



**APPENDIX A — ORDER OF THE
FIRST DISTRICT COURT OF APPEAL,
STATE OF FLORIDA, FIRST DISTRICT,
DATED FEBRUARY 22, 2021**

313 So.3d 1148 (Table)
Unpublished Disposition
(This unpublished disposition is
referenced in the Southern Reporter.)

DISTRICT COURT OF APPEAL
OF FLORIDA, FIRST DISTRICT.

T.E.L., A CHILD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 1D20-208

February 22, 2021

Rehearing Denied March 24, 2021

On appeal from the Circuit Court for Escambia County.
Coleman Lee Robinson, Judge.

2a

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Opinion

Per Curiam.

*1 Affirmed.

Lewis, Nordby, and Long, JJ., concur.

All Citations

313 So.3d 1148 (Table), 2021 WL 672055

**APPENDIX B — SENTENCING TRANSCRIPT
EXCERPT IN THE CIRCUIT COURT IN AND
FOR ESCAMBIA COUNTY, FLORIDA, JUVENILE
DIVISION, DATED JANUARY 14, 2020**

**[1]IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA**

CASE NO.: 2019 CJ 000618

STATE OF FLORIDA,

vs.

TONY LAFATA,

Defendant.

Proceedings held in the above-styled cause before the Honorable Coleman L. Robinson, Circuit Judge, on the 14th day of January, 2020, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida 32502.

There are references that he didn't get a chance to give his side of the story, but the testimony contradicted that. I think Mr. Lafata certainly may now understand, or I hope is at least beginning to understand, the severity of what happened and the position that the teacher and everybody else was put in.

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When you hear about these threats and these things that happen at schools, sometimes it's the kid that everybody thought it would be, and sometimes it's not. And making the comments to a teacher or a student or anybody else puts them in a very uncomfortable position to try to figure out are you being serious or not. It's just not funny. There is a time and a place, and school or jokes about bombs or shooting or weapons at school is never the time or the place.

I am going to withhold adjudication and place you on probation until your 19th birthday or the maximum allowed by law. I am not interested in keeping you on probation until you're 19. That's where juvenile court starts because it's about rehabilitation and trying to address the issues.

[10]If you get everything done that I order and you stay out of trouble, then somewhere down the line, you can look at coming back in and try to move to terminate probation. I can't tell you when that will be. If it were my case, I couldn't tell you, but it won't be mine because a new judge is -- we're switching next week.

There are \$186 in court costs, \$100 cost of prosecution. I am going to order 50 hours of community service work beginning no later than February. You will do at least eight hours a month every month until you finish the 50.

After that, I will authorize you to do community service work and get minimum wage credit to work off the costs I just put on you, so you can -- you will continue

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to do at least eight hours a month or pay at least \$64 a month, or any combination of the two until you work it off or pay it off.

Don't do any community service work until you get with probation first and they approve the location. If they don't approve the location, it won't count, and you will have to do it again.

You will write a letter of apology to the school principal. That's a one-page handwritten letter of apology. And a second one-page handwritten letter [11] of apology to Susanna Walters. Both of those are due within 15 days from today.

You will write a 500-word essay on the dangers of threatening violence in school and why that's inappropriate. Do not copy anybody else's work. It needs to be your words.

I am going to order that you attend at least a half day of VOP hearings in adult court with either Judge Shackelford, Judge Miller or me and that you need to do that no later than April 1st. Within two weeks of doing that, you will turn in a 250-word essay on what you got out of that.

The point is that juvenile court, as I said, it's about rehabilitation. Adult court is about punishment. If you violate probation here, you might get reinstated. But if you violate probation in adult court, they are usually talking about how much time you're going to do in jail or prison. The whole point of this system is to give you everything you need to try to keep you out of that system.

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I am going to order that you have a task evaluation within the next 30 days and follow through with any recommended treatment or counseling that comes out of that. I'm not going to do a curfew with the allegations.

[12]In addition, you will obey all laws. Where do you go to school now?

THE WITNESS: Ferry Pass Middle School.

THE COURT: Every class, every day, on time. No unexcused absences, no tardies, no referrals or getting in trouble at all. That would include the bus, the bus stop, cafeteria, any after school, anything like that. If you get in trouble at school, you're in trouble here.

You will report to the school resource officer if you have one. You will report tomorrow to let them know you're on probation, and then you report at least every week after that. They will tell you how to do that.

You live with your mother?

THE DEFENDANT: Yes, sir.

THE COURT: You continue to live with her, follow her rules, her discipline. You don't have to like it, but you have to do it. Number one, it's your mother, and you're supposed to. Number two, you're in trouble, and I'm ordering it.

If you change where you go to school or live, number one, it has to be with a parent's permission. And then

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number two, you have to let probation know before that happens.

[13] You will truthfully answer any questions that the probation officer asks you, carry out all of the instructions given to you by them or me. Keep in touch with your probation officer the way they tell you to.

You won't use, possess or be around anybody else illegally possessing alcohol, tobacco, controlled substances without a prescription or drug paraphernalia. So that includes everything from cocaine to marijuana, synthetic marijuana, any form of hemp, THC, CBD. Those are all marijuana components or types of things from marijuana plants. It also includes every form of tobacco, eCigs, vape pens, JUUL. All of that would violate probation.

You will take any medications as prescribed and show a copy of any prescription to probation, submit to random breath or urine testing at the request of law enforcement or probation. If they ask you to take a test, and you tell them you can't or you won't, that's going to violate probation because it says you're hiding something.

You won't be around anybody committing any crimes at all. You won't possess any firearms or any weapons or imitate that anything you have is a weapon. And you won't commit any acts or even threats of violence. So to say I'm going to hit you, I'm going to

**APPENDIX C — TRIAL TRANSCRIPT IN THE
CIRCUIT COURT IN AND FOR ESCAMBIA
COUNTY, FLORIDA, JUVENILE DIVISION,
DATED DECEMBER 12, 2019**

**[1]IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
JUVENILE DIVISION**

CASE NO: 2019 CJ 000618

**IN THE INTEREST OF: T.E.L.
(DOB: 06/13/2007)**

Defendant.

Digitally-recorded proceedings held in the above-styled cause before the Honorable Coleman L. Robinson, Circuit Judge, on the 12th day of December, 2019, at the Theodore Bruno Juvenile Justice Center, 1800 St. Mary's Avenue, Pensacola, Florida 32501.

[2]MR. SHERWIN: Tony Lafata.

MR. MITCHELL: We are not asking that you sequester any of the witnesses. We're happy to have them stay.

THE COURT: All right. Mr. Lafata is back with Mr. Mitchell, his counsel, his parent. I believe it was his mother that's here. The State is present.

Is the State ready to go forward?

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MR. SHERWIN: Yes.

THE COURT: Any pretrial matters from the State?

MR. SHERWIN: No.

THE COURT: Mr. Mitchell, are you ready to go forward?

MR. MITCHELL: We are. In lieu of an opening, if I could take -- take 20 seconds and encourage the Court to -- in preparation for my request for judgment of acquittal -- just be taking a gander at statute 790.162.

Ultimately, when the government rests, my judgment of acquittal argument will address the fact that there is no actual device, it will further address arguments about mens rea. Thanks for listening.

THE COURT: All right. State, have any [3]opening you wish to give?

MR. SHERWIN: No.

THE COURT: And, Mr. Mitchell, you did not -- you said you did not have an opening just then.

MR. MITCHELL: That was it.

THE COURT: All right. State, call your first witness.

MR. SHERWIN: Susannah Walters.

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THE COURT: I don't know if you heard, Mr. Mitchell. Are your witnesses outside? He did not invoke the rule.

MR. SHERWIN: Oh, gosh, I guess they are outside.

THE COURT: He did not invoke the rule of --

MR. SHERWIN: Yeah, they're out in the hall. So you can (inaudible).

Gene, are you okay with the video coming in?

MR. MITCHELL: Stipulate.

MR. SHERWIN: Okay. Great.

THE COURT: All right. If you'd raise your right hand for me.

(Witness sworn)

THE WITNESS: Yes.

THE COURT: All right. Mr. Sherwin.

WHEREUPON, SUSANNAH WALTERS, [4]having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERWIN:

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Q. Please state your name for the record.

A. Susannah Walters.

Q. And what do you do for a living?

A. I teach seventh grade civics.

Q. And at what school?

A. Ferry Pass Middle.

Q. Okay. And is that in Escambia County?

A. Yes.

Q. All right. Is one of your students Tony Lafata?

A. Yes.

Q. Do you see Mr. Lafata in the courtroom today?

A. Yes.

Q. Okay. Is that him standing up?

A. Yes.

MR. SHERWIN: Okay. Let the record reflect the witness -- she's identified the defendant.

THE COURT: It will.

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Q. (By Mr. Sherwin) All right. So were you working on September 26th of 2019?

A. Yes.

[5]Q. All right. And did you come into contact with him on that day?

A. Yes, I did.

Q. Him -- and I'm sorry -- him, being Mr. Lafata?

A. Yes.

Q. Okay. So tell me about what happened when you first came into contact (inaudible)?

A. It was at the beginning of sixth period. The bell hadn't rung yet. He came up with another student and was holding up the other student's Chromebook case and said, This is my bomb. And I said for him -- I asked him to repeat what he said and he said it again. And so I had to go report that.

Q. He said, This is my bomb. What else did he say?

A. He said, I'm going to blow up the boy's bathroom.

Q. How many times (inaudible) say both of those (inaudible)?

A. He said, I had a bomb twice and I -- he said he was going to blow up the boy's bathroom once.

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Q. Okay. And were you concerned about that?

A. Yes.

Q. What did you do after he told you that?

A. I had him come inside the classroom and I [6]called for an administrator.

Q. Okay. So, at that point, who took it from there?

A. Mr. Jackson.

MR. SHERWIN: Your Honor, Mr. Mitchell has indicated that he's stipulating to the video.

THE COURT: Is that State's Exhibit 1?

MR. SHERWIN: Yes, sir.

THE COURT: Is that correct, that there's a stipulation?

MR. MITCHELL: Yes.

THE COURT: All right. Are you offering that into evidence at this time?

MR. SHERWIN: Yes, sir. It's offered as State's Exhibit A into evidence -- or Exhibit 1 -- I'm sorry -- Exhibit 1 into evidence and permission to publish.

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THE COURT: All right. It'll be received.

(State's Exhibit No. 1 admitted into evidence)

THE COURT: Mr. Mitchell, you can see it from where you are?

MR. MITCHELL: Yes. I'm happy to have the lights dimmed if he wants to do that. The microphone's in the way.

THE COURT: (Inaudible).

[7]Q. (By Mr. Sherwin) Can you see, Ms. Walters?

A. Yes.

Q. Okay. And is that you at the door?

A. It is.

Q. Okay.

(Video played)

Q. (By Mr. Sherwin) All right. And who is that?

A. So that's Tony and my other student, Cameron, and then there was another student with the Chromebook that he was holding up.

Q. Is this the incident where, in fact, he said that he had a bomb and he was going to blow (inaudible)?

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A. Yes.

Q. All right. And that's the bag he's showing you right there that you talked about?

A. Yes.

MR. SHERWIN: That's all the questions I have.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q. Good afternoon -- or good evening rather, I beg your pardon.

Have you had a chance to watch this a couple times before today?

A. I watched it today.

Q. Okay. If I suggested to you that there's a [8]piece right there where you can see young Mr. Lafata with his right hand gesturing towards the bathroom, you'd agree with me on that, right?

A. Yes.

Q. Okay. And subsequent to this interaction, you gestured and the two boys went into the classroom, correct?

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A. Yes.

Q. Honestly, did you really think he had a bomb?

A. No, he -- no.

MR. MITCHELL: Okay. Those are my questions, Judge.

THE COURT: Any redirect?

MR. SHERWIN: No.

THE COURT: Do you want this witness to remain available?

MR. SHERWIN: No, she can go.

THE COURT: Mr. Mitchell.

MR. MITCHELL: It's to her pleasure.

THE COURT: All right. Ma'am, you're free to leave or you're free to stay.

Next witness.

MR. SHERWIN: Kevin Sanders.

THE COURT: Kevin Sanders.

If you'd raise your right hand for me.

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(Witness sworn)

[9]THE WITNESS: I do.

THE COURT: Your witness.

WHEREUPON, KEVIN SANDERS, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERWIN:

Q. Mr. Sanders -- I'm sorry -- state your name for the record.

A. Kevin Sanders.

Q. All right. And what do you do for a living?

A. I'm the dean at Ferry Pass Middle School.

Q. Okay. And were you working on September 26th of 2019?

A. Yes, I was.

Q. And did you come into contact with Tony Lafata that day?

A. Yes, I did.

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Q. All right. And why did you come into contact with him?

A. He was brought to me by our assistant principal, Mr. Jackson.

Q. All right. And did you talk to him about what happened?

A. Yes.

[10]Q. Him being -- I'm sorry -- Mr. Lafata?

A. Yes.

Q. Okay. And so what did he tell you?

A. He told me that he had done something as a joke and he thought it would be funny, but it was not.

Q. Okay. What did he tell you he did?

A. He told me that he walked up to the classroom door and held up a Chromebook case, I believe he said, and said it was a bomb and that he was going to blow up the bathroom.

Q. Okay. And was he under oath when he said that?

A. After he gave that statement, the statement was sworn by our deputy.

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MR. SHERWIN: Okay. No further questions.

THE COURT: Mr. Mitchell.

MR. MITCHELL: Thanks for coming.

THE WITNESS: Okay. Thank you.

THE COURT: May this witness be released?

MR. SHERWIN: Yes.

THE COURT: All right. Mr. Mitchell, do you agree?

MR. MITCHELL: Yes.

THE COURT: All right. Sir, you're free to go or stay.

[11]THE WITNESS: Thank you.

THE COURT: Next witness.

MR. SHERWIN: And -- no, I rest.

THE COURT: All right.

MR. MITCHELL: Consider my request for judgment of acquittal. A perusal of 790.162, it calls for unlawfully threatening to do damage with any device, suggesting that there's actually a device. There's no evidence that there's actually a device.

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Instead, the government's evidence was that the person who heard the statement from Mr. Lafata indicated she did not believe that there was an actual device. Just oppose that with the common concept of mens rea being what a crime is all about. This witness didn't really believe that there is mens rea.

Please grant our request for judgment of acquittal as the evidence does not constitute a *prima fascia* case of guilt.

MR. SHERWIN: And, Your Honor, of course, if you have the jury instructions in front of you -- and I have this case law as well. I mean, the jury instructions say, The defendant threatened to throw, place, project, discharge a destructive device, and the threat conveyed an intent to do bodily harm or damage the property of any person.

[12]That has, obviously, been proven and a -- I mean, I presented at least a -- *prima fascia* evidence of that.

And then, if you go down right below the elements of the charge, it says, It is not necessary for the State to prove that defendant had an actual intent to harm or damage, or that he had the ability to carry out the threat, or that there was an actual destructive device.

Your Honor, may I approach with case law?

THE COURT: Yes. You gave Mr. Mitchell a copy as well?

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MR. SHERWIN: Yes.

MR. MITCHELL: Sure.

THE COURT: Okay.

MR. MITCHELL: I don't know if he's finished, but if he is, may I have the last word on that?

THE COURT: Give me just a second to look at this.

(Pause in proceedings)

THE COURT: Yes, sir.

MR. MITCHELL: Sometimes I feel like the statute is muddled by the jury instructions. So for record purposes, I'd like to read the statute.

It is unlawful for any person to threaten, to [13]throw, project, place or discharge any destructive device with the intent to do bodily harm to any person, or with the intent to do damage to any property or any person, and any person convicted thereof commits a felony of the second degree, blah, blah, blah.

It -- it -- you know, I'm sensitive to his argument that they don't have to prove that there was a device, but here, they don't even think that there is one. They being the government's witness.

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So I like my argument with regard to lack of mens rea. I like my argument with regard to sufficient evidence to constitute a *prima fascia* case of guilt after I read the actual statute.

Thanks for your attention.

THE COURT: So is it your position, Mr. Mitchell, that whether there was a crime -- whether a crime occurred or not is entirely contingent upon the victim, and that if they did think that he had a weapon, then he's guilty of a crime (indiscernible) with the same conduct, if they didn't think he had a weapon, it's not a crime?

MR. MITCHELL: Well, I guess, my focus is more on the evidence presented before the Court. And if the statute says threatens to do with any device, and there's not any actual concern that there was one, you [14]know -- you know, the evidence would suggest it's lacking.

I don't mean to dodge your question, Judge. I suppose that there could be a circumstance, you know, where somebody doesn't believe or isn't quite confident.

But here, we have the benefit of seeing this hall cam where this child, 12 years old -- I -- that didn't come in. It will, if we put on -- if we wind up having to put on a case, you know, comes to the teacher and, you know, gestures to the bathroom with one hand, you know, apparently, from her testimony -- I beg your pardon -- makes a nod to a bag with the other. And her response is, Knucklehead -- nods, you know, get on into class, you know, there's not

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a taking seriously of this, you know, and I -- I -- I think that it's in lockstep with the concept of mens rea, which is certainly lacking.

I -- the teacher, whose job it is to know these kids, didn't feel there's an actual threat, an actual reason for concern. I hope the Court doesn't either.

Now, it -- ten more seconds. I suppose it would be a different circumstance, maybe -- you know, let's say you have, you know, a court security guy or [15]an airport person, right, where someone comes up that there's no knowledge of who this guy is, makes an irresponsible comment, you know, these guys are trained to take these things very seriously, you know, terrible things do happen, I'd argue that that's a little bit different, and there's a little bit more culpability, you know, mens rea.

But a 12-year-old kid in a classroom making a crack to his teacher who tells him, Knucklehead, get on in the classroom, I hope you find there's not a prima fascia case of guilt.

THE COURT: Well, I'm looking at the statute. I'm looking at the jury instruction that comes from the statute, and I'm looking at the First D.C.A. case, *Valdes v. State* --

MR. MITCHELL: Pardon me.

THE COURT: -- 443 So.2d 221 that's referenced in the jury instruction. And the instruction is: Did the defendant threaten to throw, place, project, discharge a destructive

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device, and two, threat conveyed an attempt to do bodily harm to or damage the property of any person, give if requested -- it cites to *Valdes* and it cites to *Reid v. State*.

As the State said, it is not necessary for the State to prove the defendant had the actual intent to [16]cause, harm, or damage, or that he had the ability to carry out the threat, or that there was an actual destructive device, which is drawn from the *Valdes* case where there was a threat made with a bag and no indication of whether or not there was any actual destructive device in the bag. I didn't --

MR. MITCHELL: Pardon me, Judge Robinson --

THE COURT: Well, I need to make a ruling. And my ruling is that I'm going to deny the judgment of acquittal. In the light most favorable to the State, there has been evidence presented that satisfies the elements of the crime.

MR. MITCHELL: Thank you. Tony Lafata.

THE COURT: All right. Sir, if you'll come around up here.

Raise your right hand.

(Defendant sworn)

THE DEFENDANT: Yes, sir.

THE COURT: All right. Mr. Mitchell.

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WHEREUPON, TONY LAFATA, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q. All right. What's your name?

[17]A. Tony Lafata.

Q. And how old are you?

A. Twelve.

Q. And where do you go to school?

A. Ferry Pass Middle School.

Q. What grade are you in?

A. Seventh.

Q. And are you still a student there?

A. Yes, sir.

Q. What's your favorite subject in school?

A. Reading.

Q. How did you do on your last report card?

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A. I don't remember.

Q. Is there anything wrong with your memory?

A. No.

Q. Are you nervous right now?

A. Kinda.

Q. Okay. I'm going to ask you a couple of questions, Mr. Sherwin is going to ask you a couple of questions, and Judge Robinson may ask you a couple of questions, okay. None of us are here trying to make you nervous.

If any of our questions are difficult or weird, just say, hey, would you please ask the question again, I didn't really understand it. Is that okay?

[18]A. Yes, sir.

Q. Okay. Did you hear your school teacher today tell the Judge what happened?

A. Yes, sir.

Q. Did you hear the dean of the school get up on the stand and tell Judge Robinson what happened?

A. Yes, sir.

Q. Did you see the video that we just watched?

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A. Yes. Yes, sir.

Q. Do you remember this day?

A. Yes, sir.

Q. All right. Why don't you turn your chair to Judge Robinson and tell him exactly what happened, okay?

A. So I walked up to the teacher and I said, I've got a bomb, I'm fixing to blow up the bathroom, and I went inside the classroom.

Q. Why did you do that?

A. I had to use the bathroom.

Q. Did you have a bomb?

A. No, sir.

Q. Why did you say I have a bomb and I'm going to blow up the bathroom? What message were you trying to give her?

A. That I had to use the bathroom.

Q. Now, did you think that -- that she was going [19] to think that you had an actual bomb?

A. No.

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Q. Were you trying to scare your teacher?

A. No, sir.

Q. Did you hear the testimony from the dean come in and tell the Judge that you told him that you thought it was funny, but it was not?

A. Yes, sir, I heard that.

Q. In fact, did you tell the dean that you thought you were making a joke?

A. No, sir.

Q. What did you tell the dean?

A. I told him that I was referencing to using the bathroom.

Q. Okay. At the time you said it, did you think you were being funny or not?

A. No, sir.

Q. Are you understanding my question?

A. Like, can you ask again, please?

Q. At the time that you said, I have a bomb and I'm going to go blow up the bathroom, did you think you were being funny?

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A. Yes, sir.

Q. Do you think it's funny now?

A. No, sir.

[20]Q. Can you imagine ever saying that ever again?

A. No, sir.

Q. Is there anything else you want to tell the Judge or the prosecutor?

A. No, sir.

MR. MITCHELL: Okay. Judge, those are my questions.

THE COURT: Mr. Sherwin.

MR. SHERWIN: I don't have any questions.

THE COURT: All right. Sir, you can step back down with your attorney.

Any other witnesses?

MR. MITCHELL: I'd like to offer testimony from Miyiah Davis, Judge.

THE COURT: Could you raise your right hand for me?

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(Witness sworn)

THE WITNESS: Yes, I do.

THE COURT: Mr. Mitchell.

WHEREUPON, MIYIAH DAVIS, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q. What's your name?

[21]A. Miyiah Davis.

Q. Is this your son?

A. Yes.

Q. Did you have a chance to hear the witnesses testify today?

A. Yes.

Q. Did you have a chance to see the video today?

A. Yes.

Q. Tell us about your son.

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MR. SHERWIN: Your Honor, that's -- Your Honor, it's irrelevant. Anything about his character is irrelevant, we're here for the facts of the case and that's what she's here to testify to, the facts of the case.

THE COURT: Mr. Mitchell.

MR. MITCHELL: What we've seen -- we've seen Tony take the witness stand. We've seen him testify. We've heard his teacher testify, and basically, you know, she heard what he had to say and, you know, usher him into the class. I hope that the Court's eyes would see that there's something a little bit different about this child, you know, his mannerisms, his ways, you know, head side-to-side. I was hoping his mom might enlighten us.

THE COURT: How is that relevant to the charge [22] conduct?

MR. MITCHELL: My argument has to do with mens rea. If my argument has to do with this is not a threat, this is a joke, and there is a difference between a threat and a joke, she could enlighten us.

THE COURT: Mr. Mitchell, how -- how is this not either character evidence or -- I mean, it -- or mental disability not arising to insanity? I'm not really sure I understand --

MR. MITCHELL: May I proffer it?

THE COURT: -- how it doesn't fit into some --

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MR. MITCHELL: I don't know what she has to say, Judge. May I proffer her testimony?

THE COURT: You don't know what your witness has to say?

MR. MITCHELL: I asked it because of what I saw on the screen.

May I proffer it?

THE COURT: Yes.

Q. (By Mr. Mitchell) Okay. Is there anything you'd like to Court to know about your son after seeing the video that we just watched?

A. I know that my son makes jokes on a regular basis that may be inappropriate and that's -- he's -- he doesn't have any intent. There have been several occasions [23] to where he has done things or said things that he doesn't really understand the severity of what he is saying.

And he is in counseling right now, and he does have a 504 Plan for school right now to help with his social skills in school because of this incident.

MR. MITCHELL: Those are my questions, Judge.

MR. SHERWIN: And, of course, Your Honor, that -- none of that's relevant. I would ask that you not use any of that (indiscernible) and just leave it as a proffer.

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THE COURT: Mr. Mitchell.

MR. MITCHELL: I'm confident in your ability to compartmentalize if that's what you must do.

THE COURT: Well, I don't think that that's relevance and I'm going to strike that testimony and not consider it as to the guilt.

MR. MITCHELL: Those are my questions.

THE COURT: Any questions?

MR. SHERWIN: I don't have any questions.

THE COURT: All right. Thank you, ma'am, you can step back down.

Any other witnesses?

MR. MITCHELL: No.

THE COURT: Any rebuttal?

MR. SHERWIN: Yes, Deputy Savage.

[24]THE COURT: Deputy Savage.

Would you raise your right hand for me?

(Witness sworn)

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THE WITNESS: Yes, sir, I do.

THE COURT: All right. Mr. Sherwin.

WHEREUPON, JOAN SAVAGE, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERWIN:

Q. Deputy Savage, did you hear what the defendant had to say on the day that this incident happened?

A. Yes.

Q. All right. Did he say anything to you or the dean about this being a joke about having to use the restroom?

A. No.

Q. Okay.

A. And in the video, they're coming out of the restroom.

Q. Okay. And so he's actually pointing away from the restroom?

A. Yes.

Q. Oh, okay. All right. And so what did he say about what he said?

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[25]A. Basically, when I read the statement in front of him, I asked him is this what he said and he said yes. I swore him to his statement and he said after that, I messed up.

Q. Okay. All right. Did he say anything about it being on -- like, something he saw online, that it was a joke?

A. I believe so, but I didn't -- I didn't hear it.

Q. Okay. All right. But he never said anything --

MR. MITCHELL: I'd lodge a hearsay objection.

THE COURT: Sustained

MR. SHERWIN: Okay.

THE COURT: -- as to what she said she did not hear.

Q. (By Mr. Sherwin) Okay. All right. But he never said anything to you about it being a joke about the bathroom?

A. No.

MR. SHERWIN: Okay. No further questions.

THE COURT: Mr. Mitchell.

MR. MITCHELL: No. Thank you.

THE COURT: All right. Do you need this witness to remain?

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[26]MR. SHERWIN: No, she can leave.

THE COURT: Any objection?

MR. MITCHELL: (Inaudible).

THE COURT: All right. Ma'am, you're free to go or you're free to stay, either one.

Any other witnesses?

MR. SHERWIN: The State rests.

THE COURT: All right.

MR. MITCHELL: It --

THE COURT: Mr. Mitchell.

MR. MITCHELL: I won't be redundant and make my same argument as to JOA at this point, but I would like to make -- if you deny -- if you continue to deny my JOA, and I hope you don't, then I would like to make a further argument as to innocence or lack of guilt.

THE COURT: All right. I am going to deny the motion for judgment of acquittal. I think, although, the -- as far as who gets opening, closing, I think, although the Defense called a second witness -- I did not receive testimony from that witness. So the Defense is entitled to first and last.

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MR. SHERWIN: There's no objection from State. The Defense can go first. That's fine.

THE COURT: Mr. Mitchell.

MR. MITCHELL: To find Mr. Lafata guilty I [27] think that the Court would have to determine that there is no such thing as a joke. You know, a comment I have a bomb one hundred percent of the time must constitute a threat. With the burden being proof beyond a reasonable doubt, I don't think that the Court believes that he was threatening that he had a bomb, his teacher didn't believe there was an actual bomb.

You know, if the teacher had, you know, Oh, my goodness, put her hand to her face and run off to the dean's office, it would be different, you know. She took it for what it was. It was a 12-year-old awkward boy making an inappropriate 12-year-old boy's crack, knucklehead, get in the class.

There can be times where an inappropriate joke doesn't constitute a threat. Do you -- are you persuaded beyond a reasonable doubt that there was mens rea? Are you persuaded beyond a reasonable doubt that this inappropriate crack constituted a threat with the intent to threaten that he was going to intend to cause harm?

He's been through a lot. He's had the -- the disciplinary situation, you know, from the school. You heard his mom say he's been in counseling. He's had to sit --

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MR. SHERWIN: And, of course, that's all -- [28]that was all suppressed and stricken from the record. So it's not evidence admissible during closing.

MR. MITCHELL: I forgot. I -- I beg your pardon.

The standard is high. Is this worthy of being called a crime? Is his conduct worthy of labeling him a juvenile delinquent? I hope the Court finds no.

THE COURT: Mr. Sherwin.

MR. SHERWIN: Your Honor, the elements have been proven the defendant threatened to throw, place, discharge, project a destructive device, and the threat conveyed an intent to do bodily harm or damage to the property of any person, that property being the bathroom.

It's not necessary -- again, the jury instructions are clear. I don't have to prove that he had the actual intent to cause any harm or damage, or that he had the ability to carry out anything, or that he even had a device on him.

I don't need I think the case that I gave you said something to do with a fruit. It was a grapefruit. I think I cited to a case where the guy had a crushed up, like, grapefruit juice can or something. That's not a device, but it's still, you know, he said it.

[29]It doesn't matter if he was joking. He -- the threat conveyed the intent to I'm open going to blow up the bathroom. This is a bomb, holding up the bag. I'm going

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to blow up the bathroom. Whether or not he thought it was funny and that he was joking and actually, the elements -- I don't even have to prove that somebody else thought it was serious.

I don't have to prove that that teacher thought that it was a real threat. She said she was concerned that he said that, but, yeah -- I mean, she didn't think that he had a bomb because he's a 12-year-old kid, of course, but that's not what -- that's not one of the elements that I have to prove. The only elements I have to prove is that the threat conveyed an intent to do property to the -- or damage to the property of others.

I don't -- there's nowhere in here that says I have to prove that she -- the person he said it to was scared. I don't have to prove that. I've proven the case beyond a reasonable doubt, Judge.

THE COURT: Mr. Mitchell.

MR. MITCHELL: When I made my judgment -- my request that you grant a judgment of acquittal when the government rested, you appropriately asked me if it was my position that -- that the witness has to believe [30]that there is a weapon in -- or a device in order -- I would push right back by saying, Is it the government's position that they're -- anytime a comment is made, it must constitute a threat? An inappropriate attempt at awkward humor by a 12 year old, must it always constitute a threat? Because if it must not always -- if there might be a time where an inappropriate comment from 12 year old might actually not constitute a threat, you've seen it here.

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I appreciate your attention.

THE COURT: All right. In reviewing the statute and the case law and the jury instruction provided to the Court by the supreme court, there are two simple elements to be proven beyond a reasonable doubt:

Did he threaten to throw, place, or project, or discharge a destructive device?

Did that threat convey an intent to do bodily harm or damage property?

There is not in the instruction any indication of how the party receiving the comment had to take it. In other words, a crime like an assault requires a reasonable person standard, whether a reasonable person was placed in imminent fear. There's not that instruction given here. There is not that direction [31] given here and there is not that language in the statute.

For the Court to decide, I believe, that if the -- whether or not it was a threat depended on the person hearing the threat, that places an additional element that the statute does not contemplate, and that would require this Court to rewrite the statute and that's not my role.

The First District Court of Appeals 36 years ago in *Valdes* in a case that still appears to be good law from the Court's review, and is still apart of the jury instruction, and was followed in *Reid* by the Second D.C.A. or -- actually, that came first -- it is not necessary for the State

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to prove the defendant had the actual intent to cause harm or damage, or that he had the ability to carry out the threat, or that there was an actual destructive device. There are other statutes that deal with possession of destructive devices.

Here, the evidence showed, and the video as well, defendant not only made a comment, but made a gesture, was carrying an item and made words that were a threat that he had a bomb, which is a destructive device by definition, and that he threatened to blow up the bathroom, to damage the property of Ferry Pass [32]Middle School.

Now, the consequences of that, the Court will determine that at sentencing. But it appears to the Court that beyond a reasonable doubt, the elements of the offense have been proven.

For the Court to find otherwise, would be to legislate from the bench, and I don't think that I can do that. Well, I know that I can't do that. That's not my role.

I am finding him guilty.

Is the State requesting a PDR?

MR. SHERWIN: Yes, sir.

THE COURT: Okay. Is he on any detention status right now?

MR. SHERWIN: No.

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THE COURT: Okay. All right. I am going to order a predisposition report. We're going to come back on January 14th at 1:30.

Are you available then, Mr. Mitchell?

MR. MITCHELL: You bet.

THE COURT: January 14th at 1:30 for sentencing. A PDR returnable by January 10th to all parties.

Does Mr. Lafata need a note for school to show that he was here today?

[33]MR. MITCHELL: Does he need a note for school?

Yes, please.

THE COURT: All right. Make sure you turn that in. That will excuse this afternoon. I'll see you back on that date.

(Proceedings concluded)

**APPENDIX D — ORDER OF THE FIRST
DISTRICT COURT OF APPEAL, STATE OF
FLORIDA, DENYING REHEARING, REHEARING
EN BANC AND ISSUANCE OF A WRITTEN
OPINION, DATED MARCH 24, 2021**

FLORIDA DISTRICT COURT
OF APPEAL, FIRST DISTRICT

2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151
March 24, 2021

T.E.L., A CHILD,

Appellant-Petitioner(s),

v.

STATE OF FLORIDA,

Appellee-Respondent(s).

CASE NO.: 1D20-0208
L.T. No.: 2019CJ618A

BY ORDER OF THE COURT:

Appellant's motion docketed March 02, 2021, for rehearing, rehearing *en banc* and issuance of a written opinion is denied.

Appendix D

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order. Served:

Adam B. Wilson, AAG
Hon. Ashley Moody, AG
T. E. L.
Andrea Flynn Mogensen
Benjamin Louis Hoffman, AAG

/s/
KRISTINA SAMUELS, CLERK