

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 :
 vs. :
 :
 DAVID L. LABER, :
 :
 Defendant-Appellant. :

Case No. 2013-1174
On Appeal from the Lawrence County
Court of Appeals
Fourth Appellate District
C.A. Case No. 12CA24

APPELLANT DAVID LABER'S REPLY BRIEF

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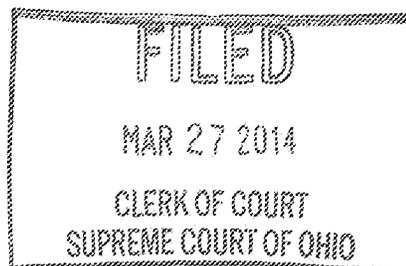


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INTRODUCTION

The Attorney General overcomplicates this case. Buried in its brief is a concession that highlights the simple issue here. David Laber speculated. Merit Brief of Appellee State of Ohio, at 3. And his speculation articulated wonder about committing violent acts. *Id.* At bottom, such an articulation of speculative thoughts does not demonstrate the specific intent to intimidate or coerce required by R.C. 2909.23(A)(1)(a).

STATEMENT OF THE CASE AND FACTS

Mr. Laber relies upon the statement of the case and facts presented in his merit brief.

ARGUMENT

PROPOSITION OF LAW

An articulation of mere thoughts is not a terrorist threat under R.C. 2909.23(A). Fifth and Fourteenth Amendments, United States Constitution; Section 16, Article I, Ohio Constitution; R.C. 2909.23; *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

I. This case should not be dismissed as improvidently accepted.

The Attorney General is correct that this is primarily a sufficiency challenge without a First-Amendment attack. But that does not eliminate the constitutionality of this case. A sufficiency challenge is itself constitutional. *See Jackson v. Virginia*, 443 U.S. 307, 314, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Moreover, lower courts need guidance whether the articulation of mere speculative thoughts evidence the required specific intent to intimidate or coerce under R.C. 2909.23(A)(1)(a).

Further, the fact that this is mostly a sufficiency case does not make the First Amendment irrelevant. Especially here, where the Ohio General Assembly did not define the term “threat,” which is an element of the offense. *See* R.C. 2909.23(A)(1). Accordingly, the United States Supreme Court’s definition of what constitutes a “threat” is relevant to this Court’s sufficiency decision.

Finally, contrary to the Attorney General’s implication, this Court does analyze sufficiency claims, particularly when a statute is open to different interpretations. *See State v. Smith*, 136 Ohio St.3d 1, 2013-Ohio-1698, 989 N.E.2d 972. Here, because the Ohio Revised Code does not define the term “threat,” and because threats inherently come through some form of verbal or non-verbal speech, this Court must interpret R.C. 2909.23(A)(1)(a) to inform lower courts if an articulation of mere speculative thoughts can demonstrate the required specific intent to intimidate or coerce.

II. An articulation of mere speculative thoughts does not establish the required specific intent to intimidate or coerce under R.C. 2909.23(A)(1)(a).

The Attorney General argues: “The objective meaning of talking very specifically about committing violent acts at a workplace, is to intimidate.” Merit Brief of Appellee State of Ohio, at 11. That, of course, is not always true. People vent. Vents can be specific hyperbole to blow off steam.

For example: a wife that has a heated phone conversation with her husband while at work may hang up and say, “I could kill him, pull an Aileen Wuornos, use that stupid pistol he keeps under the bed, two quick shots to the head.” A co-worker may hear that. Under the decision below, and the Attorney General’s argument, the wife has

violated R.C. 2909.23. But she has not, because she is not serious. *See Virginia v. Black*, 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003) (defining “true threats” to “encompass those statements where the speaker means to communicate a *serious expression* of an intent to commit an act of unlawful violence to a particular individual or group of individuals”).

The Attorney General accuses Mr. Laber of ignoring context. Merit Brief of Appellee State of Ohio, at 11. But the converse is true. The Attorney General offered only subjective interpretations as the proper context in this case. *Id.* at 10-11. And while those interpretations may satisfy the reasonable-fear element under R.C. 2909.23(A)(2), they do nothing to illuminate whether Mr. Laber had the specific intent to intimidate or coerce required under R.C. 2909.23(A)(1)(a).

The context that matters relative to the specific-intent-to-intimidate-or-coerce element is Ms. Lawless’s description of Mr. Laber’s words and her description of his frustration with his co-workers. She explained that Mr. Laber was communicating to her that he “wonder[ed] what it would be like” to commit certain violent acts. Tr. 79; *see also id.* at 65-67. She also explained that Mr. Laber was frustrated by his superiors at work. *See* Tr. 66-67. That context demonstrates that Mr. Laber, like the wife in the example above, was venting. All he did was express detailed wonder. In other words, curiosity.

Contrary to the Attorney General’s assertion, when viewed in the proper context, *State v. Baughman*, 6th Dist. Lucas No. L-11-1045, 2012-Ohio-5327, proves Mr. Laber’s point. The Attorney General highlights that Mr. Laber was speaking directly to Ms.

Lawless to demonstrate imminence. *See* Merit Brief of Appellee State of Ohio, at 13. But imminence is irrelevant to the specific intent to intimidate or coerce under R.C. 2909.23(A)(1)(a). An “insatiable desire & thirst for revenge & killing” by one who would “like to kill everybody,” which were the words used by Mr. Baughman, demonstrates a specific intent to intimidate or coerce. *Baughman* at ¶ 24. Those are concrete ideas, no matter how general, that convey pressure. *See State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501, 858 N.E.2d 341, ¶ 39. But the articulation of wonder does not convey pressure. *See* Tr. 79; *see also id.* at 65-67.

Finally, although Mr. Laber’s language was alarming enough to bring a negative consequence, that consequence is not criminal. It is through his employer, which occurred here. He was fired. *State v. Laber*, 4th Dist. Lawrence No. 12CA24, 2013-Ohio-2681, ¶ 3.

III. The Attorney General’s insistence on deference to the jury’s finding ignores that the Ohio Revised Code does not define the term “threat.”

Although courts give deference to jury decisions in sufficiency challenges, that deference does not guarantee a finding of sufficient evidence. *See generally Smith* at ¶ 26, 28. Here, this Court must decide whether Mr. Laber’s articulation of speculative thoughts demonstrated the required specific intent to intimidate or coerce. *See* R.C. 2909.23(A)(1)(a); R.C. 2901.22(A). First-Amendment implications are relevant to that decision because the Ohio Revised Code does not define the term “threat,” but the United States Supreme Court has defined a “threat” to be a *serious* expression. *See Black* at 359. Accordingly, the jury did not know that it had to weigh whether Mr. Laber’s

expression of his wonder constituted a serious expression. *See* Tr. 175-176. And none of the Attorney General's cited cases, federal and from other states, answer whether the articulation of mere speculative thoughts is a serious expression that evidences the required specific intent to intimidate or coerce under Ohio's statute. Under that statute, at most, Mr. Laber's words were "a kind of very crude offensive method of stating * * * opposition" to his co-workers. *See Watts v. United States*, 394 U.S. 705, 708, 89 S.Ct. 1399, 22 L.Ed.2d 664.

CONCLUSION

When viewed objectively, no matter how alarming, Mr. Laber's words did not indicate the specific intent to intimidate or coerce. As such, they did not violate Ohio's terrorist-threat statute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of **Appellant David Laber's Reply Brief** was sent by regular U.S. mail to Eric Murphy, State Solicitor, Attorney General of Ohio, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, and Mack Anderson, Assistant Lawrence County Prosecuting Attorney, Lawrence County Courthouse, One Veterans Square, Ironton, Ohio 45638, on this 27th day of March, 2014.



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