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No. 16-6250

116-1-14933

IN THE SUPREME COURT OF THE UNITED STATES

(USSC)

ROBERT PEREZ,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

DS
a

REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY BRIEF

I. In addition to Respondent's statement, case, and facts:

I'd been at the beach all day and had been drinking, singing, and having a good time to the tune of "All she wants to do is dance". The drink I was introduced to was called a "Molotov cocktail", the neighborhood drink as in the song by Don Henley. I write songs and sing too. As I told the Judge, a Molotov cocktail consists of ruby red grapefruit juice and vodka. This song was in my head as I went to Publix Liquor Store and while there I bought two ½ pint plastic bottles of vodka. There was only one pint of ruby red grapefruit juice in the liquor store, so while going to the grocery store next door between the breezeway I drank one ½ pint of vodka and the only ruby red grapefruit juice with two friends I introduced the drink to. While there, a Publix employee came out to smoke and had a conversation with us as to

what we were drinking, and we told her a "mollytov coctail" and she laughingly said as she lit her cigarette, "Oh, I'm not going to burn anything down am I?" I said no, not that type and then we were all laughing (it was funny at the time the way it was said). I had wet clothes and one last part of my next Molotov cocktail in my beach bag and didn't want to carry it in the store, I usually put it under the bench in the middle, but I went in the side entrance and set it by a grocery cart that was about 10-12 up and I'd figured I'd be back before anyone got there. I'm still singing in my mind when I was walking inside the sliding doors I looked back and saw who turned out to be Ken Wescott by my bag and I said, "Don't worry about that, its mine and its not going to bother anything. Its only one Molotov cocktail left in it and can't burn anything down," while still laughing also about what just said outside. The lyrics to the song are in my Certiorari.

Anyway, this guy got real irate and said I couldn't say that, that he was from New Jersey, and I can't say things like that and it really irritated me to the point I picked up my bag and walked around the corner until I saw him leave. I then walked back into the store because I was looking through the window to make sure he was gone. This is "in video". I was still frustrated by him saying a few negative things to me while I was happy and singing. I now put my beach bag right inside the left by the coupon rack because I had wet clothes in my bag plus the other bottle of vodka and I didn't want to carry it around the store. Why is the liquor store separated from the grocery store, I thought. So to be safe, I left it there for that reason also. I was still irritated while I searched with my eyes for where Mr. Wescott was and kept an eye on my bag. I said, "Fuck this shit." And that was what I said, and Robin Pontius, employee standing right next to Carrie Barfield even states that was all I said in general agitation (T. 204-205, Vol. III). Somewhere between the time I walked past the deli and the next day when they wrote their statements, Wescott and Barfield's stories changed. I was trespassed on October 13, 2012.

I wasn't arrested until February 17, 2013, after the State looked at my record, probably for Habitual Felony Offender that in pre-trial proceedings (T. 11, L.

11, L. 3-13) leads me to believe by her even mentioning HFO in pre-trial on (*id.* L. 9). I'm not proud of my past record and I never hurt anyone but myself as my record shows. This is no excuse but I'm honest. There were reasons that Wescott and Barfield wanted to get me trespassed and they did. The statements they made have many conflicts, I hope to bring out if needed.

When Respondent uses my name, Perez, when my attorney in fact was the one who stated, "Mr. Randall admitted talking about blowing up the world was frightening, but argued that did not make it a threat (Certiorari Appendix G 320-340). Every time Perez is stated, my attorney was saying this against my advice in this area. I was up and down about a *Nelson* Hearing all the time. Mr. Randall kept assuring me he knew what he was doing.

Because, the Fifth District Court of Appeals would not answer, I've come to this point in time that hopefully our Supreme Court of the United States would accept jurisdiction from many compelling reasons, especially the ones in the statement of case and facts.

II. In rebuttal to Respondent's reasons for denying writ:

A. In pre-trial proceedings the jury instructions were argued beginning with why the State changed them and Ms. Barrett [states] (Petitioner's Reply Appendix A pg.'s 5 and 6), she could not go any further, in other words, unless she had her way on jury instructions, Judge repeatedly told her the words State wanted to use would not be used, because she didn't understand stated incident and thought it misled the jury. The ^{STATE} Court stated, "That's not-- if the jury instructions are not going to be the way I proposed based on the case law, then the case is over. I mean, that is what the State has to prove." (pg. 5). To which Ms. Barrett then replied, "Okay, I'm just saying that we don't really need-- I don't need to practice that bad. If that's going to be the Court's ruling, then the case is pretty much over." (pg. 6).

Doubt is when the court in pre-trial proceedings documented (Petitioner's Reply Appendix B pg. 42): The Court: "I think even though you've represented it in quite the-- actually used these words, that it would be misleading to the jury." Then

the Court stated: "I don't like the stated part, because I don't know what stated intent actually means. I'm not sure the jury will know what stated intent means."

This Court stated this afterwards (Petitioner's Reply Appendix - C pg. 5), "Okay, see where the standard jury instruction does not include the word "stated"?"

Then the Court again stated (Petitioner's Reply Appendix - D pg.'s 12-13, L. 12-15), "Okay. The Court's going to follow *Valdez*. But, with all due respect, I'm not going to put the word "stated" in the standard jury instructions." On through, where the Court stated, "I'm going to follow the standard jury instructions." Then, the Court again stating, "I mean, I feel true to the-- I mean, I've always the position that I'm going to follow the-- if there's any dispute, I'm going to follow the standard jury instructions. I feel strongly that they have committees, they work in these instructions all the time. If they wanted the word "stated" in there, they would put the word "stated" in there."

Then Mr. Randall (defense attorney) (Petitioner's Reply Appendix - E pg. 17, L. 4-10) stated, "I don't believe the word "stated" should be-- actually I'm agreeing with the Court that stated intent not be used in jury instruction." The Court then replied, "I'm not going to use it in the jury instruction."

Petitioner never had *mens rea* at all! There is no motive, even after Judge in the lower court expressed the above statements of thought; defense attorney also states, "And I believe that is extremely misleading to the jury. It conveys that the only thing that needs to be proven is the first part, which is not what the jury instructions said (Petitioner's Reply Appendix - B pg. 43, pretrial), (since "stated intent" was added to instructions the jury didn't even look at the DVD's that have additional proof of innocence).

This with the statements made by the State that, "I'm not even suggesting that we can prove actual intent. This, with the State proffered the trial court that without the modified jury instruction that emphasizes in essence, a "strict liability" theory of criminal liability under F.S. section 790.162 simply through the "stated intent" of the statements by Petitioner, "It's going to be a big waste of time because...I'm not-- that's not what the element is." See Writ of Certiorari, Exh. JOA

App. D (Petitioner's Reply Appendix - F pg.'s 24-25, L. 14-20), which says "Okay. I had been to the beach earlier, and we had done a YouTube commercial (unintelligible) who is a friend of mine, Dennis. And we had been drinking out there. And, it was called a Molly cocktail. It consist, as what they told me of ruby red grapefruit juice and vodka." (pg. 25, L. 7-11), "Actually, told her what was in a Molotov (transcribed spelled wrong) cocktail." She said, "It's not going to burn anything up?", to which I replied, "Oh, no, not that type." And then we were all laughing. It was kind of laughing, you know. (Petitioner's Reply Appendix - F pg.'s 24-25, L. 14-20).

"Federal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state. That understanding 'took deep and early root in American soil.'" And Congress left it intact here. Under section 875(c), wrongdoing must be conscious to be criminal." *Morisette [v. United States]*, 342 U.S. 246 AT 252 (1952)].

B. What makes *Elonis v. U.S.*, with F.S. 790.162 eligible is that, after the trial, raises fundamental error that is addressable irrespective of not being raised at trial. Perez repeatedly argued the State was required to prove he made an intentional threat, not simply that alleged statements themselves were made, to establish a criminal threat.

Further, if the totality of the State's evidence fails to show as a matter of law, that a criminal offense was committed and/or that a crime was even alleged fundamental error occurs. *F.B. v. State*, 852 So.2d 226, 229-231.

I thought a lot of common sense by Court and State was for some reason not used. Respondent has now become guilty of this. I Would not disturb the Supreme Court if it wasn't forced. I have to protect myself when a storm is wailing.

Jurisdiction and constitutional provisions involved could be considered by the Supreme Court if they see fit by Rule 10(c).

III. Conclusion:

I hope and pray in the name of Jesus Christ that our Supreme Court of the United States will please consider my Petition for Writ of Certiorari as baseball legend Bobby Richardson said that used to live across the street from me in Sumter, South Carolina, "Your will Lord, only your will be done."

May God bless you all!

Honorably and Respectfully submitted,

/s/ Robert E. Perez ^{DC#} 924225

Mr. Robert Perez, *pro se*, DC# 924225

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CERTIFICATE OF SERVICE

I, Robert Perez, DC # 924225, hereby certify that on this 12th day of January, 2017, a true and correct copy of the Reply to the Response to Petition of Certiorari in the above styled cause was placed in the hands of a Prison Official for service by first-class, pre-paid, U.S. Mail to the Counsel for the Respondent, Pamela Koller, Assistant Attorney General, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, FL 32118. I further certify that the original of the above described document has been likewise filed this same day to the Clerk of the U.S. Supreme Court, One First St. N.E., Washington, DC 20543.

/s/ Robert E. Perez ^{DC #} 924225
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APPENDIX

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A

MS. BARRETT: Well, here's the issue. If that's not -- if the jury instructions are not going to be the way I proposed based on the case law, then the case is over. I mean, that is what the State has to prove. So I mean --

THE COURT: Okay. I would assume we're not going to get to that issue until jury instructions and closing statements.

MS. BARRETT: Well, if the Court is going to rule that way, it's going to be a big waste of time because he's -- I'm not even suggesting that we can prove his actual intent because we don't have to because that's not what the element is.

THE COURT: So do you want me to address that?

MS. BARRETT: I mean --

THE COURT: I mean, would you both be prepared to address it first thing?

MS. BARRETT: Well, I think I already have, but I'd be happy to look at whatever Mr. Randall can find. I researched this first. I mean, I would not have brought this case.

THE COURT: Maybe we should just -- you should probably look at the jury instructions and see what the modification was in 2000 -- I think he

1 said 1989.

2 MR. RANDALL: '89.

3 THE COURT: I'd be curious to see that and
4 maybe shepardize that case.

5 MS. BARRETT: No, I have. The case is still
6 good law, that flag had to do with some other
7 issue.

8 THE COURT: I'm happy to address it first
9 thing in the morning.

10 MS. BARRETT: Okay.

11 THE COURT: Okay.

12 MS. BARRETT: Okay. I'm just saying that we
13 don't really need -- I don't need to practice that
14 bad. If that's going to be the Court's ruling,
15 then the case is pretty much over. But that's --

16 MR. RANDALL: Well, it's still the inability
17 for the State to prove based on an inference which
18 is what --

19 MS. BARRETT: Yeah. I mean, we just disagree
20 on that, that's why I pulled the case law but --

21 THE COURT: Okay. Let's go ahead and bring
22 the jurors in, they can sit anywhere.

23 (This concludes this excerpt.)

24 * * * * *

B

1 State has to prove that he had a destructive
2 device; which, I cannot argue based on the case
3 law.

4 I do intend to argue that the State has
5 elements to prove; which is where we talked to the
6 jury yesterday -- which the State talked to the
7 jury about yesterday. And those two elements are
8 that there was allegedly a statement that was that
9 he threatened to do, discharge or -- you know, the
10 destructive device, and two, that he did so with
11 intent. He did so with intent.

12 THE COURT: Okay. I think, even though
13 you've represented it in quite the -- actually
14 used these words, and that you're probably not
15 going to use these words, that it would misleading
16 to the jury.

17 I don't like the stated intent part, because
18 I don't know what stated intent actually means.
19 I'm not sure the jury will know what stated intent
20 means.

21 MS. BARRETT: It means that in the threat,
22 what he stated his intent was.

23 THE COURT: I know. But that -- I'm just
24 saying that I like it better if you say, it is
25 only required that -- I think it needs to say, a

1 threat.

2 MS. BARRETT: Or the threat, or something --

3 THE COURT: Only require that "the threat
4 conveys intent to do bodily harm or damage to the
5 property. And that, whether the appellate
6 intended to follow through with the threat was
7 irrelevant. So you can either have -- if you want
8 stated intent -- if you agree to stated intent,
9 then I'll put in stated intent. Otherwise, I'm
10 going to put in the other part.

11 MR. RANDALL: Well, I'm objecting to the
12 stated intent, as it's not included in the
13 standard jury charge, Your Honor. I don't believe
14 (a) be naturally included in the jury instruction.
15 I'm also going to object to the Court's inclusion
16 of anything that says, "what's only required" --
17 it's only required. Because, again, Your Honor,
18 that conveys -- and I believe that is extremely
19 misleading to the jury. It conveys that the only
20 thing that needs to be proven is the first part,
21 which is not what the jury instruction said.

22 The jury instructions say, "To prove the
23 crime, the State must prove the following two
24 elements: By adding your additional sentence,
25 Your Honor, -- and I just need to make sure that

C

1 actually has a destructive device. That is not
2 what I'm arguing. Obviously, I will concede the
3 point, the State does not have to prove that
4 issue. But what they do have to prove, and what
5 the standard instructions set out, is that the
6 State has to prove that he made this threat to
7 throw, place, project, discharge a destructive
8 device. And number two, that he did so with
9 intent to do bodily harm to a person or damage the
10 property of any person.

11 The State's proposed jury instructions in
12 what I objected to yesterday in voir dire is that
13 they put in the word, "the stated intent". The
14 stated intent comes from that case law, the Valdez
15 case which the Court just referred to. However,
16 that does not -- did not get reduced to actually
17 what the standard jury instruction is.

18 THE COURT: Okay, wait --

19 MR. RANDALL: Our --

20 THE COURT: Tell me the number for the
21 standard jury instruction.

22 MR. RANDALL: 10.8, Your Honor.

23 THE COURT: Okay. See where the standard
24 jury instruction does not include the word,
25 "stated"?

D

1 distinction between this particular crime where
2 the substance of it has to do with the verbal
3 threat verses an enhancement. For example,
4 robbery with a firearm. They make a distinction
5 there, saying that in the case of robbery with a
6 fire -- firearm enhancement, there has to be an
7 actual firearm; unlike this charge, where it's not
8 an enhancement. It's the substance of the charge,
9 that the threat to make the destructive device is
10 sufficient. It doesn't have to be an actual
11 destructive device.

12 THE COURT: Okay. The Court's going to
13 follow Valdez. But, with all due respect, I'm not
14 going to put the word, "stated" in the standard
15 jury instruction.

16 MS. BARRETT: I don't understand. How are we
17 following it then? Because --

18 THE COURT: Well, because it's a -- here's my
19 concern. The standard jury instructions, they
20 knew -- I mean, you know, there's committees that
21 revise these every day. And they make the
22 decision not to revise it, not to the put word,
23 "stated" after Valdez. They didn't do that.

24 So you can argue that -- you can make your
25 argument that it's not required by the -- that he

1 actually had the ability to carry out the threat.
2 But I'm going to use the word, "stated" in the
3 jury instructions. I'm going to follow the
4 standard jury instructions.

5 MS. BARRETT: Well, then, Judge, they're not
6 -- they're -- I'm not going to be able to --
7 they're going to get the instruction -- this is
8 the only law that applies to this case. I can't
9 give them Valdez --

10 THE COURT: Well, my concern is that they
11 amended the instructions; why didn't they amend it
12 to put in the word, "stated"?

13 MS. BARRETT: I don't know. But I know that
14 this is still good law. I mean, that's -- that's
15 why --

16 THE COURT: I mean, I feel true to the -- I
17 mean, I've always the position that I'm going to
18 follow the-- if there's a dispute, I'm going to
19 follow the standard jury instructions. I feel
20 strongly that they have committees, they work on
21 these instructions all the time. If they wanted
22 the word, "stated" in the there, they would put
23 the word, "stated" in there.

24 MS. BARRETT: What the Court's doing in the
25 ruling, it is requiring the State to prove

E

1 on my objections yesterday.

2 THE COURT: And you can say it's not intent
3 -- you can say stated intent.

4 MR. RANDALL: I don't believe the word
5 "stated intent" should be actually -- I'm agreeing
6 with the Court that stated intent not be used in
7 the jury instruction.

8 THE COURT: I'm not going to use it in the
9 jury instruction. But she can say that in her
10 closing argument.

11 MS. BARRETT: Well, and then he's going to
12 say, You're going to see instruction that doesn't
13 have the word "stated" in it. So that's not the
14 law.

15 MR. RANDALL: Right. And I'm going to argue
16 this is not the law. She can argue whatever she
17 wants. But as the Court has already instructed,
18 what the State says and what I say is not the law;
19 it's just argument.

20 MS. BARRETT: So it doesn't do any good to
21 argue it.

22 I would ask if the Court's not going to
23 include the word, "stated," then under the two
24 elements, I'd ask for the sentence from Reed that
25 says, "it is only required that the threat must

F

1 MR. RANDALL: Mr. Perez, what would you like
2 to address the Court?

3 I ask that you take a deep breath and just
4 try to stay on the topic.

5 MR. PEREZ: As it all turned out, I walked
6 into the Publix. I had gotten two bottles of Blue
7 Crystal vodka, and one Ruby red grapefruit juice.

8 THE COURT: And one what?

9 MR. PEREZ: The Publix liquor store.

10 THE COURT: Okay.

11 MR. PEREZ: Right next to it, there's a --
12 there's a breezeway between --

13 THE COURT: I'm familiar with that Publix.

14 MR. PEREZ: Okay. I had been to the beach
15 earlier. And we had done a YouTube commercial
16 (unintelligible) who is a friend of mine, Dennis.
17 And we had been drinking a drink out there. And
18 it was called a Molly cocktail. It consists, as
19 what they told me of Ruby red grapefruit juice and
20 vodka.

21 Well, we had a good time. There was about
22 eight of us drinking -- went out pretty quick, and
23 we were about done. So then, I went to Publix and
24 I bought those two (unintelligible). I had two
25 friends that I was talking to. And in between

1 time, let them taste it. So I had one bottle
2 right there in between there. We were kind of
3 around back. And there was a girl out there who
4 sitting between there. She smokes cigarettes.
5 The employees smoke cigarettes in between, you
6 know, breaks. And there was, you know, something
7 said about me actually told her what was in a
8 Molotov cocktail. She said, It's not going to
9 burn anything up? I said, Oh, no, not that type.
10 And then we were all laughing. It was kind of
11 like laughing, you know.

12 Well, my friends walked inside before me, I
13 think. I can't really remember, it's been so
14 long. But I took my bag around -- right by the
15 door is where there's a huge glass opening up and
16 down, and there's a cart rack there. I figured
17 I'd leave my bag right there because there's a
18 bottle of vodka in there. I didn't want to bring
19 it in the store. So I just put it right here
20 where nobody could bother it.

21 When I was walking into the store, I went
22 back into the -- met a guy, bald head; he was with
23 me. He had a cart. And he'd push me -- I said,
24 Don't worry about that. That's mine. It's not
25 going to bother anything. It's only got one

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/s/ Robert E. Perez ^{DC# 924225}
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