

**IN THE  
SUPREME COURT OF OHIO**

|                          |   |   |
|--------------------------|---|---|
| <b>STATE OF OHIO</b>     | : | <b>NO. 2011-2075 and 2011-2178</b>  |
| Appellant/Cross-Appellee | : | On Appeal from the Hamilton County<br>Court of Appeals, First Appellate<br>District |
| vs.                      | : |   |
| <b>JULIAN STEELE</b>     | : | Court of Appeals Case<br>Number C-100637  |
| Appellee/Cross-Appellant | : |   |

**THIRD MERIT BRIEF  
ON BEHALF OF APPELLANT/CROSS-APPELLEE, STATE OF OHIO**

Daniel J. Breyer, 0008683  
 Special Prosecuting Attorney  
 123 North 3<sup>rd</sup> Street  
 Batavia, Ohio 43103  
 (513) 732-7588  
 Fax No. (513) 732-7592  
[wbreyer@co.clermont.oh.us](mailto:wbreyer@co.clermont.oh.us)

COUNSEL FOR APPELLANT/CROSS-APPELLEE, STATE OF OHIO

Gloria L. Smith, 0061231  
 Byron L. Potts & Co., LPA  
 415 E. Broad Street, Suite 112  
 Columbus, Ohio 43215  
 (614) 228-2154

COUNSEL FOR APPELLEE/CROSS-APPELLANT, JULIAN STEELE

**FILED**  
 SEP 14 2012  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**TABLE OF CONTENTS**

**PAGE NO.**

TABLE OF AUTHORITIES ..... i.

STATEMENT OF FACTS ..... 1.

REPLY TO APPELLEE/CROSS-APPELLANT’S ARGUMENT IN OPPOSITION TO  
APPELLANT/CROSS-APPELLEE, STATE OF OHIO’S, PROPOSITION OF LAW ..... 1.

**PROPOSITION OF LAW I:** In instructing a jury on a crime, which contains  
among its elements the concept of “privilege” or lack thereof, the definition of  
“privilege” contained in Ohio Revised Code section 2901.01(A)(12) is proper and  
sufficient. .... 1.

ARGUMENT IN RESPONSE TO APPELLEE/CROSS-APPELLANT’S  
PROPOSITION OF LAW III ..... 3.

**PROPOSITION OF LAW III:** The crime of intimidation as set forth in Ohio Revised  
Code Section 2931.03(B) (*sic*) does not apply to police officers when they interview or  
interrogate a suspect. .... 3.

CONCLUSION..... 5.

CERTIFICATE OF SERVICE ..... 5.

APPENDIX - 2011 Sub. H.B. No. 20 ..... 1.

**TABLE OF AUTHORITIES**

**CASES:**

*State v. Cooperrider*, 4 Ohio St.3d 226 (1983)..... 2.

*State v. Davis*, 132 Ohio St.3d 25 (2012) ..... 3.

*State v. Long*, 53 Ohio St.2d 91 (1978)..... 2.

*State v. Malone*, 121 Ohio St.3d 244 (2009)..... 3.

**CONSTITUTIONAL PROVISIONS: STATUTES:**

R.C. 2901.01 ..... 2.

R.C. 2901.01(A)(12)..... 2.

R.C. 2921.03 ..... 3, 4.

R.C. 2921.04 ..... 3, 4.

**MISCELLANEOUS**

2011 Sub. H.B. No. 20 ..... 4.

## STATEMENT OF FACTS

The State of Ohio continues to maintain that the proper facts of this case are those contained in the Statement of Facts section of the State's first merit brief, and especially those facts reiterated in detail at pages 10 to 13 of that same brief. The brief submitted by Appellee/Cross-Appellant Julian Steele contains a set of facts with several significant differences. The State maintains that these differences are unsupported by the record.

### REPLY TO APPELLEE/CROSS-APPELLANT'S ARGUMENT IN OPPOSITION TO APPELLANT/CROSS-APPELLEE, STATE OF OHIO'S, PROPOSITION OF LAW

PROPOSITION OF LAW I: In instructing a jury on a crime, which contains among its elements the concept of "privilege" or lack thereof, the definition of "privilege" contained in Ohio Revised Code section 2901.01(A)(12) is proper and sufficient.

In accord with the outrageous facts of this case, and despite the defendant's rather simplistic claims to the contrary, this case is not about a hard-working and aggressive police officer's innocent mistake as to whether probable cause existed to arrest Ramone Maxton.

The facts of this case clearly indicate that Julian Steele is a "bad" cop. He openly brags about trying to get people indicted, not just arrested, without probable cause. (Statement Transcript pgs. 38-39.) He admitted to the prosecutor in this case that he knew Ramone was innocent. And by leaving Ramone Maxton locked up in jail for nearly ten days so that he could arrange and complete a sexual assignation with Ramone's mother Alicia, Steele made it clear that this entire scenario was not an attempt to close a case by arrest, but to take sexual advantage of a vulnerable woman. The fact that Steele was a police officer is not a key factor in this case; it is almost a coincidence.

And, because a “bad” cop was caught, literally, with his pants down, his attorney wants this Court to adopt a policy giving police officers immunity for any crime they commit while wearing the uniform. Such a suggestion is unrealistic and indefensible.

In his brief, the defendant references *State v. Cooperrider*, 4 Ohio St.3d 226 (1983), and *State v. Long*, 53 Ohio St.2d 91 (1978), as justification for the Court of Appeals reversing the defendant’s abduction convictions. It is submitted that those cases actually offer great support to the State of Ohio’s argument that any error in the jury instructions in this case was clearly not cognizable plain error. The prejudice done to the defendant’s in those cases, as a result of admittedly improper jury instructions, was far more substantial than any that occurred here due to the arguably proper jury instruction regarding “privilege.” And yet those murder convictions were affirmed.

In this case, the defendant was charged with two counts of abduction. Both counts require the State of Ohio to prove an absence of privilege. And, despite the defendant’s rather puzzling claim that the instructions were tailored to fit the State’s theory of the case, it is the State’s position that the trial court was mandated to give the instruction regarding privilege that it did in fact give.

Ohio Revised Code section 2901.01 contains definitions which the legislature has determined should be applied in interpreting and enforcing all sections of the Revised Code. Included in that section is a definition for “privilege.” See R.C. 2901.01(A)(12). And it is that exact definition which was given in this particular case. If the trial court had ignored that definition, the defendant would have a more tenable argument that the instruction was in error.

**ARGUMENT IN RESPONSE TO**  
**APPELLEE/CROSS-APPELLANT'S PROPOSITION OF LAW III**

**APPELLEE/CROSS-APPELLANT'S PROPOSITION OF LAW III: The crime of intimidation as set forth in Ohio Revised Code Section 2931.03(B) (*sic*) does not apply to police officers when they interview or interrogate a suspect.**

The State of Ohio presented its argument in opposition to this Proposition of Law in its first merit brief (see pages 13-14), and reemphasizes those arguments herein as if completely rewritten.

In the State of Ohio's initial response to the defendant's third proposition of law, it was mentioned that the defendant had cited no case law in support of this proposition. However, the defendant has now referenced two cases that are suggested to support his position. It is the state's position that to the extent these cases are at all applicable, the subsequent history of R.C. 2921.04 actually supports the State of Ohio.

The cases of *State v. Malone*, 121 Ohio St.3d 244 (2009), and *State v. Davis*, 132 Ohio St.3d 25 (2012), are cited to support the defendant's argument that since no criminal proceedings had been commenced, there existed no witness to be intimidated. This contention is based upon the Ohio Supreme Court's determination that R.C. 2921.04's use of the language "witness involved in a criminal action or proceeding" required actual proceedings in a court of justice to be in existence before a witness could be intimidated. In that no court proceedings were ongoing when Steele began his intimidation of Ramone Maxton, the defendant implies that such intimidation is not covered by the statute and is therefore not a crime.

The defendant's reliance on this authority is completely misplaced. Both *Malone* and *Davis* involved prosecutions under R.C. 2921.04. The defendant's conviction is for a violation of R.C. 2921.03. The major difference between those statutes is the use of the language

“involved in a criminal action or proceeding.” This is the language upon which both *Malone* and *Davis* depend. And this language does not exist in R.C. 2921.03.

Interestingly, after the *Malone* case, and while *Davis* was pending, the legislature moved to amend R.C. 2921.04, and left R.C. 2921.03 intact. The “action or proceeding” language was removed and the term “witness” was defined to include “any person who has or claims to have knowledge concerning a fact or facts concerning a criminal or delinquent act, whether or not criminal or delinquent child charges are actually filed.” See 2011 Sub. H.B. No. 20 (effective 6/4/2012). It cannot be doubted that Ramone Maxton was a witness in this instance.

The remainder of the defendant’s argument under this proposition devolves into a weight of the evidence argument that was rejected by the Court of Appeals and which is not pertinent to this proposition of law.

When Julian Steele snatched an innocent child from his classroom and isolated him from normal surroundings, and then forced that child to abandon his truthful protestations of innocence by threatening to incarcerate his equally innocent mother and cast his younger siblings into the world of foster home existence; when he subsequently filed false criminal charges and left that child crying and praying in a secure juvenile detention facility in order to facilitate Steele’s sexual dalliances, it made no difference whether he was a police officer. Ramone Maxton was clearly intimidated into giving false information about a crime and his duties as a witness were clearly hindered. And, this was all done for Julian Steele’s benefit. His conviction for these acts should stand.

CONCLUSION

The State of Ohio requests this Court reinstate Julian Steele's convictions.

Respectfully submitted,

Daniel J. Breyer / per WSR  
Daniel J. Breyer, 0008683  
Special Prosecuting Attorney  
123 North 3<sup>rd</sup> Street  
Batavia, OH 43103  
Phone: (513) 732-7588  
Fax: (513) 753-7592  
[wbreyer@co.clermont.oh.us](mailto:wbreyer@co.clermont.oh.us)

Counsel for Appellant/Cross-Appellee, State of  
Ohio

CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of September, 2012, a copy of this Third Merit Brief on behalf of Appellant/Cross-Appellee, State of Ohio, was sent by ordinary U.S. mail to counsel of record for appellee/cross-appellant addressed as follows:

Gloria L. Smith  
Attorney at Law  
Byron L. Potts & Co., LPA  
415 E. Broad Street, Suite 112  
Columbus, Ohio 43215

Daniel J. Breyer / per WSR  
Daniel J. Breyer, 0008683  
Special Prosecuting Attorney

# Third Merit Brief-Appendix

(129th General Assembly)  
(Substitute House Bill Number 20)

## AN ACT

To amend section 2921.04 of the Revised Code to specify that the offense of intimidation of an attorney, victim, or witness in a criminal case also applies to delinquency cases and to attempts to influence, intimidate, or hinder a witness to a criminal or delinquent act regardless of whether an action or proceeding is pending.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 2921.04 of the Revised Code be amended to read as follows:

Sec. 2921.04. (A) No person shall knowingly attempt to intimidate or hinder the victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding, and no person shall knowingly attempt to intimidate a witness ~~involved in~~ to a criminal action or proceeding in the discharge of the duties of the witness or delinquent act by reason of the person being a witness to that act.

(B) No person, knowingly and by force or by unlawful threat of harm to any person or property or by unlawful threat to commit any offense or calumny against any person, shall attempt to influence, intimidate, or hinder ~~the any of the following persons:~~

(1) The victim of a crime or delinquent act in the filing or prosecution of criminal charges or ~~an attorney or a delinquent child action or proceeding;~~

(2) A witness involved in a to a criminal or delinquent act by reason of the person being a witness to that act;

(3) An attorney by reason of the attorney's involvement in any criminal or delinquent child action or proceeding in the discharge of the duties of the attorney or witness.

(C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment, or information, by participating in the arbitration, mediation, compromise, settlement, or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement, or

conciliation of a dispute of that nature that is conferred by any of the following:

(1) A section of the Revised Code;

(2) The Rules of Criminal Procedure, the Rules of Superintendence for Municipal Courts and County Courts, the Rules of Superintendence for Courts of Common Pleas, or another rule adopted by the supreme court in accordance with section 5 of Article IV, Ohio Constitution;

(3) A local rule of court, including, but not limited to, a local rule of court that relates to alternative dispute resolution or other case management programs and that authorizes the referral of disputes pertaining to the alleged commission of certain types of criminal offenses to appropriate and available arbitration, mediation, compromise, settlement, or other conciliation programs;

(4) The order of a judge of a municipal court, county court, or court of common pleas.

(D) Whoever violates this section is guilty of intimidation of an attorney, victim, or witness in a criminal case. A violation of division (A) of this section is a misdemeanor of the first degree. A violation of division (B) of this section is a felony of the third degree.

(E) As used in this section, "witness" means any person who has or claims to have knowledge concerning a fact or facts concerning a criminal or delinquent act, whether or not criminal or delinquent child charges are actually filed.

SECTION 2. That existing section 2921.04 of the Revised Code is hereby repealed.

# Status Report of Legislation

## 129th General Assembly - House Bills

### HB 20

**Primary Sponsor(s):** Burke & Letson

**Subject:** Criminal intimidation-expand scope to delinquency/affirmative defense

#### Abbreviations used in the Status Report

A - Amended      P - Postponed      S - Substitute      \* - Note  
 F - Failed to Pass      R - Rereferred      V - Vetoed

| Action by Chamber                      | House            | Senate                     |
|--|------------------|----------------------------|
| Introduced                             | 01/13/11         | 03/22/11                   |
| Committee Assigned                     | Criminal Justice | Judiciary Criminal Justice |
| Committee Report                       | 03/09/11         | S 02/01/12                 |
| Passed 3rd Consideration               | 03/16/11         | 02/14/12                   |
| Further Action To Conference Committee |                  |                            |
| Concurrence                            | 02/15/12         |                            |
| Sent to Governor                       | 02/23/12         |                            |
| End of 10-day period                   | 03/06/12         |                            |
| Governor's Action                      | 03/02/12         |                            |
| Effective Date                         | 06/04/12         |                            |

#### Notes

3.