

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET No. 12-1309

STATE OF WEST VIRGINIA,

Plaintiff Below, Respondent,

VS.

JAMES SCOTT YOCUM,

Defendant Below, Petitioner.

Appeal from a final order
of the Circuit Court of Marshall
County (12-F-47)

PETITIONER'S REPLY

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II. TABLE OF AUTHORITIES

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III. REPLY OF THE PETITIONER

Summarizing the argument, and in line with what the Petitioner has already stated, the Respondent contends that section 61-6-24 of the West Virginia Code prohibits threatening to commit a terrorist act, which, “if carried out[,] would likely result in serious bodily injury.” Resp’t Br. at 3. Apparently, speculation *is* preferred to relying on the circumstances as they exist and determining whether or not there is a reasonable expectation of serious bodily injury at the time of the perceived threat.

Such a notion becomes downright dangerous when one thinks of the absurd conclusions which law enforcement or prosecutors could, ultimately, conceive, and thereafter file charges, based upon what may, very likely, be the ravings of a man being stripped, even if just temporarily, of his liberty rights, and caged – i.e., a criminal defendant.

Now, the Respondent is accurate in stating “threats are not within the protection of the First Amendment.” Resp’t Br. at 6. Petitioner’s trial counsel, even, acknowledged this rule during his closing remarks. (A.R. 239.) Nevertheless, such a rule can only hold true for section 61-6-24 of the West Virginia Code if the conduct proscribed within said statute is adequately defined. The arguments of counsel during the closing argument phase of trial shone a light on how inadequately the statute spells out what is considered a “terrorist act.” (A.R. 231-232, 236-241.)

A “true threat” may not be protected speech, but the West Virginia citizen should know what is and what is not a “threat.”

Despite the Respondent's position, and the cases cited and utilized¹ to prop up such a notion, what occurred in this case goes beyond mere disagreement between the parties. While disagreement between the parties as to meaning and/or applicability of certain statutory provisions may not, in and of itself, be grounds to void the same for vagueness, such a disagreement, particularly when it involves behavior which is criminalized, should be carefully reviewed. Again, personal liberty is at stake here.

More important, and underlying those cases which the Respondent cites, there is need for clarity and un-ambiguity within a statute. *In re Estate of Resseger*, 152 W.Va. 216, 220, 161 S.E.2d 257, 260 (1968); *State v. Mattioli*, 556 A.2d 584, 585 (Conn. 1989); *Planned Parenthood v. Arizona*, 718 F.2d 938, 947 (9th Cir. 1983); *Southwestern Bell Telephone Co. v. City of El Paso*, 168 F. Supp.2d 640, 645 (W.D. Tex. 2001). Section 61-6-24 of the West Virginia Code, as illuminated by the arguments of counsel, is not clear and suffers ambiguity.

Contrary to what the Respondent may believe, the Petitioner's interpretation does not simply leave out "with or without the intent to commit the act" portion of the statute. It is given this portion of the statute which makes the Respondent's speculative position so troubling. As is said in the Respondent's Brief, "all that matters is the nature of what is threatened—if the threat would be carried out, it would '[I]ikely . . . result in serious bodily injury or damage to property or the environment[.]'" Resp't Br. at 15. The Petitioner submits, that is a pretty big "if."

If Person A actually had the ray gun, which he "threatened" to use to disintegrate Officer B and Officer B's family, that would likely result in serious bodily injury to Officer B and Officer B's family. While that sounds absurd; perhaps, the origins of a bad comic book character, it is not far removed from the argument that if the Petitioner was able to, *actually*, get

¹ The Petitioner would note that of those cases cited, only one (1), which arises out of Connecticut, *State v. Mattioli*, 556 A.2d 584 (1989), is a criminal case.

access to Officer Allman's daughter(s) and have coitus with them, they would suffer serious bodily injury. That was what the State argued in this case.

When there is no need to show an intent to commit the act threatened, as section 61-6-24 of the West Virginia Code does, the "likeliness" of the act should not be premised upon a fiction.

The "what if" game may be a fine exercise for authors and writers, but it has no place in the criminal justice system.

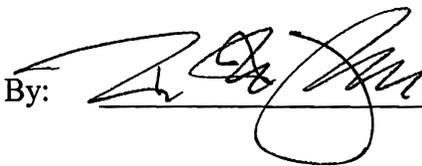
Despite what occurred on September 11, 2001, sanity must still reign in a civilized society. Therefore, a review as to the probabilities of calamitous events, perceived by way of an utterance or threat, should be required in our justice system.

IV. CONCLUSION

This Honorable Court should reverse the conviction of the Petitioner, James Scott Yocum, in this matter.

Respectfully Submitted,

JAMES SCOTT YOCUM
Petitioner and Defendant below

By:  _____

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V. CERTIFICATE OF SERVICE

I, Brent A. Clyburn, Esq., counsel for James Scott Yocum, certify that I have served the attached PETITIONER'S BRIEF upon the State of West Virginia by forwarding a true and accurate copy thereof by United States Postal Service, postage pre-paid, to the Office of the Attorney General, Scott E. Johnson, AAG, 812 Quarrier Street, 6th Floor, Charleston, West Virginia 25301 on the 15th day of April, 2013.



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