

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : Case No.: 2011-2075
 Appellant/Cross-Appellee : 2011-2178

-vs- : On appeal from the Hamilton County
 Court of Appeals, First Appellate District

JULIAN STEELE : Court of Appeals
 Appellee/Cross-Appellant : Case No.: B0903495

FOURTH MERIT BRIEF ON BEHALF
 OF APPELLEE/CROSS-APPELLANT
 JULIAN STEELE

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STATEMENT OF FACTS

The Appellee/Cross-Appellant maintains that the relevant facts are outlined in the Statement of Facts of his merit brief. The facts set forth in it are supported by the record.

REPLY TO APPELLANT/CROSS-APPELLEE'S ARGUMENT IN OPPOSITION TO APPELLEE/CROSS-APPELLANT'S PROPOSITION OF LAW III

PROPOSITION OF LAW III: The crime of intimidation as set forth in Ohio Revised Code Section 2921.03 does not apply to police officers when they interrogate a suspect.

The state argues that *State v. Malone*, 121 Ohio St.3d 244 (2009) and *State v. Davis*, 132 Ohio St.3d 25 (2012) are not relevant to the instant case because those cases analyze R.C. 2921.04 and not R.C. 2921.03. The state's argument is erroneous. These cases are applicable because of the analysis of "witness intimidation," which is exact issue in the case at bar.

R.C. 2921.03(A) outlines the various ways that a person can intimidate a witness. None of those ways includes police officers interrogating suspects. Detective Steele is not asking this court to rewrite the statute. He is requesting that this court apply it in the way that it was intended. "The polestar of construction and interpretation of statutory language is legislative intention." *State ex rel Francis v. Sours*, 143 Ohio St. 120, 124, 53 N.E.2d 1021 (1944). "In determining the legislative intent of the statute 'it is the duty of this court to give effect to the words used [in the statute], not to delete words used or to insert words not used.'" *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 28, 263 N.E.2d 249 (1970), quoting *Columbus-Suburban Coach Lines v. Pub. Util. Comm.*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969).

The state did not apply the intimidation statute in a proper manner. By its plain language, the statute does not apply to police officers when they interrogate suspects. No matter how much the state engages in name calling (i.e. "bad cop") and attempts at emotional appeal (e.g. "innocent child"), the statute still does not apply to the interview and interrogation tactics of

police officers. As a policy matter, police officers have significant freedom in their interview and interrogation tactics. See *State v. Lynch*, 98 Ohio St.3d 514, 523, 2003-Ohio-2284, 787 N.E.2d 1185 (2003); *State v. Loza*, 71 Ohio St.3d 61, 1994-Ohio-409, 641 N.E.2d 1082 (1994); *Frazier v. Cupp*, 394 U.S. 731, 739, 89 S. Ct. 1420, 22 L.Ed. 2d 684 (1969).

If this court properly applies the statute, the intimidation conviction should be reversed. It will not give immunity to police officers because there are cases where police officers may actually engage in witness intimidation. A hypothetical case would be if a police officer filed a criminal complaint against a defendant, and then the police officer interrogated a witness that was identified as such by the defendant or by his or her counsel.

Detective Steele interviewed and interrogated a suspect prior to the institution of criminal charges. Maxton was not a witness when he was interviewed and interrogated by Detective Steele. Therefore, the intimidation statute is not applicable in this case.

CONCLUSION

For the reasons outlined above, the intimidation conviction should be reversed, and the defendant discharged from further prosecution.

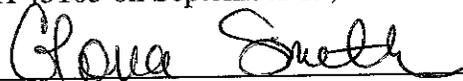
Respectfully submitted,



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PROOF OF SERVICE

I certify that a copy of this Motion was sent by ordinary U.S. Mail to counsel for Appellant/cross-appellee, Daniel Breyer, Special Prosecuting Attorney, Clermont County Prosecutor's Office, 123 North 3rd Street, Batavia, OH 43103 on September 19, 2012.


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