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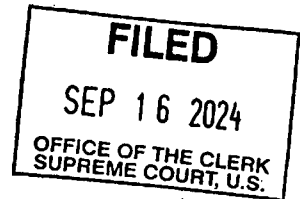
IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

DEANDRE JOHNSON, 1999377

V.

CHADWICK DOTSON, DIRECTOR
VIRGINIA D.O.C.



ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

DEANDRE JOHNSON, 1999377
3521 WOODS WAY
STATE FARM, VIRGINIA 23160
PRO SE PETITIONER

QUESTION PRESENTED

WHETHER REASONABLE JURY WOULD FIND DEBATEABLE
COUNSEL'S EFFECTIVENESS FOR FAILING TO ARGUE PETITIONER'S
STATEMENTS DID NOT CONSTITUTE THREATS AS DEFINED BY
ELONIS.

WHETHER REASONABLE JURY WOULD FIND DEBATEABLE
COUNSEL'S EFFECTIVENESS FOR FAILING TO ARGUE
CONVICTIONS FOR HAVING CONTACT OF ANY KIND
VIOLATES THE FIRST AMENDMENT.

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

RELATED CASES

JOHANSON V. DOTSON, 23-6871

U.S. COURT OF APPEALS (4TH CIR) JUDGMENT ENTERED JULY 9, 2024

JOHANSON V. CLARKE, NO 2:21CV511

U.S. DISTRICT COURT (E.D. VA) JUDGMENT ENTERED AUGUST 18, 2023

JOHANSON V. CLARKE, NO 210552

SUPREME COURT OF VIRGINIA JUDGMENT ENTERED MAY 16, 2022

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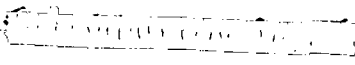
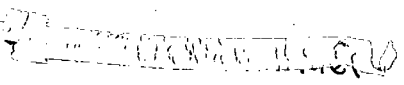
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STATUTES AND RULES

28 U.S.C. 2253

28 U.S.C. 2254

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW
THE JUDGMENT BELOW.

OPINIONS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS
APPEARS AT APPENDIX A TO THE PETITION AND IS UNPUBLISHED.

THE OPINION OF THE UNITED STATES DISTRICT COURT
APPEARS AT APPENDIX B TO THE PETITION, AND
IS UNPUBLISHED.

THE OPINION OF THE HIGHEST STATE COURT TO
REVIEW THE MERITS APPEARS AT APPENDIX C TO
THE PETITION, AND IS UNPUBLISHED.

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS JULY 9, 2024.

A TIMELY PETITION FOR REHEARING EN BANC WAS DENIED ON AUGUST 13, 2024. (EN BANC ORDER NOT INCLUDED IN THIS PETITION)

THE JURISDICTION OF THIS COURT IS INVOKED
UNDER 28 U.S.C. 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

VIRGINIA CODE 18.2-60

VIRGINIA CODE 18.2-60.4

SIXTH AMENDMENT RIGHT TO COUNSEL

FIRST AMENDMENT FREE SPEECH CLAUSE

AEDPA 28 U.S.C. 2254(d)(1)-(2)

STATEMENT OF THE CASE

DEANDRE JOHANSON, A VIRGINIA PRISONER, WAS CHARGED WITH NINE COUNTS OF THREAT IN WRITING VA CODE 18.2-60 AND FOUR COUNTS OF PROTECTIVE ORDER VIOLATION (POV) VA CODE 18.2-60.4.

THE VICTIMS IN THAT CASE WERE COURTNEY TESADA, PROSECUTOR AMANDA SWEENEY, AND CIRCUIT COURT JUDGE RICARDO RIGUAL. THE COMMONWEALTH PRESENTED EVIDENCE THAT JOHANSON "VIOLATED THE TERMS OF THE PROTECTIVE ORDER BY REACHING OUT TO MS. TESADA." APP 19

THE COMMONWEALTH ALSO INTRODUCED SEVERAL LETTERS AUTHORED BY JOHANSON, WHICH WERE DEEMED TO BE THREATENING IN NATURE. IN EXAMINING JOHANSON'S LETTERS, THE COMMONWEALTH NOTED THAT "SOME OF

THE [STATEMENTS]... ARE SORT OF OBVIOUS THREATS, AND OTHERS ARE NOT, CANDIDLY. AND SO CONTEXT IS EVERYTHING." APP 16 THE COMMONWEALTH CONCLUDED THAT "CONTEXT IS EVERYTHING WHEN YOU'RE TALKING ABOUT WHETHER THESE ARE THREATS OR NOT." APP 17, AND "IN A TOTALLY DIFFERENT CONTEXT, MAYBE SOME OF THESE LETTERS ARE NOT THREATS, BUT WHEN YOU'VE BEEN CONVICTED OF RAPE... THESE ARE THREATS." APP 17-18

JOHNSON WAS FOUND GUILTY BY THE JURY ON ALL COUNTS, AND WAS SENTENCED TO SERVE FOUR YEARS AND EIGHTEEN MONTHS IN PRISON.

JOHNSON FILED A PETITION FOR A WRIT OF HABEAS CORPUS 8.01-654(A)(4) IN THE SUPREME COURT OF VIRGINIA CHALLENGING THE EFFECTIVENESS

OF HIS APPELLATE COUNSEL. SPECIFICALLY, JOHANSON ARGUED THAT COUNSEL SHOULD HAVE ARGUED ON DIRECT APPEAL 1) THAT HIS STATEMENTS DID NOT CONSTITUTE THREATS, AND 2) THAT HIS CONVICTIONS FOR HAVING CONTACT OF ANY KIND VIOLATES THE FIRST AMENDMENT. APP 28-31

THE SUPREME COURT OF VIRGINIA REJECTED JOHANSON'S CLAIMS, FINDING THAT JOHANSON "[R]EPEATEDLY THREATENED THE VICTIMS WITH VIOLENCE AND DEATH ONCE HE WAS RELEASED FROM INCARCERATION." APP 13 CONCLUDING THAT "COUNSEL COULD REASONABLY HAVE DETERMINED THESE THREATS WERE NOT PROTECTED FREE SPEECH." 1D.

THE UNITED STATES DISTRICT COURT MIMICKED
THE SUPREME COURT OF VIRGINIA IN JOHNSON'S
FEDERAL HABEAS CORPUS PETITION 28 U.S.C. 2254,
FINDING THAT THE STATE COURT DECISION WAS
NOT UNREASONABLE OR CONTRARY TO FEDERAL
LAW WHERE JOHNSON'S "THREATS ABOUT VIOLENCE
AND DEATH, WERE NOT PROTECTED BY FREE SPEECH,
BECAUSE FREE SPEECH DOES NOT PROTECT TRUE
THREATS" JOHNSON V. CLARKE, NO 2:21CV511
(E.D. Va 7/6/2023) App 7

JOHNSON SOUGHT A CERTIFICATE OF APPEALABILITY
FROM THE UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT, ASKING WHETHER JUSTICE OF PEACE
WOULD FIND DEBATEABLE IF HIS APPELLATE COUNSEL
WAS INEFFECTIVE FOR FAILING TO ARGUE ON DIRECT
APPEAL 1) THAT JOHNSON'S STATEMENTS DID NOT
CONSTITUTE THREATS, AND 2) THAT JOHNSON COULD
NOT BE CONVICTED FOR HAVING CONTACT OF ANY
KIND.

THE FOURTH CIRCUIT DENIED JOHANSON
A CERTIFICATE OF APPEALABILITY 28 U.S.C. 2253,
CONCLUDING THAT JOHANSON DID NOT MAKE
A SUBSTANTIAL SHOWING OF THE DENIAL OF A
CONSTITUTIONAL RIGHT. JOHANSON V. DUTSON, 23-6871
(CA4 7/9/2024) APP 2. THE FOURTH CIRCUIT
DENIED REHEARING EN BANC ON AUGUST 13, 2024.
ID (DID NOT INCLUDE)

REASONS FOR GRANTING THE PETITION

A FEDERAL COURT OF APPEALS SHOULD ISSUE
A CERTIFICATE OF APPEALABILITY 28 U.S.C. 2253,
ONCE A PETITIONER MAKES A "SUBSTANTIAL SHOWING
OF THE DENIAL OF A CONSTITUTIONAL RIGHT."
MILLER-EL V. COCKRELL, 537 U.S. 322, 336 (2003).

WHEN, AS HERE, THE "DISTRICT COURT HAS
REJECTED THE CONSTITUTIONAL CLAIMS ON THE
MERITS, ... THE PETITIONER MUST DEMONSTRATE
THAT REASONABLE JURIST WOULD FIND THE
DISTRICT COURT'S ASSESSMENT OF THE CONSTITUTIONAL
CLAIM DEBATEABLE OR WRONG." ID AT 338.

ULTIMATELY, JOHNSON MUST ESTABLISH THAT
"THE ISSUES PRESENTED WERE ADEQUATE TO
DESERVE ENCOURAGEMENT TO PROCEED
FURTHER." ID AT 336.

"FEDERAL HABEAS RELIEF MAY NOT BE GRANTED FOR CLAIMS SUBJECT TO 2254(d) UNLESS IT IS SHOWN THAT THE [] STATE COURT'S DECISION WAS CONTRARY TO FEDERAL LAW THEN CLEARLY ESTABLISHED IN THE HOLDINGS OF THIS COURT, 2254(d)(1), OR THAT IT INVOLVED AN UNREASONABLE APPLICATION OF SUCH LAW, OR THAT IT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE RECORD BEFORE THE STATE COURT, 2254(d)(2)." HARRINGTON V. RICHTER, 562 U.S. 86, 100 (2011)

THE STATE COURT DECISION MUST HAVE BEEN "SO LACKING IN JUSTIFICATION THAT THERE WAS AN ERROR WELL UNDERSTOOD AND COMPREHENDED IN EXISTING LAW BEYOND ANY POSSIBILITY FOR FAIRMINDED DISAGREEMENT."
ID AT 103.

BECAUSE JOHNSON HAS ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL, HE MUST SHOW THAT HIS COUNSEL WAS OBJECTIVELY UNREASONABLE IN FAILING TO RAISE ARGUABLE ISSUES, AND THAT ABSENT COUNSEL'S ERROR HE WOULD HAVE PREVAILED ON HIS APPEAL. SMITH V. ROBBINS, 528 U.S. 259, 288 (2000) (CITING STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984))

PERFORMANCE

"GENERALLY, ONLY WHEN IGNORED ISSUES ARE CLEARLY STRONGER THAN THOSE PRESENTED, WILL THE PRESUMPTION OF EFFECTIVE ASSISTANCE OF COUNSEL BE OVERCOME." SMITH, AT 288

BECAUSE JOHNSON'S APPELLATE COUNSEL FAILED TO PRESENT TWO ARGUABLE FIRST AMENDMENT ISSUES ON DIRECT APPEAL, COUNSEL WAS INEFFECTIVE UNDER STRICKLAND.

I. THREATS

THE COMMONWEALTH UNREASONABLY APPLIED STRICKLAND TO JOHANSON'S CASE, 2254(d)(1), WHERE HIS STATEMENTS DO NOT CONSTITUTE THREATS AS DEFINED BY ELONIS V. UNITED STATES, 575 U.S. 723 (2015).

"A THREAT IS AN EXPRESSION OF AN INTENTION TO INFLECT LOSS OR HARM ON ANOTHER BY ILLEGAL MEANS." ID AT 733; ADDITIONALLY, "IN CASES RAISING FIRST AMENDMENT ISSUES... AN APPELLATE COURT HAS AN OBLIGATION TO MAKE AN INDEPENDENT EXAMINATION OF THE WHOLE RECORD IN ORDER TO MAKE SURE THAT THE JUDGMENT DOES NOT CONSTITUTE A FORBIDDEN INTRUSION ON...FREE EXPRESSION." BOSE CORP V. CONSUMERS UNION, 466 U.S. 485, 499 (1984).

IN ITS ANALYSIS, THE COMMONWEALTH FAILED TO RECITE JOHANSON'S STATEMENTS, OR EXPLAIN HOW THOSE STATEMENTS WERE THREATS AS OPPOSED TO PROTECTED EXPRESSION.

SEE UNITED STATES V. DAVITASHVILI, 94 F. 4TH 104,
110 (CA3 2024) (RECITING STATEMENTS AND APPLYING THE
LAW); UNITED STATES V. WHITE, 818 F. 3d 212, 222 (CA4 2016)
(SAME); UNITED STATES V. BAG DASARIAN, 652 F. 3d 1113,
1119 (CA9 2011) (SAME).

THERE APPEARS TO BE A NATION WIDE CONSENSUS THAT
IN TRUE THREAT CASES, ANALYZING THE STATEMENTS,
AND SAYING WHAT THE LAW IS, IS A BEDROCK PRINCIPLE,
TO PROTECT NOT ONLY THE PUBLIC, BUT THE
PETITIONER AS WELL FROM "SWALLOW[ING] WORDS
THAT ARE IN FACT NOT TRUE THREATS."

COUNTERMAN V. COLORADO, 600 U.S. 66, 78 (2023).

JOHANSON'S NINE SEPARATE STATEMENTS RESULTED
IN NINE SEPARATE FELONY CONVICTIONS, AND ARE
ENTITLED TO MORE THAN A MERE BLANKET DENIAL.

ACCORDINGLY, THIS CLAIM MUST BE REVIEWED
DE NOVO.

JOHANSON ARGUED BEFORE THE SUPREME COURT OF VIRGINIA THAT HIS "ENTIRE CASE REVOLVE[D] AROUND THE FACT THAT A THREAT (ACTUS REUS) HAS ACTUALLY BEEN COMMUNICATED." APP 29

THREATS AND TRUE THREATS ARE NOT "COEXTENSIVE." UNITED STATES V. STOCK, 728 F.3d 287, 294 (CA3 2013); AND "IT IS NOT UNPRECEDENTED FOR A COURT TO CONCLUDE THAT A COMMUNICATION DOES NOT LEGALLY QUALIFY AS A THREAT." ID AT 298.

THE ONLY CASE THAT RESEMBLES THIS COURT'S DEFINITION OF WHAT A THREAT IS, IS UNITED STATES V. BAGDASARIAN, 652 F.3d 1113, 1117 (CA9 2011).

IN BAGDASARIAN, THE NINTH CIRCUIT HELD THAT "THE SUBJECTIVE TEST SET FORTH IN [VIRGINIA V.] BLACK, MUST BE READ INTO ALL THREAT STATUTES THAT CRIMINALIZE PURE SPEECH." ID AT 1117;

AND "WHEN OUR LAW PUNISHES WORDS, WE...
MUST NOT DISTORT OR EMBELLISH THEIR PLAIN
MEANING SO THAT THE LAW MAY REACH THEM."
Id at 1120; FINALLY, "A STATEMENT THAT
THE SPEAKER DOES NOT INTEND AS A THREAT
IS AFFORDED CONSTITUTIONAL PROTECTION
AND CANNOT BE HELD CRIMINAL." Id at
1122.

THUS, IN DETERMINING IF JOHNSON'S
STATEMENTS LEGALLY QUALIFY AS A THREAT,
THE COMMONWEALTH IS BOUND BY WHAT JOHNSON
ACTUALLY SAID. AS THIS COURT OBSERVED,
"AN ANONYMOUS LETTER THAT SAYS 'I'M GOING
TO KILL YOU' IS AN EXPRESSION OF AN
INTENTION TO INFLECT LOSS OR HARM REGARDLESS
OF THE AUTHOR'S INTENT. A VICTIM WHO RECEIVES
THAT LETTER IN THE MAIL HAS RECEIVED A
THREAT, EVEN IF THE AUTHOR BELIEVES
(WRONGLY) THAT HIS MESSAGE WILL BE
TAKEN AS A JOKE." ELONIS, AT 733.

JOHANSON WAS CONVICTED UPON NINE (9)
COUNTS OF THREATS IN WRITING VA CODE 18.2-60.
HE WROTE COURTNEY TEJADA FOUR LETTERS
WHICH STATED:

COUNT 1: WHEN I'M FREE, I'M COMING
FOR YOU. YOU BETTER BE SINGLE, CHILDLESS
AND UNMARRIED. APP 5

COUNT 2: I CONSTANTLY EXPERIENCE
HOMICIDAL THOUGHTS WHEN I THINK ABOUT
CERTAIN THINGS THAT TRANSPIRED THAT YOU
DENIED AND BLAMED ME FOR. SPEAK NOW
OR FOREVER HOLD YOUR PEACE. APP 5

IN BAGDASARIAN, THE NINTH CIRCUIT PLACED
THE SPEAKERS STATEMENTS INTO TWO CATEGORIES:
1) "PREDICTIVE" AND 2) "EXHORTATORY" 10, AT 1122.
JOHANSON'S STATEMENTS ARE BOTH PREDICTIVE,
EXHORTATORY AND LASTLY DECLARATORY.

NONETHELESS, JOHANSON'S STATEMENTS ARE
UTTERLY DEVOID OF ANY EXPRESSION OF INFLICTING
LOSS OR HARM. IF JOHANSON WANTED TO THREATEN
TEJADA, HE COULD HAVE SIMPLY STATED THAT
HE WAS GOING TO HARM HER IN SOME ILLEGAL
WAY - THIS HE DID NOT DO.

COUNTS 1 AND 2 ARE PROTECTED EXPRESSION
PER ELONIS' DEFINITION.

COUNT 3: SHOULD I CONSIDER RETRIBUTION
OR DROP IT. I'M BEGGING YOU TO RESPOND.
I WILL BE HOME SOONER THAN YOU THINK.
I HAVE THE VIN NUMBER AND TAG NUMBER
TO THAT NISSAN ALTIMA. PLEASE DO NOT
UNDERESTIMATE MY DETERMINATION. I'M
UNDER THE EXPRESSION THAT YOU SINCERELY
DO NOT WANT TO LIVE. YOU CONSTANTLY
SPEAK ABOUT SUICIDE. I CONSTANTLY THINK
ABOUT HOMICIDE. MAYBE WE CAN MAKE A
MUTUAL AGREEMENT.

IF YOU'RE JUSTIFIED IN COMMITTING ADULTERY,
SHALL I NOT BE JUSTIFIED IN COMMITTING MURDER?

APP 5

IF HAVING HOMICIDAL THOUGHTS WERE CRIMINAL, THEN
THE ENTIRE WORLD WOULD BE INCARCERATED; MOREOVER,
ACTS OF ADULTERY ARE PUNISHABLE BY DEATH. SEE
LEVITICUS 20:10. CONTEXT OR INTENT IS

IRRELEVANT IN DECIDING IF JOHNSON ACTUALLY

EXPRESSED A THREAT. JOHNSON'S WORDS

"ON ITS FACE" BAGDASARIAN, AT 1122, SIMPLY
DO NOT CONTAIN AN EXPRESSION TO "INFLECT LOSS
OR HARM."

COUNT 3 IS PROTECTED EXPRESSION PER
ELMIS' DEFINITION.

COUNT 4: YOU'RE GOING TO GET [YOUR
BOYFRIEND] KILLED AND IF I KILL YOU
AFTER I AM RELEASED I WILL BE JUSTIFIED.

IF YOU DIVORCE ME... YOU DESERVE TO
BE DOUSED WITH GASOLINE, SET ON FIRE, BURNED
ALIVE. BITCH YOU ARE MY FUCKING WIFE, AND
WHEN I'M RELEASED, I'M COMING FOR ~~THE~~,
FIGURATIVELY AND LITERALLY BITCH. AND
DONT WASTE YOUR TIME WITH NESTOR,
HE'LL BE DEAD BY THIS TIME NEXT YEAR.
APP 5-6

JOHANSON'S COMMENTS ABOUT TEJADA'S
BOYFRIEND DYING WERE "PREDICTIVE". "THE
NOTION THAT [JOHANSON] HIMSELF HAD PLANS TO
FULFILL" THAT PREDICTION, BAGDASARIAN, AT
1122, WERE NEVER EXPRESSED.

ADDITIONALLY, JOHANSON'S BELIEF THAT HE
WOULD BE JUSTIFIED IN CAUSING TEJADA'S DEATH
STEMS FROM THE FACT THAT TEJADA WAS ACTIVELY
COMMITTING ADULTERY - WHICH IS AGAINST
JOHANSON'S RELIGIOUS FAITH.

LASTLY, JOHNSON EXHORTATION THAT TEJADA IS DESERVING OF BEING BURNED ALIVE, IS NOT AN EXPRESSION TO INFLECT LOSS OR HARM.

COUNT 4 IS PROTECTED EXPRESSION PER ELUMS' DEFINITION.

JOHNSON ALSO WROTE PROSECUTOR AMANDA SWEENEY THREE LETTERS WHICH STATED:

COUNT 5: [JOHNSON] ASKED SWEENEY ABOUT HER FAVORITE [SEX] POSITION AND TOLD HER HE WANTED HER TO BEAR HIS CHILDREN. [JOHNSON] REQUESTED THAT SWEENEY WEAR A RED THONG, AND INFORMED HER THAT HE WOULD BE ON TOP OF HER 9-7. APP 6

COUNT 6: [JOHNSON] DESCRIBED IN COARSE AND DETAILED TERMS HOW HE WANTED TO HAVE SEXUAL INTERCOURSE WITH HER AFTER HIS RELEASE. [JOHNSON] STRESSED, THIS IS PERSONAL AMANDA. APP 6

COUNT 7: [JOHNSON] TOLD SWEENEY HE WAS COMING FOR HER AFTER HIS RELEASE. INQUIRED ABOUT SWEENEY WEARING A RED THONG, AND DISCUSSED HAVING SEXUAL INTERCOURSE WITH SWEENEY. HE ALSO EXPRESSED AN ABILITY TO LOCATE SWEENEY BASED ON HER ONLINE ACTIVITY. APP 6

WHILE JOHNSON'S LETTERS TO SWEENEY MAY HAVE BEEN UNWANTED, "OBSCENE, AND VULGAR, THEY FALL WELL SHORT OF BEING THREATS OF VIOLENCE.

JOHNSON BELIEVED HE WAS ONLY SOLICITING SEX FROM A PUBLIC OFFICIAL. "HAVING LIABILITY TURN ON WHETHER A "REASONABLE PERSON" REGARDS THE COMMUNICATION AS A THREAT - REGARDLESS OF WHAT [JOHNSON] THINKS - REDUCES CULPABILITY TO NEGLIGENCE." ELONIS, AT 738.

JOHANSON'S STATEMENTS TO SWEENEY SHOULD NOT BE DISTORTED SIMPLY BECAUSE HE WAS "CONVICTED OF RAPE" APP 17, AND SWEENEY SERVED AS THE PROSECUTOR IN THAT CASE.

TAKEN AT FACE VALUE, NONE OF JOHANSON'S STATEMENTS ACTUALLY INVOLVE AN ILLEGAL ACT BEING COMMITTED.

COUNTS 5, 6, AND 7, ARE PROTECTED EXPRESSION PER KLONIS' DEFINITION.

LASTLY, JOHANSON WROTE CIRCUIT COURT JUDGE RICHARD RIGUAL TWO LETTERS WHICH STATED:

COUNT 8: YOU DESERVE TO DIE THE DEATH OF A FOOLISH MAN AND AN UNTIMELY DEATH IS INDEED IN YOUR FUTURE. YOU HAVE TO DIE AN EARLY DEATH. APP 6

COUNT 9: DIE A PAINFUL, EARLY DEATH
YOU DUMB RACIST, FOOLISH MAN. I WILL
BE FREE BY JANUARY 9, 2020 APP 6

"THE LANGUAGE OF THE POLITICAL ARENA... IS
OFTEN VITUPERATIVE, ABUSIVE, AND INEXACT."
WATTS V. UNITED STATES, 394 U.S. 705, 708 (1969)

JOHANSON'S ABUSIVE STATEMENTS TO JUDGE
FIGUEROA WERE PREDICTIVE, EXHORTATORY, AND
DECLARATORY ABOUT THE JUDGE'S DEATH. HOWEVER,
THERE EXISTS NO "NOTION THAT [JOHANSON] HIMSELF
HAD PLANS TO FULFILL" THE DESIRED ACTS,
BAGDASARIAN, AT 1122.

THE FIRST AMENDMENT IS AN ABSOLUTE BAR
AGAINST PURE EXPRESSION CONVICTIONS, UNLESS
THE ACCUSED HAS KNOWINGLY, INTELLIGENTLY, AND
VOLUNTARILY WAIVED HIS FIRST AMENDMENT
PROTECTIONS BY EXPRESSING AN INTENTION

TO "INFLECT LOSS OR HARM ON ANOTHER BY
ILLEGAL MEANS." ELONIS, AT 733.

COUNTS 8 AND 9 ARE PROTECTED EXPRESSION
PER ELONIS' DEFINITION.

II. PROTECTIVE ORDER CONVICTIONS

THE COMMONWEALTH MADE AN UNREASONABLE DETERMINATION
OF FACTS, 2254(d)(2), WHERE JOHANSON WAS CONVICTED
FOR HAVING CONTACT OF ANY KIND.

IN THE SUPREME COURT OF VIRGINIA, JOHANSON
ARGUED THAT "IRRESPECTIVE OF THE SUBJECTIVE INTENTIONS
OF JOHANSON, OR THE CONTENTS OF HIS COMMUNICATION, [HE]
WAS CONVICTED AND IMPRISONED." APP 31; AND THAT
"THE JURY CONVICTED [HIM] FOR COMMUNICATING WITH
TEJADA AND NOTHING ELSE" 10.

3
IN THE FOURTH CIRCUIT, JOHANSON ARGUED
THAT "PROHIBITING CONTACT OF ANY KIND IS A BLATANT
FIRST AMENDMENT VIOLATION." APP 27

THE RECORD BEFORE THE SUPREME COURT
OF VIRGINIA CLEARLY ESTABLISHES THAT JOHANSON
WAS CONVICTED FOR HAVING CONTACT OF ANY KIND
WITH TEJADA AND NOTHING ELSE:

"[A] PROTECTIVE ORDER... ORDERS SOMEONE NOT
TO HAVE CONTACT WITH SOMEONE ELSE OF ANY KIND
AND [JOHANSON] VIOLATED THAT BY REACHING OUT
TO MS. TEJADA." APP 19

"[E]VERY LETTER THERE IS A VIOLATION OF THE
PROTECTIVE ORDER NO MATTER WHAT'S IN IT ALL.
IT'S A CONTACT WHEN YOU SHOULD NOT HAVE
CONTACT WITH HER." APP 20-21

"NO CONTACT MEANS NO CONTACT." APP 22

EVEN THE GIVEN JURY INSTRUCTION APP 32
DID NOT REQUIRE A THREAT OF "VIOLENCE AND
DEATH" AS THE SUPREME COURT OF VIRGINIA FOUND.
SEE WALTON V. COMMONWEALTH, 2015 VA APP LEXIS
128 (VA APP CT 4/18/2015) (FINDING ACT OR THREAT OF
VIOLENCE IS AN ELEMENT OF PROTECTIVE ORDER VIOLATION).

ACCORDINGLY, THIS CLAIM MUST BE REVIEWED
DE NOVO.

"THE FIRST AMENDMENT PERMITS THE RESTRICTION
OF SPEECH IN A FEW LIMITED AREAS;" VIRGINIA V.
BLACK, 538 U.S. 343, 358 (2003).

HOWEVER, NONE OF THOSE LIMITED AREAS ARE
PRESENT IN THIS CASE, BECAUSE JOHNSON WAS CONVICTED
FOR CONTRACTING TEJADA "NO MATTER WHAT" HIS
LETTERS CONTAINED, APP 21

THIS GOVERNMENT ACTION FALLS OUTSIDE OF
THE RESTRICTIONS PERMITTED BY THE FIRST
AMENDMENT.

PREJUDICE

BECAUSE JOHANSON'S COUNSEL WITHHELD TWO STRONGER ISSUES, THERE EXISTS A REASONABLE PROBABILITY THAT HIS DIRECT APPEAL WOULD HAVE BEEN SUCCESSFUL, AND JOHANSON WOULD HAVE RECEIVED VINDICATION FROM THE DENIAL OF HIS FEDERAL RIGHTS.

ACCORDINGLY, REASONABLE JURY WOULD HAVE FOUND COUNSEL'S EFFECTIVENESS DEBATEABLE WHERE COUNSEL FAILED TO PRESENT ARGUABLE ISSUES ON DIRECT APPEAL

CONCLUSION

THE PETITION FOR A WRIT OF HABEAS CORPUS SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED

DEANDRE JOHNSON

DATE: SEPTEMBER 11, 2024