSKI

STATE OF CALIFORNIA §
§
SAN DIEGO COUNTY §

Before me, the undersigned notary, on this day personally appeared Brooke Binkowski, a person whose identity has been established to me. Upon being duly sworn, Affiant states:

1. My name is Brooke Binkowski. I am over the age of 21 and competent to make this affidavit.

2. I am a multimedia journalist and researcher, and I am the Managing Editor of Snopes.com.

3. The Snopes.com website was founded by David Mikkelson in 1994 as an expression of his interest in researching urban legends, and it has since grown into the oldest and largest fact-checking site on the Internet.

4. Over twenty years later, Snopes.com has come to be regarded as an essential source for research on rumors and misinformation. Our work has been described as painstaking, scholarly, and reliable, and has been lauded by the world's top folklorists and journalists.

5. As part of my work with Snopes, I routinely investigate rumors circulating on the internet to assess their validity.

6. In the course of this work, I have become very familiar with the website 4chan.org.

7. 4chan.org is a web site that has come to represent the worst of Internet culture. Its visitors frequently create and disseminate violent racist and misogynistic content that they use for purposes of "trolling" and "shitposting" (two Internet culture words that

are employed in a variety of ways but in this context means using disinformation and smears to harass and bully people online.)

8. 4chan.org is an anonymous public site that does not seem to be moderated; its most notorious channel, /pol/, has become a gathering place for white supremacists to discuss or plan events and create and spread hoaxes.

9. The culture of 4chan.org is described by members as ironic nihilism, which is often cover for users to air out their most repellent sentiments under cover of "humor" without consequence, and is thus fertile ground for radicalization.

10. 4chan's reputation for hoaxes and false information is well known among journalists and online culture.

11. In my work with Snopes, I am also very familiar with InfoWars, who often propagate the false stories debunked on our website.

12. InfoWars articles and videos frequently refer to 4chan. I have no doubt that InfoWars reporters are aware of 4chan and aware of its reliability problems.

13. Any journalist familiar with 4chan would have serious doubts about the accuracy of an image obtained from an anonymous 4chan message.

14. Even ignoring 4chan's notorious history of fakery, publishing an image from any anonymous message board with no meaningful corroboration of its accuracy violates absolutely every standard of care I have applied throughout my 23-year career in journalism.

FURTHER YOUR AFFIANT SAYETH NOT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 13th day of July, 2018, by Kimberly Brooke Binkowski,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

TRUE FLORES
Notary Public – California
San Diego County
Commission # 2196941
My Comm. Expires May 13, 2021

(Seal)

Signature

AFFIDAVIT OF MARK BANKSTON

STATE OF TEXAS §
§
HARRIS COUNTY §

Before me, the undersigned notary, on this day personally appeared Mark Bankston, a person whose identity is known to me. Upon being duly sworn, Affiant states:

1. My name is Mark Bankston. I am over the age of 21 and competent to make this affidavit.

2. I am an attorney at the law firm Kaster Lynch Farrar & Ball, LLP. I serve as lead counsel for the Plaintiff in *Fontaine v. Jones, et al.*

3. As a civil litigator, I have nine years of experience in complex tort lawsuits. I have tried over a dozen injury lawsuits to a jury, and I have represented scores of clients in over twenty different states in connection with various product liability, civil rights, employment, and negligence cases in state and federal court.

4. I currently serve on the Plaintiffs' Steering Committee in Multi-District Litigation for MDL-2666, *In re Bair Hugger Products Liability Litigation,* pending in U.S. District Court for the District of Minnesota. I am also the Plaintiffs' Briefing Chair for that consolidated proceeding. My billing in that lawsuit is submitted to the Plaintiffs' Steering Committee at a rate of $550 per hour.

5. While this lawsuit is not as complex as a medical device mass tort, it nonetheless presented complicated legal and evidentiary issues which required an attorney of a high level of competence. Given the work itemized and described in this affidavit, I would value my time for the purposes of this affidavit at a rate of $450 per hour.

6. In connection with responding to Defendants' Motion to Dismiss, I rendered the following legal services:

Work Performed	**Hours**	**Rate**	**Total**
Review of Defendants' Motion to Dismiss	2.5	$450/hr	$1,125
Legal research	12	$450/hr	$5,400
Expert meetings	6	$450/hr	$2,700
Online fact research	5	$450/hr	$2,250
Drafting Plaintiff's response	21	$450/hr	$9,450
			$20, 926

7. All the work described was necessary to properly respond to Defendants' Motion to Dismiss under the Texas Citizen's Participation Act.

FURTHER YOUR AFFIANT SAYETH NOT

Mark Bankston

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

SWORN to and SUBSCRIBED before, the undersigned authority, on the ___ day of July, 2018, by Mr. Mark Bankston.

ERIC TELLEZ
Notary Public State of Texas
My Commission# 124709495
My Comm. Exp. Apr. 06, 2021

Notary Public, State of Texas

My commission expires: 4-6-21

AFFIDAVIT OF MARCEL FONTAINE

STATE OF TEXAS §
§
TRAVIS COUNTY §

Before me, the undersigned notary, on this day personally appeared MARCEL FONTAINE, a person whose identity is known to me. Upon being duly sworn, Affiant states:

1. My name is Marcel Fontaine. I am over the age of 21 and competent to make this affidavit.

2. On February 14, 2018, my photograph was published by Infowars along with an allegation that I was the Parkland High School shooter. As a result, my image went viral on social media.

3. The extreme shock, stress, embarrassment, and fear from this incident caused a major disruption in my daily routine. For the first several weeks, everyone who knew me was talking about it. Even though many of them meant well, I couldn't go anywhere or talk online without the incident coming up. Because of this, I started avoiding social settings, and my life became more isolated.

4. I generally tried to avoid looking at the things being said online as my picture was being passed around after the InfoWars article. But it was everywhere. I've seen hundreds of violent, hateful messages posted online. I have seen messages from people wishing me dead even after being told of my real identity. And I've personally been sent violent and harassing messages which continued even weeks later, including a threat which referenced my place of employment.

5. After my photo spread across the internet, I have seen blogs, social media messages, and images posted online by individuals who appear to believe I am part of a conspiracy to stage the Florida shooting. I saw an individual online post a facial comparison to claim that I am an actor who "played" Nikolas Cruz. I am terrified that InfoWars fans may come to similar conclusions, and that they may seek to confront me or do me harm over the coming years. I am aware this has happened to other individuals who became a part of a conspiracy theory popularized by Infowars.

6. As a result of these fears, my sleep became highly irregular, and I continue to suffer from severe insomnia. This also disrupted my usual routine. I've been having frequent

nightmares about a confrontation with an InfoWars fan. When walking in public places, I found myself having severe panic attacks at the thought of those nightmares coming true.

7. I feel like having my image exposed to the world as a mass murderer has forever changed me. My demeanor has become more anxious and less trusting. It is also interfering with my personal relationships. Because my severe anxiety and fear over this incident shows no sign of going away, I decided to seek therapy to help address these issues.

FURTHER YOUR AFFIANT SAYETH NOT

MARCEL FONTAINE

SWORN to and SUBSCRIBED before, the undersigned authority, on the 25th day of May, 2018, by Mr. Marcel Fontaine.

ERIC TELLEZ
Notary Public State of Texas
My Commission# 124709495
My Comm. Exp. Apr. 06. 2021

Notary Public, State of Texas

My commission expires: 4-6-21

AFFIDAVIT OF FRED ZIPP

STATE OF TEXAS §
§
TRAVIS COUNTY §

Before me, the undersigned notary, on this day personally appeared FRED ZIPP, a person whose identity has been established to me. Upon being duly sworn, Affiant states:

PERSONAL BACKGROUND

I have spent 39 years in daily newspaper journalism and journalism education.

From 1979 to 1984, I was a reporter and assistant city editor at the Beaumont Enterprise in Beaumont, Texas. From 1984 to 1987, I was a sports copy editor, assistant sports editor and assistant city editor at the Austin American-Statesman in Austin, Texas. From 1987 to 1998, I was assistant metro editor, deputy metro editor, news editor and metro editor the Palm Beach Post in West Palm Beach, Florida. In 1998, I returned to the American-Statesman as assistant managing editor, managing editor, and retired as editor. Over the course of my career, I gained extensive experience and expertise in the responsible delivery of news content to a mass media audience.

In 2012, I began teaching at the University of Texas at Austin. At the University of Texas, I supervise a digital media initiative known as *Reporting Texas* which functions similarly to a newsroom; students are the reporters, and I am their editor. I help them conceive, report and write stories that are posted on the reportingtexas.com website. *Reporting Texas* focuses on often hidden stories, using text, photos, audio and video to provide views of people and places rarely seen in the news. As such, I continue to apply my expertise in story verification on a daily basis while instructing students.

I have been a director and officer of the Freedom of Information Foundation of Texas and the Headliners Foundation of Texas, an organization that promotes journalism excellence in the state.

SCOPE OF REVIEW

In arriving at my opinions in this case, I have used the same principles and analysis as I have used throughout my journalism career to determine whether particular images and assertions could be responsibly published. This review included an examination of the article at issue as well as relevant background materials. I have reviewed numerous background items, including:

- News articles and internet publications about the spread of Plaintiff's image.
- Social media posts relating to Plaintiff's image.
- Various articles and social media posts from InfoWars.
- Industry reference materials on general journalism practices and the ethical publishing of images.

BACKGROUND KNOWLEDGE OF INFOWARS

Having been involved in media in Austin for 23 years, I am aware of Alex Jones and InfoWars, although I felt no need to pay close attention to either one before agreeing to review the article in this lawsuit. Nonetheless, I was aware of InfoWars' extremely poor reputation in the media industry with respect to the reliability of the information it publishes. I have considered InfoWars' history only to the extent of concluding that InfoWars should be conscious of the criticism over its reliability.

After I asked to review the events of this lawsuit, I have spent a significant amount of time reading articles on InfoWars.com and reviewing audio and video recordings posted on the site. While the site purports to be a news and information operation, it is actually a propaganda outlet for Mr. Jones' theories about a global conspiracy to control and enslave the world's population. In Mr. Jones' views, communists are active participants in the conspiracy, and depriving citizens of access to firearms is a tactic used in enslaving the population.

EXERCISING REASONABLE CARE IN MASS MEDIA

According to the American Press Institute, "Journalism is the activity of gathering, assessing, creating, and presenting news and information. It is also the product of these activities."

"Journalism can be distinguished from other activities and products by certain identifiable characteristics and practices. These elements not only separate journalism from other forms of communication, they are what make it indispensable to democratic societies." [1]

Further, API states, the value of journalism "flows from its purpose, to provide people with verified information they can use to make better decisions, and its practices, the most important of which is a systematic process – a discipline of verification – that journalists use to find not just the facts, but also the 'truth about the facts.'"[2] What sets journalism apart from other forms of communication, then, is the deliberate, disciplined practice of verification that the information it provides the public is accurate.

Identifying a person as a suspect in a mass shooting is perhaps the most serious and damaging accusation that could be leveled against an individual. Most news organizations would report such an accusation only if it came from a clearly identified source involved in the investigation of the shooting. Similarly, most news organizations would publish an image of a person identified as a suspect in a mass shooting only if the image came from a clearly identified source involved in the investigation. Identifying a suspect or publishing an image of a suspect based on sources unrelated to an investigation would require the highest level of diligence in verifying accuracy. A publisher should take appropriate steps to verify the following:

[1] https://www.americanpressinstitute.org/journalism-essentials/what-is-journalism/
[2] https://www.americanpressinstitute.org/journalism-essentials/what-is-journalism/makes-journalism-different-forms-communication/

- Has a bona fide allegation been made against the individual?
- Who made the allegation?
- What is the basis for the allegation?
- Are the accuser and the basis for the allegation credible?

Publishers must take into account the significance of a news event when considering the consequences of a false accusation. The consequences of a false accusation are enormous when the event is subject to global attention. The desire to report as rapidly as possible on a breaking news event does not change a publisher's obligation to report only the facts and to avoid making false accusations of criminal conduct. Publishers understand that using the image of an innocent person as a mass murderer can expose that person to hatred, contempt, ridicule, or harassment.

Among the references I reviewed in this case is an industry publication entitled *Verification Handbook: An Ultimate Guideline on Digital Age Sourcing for Emergency Coverage*, edited by Craig Silverman. The guidelines discussed in this publication confirm my opinions in this case, and they accurately state the appropriate standard of care.

As a general rule applied to any kind of content, the Handbook states, "Verification employs a mix of three factors:

- "A person's resourcefulness, persistence, skepticism and skill."
- "Sources' knowledge, reliability and honesty, and the number, variety and reliability of sources you can find and persuade to talk."
- "Documentation."[3]

More specifically, in Chapter 4: Verifying Images, the Handbook states "the basic principles of image verification remain the same" in the digital age.[4] These steps include:

- "Establish the author/originator of the image."
- "Corroborate the location, date and approximate time the image was taken."
- "Confirm the image is what it is labeled/suggested to be showing."[5]

[3] *Verification Handbook: An Ultimate Guideline on Digital Age Sourcing for Emergency Coverage,* p. 17.
[4] *Id,* p. 36.
[5] *Id,* p. 36

More specifically still, in a section on user-generated content (that is, content produced by a member of a social network for other members of the network), the Verification Handbook offers these guidelines:

- "Start from the assumption that the content is inaccurate or been scraped, sliced, diced, duplicated and/or reposted with different context."

- "Follow these steps when verifying UGC:

    - Identify and verify the original source and the content (including location, date and approximate time).

    - Triangulate and challenge the source.

    - Obtain permission from the author/originator to use the content (photos, videos, audio).

- "Always gather information about the uploaders, and verify as much as possible before contacting and asking them directly whether they are indeed victims, witnesses or the creator of the content."[6]

During this process, "an important step is to use a service like Google Reverse Image Search or TinEye."[7] This is because "pre-existing images that have been misattributed (perhaps the most common form of 'fake') can often be debunked in a few seconds through a reverse image search."[8]

Kit Daniels identifies himself as an "editor, video journalist and social commentator" for InfoWars.com.[9] In his declaration related to this case, he describes how he came to publish the photo of Marcel Fontaine on InfoWars in an article titled "Reported Florida Shooter Dressed as Communist, Supported Isis." Mr. Daniels claims that the image was "obtained from the popular image and web board entitled 4Chan." He also claims he saw the image on social media, and points to "a Twitter post by "Laguna Beach Antifa." According to Mr. Daniels, "the publication of the Challenged Image on 4Chan confirmed the reports."

Mr. Daniels admits that he did not perform any of the verification steps outlined above; apparently, he made no effort at all to verify that the image accurately portrayed the Parkland shooter. He entirely skipped the "assessing" stage of journalistic practice as articulated by the American Press Institute. It is reckless to ignore basic verification and publish an image without eliminating serious doubts about its accuracy. A reporter should take the necessary steps to "confirm that the image is what it purports to be."[10]

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[6] *Id.* at 98.
[7] *Id.* at 37.
[8] *Id.* at 45
[9] *Declaration of Kit Daniels, Marcel Fontaine, Plaintiff, v. Alex E. Jones, InfoWars, LLC, Free Speech Systems, LLC and Kit Daniels, Defendants*
[10] *Verification Handbook: An Ultimate Guideline on Digital Age Sourcing for Emergency Coverage*, p. 39.

OPINION REGARDING INFOWARS' FEBRUARY 14, 2018 ARTICLE

My review shows that Mr. Fontaine was not the Parkland shooter and that he had no involvement with the Parkland shooting. I have been unable to locate any party making a genuine allegation that Mr. Fontaine was the Parkland shooter.

InfoWars admits that it found the image on the website 4chan.org, though it did not attribute the image to 4chan in its article, as standard journalism practice would dictate. 4chan is an anonymous discussion forum with a history for fakery and internet trolling. Any competent journalist would know there are obvious reasons to doubt the veracity of an anonymous 4chan post as a news source.

In fact, 4chan's reputation for fakery during national tragedies became so bad that Forbes published an article on October 3, 2017, entitled "Google Needs to Blacklist 4chan During National Crises."[11] Noting how 4chan is "the Internet's own Lord of the Flies island," the article explains how "[t]heir community actively seeks to spread misinformation, especially during mass shootings."[12] The article notes that the users of 4chan "have been engaging in this type of online sabotage for over a decade."[13]

I have reviewed materials which indicate that Mr. Daniels personally understood 4chan's reliability problem. For example, on August 24, 2017, Mr. Daniels wrote an article for InfoWars entitled "BBC Falls Victim to 4chan Trolling – MSM Caught Sound Like Idiots."[14] Mr. Daniels mocked the BBC, writing that the "BBC claims visiting 4Chan constitutes 'investigative journalism.'"[15]

I conclude that more likely than not, Mr. Daniels and InfoWars entertained serious doubts about the accuracy of the photograph found on 4chan.

Moreover, a routine reverse-image search would have revealed to Mr. Daniels that the same photograph had been posted two days before the shooting by a 4chan troll with a Nazi flag on his personal profile. That anonymous 4chan troll had used the image to make fun of Mr. Fontaine.

---

[11] https://www.forbes.com/sites/fruzsinaeordogh/2017/10/03/google-needs-to-blacklist-4chan-during-national-crises/#3a66430f3dcd
[12] *Id.*
[13] *Id.*
[14] https://www.infowars.com/bbc-falls-victim-to-4chan-trolling-msm-caught-sounding-like-idiots/
[15] *Id.*

Within hours of the posting of Mr. Daniel's story, numerous individuals online pointed out that a reverse-image search would have revealed this 4chan post from two days earlier. A search of the 4chan archives also would have revealed that on February 10, four days before the shooting, Mr. Fontaine's image was posted in response to a person asking users to "show me your worst unironic lefty dimwits, commies, etc., you've found while surfing the internet/social media."[16]

Above: Commenter on the disputed article discusses the reverse-image search result. I have reviewed multiple examples of users drawing attention to this fact.

As noted above, an image search is a basic step in photo verification. Mr. Daniels was aware of reverse image searching, as he included a link to a reverse image search in a story he wrote on November 5, 2016, entitled "Read Hillary Emails to Find Child Rape Evidence."[17]

[16] https://archive.is/snpGJ
[17] https://staging.infowars.com/bombshell-hillary-linked-to-child-rape-network-emails-suggest/

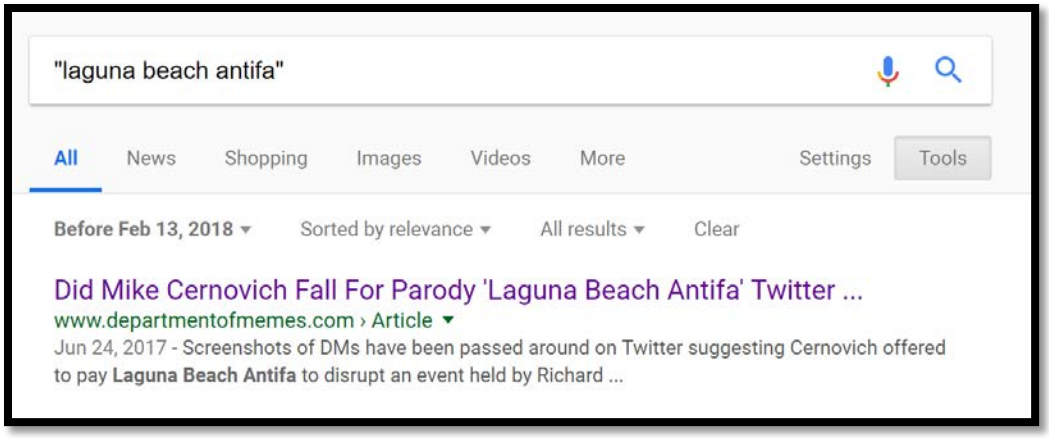
This is not the first time InfoWars ignored proper attribution and verification of an image. As reported by the Washington Post, InfoWars has been criticized in the past for relying on dubious information rather than performing a reverse image search:

> In what may be one of the more bizarre attacks on the controversial Common Core curriculum, Alex Jones's Infowars — best known for its propagation of wonderfully imaginative conspiracy theories — published a series of "shocking images out of a classroom in Jacksonville, Florida" that show "a teacher demonstrating how to use a strap-on sex toy" to 11-year-old students. The story has since disappeared, perhaps because a quick reverse image-search makes it pretty clear that the images came from an LGBT event at a college in Canada … and that the story itself originated on *Modern Woman Digest*, a bad "satire," *i.e.* fake-news, site.[18]

Mr. Daniels also stated that he saw the image from 4chan on social media, but he pointed to a similar "satire" fake news source: an anonymous Twitter user known as "Laguna Beach Antifa," who was clearly making a bad joke:

The anonymous Twitter account "Laguna Beach Antifa" is a known troll account with a documented history of hoaxes. A Google search would have revealed this fact, since four of the top of results on February 13, 2018, for "Laguna Beach Antifa" were articles noting the account was fake. Even a cursory review of its prior content would have made this obvious as well.

[18] https://www.washingtonpost.com/news/the-intersect/wp/2014/09/19/what-was-fake-on-the-internet-this-week-sidewalks-for-texters-the-antichrist-and-charging-your-phone-by-microwave/?utm_term=.daf038d93bdc



Above: The first Google result as of February 13, 2018

In short, the "Laguna Beach Antifa" tweet was not a serious message or genuine allegation. It was a bad joke by an anonymous internet troll.

Not only did InfoWars fail to take basic steps to verify the photograph, but also, according to the evidence I reviewed, it was likely motivated by a desire to avoid the truth. Not only does the article use the recklessly sourced photo of Mr. Fontaine, but it also contains voter registration information for a certain "Nicolas Cruz," an individual with a differently spelled name than the accused Florida shooter, Nikolas Cruz.[19] The InfoWars article also makes the dubious claim that "the shooter's garb is very similar to the style worn by ISIS fighters." The overall content of the article is an attempt to connect the shooter to left-wing ideologies or Muslim terror through use of bogus evidence.

In addition, I have reviewed numerous articles and social media posts by InfoWars and Mr. Daniels which feature alarmist statements about a communist threat to America. It appears likely that InfoWars' eagerness to publish anti-communist content to its audience caused it to disregard the accuracy problems with the photograph.

In sum, it is my opinion that the InfoWars failed to use reasonable care to ascertain the accuracy of the photograph or the credibility of the allegations. Moreover, it is my opinion that the InfoWars entertained serious doubt about the truth of their publication. I conclude that the photo was published with reckless disregard for falsity.

FURTHER YOUR AFFIANT SAYETH NOT

[19] https://www.usnews.com/news/best-states/florida/articles/2018-02-16/florida-shooting-suspect-is-not-a-democrat

ERIC TELLEZ
Notary Public State of Texas
My Commission# 124709495
My Comm. Exp. Apr. 06, 2021

Fred Zipp

Eric Tellez

My commission expires 4-6-21

archive.today
webpage capture
Saved from https://www.infowars.com/report-florida-shooter-inspired-by-isis-allahu-akbar/ search
15 Feb 2018 00:25:31 UT
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All snapshots from host www.infowars.com
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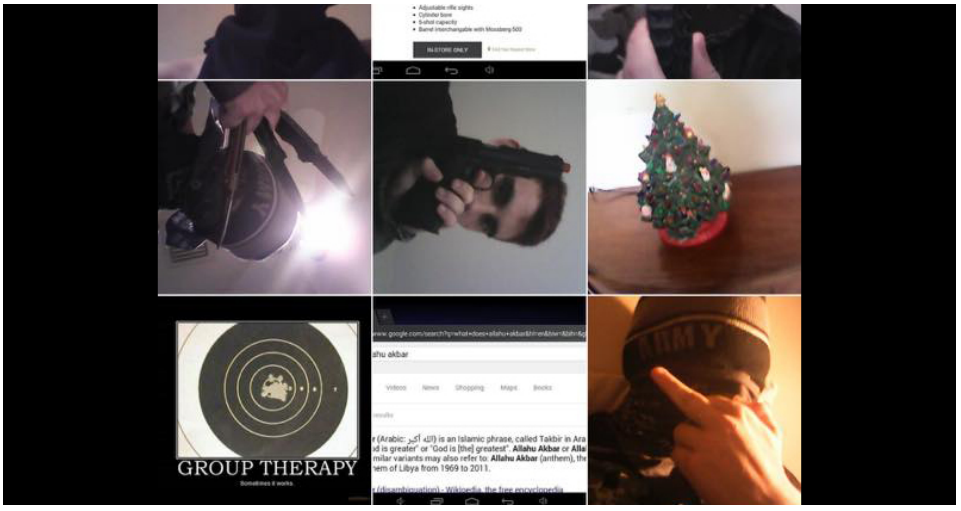
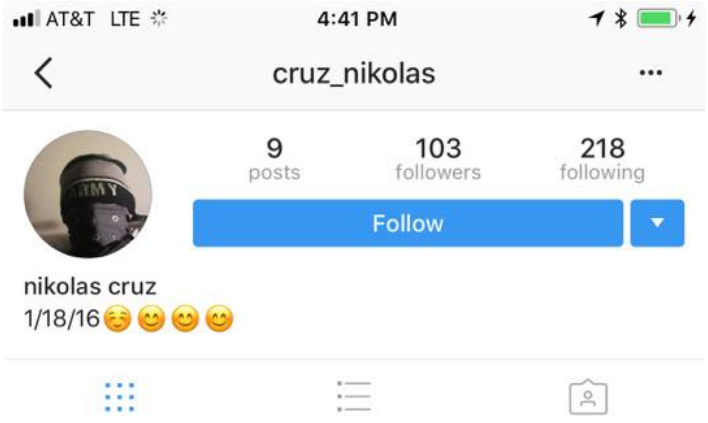
REPORTED FLORIDA SHOOTER DRESSED AS COMMUNIST, SUPPORTED ISIS

MSM already covering it up

Kit Daniels | Infowars.com - FEBRUARY 14, 2018 746 Comments



Alleged photos of the suspected Florida high school shooter make reference to various ideologies including communism and perhaps ISIS, and voter records suggest 19-year-old Nicolas Cruz was a Democratic voter.



TODAY ON THE ALEX JONES SHOW

Wednesday, Feb. 14th: Americans Fall in Love with Trump - The president's popularity is on a massive upswing as more people - including former Hillary voters -...

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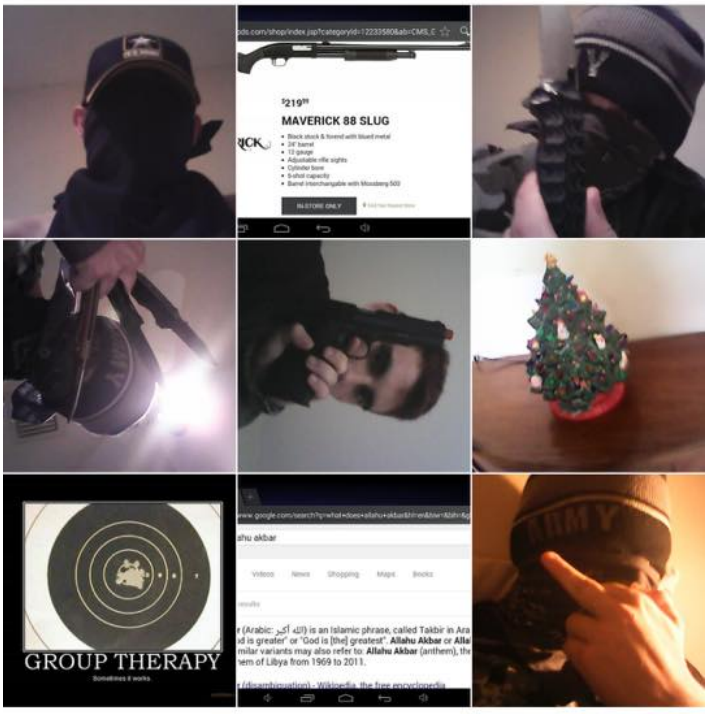

Additionally, the shooter's garb is very similar to the style worn by ISIS fighters in Syria.

> Parkland Killer, Nicolas Cruz, was a known security threat & was not allowed to carry a backpack to school last year. Also belonged to Middle East Resistance groups on social media. A) How did he get in being a known-threat? B) Was this terror-related?
>
> — PolitiDiva™ (@realPolitiDiva) February 14, 2018

The Instagram account was taken down soon after the suspect was arrested.

The shooter was also suspected of having planted bombs, according to the police scanner.

Internet sleuths have suggested the following screenshot reveal Cruz may have had an anti-Islam slant back in 2015, but interestingly, there's also a 19-year-old Nicolas Cruz who's listed as a Democratic voter in Oakland Park, Florida, which may be the suspect (address blurred out to protect the innocent otherwise):

Why Is Jeff Sessions Violating Donald Trump's Marijuana Position

Pedophile Becomes Fire Chief, Cannabis Activist Gets Life

Reported Florida Shooter Dressed as Communist, Supported ISIS

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Shock Footage: Student Films Shots Fired Inside Florida High School

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1365 Comments

NYT Investigates If White Children Can Wear Black Panther Mask
1393 Comments

"Fuck Trump" T-Shirt Wearer Says He is Fighting Institutional Racism
1114 Comments

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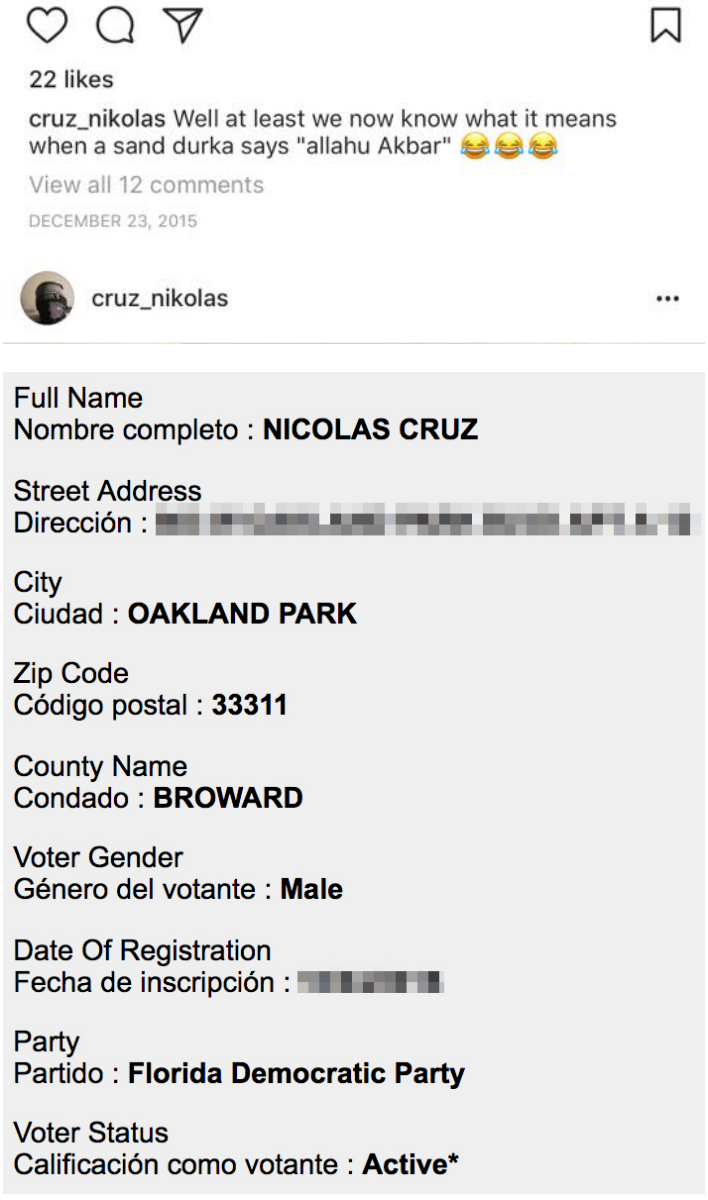
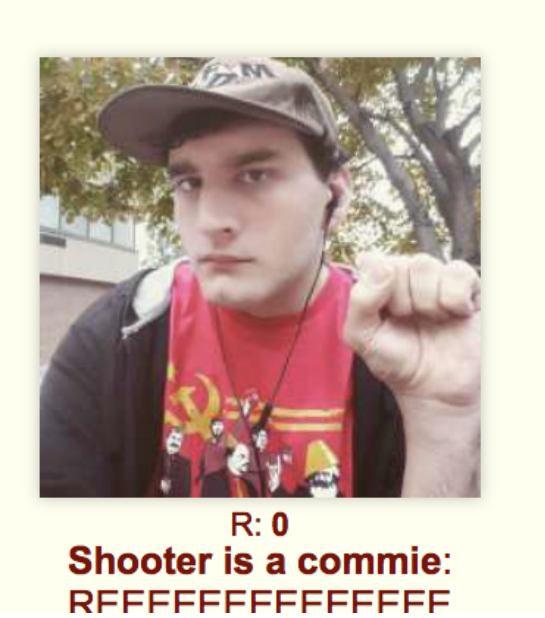


And another alleged photo of the suspect shows communist garb:



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THE ALEX JONES SHOW. AI SUPER COMPUTERS WILL DECIDE WHO LIVES AND WHO DIES

REAL NEWS WITH DAVID KNIGHT. REVEALED: THE "DEEP THROAT" OF RUSSIAGATE

1 2 3 4 5

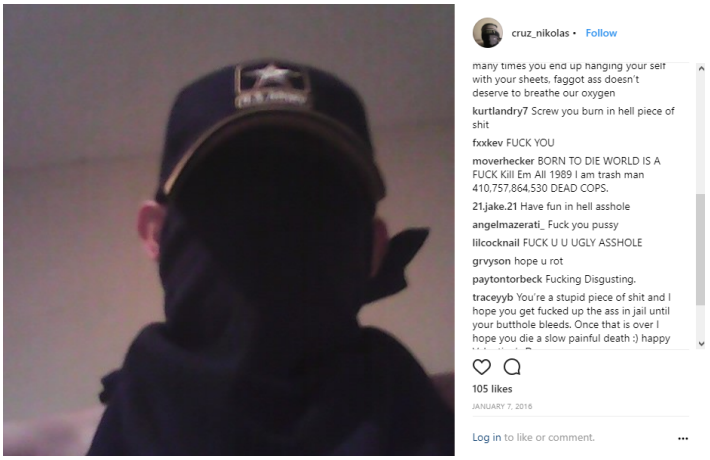
FEATURED VIDEOS

The Fight For Free Speech - See the rest on the Alex Jones YouTube channel.

Does Tucker Carlson Despise Alex Jones? - See the rest on the Alex Jones YouTube channel.

ILLUSTRATION

This screenshot, found on a Japanese cartoon image board, was apparently taken right after the suspect was apprehended – and right before Instagram nixed the account:



It's possible the suspect is simply mentally disturbed and latched onto various ideologies to fill a sense of emptiness.

Facebook: https://www.facebook.com/RealKitDaniels

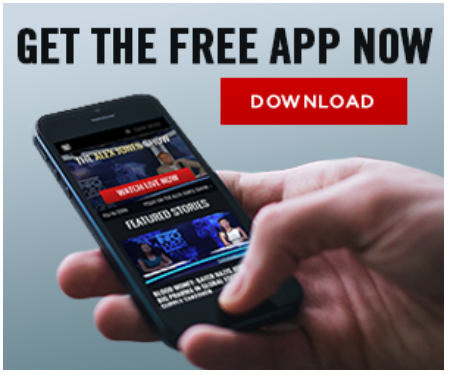
Twitter: Follow @KitDaniels1776

POLLS

How much money would CNN need to pay you to watch?

- $1000
- $10,000
- $1,000,000
- My time is too valuable.

Vote View Results



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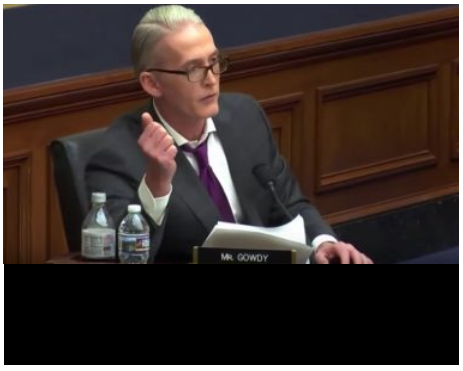

GOWDY: LEAVING CONGRESS TO WORK SOMEWHERE 'WHERE FACTS MATTER'

U.S. NEWS 33 Comments

SHOCK POLL FINDS DEMOCRATS' "BLUE WAVE" HAS TURNED INTO A DROUGHT

U.S. NEWS 201 Comments

REPORT: ROMNEY TO SHOOTING OUTSIDE FEINSTEIN FLASHBACK:

REPORT: ROMNEY TO ANNOUNCE SENATE RUN ON SOCIAL MEDIA

U.S. NEWS

55 Comments

SHOOTING OUTSIDE NSA HQ IN FORT MEADE, ONE INJURED

U.S. NEWS

125 Comments

FEINSTEIN FLASHBACK: 'DAY WHEN AMERICA COULD BE THE WELFARE STATE FOR MEXICO IS GONE'

U.S. NEWS

118 Comments

Ads by Revcontent

You Should Never Shop on Amazon Again After Seeing This Site

Tophatter

X

Watch Obama's Face at 0:33. This Leaked Video Will Destroy Obama's Legacy

Healthtactics

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Christian Doctor Slams Atheist With 1 Sentence

Health Revelations

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Publishers Clearing House

X

The One Thing All Cheaters Have in Common

TruthFinder

X

Millions of People Are Canceling Their Cable Because of This New Site

PlatinumTVBox.com

X

This Crazy Method "Ends" Ear Ringing (Tinnitus) - Watch

Silencis Complete

X

The Unusual Link Between

Coconut Oil and Alzheimer's

Memory Repair

x

Sandra Bullock's Son Used To Be Adorable, But How He Looks Now Is Insane

Stantondaily

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The Brutal Scandal That Ended Duck Dynasty

Trendchaser

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Optometrist: Glasses Are Gone, This Restores Vision Clarity

Outback Vision Protocol

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7 Time Lotto Winner Says "You're All Playing the Lotto Wrong!"

Smart Advice Daily

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New "Legal Steroid" Turning Men into Beasts

World Health Labs

x

One Cup (Before Bedtime) Burn Belly Fat Like Crazy!

Healthier Patriot

x

Barron Trump's Leaked IQ Rocks the Nation!

Dailystuff

x

Better Than Prescription Meds? New "Silicon Valley" Drug is Now 100% Legal

Enhanced Mind IQ

x

Rare Photos from History: Historical Photos Will Leave You Lost for Words

Dailystuff

x

Do You Still Support President Trump?

Great American Daily

x

COMMENTS

Sorry, the browser you are using is not currently supported. Disqus actively supports the following browsers:

- Firefox
- Chrome
- Internet Explorer 11+
- Safari

NotMyFaultEver • 0 minutes ago

Gender:Male. Just like every other time. See, I can play childish guilt by association too.

G G • 0 minutes ago

Antifa Social Justice Warrior? Sure looks like one, and his cowardly action fit the profile. The parents, school and police ALL failed with all these red flags?

Freebird • 1 minute ago

Check his Antifa connections just like the Las Vegas shooter

liberalsarethedevil • 2 minutes ago

Democrat (Public) Schools should be abolished. Parents should get a voucher for their equal share of district funds for their children, to use at the private school of their choice.

WhenTheRightIsRight • 2 minutes ago

I can't wait until the Libertarian Party takes the Democratic Party's place as the primary competitor of the Republican Party. I do believe that "yellow" is the color for "Libertarian." If the next Presidential Election is mainly red/yellow states, as opposed to red/blue states, then I'll be jumping for joy. Raise your glasses. "Here's to the fall of the Democratic Party! Cheers!"

Dhfgg • 2 minutes ago

The shirt is making fun of Communism. Here it is: https://www.teepublic.com/k...

Marx has a lampshade on his head, and they're all drinking beer.

VIEWER DISCRETION IS ADVISED • 2 minutes ago

The Demolition of Truth

https://www.youtube.com/wat...

Einstein 12.0 • 3 minutes ago

American exceptionalism hard at work here!👌

daaa • 0 minutes ago

Especially since he was a Hispanic dreamer with Communist leanings. Where do you plan to shoot ?

dan from ohio • 3 minutes ago

Just another democrat leftist inspired by the left to commit violence for the revolution.

bgbs • 4 minutes ago

He looks like a commie antifa punk

Something stinks • 4 minutes ago

US Army hat? Wtf is that all about?

guest • 2 minutes ago

It was reported that Cruz was in Jr ROTC

Einstein 12.0 • 5 minutes ago

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Good-Bye-Man • 1 minute ago

I saw a guy at the mall yesterday who looked just like Peter Griffin....true.

Dmitry Krotchlikmeoff • 0 minutes ago

Michael Moore?

Dmitry Krotchlikmeoff • 2 minutes ago

Beautiful! Magnifique! I would like to purchase your Peter Griffin portrait,sir.

Dave • 6 minutes ago

Not surprised not a mention of the Democrats trying to kill DACA in Congress. Dems will,use this to try and shame republicans.

Big Red • 6 minutes ago

DEMOCRATS = COMMUNISTS

davidscott999 • 6 minutes ago

There has been a pretty heavy censoring of Rand Paul's attacker/neighbor and his political affiliation. Imagine if the roles were reversed.

Flatlandr • 6 minutes ago

Is it possible that Trump orchestrated this shooting to hijack the news cycles so Stormy Daniels never gets to tell her story???

Dmitry Krotchlikmeoff • 1 minute ago

my butt says more intelligent things

Flatlandr • 0 minutes ago

Wow... nice butt.

WDIK • 2 minutes ago

And the magic eight ball says, "Highly Unlikely." I do give you points for the conspiracy angle on this site :-).

CAPTAIN DEPLORABLE • 4 minutes ago

You can’t blame any red blooded man for wanting a night in bed with that.

Flatlandr • 3 minutes ago

Yes, but what if you're orange blooded?

davidscott999 • 5 minutes ago

Of course: As my father used to say - anything is possible. It's possible that you're the only conscious creature in the universe, and everything and everyone around you is in your mind, including this message. Lonely?

Flatlandr • 4 minutes ago

I wish I was lonely. I crave loneliness.

RS • 6 minutes ago

Kudos to Infowars for showing us the perp when the rest of the media is refusing to show. Hope

the rest of us don't lose out rights for the evil deeds of one. That effectively allows criminals to force the debate on our rights.

fearnotruth • 7 minutes ago

once again - every mass shooting till Trump took power was a false flag as per INFOWARS analysis, you know, staged by "gun grabbers" - now it's all commies and terrorists - and all the more reason to stock pile weapons, ammo and always carry - what a bunch of phonies

Michael Moore-on • 1 minute ago

You don't think that it's strange that he's a registered Democrat?

joe schmo • 7 minutes ago

Liberal logic= Instead of allowing the people to be armed who can make the biggest difference and serve as a stronger deterrent than law enforcement, namely teachers, nurses, social workers, security guards, et al..LET'S CREATE "GUN FREE ZONES" where the only people who ARE allowed to enter the scene armed, the cops, can show up after the fact just to draw chalk lines around the bodies..YEAH, THAT'S THE TICKET!!

CAPTAIN DEPLORABLE • 8 minutes ago

Private schools are the answer. A Catholic School is best for your kids. Public Schools can not save your child.

MisterGoldiloxx • 0 minutes ago

I attended Catholic school (I apologize for Francis, I did not vote for him).
Amazing how many non-Catholic parents paid to send their kids there too...

Punnywise • 8 minutes ago

Here we go again ..... blaming ISIS for radical left wing American terror just like Las Vegas ... see a pattern here ?

Andrew Koch • 8 minutes ago

Lolol of course infowars didnt show the picture of him wearing a MAGA hat

Karl • 3 minutes ago

Nor will they mention any relationship between him and Ted Cruz.

lol • 6 minutes ago

because the MAGA hat was Photoshopped..... lol. He was a violent Communist Democrat with an interest in ISIS.

Michael Moore-on • 7 minutes ago

Hillary supporters would often dress up in Bernie Sanders T-Shirts right before committing acts of violence against Trump supporters....It's an old tactic used by Saul Alinsky.....He is a registered Democratic voter after all.

Classical Lover • 5 minutes ago

People that get caught doing that stuff need to be locked up in mental institutions. It's terrible

Karl • 4 minutes ago

They get put in institutions only they are our colleges and universities.

Michael Moore-on • 4 minutes ago

He'll probably get killed by the same deep state people that sent him.

Classical Lover • 3 minutes ago

True, but yet everyone thinks they are all that and then some. Not going to happen to them.

Big Red • 8 minutes ago

Is he a DREAMER?

CAPTAIN DEPLORABLE • 9 minutes ago

White folks take your kids out of these Liberal Public Schools. Obviously, your kids are no longer safe in these schools. They pretty much have become hell holes.

Michael Moore-on • 9 minutes ago

Amen!

WHO IS ENEMY #1 • 9 minutes ago

I suggest you watch "how the CIA controls ISIS" if this blows your sheeple mind.

https://www.youtube.com/wat...

JoJosephson • 9 minutes ago

Shooter's full name is Nikolas Jesus de Cruz

911 box cutter LOL • 8 minutes ago

That would implicate all Christians to be TERRORISTS.

Steve Cross • 10 minutes ago

he found gun under a bench and it accidentally went off .isnt fla. a sanctuary state NOT GUILTY

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AFFIDAVIT OF BROOKE BINKOWSKI

STATE OF CALIFORNIA §
§
SAN DIEGO COUNTY §

Before me, the undersigned notary, on this day personally appeared Brooke Binkowski, a person whose identity has been established to me. Upon being duly sworn, Affiant states:

1. My name is Brooke Binkowski. I am over the age of 21 and competent to make this affidavit.

2. I am a multimedia journalist and researcher, and I am the Managing Editor of Snopes.com.

3. The Snopes.com website was founded by David Mikkelson in 1994 as an expression of his interest in researching urban legends, and it has since grown into the oldest and largest fact-checking site on the Internet.

4. Over twenty years later, Snopes.com has come to be regarded as an essential source for research on rumors and misinformation. Our work has been described as painstaking, scholarly, and reliable, and has been lauded by the world's top folklorists and journalists.

5. As part of my work with Snopes, I routinely investigate rumors circulating on the internet to assess their validity.

6. In the course of this work, I have become very familiar with the website 4chan.org.

7. 4chan.org is a web site that has come to represent the worst of Internet culture. Its visitors frequently create and disseminate violent racist and misogynistic content that they use for purposes of "trolling" and "shitposting" (two Internet culture words that

are employed in a variety of ways but in this context means using disinformation and smears to harass and bully people online.)

8. 4chan.org is an anonymous public site that does not seem to be moderated; its most notorious channel, /pol/, has become a gathering place for white supremacists to discuss or plan events and create and spread hoaxes.

9. The culture of 4chan.org is described by members as ironic nihilism, which is often cover for users to air out their most repellent sentiments under cover of "humor" without consequence, and is thus fertile ground for radicalization.

10. 4chan's reputation for hoaxes and false information is well known among journalists and online culture.

11. In my work with Snopes, I am also very familiar with InfoWars, who often propagate the false stories debunked on our website.

12. InfoWars articles and videos frequently refer to 4chan. I have no doubt that InfoWars reporters are aware of 4chan and aware of its reliability problems.

13. Any journalist familiar with 4chan would have serious doubts about the accuracy of an image obtained from an anonymous 4chan message.

14. Even ignoring 4chan's notorious history of fakery, publishing an image from any anonymous message board with no meaningful corroboration of its accuracy violates absolutely every standard of care I have applied throughout my 23-year career in journalism.

FURTHER YOUR AFFIANT SAYETH NOT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 13th day of July, 2018, by Kimberly Brooke Binkowski,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

TRUE FLORES
Notary Public – California
San Diego County
Commission # 2196941
My Comm. Expires May 13, 2021

(Seal)

Signature

AFFIDAVIT OF MARK BANKSTON

STATE OF TEXAS §
§
HARRIS COUNTY §

Before me, the undersigned notary, on this day personally appeared Mark Bankston, a person whose identity is known to me. Upon being duly sworn, Affiant states:

1. My name is Mark Bankston. I am over the age of 21 and competent to make this affidavit.

2. I am an attorney at the law firm Kaster Lynch Farrar & Ball, LLP. I serve as lead counsel for the Plaintiff in *Fontaine v. Jones, et al.*

3. As a civil litigator, I have nine years of experience in complex tort lawsuits. I have tried over a dozen injury lawsuits to a jury, and I have represented scores of clients in over twenty different states in connection with various product liability, civil rights, employment, and negligence cases in state and federal court.

4. I currently serve on the Plaintiffs' Steering Committee in Multi-District Litigation for MDL-2666, *In re Bair Hugger Products Liability Litigation,* pending in U.S. District Court for the District of Minnesota. I am also the Plaintiffs' Briefing Chair for that consolidated proceeding. My billing in that lawsuit is submitted to the Plaintiffs' Steering Committee at a rate of $550 per hour.

5. While this lawsuit is not as complex as a medical device mass tort, it nonetheless presented complicated legal and evidentiary issues which required an attorney of a high level of competence. Given the work itemized and described in this affidavit, I would value my time for the purposes of this affidavit at a rate of $450 per hour.

6. In connection with responding to Defendants' Motion to Dismiss, I rendered the following legal services:

Work Performed	**Hours**	**Rate**	**Total**
Review of Defendants' Motion to Dismiss	2.5	$450/hr	$1,125
Legal research	12	$450/hr	$5,400
Expert meetings	6	$450/hr	$2,700
Online fact research	5	$450/hr	$2,250
Drafting Plaintiff's response	21	$450/hr	$9,450
			$20, 926

7. All the work described was necessary to properly respond to Defendants' Motion to Dismiss under the Texas Citizen's Participation Act.

FURTHER YOUR AFFIANT SAYETH NOT

Mark Bankston

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

SWORN to and SUBSCRIBED before, the undersigned authority, on the ___ day of July, 2018, by Mr. Mark Bankston.

ERIC TELLEZ
Notary Public State of Texas
My Commission# 124709495
My Comm. Exp. Apr. 06, 2021

Notary Public, State of Texas

My commission expires: 4-6-21