

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ELLIS COLE,)	
)	
Plaintiff,)	No. 14 cv 3721
)	
v.)	JURY TRIAL DEMANDED
)	
APC STORES, INC., d/b/a)	
LEE AUTO PARTS, and)	
CERTIFIED AUTOMOTIVE)	
WAREHOUSE, INC., d/b/a)	
AUTO-WARES GROUP OF)	
COMPANIES, d/b/a LEE AUTO)	
PARTS,)	
Defendants.)	

COMPLAINT

Introduction

1. This is a race harassment and retaliation case brought pursuant to Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. 2000e-5 (“Title VII”) and 42 U.S.C. 1981 (“Section 1981”).

Jurisdiction and Venue

2. The Court has jurisdiction over this case pursuant to the provisions of 28 U.S.C. sections 1331 and 1343(a)(4) and 42 U.S.C. 2000e-5(f)(3).

3. Venue is proper in this judicial district because the actions at issue took place within this district.

EEOC Proceedings

4. As described below, plaintiff Ellis Cole, the only African-American employed by

defendant at his facility, has been subject to repeated racial harassment over a period of years going back to at least 2003. In 2013, for example, Defendant's employees left a noose at plaintiff's work station, circulated to plaintiff racially offensive written "jokes" and degrading racist photographs, and cursed plaintiff out when he made his most recent complaint about the racially hostile work environment he is being subjected to.

5. As a consequence of this repeated pattern of racial harassment and Defendant's failure to stop the discriminatory actions of its supervisors and employees, Plaintiff filed a timely charge of discrimination against defendant Lee Auto Parts with the Equal Employment Opportunity Commission ("EEOC") on or about July 22, 2013.

6. Plaintiff received a right-to-sue letter from the EEOC on or about March 28, 2014 and filed this lawsuit within the statutory time limit under Title VII.

Parties

7. Plaintiff Ellis Cole (hereafter referred to as "Plaintiff") is an African-American man.

8. Defendant APC Stores, Inc. is a Michigan corporation registered to do business in the State of Illinois, doing business as Lee Auto Parts.

9. Defendant Certified Automotive Warehouse, Inc. is an Illinois corporation doing business under the assumed name Auto-Wares Group of Companies, which does business as Lee Auto Parts.

10. Defendants APC Stores, Inc. and Certified Automotive Warehouse, Inc. are hereafter collectively referred to as "Lee Auto Parts" or "Defendant."

11. Defendant is an "employer" as that term is defined in Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. 2000e(b).

Facts

12. Plaintiff began working for Lee Auto Parts in or around January, 1996 and has worked since that time as a machinist for Lee Auto Parts at its location in Des Plaines, Illinois.

13. All the managers and co-employees of Plaintiff referred to in this complaint are white. While Plaintiff was employed by Defendant in Des Plaines, he believes, he was the only African-American employee at that location, except for one other African-American man who was employed there for a brief period of time.

14. Since at least 2003 Plaintiff has been subject to repeated, severe, and highly offensive racial harassment by his supervisors and co-workers, because of his race. Copies of the materials that were left at his work station or given to him by his co-workers are attached as Exhibits 1-13.

15. That harassment of Plaintiff by Defendant's supervisors and co-workers has included the following examples: (a) Co-workers, including store manager Mitch Houdak, referring to the work Plaintiff performed as "nigger work." When Plaintiff complained about this to his supervisor Hank Macklezow, in approximately 1996 or 1997, Macklezow said it didn't mean anything and was only a metaphor. (b) Store manager Mitch Houdak said to Mr. Ellis that he wanted him to smile so he could see his bright teeth. (c) Store manager Mitch Houdak told Plaintiff that he wanted Plaintiff to walk in the center of the aisles "because your kind steal." (d) In 2003 a small wooden cross, partially burned, was left at plaintiff's work station. (See Exhibit 1.) Plaintiff notified his supervisor Hank Macklezow that a burned cross was left at his work station but Defendant took no remedial action. (e) One of Plaintiff's co-workers engaged in hate speech and pro-Nazi speech, saying derogatory things about people of many races. He said to Plaintiff that black people are not born, they come from pods. (f) One of Plaintiff's co-workers said to Plaintiff that he could smell Plaintiff when he came in the room, that he smelled like fried chicken and collard greens. (g) In around 2003 or 2004 one of more of Defendant's employees

left pictures of naked body parts at Plaintiff's work station with written messages, such as a picture of a penis with the message "suck this nigger," and a picture of testicles with the message "my nuts on your black chin," and a photograph of someone's buttocks with the message, "Here's a kiss for you Ellis!!" (See Exhibit 2.) Plaintiff showed these pictures to his supervisor Hank Macklezov but no remedial action was taken. (h) In 2010, a co-worker gave Plaintiff a picture of a black man being whipped, with a house burning in the background (Exhibit 3), and later showed plaintiff a picture of a cat strapped with dynamite and said, "Have you seen this? Boom. This is what happens to loud mouth niggers." Plaintiff told his supervisor Hank Macklezow about that but Macklezow failed to take corrective action and said only that it didn't mean anything, and did not mean that the co-worker was going to blow anything up.

16. In 2011 and the years prior to 2011 Plaintiff was subject to disparate treatment in taking and returning from breaks. Plaintiff was told that he could take two 15 minute breaks, without clocking out, or clock out to take a 30 minute break for lunch. Plaintiff was held to this rule but the other, white employees were not. They took 15 minute breaks and lunch breaks and extended bathroom breaks. If Plaintiff was one or two minutes late to start work after a break he was reprimanded by his supervisor Hank Macklezow, but other employees who were late were not reprimanded.

17. In 2011 one of plaintiff's co-workers complained about the jazz music that Plaintiff played at work, saying he didn't want to hear that "monkey music." Hank Macklezow was present when this comment was made. Plaintiff and the co-worker had an argument about it. Macklezow, the supervisor, intervened and said to Plaintiff that if his co-workers did not want to hear his music they didn't have to and said he wanted Plaintiff to shut it off.

18. On a Saturday in 2011 Plaintiff called the company's corporate office and left a message complaining about the differential treatment he was receiving. He was called back the next day, on Sunday, by an employee named Chris Stevenson, who Plaintiff understood worked in Loss Prevention and Human Resources. Plaintiff explained that he believed he was being subject to adverse treatment and harassment because of his race. Plaintiff was directed by Stevenson to talk to his area manager, Gary Anderson. The next day, Plaintiff talked to Gary Anderson and said he believed he was being treated unfairly because he is black.

19. A meeting was held with Plaintiff and Mr. Anderson and some of Plaintiff's co-workers. At that meeting Plaintiff described the way in which he was being subject to discrimination and harassment in taking breaks, said that his co-employee had been leaving racist materials and making racist comments, and said that he was not allowed to play his music because he is black, he believed.

20. Although this meeting was held, no actions were taken to discipline Plaintiff's co-workers or prevent racial harassment in the future. After this 2011 meeting Plaintiff began receiving the materials attached to this complaint as Exhibits 4-13.

21. Plaintiff was subject to an increased level of harassment because of his opposition to discrimination.

22. In 2011 a co-employee gave Plaintiff the lyrics of an "Old Black Joe" song (see Exhibit 4), saying, "I heard you wanted to listen to music. I want you to listen to this song Old Black Joe. That's the only music around here you should be listening to."

23. In 2011 the "Peanuts" cartoon attached hereto as Exhibit 5 was given to Plaintiff by a co-employee, who said to Plaintiff, "Ellis, I'm having my Ku Klux Klan sheet pressed. Can you pick it up from the cleaners?"

24. When Plaintiff talked to a white woman in the store a co-employee said, "You're not allowed to talk to white women. You know what we do to niggers who talk to white women." Another co-employee said, "You know you're not supposed to talk to white women. We lynch niggers who talk to white women."

25. In 2012 one of more of Defendant's employees left a picture of a dog in a Ku Klux Klan hood at Plaintiff's work station. (See Exhibit 6.)

26. Also in 2012, one or more of Defendant's employees posted a sign that said "Whites Only" on a bathroom door. (See Exhibit 7.)

27. In 2012, a co-employee gave Plaintiff a photo-shopped picture of Plaintiff in a Ku Klux Klan robe. (Exhibit 8.)

28. Also in 2012, one or more of Defendant's employees left "Wallace for President" bumper stickers at the front of the store. (See Exhibit 9.) Defendant's store manager, Mitch Houdak, gave one to Plaintiff.

29. One or more of Defendant's employees left at Plaintiff's work station a card purporting to be from the Knights of the Ku Klux Klan which stated, "I Have Contributed \$1.00 in Your Name to the N.A.A.C.P. Congratulations! You Are Now An 'HONORARY NIGGER.'" (See Exhibit 10.)

30. Several of Defendant's employees asked Plaintiff if he wanted to sign a petition to make the birthday of James Earl Ray, the assassin of Dr. Martin Luther King, Jr., a holiday.

31. In 2012 Plaintiff asked his supervisor Hank Macklezow if he could call the corporate office to complain about the way he was being treated. Macklezow got back to plaintiff and said area manager Gary Anderson said he "does not have any time for any of your foolishness."

32. Plaintiff then called the corporate office in Michigan, asked to speak with the head of

33. Human Resources, and ended up speaking again with Chis Stevenson. Plaintiff told Stevenson that he was being singled out because he is black and was being harassed in multiple ways. He told Stevenson about the racist literature that was left at his workplace and said that other employees were opening his mail. Stevenson said his problems needed to be resolved in Illinois and said that Plaintiff should talk to area manager Gary Anderson. Plaintiff explained his problems with Anderson to Stevenson. Stevenson said he would call Anderson and have Anderson call Plaintiff. Defendant's area manager Gary Anderson called Plaintiff, but when Plaintiff tried to discuss with him the problems of racial harassment that Defendant's employees were subjecting him to, Anderson dismissed what he was saying.

34. In July, 2012, Plaintiff's supervisor Hank Macklezow gave Plaintiff an evaluation in which Macklezow he gave Plaintiff a low rating for not interacting with his co-employees. Plaintiff said then that he was not interacting with them because of the racist literature he was getting. Macklezow said some of it was coming from the front of the store, it had nothing to do with their department, and Plaintiff should forget about it. Plaintiff said it seemed like he was being subject to retaliation for what people were doing to him.

35. In 2013 one or more of Defendant's employees left at Plaintiff's work station a racially-offensive picture of an African-American child holding a poster stating that she steals and wants to go to prison to be with her father. (See Exhibit 11.)

36. In 2013 one or more of Defendant's employees left at Plaintiff's work station the racially-offensive "joke" about African-American children that is attached as Exhibit 12.

37. In 2013 one or more of Defendant's employees left at Plaintiff's work station the offensive "joke" entitled "Shower Sex" that is attached as Exhibit 13.

38. In June, 2013, a noose was left at Plaintiff's work station by one of Defendant's

employees. A picture of the noose is attached as Exhibit 1.

39. In addition to notifying Defendant's corporate office in 2011 and 2012 about racially offensive conduct as discussed above, and in addition to the multiple times he talked to his supervisor Hank Macklezow and area manager Gary Anderson about the racially discriminatory conduct and harassment to which he was subjected, Plaintiff informed Defendant that he was subject to racial harassment by writing in the comments section of his July, 2013 performance evaluation, "my interaction with some crewmember is limited because I have received racist and hate material in my work area which I believe to be racially motivated."

40. Plaintiff was also subject to other aspects of harassment and discrimination because of his race. Despite his requests, Plaintiff was not given training or the opportunity to perform more advanced work such as welding, boring engines, assembling heads, and doing valve jobs.

Plaintiff has not been given any training on accessing information by computer. Plaintiff has not been given the opportunity given to other employees to watch corporate videotapes providing information about company developments including new stores and products.

41. The racial harassment that Plaintiff received was highly objectionable to him and was unwelcome.

42. The racial harassment that Plaintiff underwent was sufficiently severe or pervasive that a reasonable person in Plaintiff's position would have found his work environment to be hostile or abusive.

43. At the time Plaintiff suffered from this harassment, Plaintiff believed that the conduct made his work environment hostile or abusive.

44. Defendant knew or should have known about this harassment. As described above, some

of this harassment came from Plaintiff's supervisors. Plaintiff repeatedly complained to management about the harassment, complaining in particular to his supervisor Hank Maklezow and to area manager Gary Anderson and complaining in 2011 and 2012 to Defendant's Human Resources Department.

45. In a last attempt to complain, Plaintiff talked to Hank Maklezow in 2013, after the noose was left at his work station. Plaintiff talked to Maklezow about the treatment he had received, including the noose, the picture of Plaintiff in a Ku Klux Klan robe, and the racist "jokes." Maklezow said he didn't have any evidence. Plaintiff said he had it and asked if Macklezow wanted to see it. Maklezow, said, "No, I want you to leave me alone. Get the fuck out of my face."

46. Despite Plaintiff's complaints and Defendant's knowledge of the harassment, Defendant did not take steps to stop the harassment or prevent it from recurring. To the contrary, the racial harassment of Plaintiff intensified after his complaints.

47. In failing to investigate Plaintiff's complaints and take effective remedial action Defendant violated its own personnel policies, as expressed in the Employee Handbook given to Plaintiff. That Handbook says that when a complaint of racial harassment is made, "The Company's Human Resource Representative will investigate the matter promptly and take appropriate remedial action along with senior management. The results of the investigation shall be promptly communicated to the complaining party, together with the remedial actions proposed and/or taken, if any, to stop similar occurrences of further harassment and/or discrimination, if any." Plaintiff followed the policies in the handbook by reporting to his supervisor Hank Hacklezow, and to area manager Gary Anderson, and to Chris Stevenson, at the company's corporate office, that he was subject to racially discriminatory treatment and harassment.

Contrary to Defendant's policies, no investigation was made of Plaintiff's complaints of discrimination and harassment and no remedial actions were taken to stop the discrimination and harassment.

48. As a result of the harassment of Plaintiff by his supervisors and co-workers and Defendant's failure to take action to stop it, plaintiff has suffered significant emotional distress. He lost weight and his ability to concentrate has been impaired. Plaintiff has suffered from sleeplessness and nightmares, has spent long periods of time sitting by himself in a room not engaging with any other person or in any activity, and has been distracted from his family. Plaintiff has also suffered severe anxiety and fears for his safety.

Count I – Racial Harassment/ Hostile Work Environment

49. Plaintiff incorporates and re-alleges paragraphs 1- 40 of this Complaint as paragraphs 1-40 of Count I.

50. By the actions described above, Defendant created and imposed a racially hostile work environment on plaintiff, in violation of Title VII and Section 1981.

51. To remedy his injuries, Plaintiff seeks an award of damages from defendant for compensatory damages, punitive damages, prejudgment interest, post-judgment interest, costs, reasonable attorney's fees, injunctive relief, and such other relief as the Court may find appropriate.

Count II – Retaliation

44. Plaintiff incorporates and re-alleges paragraphs 1- 40 of this Complaint as paragraphs 1- 43 of Count II.

45. By the actions described above, Plaintiff's supervisors and co-workers retaliated against

Plaintiff because of his opposition to their racial discrimination and harassment. The harassment of Plaintiff increased after he complained and expressed his opposition to the racially discriminatory treatment to which he was subjected. Defendant retaliated against Plaintiff by allowing these actions and failing to take prompt and effective remedial action to prevent them, in violation of Title VII, 42 U.S.C. 2000e-3(a), and Section 1981.

46. To remedy his injuries, Plaintiff seeks an award of damages from defendant for compensatory damages, punitive damages, prejudgment interest, post-judgment interest, costs, reasonable attorney's fees, injunctive relief, and such other relief as the Court may find appropriate.

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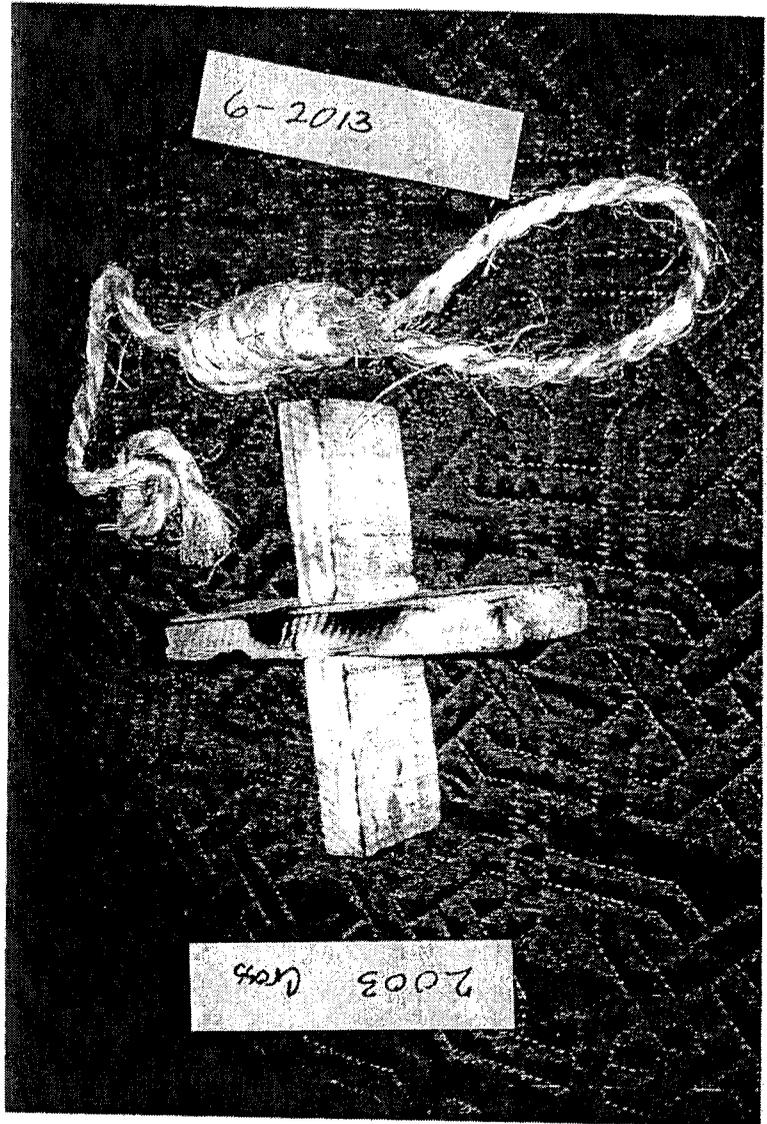
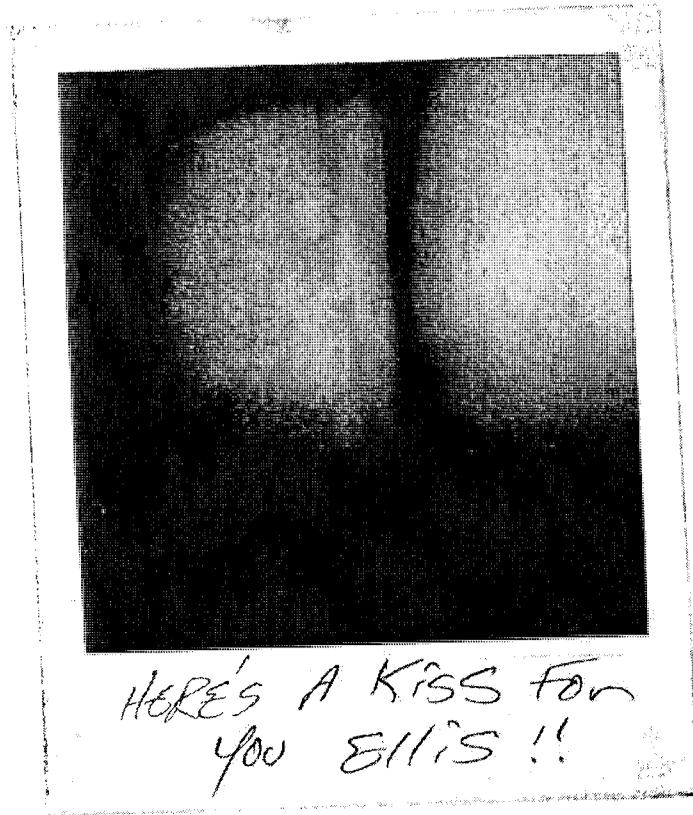


EXHIBIT
1



2010



Gone are the days when my heart was young and gay,
Gone are my friends from the cotton fields away,
Gone from the earth to a better land I know,
I hear their gentle voices calling "Old Black Joe".

Chorus:

I'm coming, I'm coming, for my head is bending low:
I hear those gentle voices calling, "Old Black Joe"

Why do I weep when my heart should feel no pain
Why do I sigh that my friends come not again,
Grieving for forms now departed long ago.

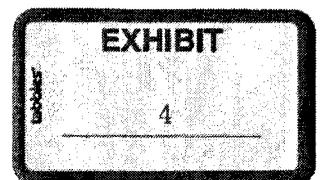
I hear their gentle voices calling "Old Black Joe".

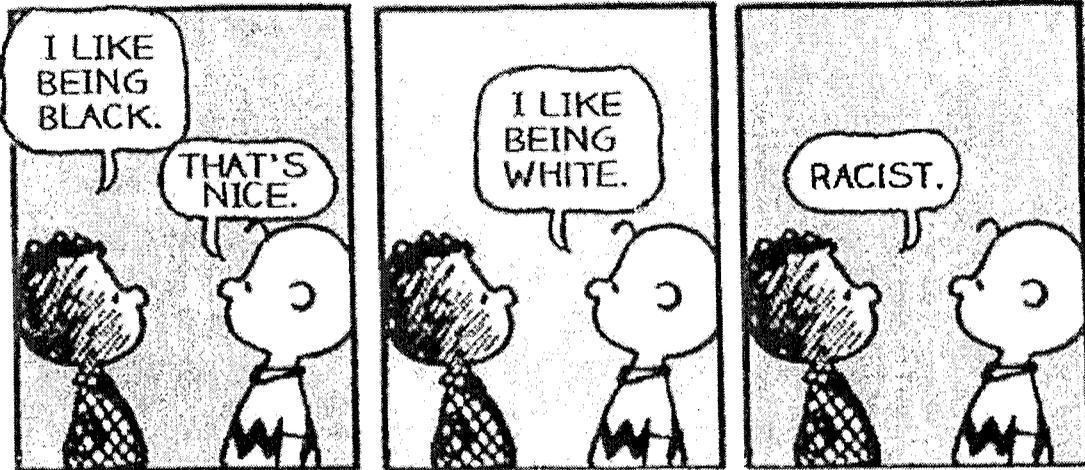
Chorus:

Where are the hearts once so happy and so free?
The children so dear that I held upon my knee,
Gone to the shore where my soul has longed to go.
I hear their gentle voices calling "Old Black Joe".

Chorus:

9-2011

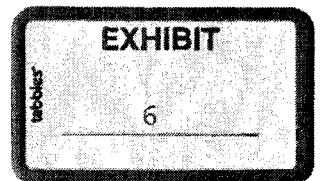




10 2011

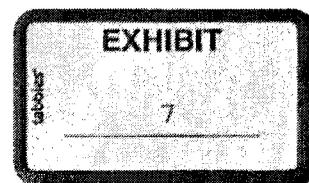


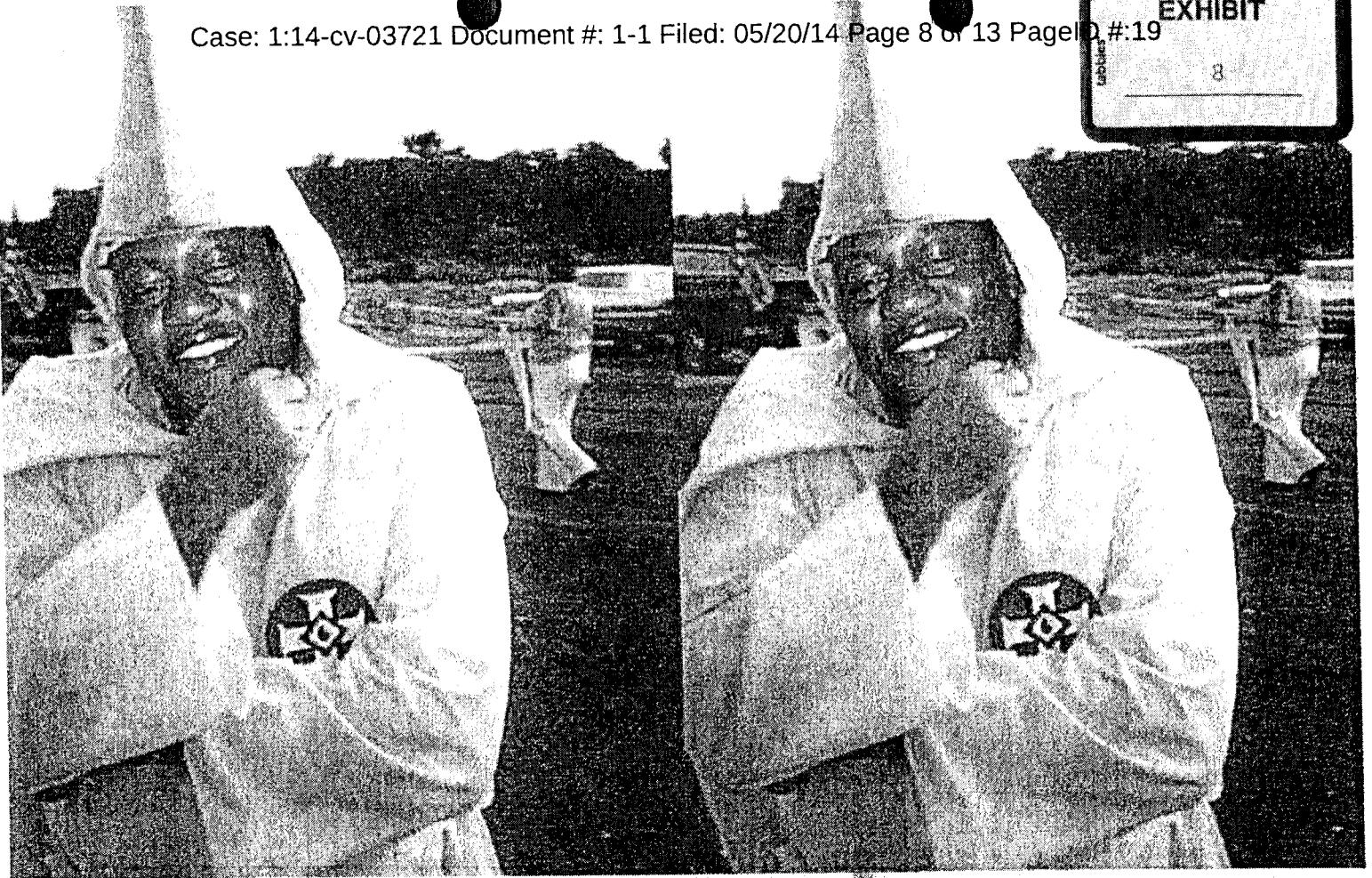
10-2012



WHITES
ONLY

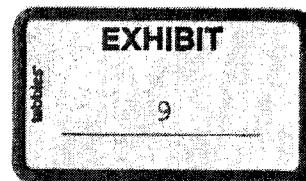
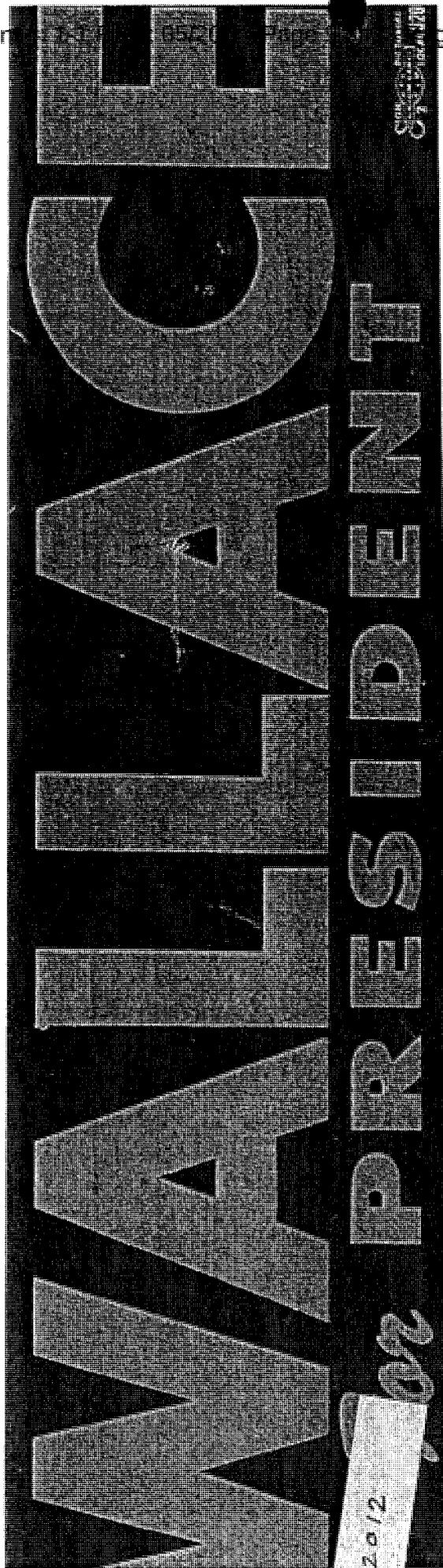
10-2012





12-2012





K. I Have Contributed \$1.00 in Your Name
to the
N.A.A.C.P.
Congratulations! ...
You Are Now An
"HONORARY NIGGER"
KNIGHTS OF THE KU KLUX KLAN
K.

EXHIBIT
10

Be sure to see all 3 pictures....

3-2013

We need more people like her.

Now this is a seriously strict mom. Don't mess with her. I'd like to see more parents like this.



A little boy and girl go trick or treating. They knock on the door of this house and the man who answers it says, "Well, you two are awful cute. Who are you supposed to be?"

"We're Jack and Jill", they reply.

The man says, "You can't be Jack and Jill, you're black!"

So, they go off and a short while later they come back dressed differently. They ring the doorbell and once again the man opens the door.

"Well now, you're just darn cute. Who are you this time?"

"We're Hansel and Gretel", says the little boy.

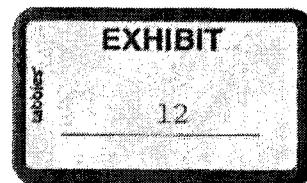
"Well, I hate to disappoint you son, but you can't be Hansel and Gretel because you're black!"

Heads hung low, they leave. Not too much the later, the man hears the bell ring again. This time when he opens the door, there stand the two children but this time they are BUCK NAKED.

"Oh my! And just who are supposed to be now?!!", he asks.

"Chocolate M&M's", says the little girl. "I! 'm plain, he's got nuts

4-2013



Shower Sex

In a recent survey requested by President Obama, African-Americans have proved to be the most likely to have had sex in the shower!

In the survey, carried out for him by a leading toiletries firm, a huge majority, 86% of African-Americans, said that they have had sex in the shower.

The other 14% said they hadn't been to prison yet.

Sort of brings tears to your eyes doesn't it?

5-2013

