

IS SMIRKING AT A SHERIFF'S DEPUTY A HATE CRIME IN UTAH?

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<https://utpolunderground.com/is-smirking-at-a-sheriffs-deputy-a-hate-crime-in-utah/>



A traffic stop in Panguitch in July that led to charges against a 19-year-old woman for allegedly “smirking in an intimidating manner” toward a sheriff’s deputy while crumbling and stomping on a pro-police “Back the Blue” sign has sparked a debate over what constitutes a hate crime.

The Garfield County Attorney’s Office charged the California resident in 6th District Court with criminal mischief – which was enhanced to a Class A misdemeanor from a Class B misdemeanor because prosecutors filed the charge as a hate crime – and disorderly conduct, which is an infraction.

The maximum penalty for a Class A misdemeanor is a year in jail.

The woman was charged under a Utah law that allows the enhancement in cases where the primary offense was committed “with the intent to intimidate or terrorize another person” or with reason to believe that the action would intimidate or terrorize that person. “Intimidate or terrorize” is defined as an act that causes the person “to fear for his physical safety or damages the property of that person or another.”

The statute also says, “This section does not affect or limit any individual’s constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of the state or by the Constitution or laws of the United States.”

Garfield County Sheriff James Perkins supports the charges, saying the woman targeted the officer “in a very unpeaceful manner” and displayed “extremely aggressive and violent behavior” in a busy parking lot.

“The simple fact is, while this officer was doing his duty in a proactive and compassionate manner, he was singled out and attacked by this person because he was a law enforcement officer,” Perkins says in a news release posted on Facebook a week after the incident. “We are greatly disturbed by the hatred shown to law enforcement officers for no apparent reason. We are hopeful that this county can mend and heal from the division. Meanwhile, this case will go forward in a professional manner.”

The ACLU of Utah says it is troubled by the addition of the hate crime enhancement.

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“This kind of charging decision sends an extremely chilling message to the community that the government will seek harsher punishment for people charged with crimes who disagree with police actions,” the organization says in a written statement. “This concern is even greater because we do not view the enhancement as supportable under the language of the statute.”

The statement says the ACLU of Utah consistently warns that enhancements are often used to single out unpopular groups or messages rather than provide protections for marginalized communities and that the case has confirmed its warnings.

“Finally, this case is a reminder that we believe that prosecutors should exercise their discretion about whether to bring any criminal charges at all with an eye toward what kinds of incidents are truly worth using government resources to pursue,” the statement says. “Bringing a charge against this person that could result in her spending a year in jail makes no sense both in terms of simple fairness and expending the county’s time and money.”

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ACLU of Utah

CONFLICTING STORIES ABOUT THE INCIDENT

The sheriff’s news release and court documents give this account of what happened on July 7: Deputy Cree Carter was patrolling Panguitch when he saw three vehicles traveling 50 miles an hour in a 30-mph zone and stopped the caravan at a convenience store parking lot. The deputy told the drivers to slow down and after noticing tobacco products in one vehicle, told the occupants that they were too young to possess those items in Utah.

After the stop was completed, several of the vehicle occupants left the area and returned with a Back the Blue sign, the sheriff said in the news release. He said the sign was made in Panguitch and many are found in yards and businesses throughout Garfield County.

Carter said in an affidavit that after he concluded the traffic stop, he saw the 19-year-old stomping on the Back the Blue sign, crumble it up “in a destructive manner” and throw it into a trash can “all while smirking in an intimidating manner towards me.”

According to his affidavit, Carter confronted the woman and she said she got the sign from her mother, who lives in California, and that she could do what she wanted with it. He told her that the sheriff’s office produces the Back the Blue signs and that he believed she had acquired it in the community. Carter said he checked with convenience store workers, who told him the sign was not the business’ property. He then read the woman her rights and again asked her where she got the sign.

After allegedly telling inconsistent stories, the woman said she found it on the ground.

“Due to (the woman) destroying property that did not belong to her in a manner to attempt to intimidate law-enforcement, I placed her under arrest,” Carter said in his affidavit.

He said the hate crime enhancement was added to the allegations because of the woman’s demeanor while destroying a pro-law enforcement sign.

The woman was arrested, booked into jail, and later released on \$600 bail.

“The officer that was targeted is a veteran with an exemplary record and has served the United States in active combat,” Perkins said in the release. “In his years of service to Garfield County, this particular officer has never received a single complaint and is an asset to the Sheriff’s office and to the County.”

According to the sheriff, the deputy did not give anyone a ticket.

But in an interview with the Daily Beast, the woman said Carter eventually wrote her friend a ticket for speeding, which upset her. Her friends had found a Back the Blue sign on the side of the road that they kept in one of the cars and she picked it up, she said.

She then waved the sign at the officer, stepped on it, and threw it in the trash, according to the woman. Perkins and the Garfield County Attorney’s Office did not respond to requests for comment on the case.

This is not the first time a defendant has been accused in Garfield County with a hate crime involving a Back the Blue sign. In August 2020, a 31-year-old man was arrested for spray-painting the word “bisexual” in pink over the word “blue” on a sign at a gas station in Escalante.

He was charged with criminal mischief, which was enhanced to a Class A misdemeanor because the offense was designated a hate crime against a law enforcement officer. He pleaded guilty and was sentenced to two days in jail and a year of probation.

Another law, which was passed by the Legislature in 2019, added hate-crime enhancements to the sentences of offenders who select victims based on certain characteristics. The Victim Targeting Penalty Enhancements bill, originally increased punishment for selecting victims based on ancestry, disability, ethnicity, gender, gender identity, national origin, race, religion or sexual orientation or damaging property based on the owner having any of those characteristics.

Lawmakers amended the final version of the bill to include victims who are targeted because of their status as a law enforcement officer, correctional officer, special officer or any other peace officer. Other added categories were age, familial status, homelessness, marital status, matriculation, political expression, service in the US Armed Forces and status as an emergency responder.

This law was not used in either of these Garfield County cases.

CONCERNS ABOUT SELECTIVE ENFORCEMENT

Seth Brysk, the Anti-Defamation League’s director of the region that includes Utah, said based on what he knows from news accounts about the latest case, the young woman’s actions do not appear to be a hate crime. He pointed out the deputy was an armed member of law enforcement who appeared to be in control of the situation.

“Does he genuinely feel terrorized and intimidated by someone making a face at him and tearing up a piece of paper or cardboard?” Brysk asked. “It just doesn’t seem to pass the smell test.”

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Given the circumstances of the incident, filing a hate-crime enhancement seems to make a mockery of “those very real cases where members of law enforcement are being attacked or members of various communities have crimes committed against them,” he said.

“There are people now for a variety of reasons calling into question the necessity for hate crime statutes and the reason for having them in the first place,” Brysk said.

He said hate crimes target people on the basis of their immutable characteristics and are meant to terrorize and intimidate not just the specific target but anybody who is a member of that class. Hate crime statutes send a countervailing message that “we’re not going to tolerate people trying to marginalize and reject and intimidate members of our community,” he said.

“Law enforcement members serve an important function in our community and in society,” Brysk said.

“They have a difficult and important role to play. They deserve our support and respect for that role.

They are also vested with awesome powers by the state and by the consent of society. We expect them to use those powers judiciously.”

From what they’ve heard about the incident, two experts in criminal law also questioned the use of the hate crime statute in the woman’s case.

Paul Cassell, a law professor at the University of Utah, said prosecutors should reserve the statute for situations where threats of violence are being directly suggested.

“This statute was intended to cover very serious types of things like firebombing someone’s house or burning a cross on a lawn or painting a swastika on a synagogue,” he said. “Those kinds of things directly convey the threat of violence. Smirking and crumbling up a sign doesn’t do anything like that.”

Cassell also questions why the defendant was even charged with the underlying offense of criminal mischief, which was based on her allegedly destroying someone else’s property. If the sign was in a trashcan or blowing down a street, it would be abandoned property, he said.

There's no evidence she stole the sign "and it's not her job to explain where she got the sign," Cassell added.

Prosecuting the woman feeds into the argument made by those who think the hate-crime law is too vague, he said.

"It's making Garfield County the butt of jokes across the nation and I think that's unfortunate because it's calling into disrepute the Utah hate crimes statute," Cassell said. "I'm hopeful that cooler heads will prevail and the hate crime charge will be dropped."

Daniel Medwed, a law professor at Northeastern University in Boston, said proving beyond a reasonable doubt that the woman had the intent to intimidate or terrorize the deputy will be tough because the case is not based on language.

"It shouldn't just be grounded on the feelings of the victim or the victim's perception," he said. "Here, it appears as though he interpreted a look, a sneer as intimidating."

Medwed, who formerly taught at the U. law school, said he's troubled about the possibility of selective prosecution.

"Of all the potential hate crimes to investigate and prosecute in the state of Utah, why this one?" he asked.

NOTES

This is the law the two Garfield County defendants were charged under (76-3-203.3):

<https://le.utah.gov/xcode/Title76/Chapter3/76-3-S203.3.html>