

Capital Murder

James Alex Fields drove his silver Dodge Challenger into a crowd of people protesting against white supremacists, white nationalists, and fascists, many, if not most, of whom came to the event from outside of Charlottesville, Virginia. There were also counter-protestors, variously labeled Anti-Fa or Anti-Fascists, with many, if not most, coming from outside of Charlottesville and with some who also engaged in acts of violence, albeit none resulting in the loss of life.

Fields' actions caused the death of Heather Hager, a 32 year old woman who was protesting against white power protestors. She was hit while crossing the street. Although presently charged with second degree murder, Fields ought to be charged with Capital Murder under the Virginia criminal code. His actions appear to qualify for that higher charge. The conviction and execution of Fields would send a clear message to others of like ilk who entertain the notion of transforming venomous rhetoric into violent action.

Under the First Amendment, each of us is entitled to use his or her own property or public areas set apart from time immemorial for the delivery of speeches to convey our views. We may do so provided that we do not act in ways that violate the equal rights of others or block ingress or egress to buildings and streets. We may do so even, as is the case here, or most especially when, the views expressed are repulsive to the majority. Most all of us condemn the views of those who claim that one's immutable characteristics, race, disability, age, gender, etc. render them deserving of derision, punishment, or denial of equal justice under law. But that condemnation by the majority does not justify suppression of the minority and such suppression if sustained or condoned by law violates the First Amendment. Indeed, equal justice under law and blind justice are bedrock principles of Western jurisprudence and of our Constitution

and laws.

Although imbued with an unalienable right to hold and communicate one's own views on one's own property or on public property set apart for that purpose, none of us has a right to graduate from vile invective to violent action. The political problem for the White supremacists who gathered in Charlottesville is that their vile views call for the degradation of people based on their non-white status. That is their essential political problem, but it is not a legal problem per se. The legal problem for the White supremacists in this instance is that they translated their vile rhetoric into violent action.

When speech merges with violent action, the state may act against the violence not because the speakers hold a particular viewpoint but because they have violated the equal rights of another, in this case, depriving an innocent, 32 year old woman, Heather Hager, of her life. Although the authorities have thus far charged Fields with second degree murder, they ought to rethink that determination because he plainly appears deserving of a Capital Murder charge.

Under Virginia law, if a person commits a "willful, deliberate, and premeditated" killing that involves one or more aggravating factors, that person is guilty of Capital Murder. The penalty for Capital Murder is capital punishment by lethal injection or electrocution, at the convicted party's election. In this instance, James Alex Fields intentionally used his Dodge Charger as an instrument to cause death and serious bodily injury by driving it at a high rate of speed into a crowd of anti-white power protestors. It was the logical and predictable consequence of his act that one or more people might die. Moreover, his action fits at least two of the aggravating factors specified in the Virginia statute, only one of which is required for Capital Murder. It appears that Fields was not acting alone but in conjunction with accessories. Individuals associated with the White

supremacist movement who have encouraged violence at other rallies or violence in general may have solicited or encouraged Fields' actions. If so, then his act of murder was "pursuant to the direction or order of one who is engaged in a continuing criminal enterprise." Even if that factor cannot be proven beyond a reasonable doubt, another appears likely provable beyond a reasonable doubt. A murder "committed in the commission or attempted commission of an act of terrorism" is Capital Murder. An act of terrorism is defined as intentional or indiscriminate violence as a means to create terror or fear. Undoubtedly, Fields' decision to drive a car at lethal speed into a crowd of anti-White power protestors was an act of intentional violence intended to create terror or fear.

Consequently, rather than being charged with second degree murder, James Alex Fields should be charged with Capital Murder, and his conviction and execution can then serve as a sober deterrent to other like-minded individuals who are intent on committing acts of violence in service of the White power movement. They must come to understand that while in the United States, our Constitution affords protection to those who utter even views as repulsive as their own, it affords no protection for those who commit acts of violence. For those who would kill to make a point, the law should afford proportional justice and ensure that they may never kill again. Capital Murder appears to fit well the violent acts committed by James Alex Fields.

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