

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Court of Appeals No. {22}E-25-042

Appellee

Trial Court No. 2024 CR 0091

v.

Ashli Ford

DECISION AND JUDGMENT

Appellant

Decided: September 15, 2026

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Kristin R. Palmer, Assistant Prosecuting Attorney, for appellee.

Peter Pattakos, for appellant.

* * * * *

SULEK, J.

{¶ 1} Appellant Ashli Ford appeals the judgment of the Erie County Court of Common Pleas, which convicted her of four counts of intimidation following a bench trial. At issue in this appeal is whether Ford’s statement in a Facebook post that “I will escort you to your demise in a manner more akin to Malcolm X than Martin Luther King Jr.” constitutes a “true threat.” This court holds that, when considered in context, Ford’s statement is not a true threat as a matter of law but is instead political hyperbole protected

by the First Amendment. For the reasons more fully discussed below, the trial court's judgment is reversed, and Ford's convictions are vacated.

I. Factual Background and Procedural History

{¶ 2} The present case began on March 15, 2024, when the Erie County Grand Jury returned a 19-count indictment against Ford, consisting of nine counts of extortion in violation of R.C. 2905.11, felonies of the third degree; four counts of intimidation in violation of R.C. 2921.03, felonies of the third degree; three counts of telecommunications fraud in violation of R.C. 2913.05, felonies of the fifth degree; and three counts of falsification in violation of R.C. 2921.13, misdemeanors of the first degree.

{¶ 3} The matter proceeded to a four-day bench trial, following which the trial court found Ford guilty of the four counts of intimidation and not guilty of the remaining fifteen counts. On appeal, Ford argues that her convictions for intimidation are based on insufficient evidence because the allegedly incriminating statements constitute protected speech under the First Amendment to the United States Constitution. This court, therefore, will limit its focus to the facts pertaining to the counts of intimidation.

{¶ 4} Ford is a consultant, online podcaster, and self-styled investigative journalist and victim's advocate.

{¶ 5} In August 2023, she was charged with two counts of falsification in the Norwalk Municipal Court. The charges arose from a conversation with David Smith, the

Norwalk Chief of Police, in which she allegedly falsely accused Mike White, the Norwalk Safety Service Director, of criminal behavior occurring 10 to 13 years earlier. She was served with a summons on August 22 or 23, 2023, and was arraigned on September 18, 2023. Eventually, the matter proceeded to a bench trial where she was acquitted of the falsification charges.

{¶ 6} Shortly after her arraignment, on September 19, 2023, Ford attended a Norwalk City Council meeting. During the public speaking portion, she claimed that she was arraigned on false charges. She stated her intention to sue into bankruptcy a list of Norwalk employees, including Stu O'Hara, the city law director.

{¶ 7} At issue in this case is a subsequent September 22, 2023 Facebook post in which Ford stated the following, verbatim:

All the surrounding area's LE and Law community are reaching out to me saying the same things . . . "keep going; you have them", "thank you", "we have been waiting for this", "you were made for this", "thank God for you".

Dave Light, Stu O'Hara, Mike White, Dave Smith, Norwalk City Council: I know that I have you on your knees. I'm not being arrogant. I am stating pure fact! This is your VERY LAST opportunity to end this in a respectable manner. These problems will not only be addressed, I'll personally see that they are corrected. You can be part of the solution or part of the downfall. That is entirely up to you. Everyone is wrong at some point. How you behave after is what defines you. The decisions you make TODAY will define your entire career and the legacy you leave behind for your children. I will not stop! I will slowly crumble the reputation every single person who stands in way of justice. I will not be professional or political, though I have mastered both. I will escort you to your demise in a manner more akin to Malcolm X than Martin Luther King Jr. I've tried gentle parenting. Now I'll meet you on a level you seem to understand a

little better. Legal avenues are being blocked ☹ Nobody will touch this level of corruption!

Cool, cool. I tried it your way. I'm going to drag you through the court of public opinion. Watch me compete with these people's favorite Netflix show. You can't make this stuff up! It's better than any book, TV show, or movie I have ever seen! I'm going to drag out every single low down, dirty deed; side piece; dick 🍆 sent to the chic yall just pulled over; city money spent on personal expenses; stolen city property; musical chairs jobs, shut up settlements; nollied charges; human trafficking ring; child pornographer and the people who view it; rapist; wife beater cop; let me shave but then come out butt naked and demand sex cop; badge wearing drug dealer; sex tape; lost rec key cards because a cop was banging a dispatcher; corruption coverup; thong wearing judge; cops getting head in a park bathroom; cop banging cis; cis who date HCSD staff, who help them get away before busts; stolen gun; cops who tase kids and girlfriends; cops who have sex in cruisers in parking lots; cops who have sex at the end of dead end streets- in cruisers; cops who have sex on ride alongs- in cruisers; cops who lie about police Chiefs to mayor's so his buddy can get the job; attorney run trap house; suicides that ain't suicides; duped sheriff, missing women, screenshots, accidents that ain't accidents; police being targeted for telling on bad cops; law directors covering for a married woman he was banging; sketchy ass poker games; dirty politics; mayors downloading porn in firehouse; firefighters banging eachother's wives; murder; cases that look like murder; every dollar spent without a council vote; every garbage deal voted for personal gain

You feel me? You are about to! Do your jobs! Do what is just and right! Follow the laws! I will tell everytime you don't!

When you see the uptick in New voter registration, just know they are gearing up for me to run for mayor!

{¶ 8} The four named victims, Dave Light, Stu O'Hara, Mike White, and Dave Smith, were witnesses in Ford's falsification trial, and each testified in the underlying trial in the present case.

{¶ 9} Dave Light is the Mayor of Norwalk, a position he was elected to after serving as Norwalk's Chief of Police. He initially met Ford approximately 20 years earlier when he investigated a complaint that her father was menacing her. He later had interactions with her when she was managing a restaurant on the north side of the town. More recently, he would meet with and assist Ford when she had difficulty obtaining public records. During one of those meetings in 2023 with Light and Norwalk Law Director Stu O'Hara, Ford discussed a number of crimes that she believed had been committed by police officers and other officials, and for which she claimed to have evidence. Light encouraged her to take the evidence directly to O'Hara.

{¶ 10} Light's testimony then turned to the September 22, 2023 Facebook post and why he viewed it as a threat:

A. Okay. When she gets later in the same page, first page, I will not stop. I will slowly crumble the reputation of every single person who stands in the way of justice. I will not be professional or political, though I have mastered both. And this is the disturbing part, I will escort you to your demise in a manner more akin to Malcolm X than Martin Luther King Jr. I've tried gentle parenting. Now I'll meet you on a level you seem to understand a little better. So that's – that's the part that raises alarm to me.

Q. Explain to the Court why that rose alarm to you?

A. Well, these two gentlemen were both political activists. Malcolm X was shot in a violent manner 21 times, and Martin Luther King Jr. was shot once. So he – Malcolm X died in a much more violent manner. And to escort me to my demise in a manner more akin to Malcolm X than Martin Luther, to me that's – that's disturbing to me and it causes me a lot of alarm, it's not only to me, to my family.

Q. Why is that?

A. Well, in our society people are greatly disturbed, and rightfully so, about people who do harm to children. And we – when you have several thousand followers and you accuse someone, anyone, of harming children and being involved in child sex trafficking rings and stuff, that’s dangerous. It’s a danger to me because there’s always some part of those people that she reaches that actually believe that nonsense and will come after me and my family. And that’s what causes me to feel threatened by her for posting this stuff.

Q. Okay. Did that cause you to believe that you could be exposed to some physical or property harm?

A. Oh, absolutely. Absolutely.

{¶ 11} Stu O’Hara similarly testified that he considered the Facebook post to be a threat. Specifically, he identified Ford’s statement that “I know that I have you on your knees. I am not being arrogant. I am stating pure fact! This is your very last opportunity to end this in a respectable manner,” and remarked that it was then followed by her statement that “I will escort you to your demise in a manner more akin to Malcolm X than Martin Luther King Jr.” He testified that he viewed it as a threat because she used the word “demise” in the context of Martin Luther King Jr., who was shot once, and Malcolm X, who was shot over 20 times.

{¶ 12} On cross-examination, the following exchange was had:

Q. Okay. Let’s talk about – you were asked about Martin Luther King versus Malcom X. All right. You said you’re not quite up to date on your history but you were right. So one shot versus 21 shots, right?

A. Correct.

Q. Are you familiar with their differences in philosophical positions?

A. I believe they were quite different philosophically.

Q. How so?

A. Martin Luther King believed in, as I recall, civil disobedience, but peaceful civil disobedience, peaceful protest. Martin Luther King had a more – or, excuse me, Malcom X had a more violent approach toward changing society.

Q. More militant, correct?

A. Correct.

Q. Couldn't that be what she was talking about, she was done playing nice and she wasn't going to hold back?

A. I don't know if that's what she meant.

Q. Because you don't know, right? You have no idea what her intentions were?

A. All I know is what she's printed here and was –

Q. Correct. Which can be interpreted different ways?

A. To me it was – only had one meaning.

Q. Okay. Even though you agree there are different – differences in their philosophical approach to a civil rights movement?

A. In terms of the civil rights movement, yes.

Q. So if it only had one meaning, I guess, if both men were assassinated what's the difference between one and 21 bullets?

A. A more violent death.

Q. Wasn't it the same outcome? Why would you make that distinction and not be talking about the actual distinction between the two and their philosophical approach to the civil rights movement?

A. Well, I suppose one bullet it would be quick, being shot 21 times it could be a whole heck of a lot more painful if you didn't die on the first bullet.

Q. I guess. I think that's kind of a stretch in interpretation though, wouldn't you think? You're putting a lot of thoughts into Ms. Ford's head, wouldn't you agree?

A. No. I felt threatened by what she wrote.

Q. Okay. Has she ever made a violent threat towards you any other time?

A. No.

{¶ 13} Mike White, the retired safety service director for the city of Norwalk, testified that he met with Ford, Light, and O'Hara to discuss information she said she had about criminal activity. White advised her that if she had any definitive proof she needed to come forward with it. Ford then met with Dave Smith, the Norwalk Police Chief. Following Ford's meeting with Dave Smith, White filed falsification charges against Ford "because she accused me of identifying stolen evidence in a case and talking someone out of filing criminal charges." Although Ford was ultimately acquitted, White maintained that it was proven that she lied, but the prosecution could not prove intent. He expressed disappointment over what he thought was a lack of effort on the part of the prosecution team.

{¶ 14} Regarding the September 22, 2023 Facebook post, White testified that when he saw it, he was “very concerned” about physical harm. White believed that Ford was mentally ill and a drug abuser. As to the specific threatening language, he explained that “[t]he sentence about Malcolm X and Martin Luther King concern me.” He also mentioned Ford’s statement that she was going to put him through the court of opinion. White thought that “the tone of the email was extremely disturbing and threatening.”

{¶ 15} Finally, David Smith, the retired chief of police for the city of Norwalk, testified that he met with Ford on July 20, 2023, regarding her claims of misconduct on the part of police officers and other officials. During the meeting, Ford made more allegations, but did not provide any verification or proof, which led to the falsification charges filed by Mike White. Relevant here, Smith did not testify as to whether he found the September 22, 2023 Facebook post to be threatening.

{¶ 16} Following the State’s presentation of evidence, Ford testified in her own defense.

{¶ 17} Ford stated that her relationship with Light began to sour in May 2023, when she accused him of misconduct. Regarding her September 22, 2023 post, Ford described that she used the word “demise” as a synonym of downfall, and the meaning of the post was political demise. As to her reference to Martin Luther King Jr. and Malcolm X, she maintained that

Martin Luther King Jr. was a reactor. He typically waited until something terrible happened. He used the circumstances of something terrible

happening to incite people to effect change. Martin – Malcom X was a little bit different. Again, he was – I wouldn't call him a reactor, I would call him proactive, he typically used events that had happened in the past, patterns of events, to show why we don't want history to repeat itself. Sometimes people viewed him as violent, but he repeatedly described himself as not for wanting violence. He described himself as being someone who was a realist.

According to Ford, nothing about the post was meant to incite violence:

Q: Was the fact that both men are dead, that even cross your mind when you wrote that post?

A: No.

Q: Were you alluding to death in any way, shape, or form, when you wrote that post?

A: Absolutely not.

Q: Were you – were you meaning to convey that you were going to harm the people listed in a manner more like Malcolm X versus Martin Luther King?

A: Under no circumstances would I ever even consider to suggest that. That – I compared these two men because I quote both of these men quite a bit on my Facebook, particularly Malcolm X who I tend to agree with a little bit more. I quote these men a lot. This is not me quoting them about their death. I'm talking about their life. How they were activists. How they lived. Their death is a shame. Their death is a disgrace in this country. Why would I address that?

On cross-examination, Ford was asked why she did not refer to politicians like Richard Nixon or Eliot Spitzer who left office in disgrace:

Q: Okay. But in that September 22nd, 2023 post you don't cite any elected officials who left in disgrace. You select two people who were murdered, isn't that true?

A: Because I'm relating Martin Luther King and Malcolm X to how I will escort them. So I wouldn't be relating it to Richard Nixon who left in disgrace because I'm not relating it to – the subject of that sentence is I, me. I'm relating how I will lead them more akin to Malcolm X and Martin Luther King.

Q: And, actually, Malcolm X and Martin Luther King were violently murdered because they were public figures, isn't that correct?

A: Oh, a lot of civil rights activists were murdered, sure.

Q: So when you use the word demise in that context it has only one reasonable interpretation and that is death?

A: Not if you use the context of the sentence, two sentences above it, where it says downfall. Downfall is an adjective of demise, and it's specifically used when you're talking about some political corruption or government, or office, something in power. So downfall and demise are adjectives of each other because I use them both in the same paragraph. I would assume you use that as context.

She clarified on redirect:

Q: Okay. Explain the sentence that begins with I'll escort you to your demise.

A: I will escort you to your demise more akin to Malcolm X than Martin Luther King Jr. I is the subject, escort would be your verb. To your demise is a prepositional phrase because it starts with to. It can be removed from the sentence. More akin is a comparative phrase. It cannot be removed from the sentence. More akin to Malcolm X talks about how I will escort you, not your demise.

{¶ 18} After the presentation of evidence and closing arguments, the trial court found Ford guilty of the four counts of intimidation. At the sentencing hearing, it sentenced Ford to probation.

II. Assignments of Error

{¶ 19} Ford timely appeals her judgment of conviction, asserting two assignments of error for review:

1. Ford’s conviction for intimidation under R.C. 2921.03 was based on legally insufficient evidence because the allegedly criminal conduct at issue—Ford posting on Facebook, in the context of a political dispute with certain officials of the City of Norwalk, that she will “escort [these officials] to [their] demise in a manner more akin to Malcolm X than Martin Luther King Jr.”—is constitutionally protected speech.

2. In the event that Ford could be found to have waived her First Amendment-based arguments by having failed to sufficiently raise them at trial, any such failure resulted from the ineffective assistance of counsel in violation of the Sixth Amendment, thereby warranting that the convictions be reversed and vacated.

III. Analysis

{¶ 20} At the outset, the State concedes that Ford properly preserved her First Amendment argument by raising it (1) in a pretrial motion to dismiss, (2) in her Crim.R. 29 motion for acquittal following the State’s presentation of evidence, and (3) in her post-trial motion for acquittal. This court’s analysis, therefore, will center on whether Ford’s conviction is based on insufficient evidence as described in Ford’s first assignment of error.

{¶ 21} When reviewing the sufficiency of the evidence, the relevant inquiry is “whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a

reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus; *State v. Hall*, 2026-Ohio-2020, ¶ 31 (6th Dist.).

{¶ 22} Ford was convicted of intimidation under R.C. 2921.03(A), which provides,

No person, knowingly and by force, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant, a party official, or an attorney or witness involved in a civil action or proceeding in the discharge of the person’s (sic) the duties of the public servant, party official, attorney, or witness.

{¶ 23} At issue is whether Ford’s September 22, 2023 Facebook post constituted an “unlawful threat of harm.” An “unlawful threat of harm” exists “only when the very making of the threat is itself unlawful because it violates established criminal or civil law.” *State v. Cress*, 2006-Ohio-6501, ¶ 42. In this case, the State argues that her Facebook post was an unlawful threat of physical harm. Ford maintains, on the other hand, that the Facebook post is not an unlawful threat of physical harm, but is instead protected political speech under the First Amendment to the United States Constitution.

{¶ 24} “The First Amendment, applicable to the States through the Fourteenth Amendment, provides that ‘Congress shall make no law . . . abridging the freedom of speech.’” *Virginia v. Black*, 538 U.S. 343, 358 (2003). “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or

disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989); *Black* at 358. “The United States Supreme Court has said that “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”” *Bey v. Rasaweher*, 2020-Ohio-3301, ¶ 58, quoting *Snyder v. Phelps*, 562 U.S. 443, 452 (2011), quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983). Furthermore, “[s]uch speech is protected by the First Amendment even though the speaker or writer was motivated by hatred or ill-will.” *Id.*, citing *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 53 (1988).

{¶ 25} “The protections afforded by the First Amendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the Constitution.” *Black* at 358. One of those categories is “true threats.” *Id.* at 359. “‘True threats’ 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.” *Id.* “The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats ‘protect[s] individuals from the fear of violence’ and ‘from the disruption that fear engenders,’ in addition to protecting people ‘from the possibility that the threatened violence will occur.’” *Id.* at 359-360. “Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360.

{¶ 26} Whether speech constitutes a true threat is typically a question for the trier of fact. *Hess v. Oakland Cty., Michigan*, 174 F.4th 981, 993 (6th Cir. 2026). “But as in any setting, courts retain the power to remove a true-threat question from the jury’s consideration, or override its verdict, if the evidence shows that the speech was protected as a matter of law.” *Id.*, citing *Watts v. United States*, 394 U.S. 705, 706 (1969).

{¶ 27} The Sixth Circuit has recognized many factors that are relevant when considering whether a statement is a true threat:

The statement’s context, express or conditional nature, and the listeners’ reactions matter. . . . Although the “listener’s subjective fear alone is not enough to turn an innocuous statement into a true threat,” a statement is more likely to count as a true threat if the listener is “alarmed enough” to immediately alert authorities. *Thames [v. City of Westland]*, 796 Fed.Appx. [251, 262] (emphasis removed). Other variables include the statement’s specificity, audience (intended or otherwise), location, and tone, in addition to any history of prior “conflict between the speaker and the statement’s target. . . . The target of the speech need not hear it first-hand for the statement to count as a true threat . . . but distance between the speaker and recipient may tend to diminish a statement’s threatening nature . . .

(Internal citations omitted for readability). *Hess* at 994.

{¶ 28} In this case, when read in context, Ford’s September 22, 2023 Facebook post does not constitute a true threat as a matter of law. The critical sentence in Ford’s post is “I will escort you to your demise in a manner more akin to Malcolm X than Martin Luther King Jr.” The parties dispute what the reference to Malcolm X and Martin Luther King Jr. modifies. Ford argues that it modifies the manner in which she will

escort the named officials. The State, on the other hand, argues that it modifies the officials' demise. The State's position is not a reasonable interpretation of Ford's post.

{¶ 29} The State maintains that Ford's choice of comparators demonstrates that she was not conveying a threat of mere political downfall, but rather she intended to convey a threat of actual violence. It reaches this conclusion by emphasizing that Ford did not name disgraced politicians who were forced out of office, but instead referenced two leaders who were murdered. Thus, the State posits that when she used the word "demise," she meant the officials' physical death.

{¶ 30} The State's interpretation, however, ignores that Ford drew a distinction between Malcolm X and Martin Luther King Jr. In her post, Ford did not say that she would escort the officials to their demise in the same manner as Malcolm X *and* Martin Luther King Jr., which would highlight the similarities between the two. Rather, she focused on their dissimilarities, saying that she would escort the officials to their demise in a manner more like Malcolm X and less like Martin Luther King Jr. Because Ford distinguished the two, it is unreasonable to interpret her use of "demise" as referring to the similarity that both were murdered.

{¶ 31} Notably, in the trial court, the State elicited testimony that attempted to draw a distinction between the manner in which Malcolm X and Martin Luther King Jr. were killed, with the former being shot 21 times and the latter being shot only once. The State does not continue this argument on appeal, and for good reason. Aside from

constituting a relatively arcane bit of historical trivia, this distinction requires one to deduce a threat not from the fact that both men were killed, but from the fact that one was arguably more violently killed. Nothing else in the record, however, supports that Ford possessed this level of bloodlust.

{¶ 32} Instead, the record supports the much more straightforward interpretation that Ford was referring to the differences in Malcolm X's and Martin Luther King Jr.'s advocacy styles when describing how she would escort the officials to their political demise. Specifically, that she would pursue the more aggressive and confrontational style commonly ascribed to Malcolm X as opposed to the more civil and passive style commonly ascribed to Martin Luther King Jr.

{¶ 33} This interpretation is consistent with the remainder of Ford's September 22, 2023 post, in which she does not mention physical violence but focuses on reputational harm. For example, she threatens to "crumble the reputation every single person who stands in way of justice" and "drag [them] through the court of public opinion." She also says that she will "drag out" every corrupt deed. And she exhorts the officials to "Do your jobs! Do what is just and right! Follow the laws!", and if they do not, she will "tell everytime [they] don't!" Finally, she closes by alluding to running for mayor in the future. All of this demonstrates that the context of Ford's post is entirely political.

{¶ 34} Furthermore, nothing in the broader context in which the post was made supports the conclusion that she was threatening physical harm. Ford has no history of

violence or criminal activity. O’Hara acknowledged that Ford has never made any other threats towards him. She has known and interacted with Light for many years. After she was charged with falsification, she threatened to sue everyone into bankruptcy, not to physically harm them. And perhaps most tellingly, when Ford perceives injustice, her pattern has been to report the matter to law enforcement, and if that does not achieve the result she wants, she publicizes it on the internet. Her September 22, 2023 threat to expose the allegedly corrupt deeds is entirely consistent with this. Threatening to commit physical violence is not.

{¶ 35} The State in its appellate brief compares the present matter to that in *State v. Baumgartner*, 2009-Ohio-624 (8th Dist.). In that case, Baumgartner was convicted of intimidation for posting a modified version of a rap song on the internet, in which she “intimidated the [victims] by referencing domestic violence in the [victims’] household in the same breath as children services.” *Id.* at ¶ 8. On appeal, the Eighth District rejected Baumgartner’s claim that the altered rap lyrics were not a true threat but were artistic expressions protected by the First Amendment. *Id.* at ¶ 50-53. In concluding that the lyrics were a true threat, the Eighth District reasoned that “the critical question is whether the victim subjectively believed at the time of the offense that the offender would cause serious physical harm,” and that the victims’ subjective belief of physical harm was demonstrated by their flight from Ohio after the rap lyrics were posted on the internet. *Id.* at ¶ 52.

{¶ 36} This court does not find *Baumgartner* persuasive. First, *Baumgartner* does not identify the modified rap lyrics. Thus, this court has nothing with which to compare Ford’s statement that she would escort the officials to their demise in a manner more akin to Malcolm X than Martin Luther King Jr. Second, *Baumgartner* relies exclusively on the hearer’s subjective belief in whether the statement was a threat. While the hearer’s subjective belief is a relevant consideration, it alone “is not enough to turn an innocuous statement into a true threat (via a ‘heckler’s veto’).” *Thames v. City of Westland*, 796 Fed.Appx. 251, 262 (6th Cir. 2019). In this case, as described above, the officials’ subjective interpretation that Ford threatened actual physical harm is unreasonable. *Baumgartner* is therefore distinguishable.

{¶ 37} Finally, this court notes that both parties cite the United States Supreme Court’s decision in *Counterman v. Colorado*, 600 US. 66 (2023), in which the court held that a statute criminalizing speech that constitutes a true threat must require a mens rea of at least recklessness. *Id.* at 69. In that case, the Colorado statute at issue required only that the speech be objectively threatening in that it “would cause a reasonable person to suffer serious emotional distress and does cause that person . . . to suffer serious emotional distress.” *Id.* at syllabus. The Supreme Court held that an objectively threatening statement by itself was insufficient to support a conviction, and that the First Amendment requires “proof that the defendant had some subjective understanding of the threatening nature of his statements.” *Id.* at 69. It determined that the appropriate

standard for that subjective understanding was recklessness, which “offers ‘enough “breathing space” for protected speech,’ without sacrificing too many of the benefits of enforcing laws against true threats.” *Id.* at 82, quoting *Elonis v. U.S.*, 575 U.S. 723, 748 (Alito, J., concurring in part and dissenting in part). In this case, however, the intimidation statute under which Ford was convicted requires the higher mens rea standard of knowingly. *See* R.C. 2921.03. *Counterman*, therefore, is not implicated.

{¶ 38} In sum, the First Amendment protects “political hyperbole” that ““may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”” *Watts v. U.S.*, 394 U.S. 705, 708 (1969), quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (In *Watts*, the United States Supreme Court held that the defendant’s statement, “If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.” was not a true threat but was “a kind of very crude offensive method of stating a political opposition to the President.”). Ford’s September 22, 2023 Facebook post, when considering the context in which it was made, is such an example of that type of political hyperbole. This court holds that under the circumstances it was not a true threat as a matter of law.

{¶ 39} Accordingly, because Ford’s post constitutes protected speech under the First Amendment, no rational trier of fact could have found that the State proved the essential element of an unlawful threat of harm beyond a reasonable doubt. Ford’s

convictions for intimidation, therefore, are based upon insufficient evidence. Her first assignment of error is well-taken.

{¶ 40} Ford's second assignment of error is moot.

IV. Conclusion

{¶ 41} For the foregoing reasons, the judgment of the Erie County Court of Common Pleas is reversed and Ford's convictions for intimidation are vacated. The State is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed
and vacated.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Thomas J. Osowik, P.J.

JUDGE

Gene A. Zmuda, J.

JUDGE

Charles E. Sulek, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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