Court of Appeal, First Appellate District, Division Four - No. A165339

S289208

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

ROSS FARCA, Defendant and Appellant.

The petition for review is denied.

GUERRERO
Chief Justice

Filed 12/30/24

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ROSS FARCA, Defendant and Appellant.	A165339 (Contra Costa County Super. Ct. No. 05002015113)

Ross Farca appeals after a jury convicted him of (1) manufacturing an assault weapon (Pen. Code[1], § 30600, subd. (a)); (2) possessing an assault weapon (§ 30605, subd. (a)); (3) interfering with another person's exercise of civil rights by threat of force (§ 422.6, subd. (a)); (4) criminal threats (§ 422, subd. (a)); and (5) threatening a public officer (§ 71). He contends (1) sections 30600 and 30605 are unconstitutional because they infringe on rights protected by the Second Amendment; (2) substantial evidence does not support his conviction for violating section 422.6, subdivision (a); (3) the jury was not instructed on an element of the section 71 offense of threatening

[1] Undesignated statutory citations are to the Penal Code.

a public officer, and (4) substantial evidence does not support his convictions for criminal threats or threatening a public officer. We conclude Farca forfeited his first argument by failing to raise it in the trial court, and we do not agree with his fourth argument. But we agree with Farca that the evidence does not support his conviction for violating section 422.6, subdivision (a) and the instruction on the charge of threatening a public officer under section 71 prejudicially omitted an element of the offense. We therefore affirm the convictions on the first, second, and fourth counts; reverse the convictions on the third and fifth counts; and remand the matter to the trial court for further proceedings.

BACKGROUND

Around June 2019, Farca had two accounts on Steam, an online gaming website and social platform. Steam allows users to post comments on one another's pages, like a social networking site. The name of one of Farca's accounts was "Adolf Hitler (((6 MILLION)))." The description of the account said "Brenton Tarrant is a hero!!" and had an icon of the flag of New Zealand. Brenton Tarrant shot and killed about 50 Muslim people at mosques in Christchurch, New Zealand. The description of the Steam account also stated, "I have a fully semi automatic assault weapon AR15 with multiple high capacity magazines. Wanna see a mass shooting with a body count of over 30 subhumans?" The Nazi party in World War II referred to Jews as subhumans.

Using that account, Farca sent a message to three other users, saying, "I currently own an AR15 semi auto rifle but I can

buy/make the auto sear and get the M16 parts kit. What do you think of me doing what John Earnest tried to do, but with a Nazi uniform, an unregistered and illegally converted 'machine gun' and actually livestreaming it with Nazi music? I would get a body count of like 30 kikes and then like 5 police officers because I would also decide to fight to the death 1) you don't surrender to the ZOG 2) ever watch US prison documentaries? Also I would not spam full auto, I would just use it for clusterf,ucks [*sic*] of kikes. Generally you want to be on semi auto only so you don't waste ammo plus depending on the target richness and need for suppression eventually I may go low on ammo so I would need to resupply from the dead officers since it's 5.56." Farca also posted, "I just would need a better target than f,ucking [*sic*] some random synagogue with kikes that aren't really a threat. Preferibly [*sic*] with some high value targets, even though they would have their own security." John Earnest shot and killed one person at a synagogue in Poway in early 2019. (U.S. Attorney's Off., S.D. Cal., (Press Release, Dec 28, 2021) John T. Earnest Sentenced to Life Plus 30 Years in Prison for Federal Hate Crimes Related to 2019 Poway Synagogue Shooting and Attempted Mosque Arson, <https://www.justice.gov/usao-sdca/pr/john-t-earnest-sentenced-life-plus-30-years-prison-federal-hate-crimes-related-2019> [as of Dec. 30, 2024].) "Kike" is a derogatory term for a Jewish person.

Acting on a tip from the FBI, Detective Gregory Mahan of the Concord police found Farca's Steam posts. The FBI tip identified the Steam user as Farca. Mahan conducted a background check and discovered that Farca lived in Concord and

had purchased a "stripped lower" for an AR-15 a few months earlier. A stripped lower is the most basic part of a firearm on which a gun is built by adding other components.

Farca lived in his mother's home with his grandmother and brother. In Farca's bedroom, police found, among other things, an AR-15-style semiautomatic rifle with a pistol grip, detachable magazine, telescoping stock, and two types of scopes. The rifle had been assembled from the stripped lower that Farca had purchased and additional components that Farca received in the mail. Police also found 10 30-round and three 40-round magazines that corresponded to the rifle and tools and instructions for assembling firearms. Mahan opined at trial as an expert that the rifle was an assault weapon as defined by section 30515 because of its removable magazine, pistol grip, and telescoping stock. (§ 30515, subd. (a)(1)(A) & (C).) But Mahan also said that the weapon had a legitimate self-defense purpose.

Also in Farca's home were a Japanese sword, a military-style combat fixed-blade knife, and a military-style camouflage uniform. Farca had numerous history books about World War II and Nazi Germany, as well as two pro-Jewish books. Laptops and a cell phone in Farca's room had a large amount of anti-Semitic and pro-Nazi material, including a copy of Mein Kampf, as well as a video of the Christchurch shooting. The laptops were linked to the Steam accounts. The Internet history on Farca's laptops and phone included searches for "Concord police scanner," "First Lutheran Church in Concord," "sf jewish library," and "sf jewish museum." The devices had saved copies of Steam chats

and Youtube comments in which Farca's account mentioned suicide by cop, being willing to slaughter law enforcement officers, and not being willing to go to prison.

Deborah K., the executive director of a synagogue in Lafayette, learned through a media article and law enforcement bulletin that Farca had been arrested less than 10 miles from the synagogue and had said online that he wanted to attack Jewish people and kill police. She also learned that the police seized an assault weapon during the search. Deborah K. felt concerned or threatened because of her knowledge of the attacks earlier that year by Tarrant and Earnest and the fact that Farca was arrested nearby with the means to carry out an attack. She contacted the local police, and the synagogue hired armed, full-time private security. Deborah K. knew that Farca had not posted anything directly identifying her synagogue or its rabbi or congregants.

Mahan testified at Farca's preliminary hearing on October 5 and 20, 2020. On October 8, 2020, Mahan was involved in an advisory role in a federal probation search of Farca's home. Mahan participated in the briefing before the search, stood down the block during the search, and came to Farca's home after the scene was secure in order to answer any questions the federal officers might have. During the search, Farca was sitting on a curb across the street, guarded by a deputy sheriff and a federal probation officer. When Mahan was no longer needed and was walking away from Farca's home, he heard Farca yell, "Private Mahan, why are you here? This is a federal search. Sieg Heil.

Sieg Heil." Farca continued yelling, but Mahan tried to ignore it, got in his car, and left. Later, Mahan learned that the deputy sheriff guarding Farca had heard him say, "Mahan, the next time I see you, you will be arresting me for PC187 on you." Penal Code section 187 defines the crime of murder. The sheriff told Farca to calm down and stop yelling. Farca complied, apologized, and explained that he hated Mahan because Mahan had ruined his life. Farca then laid down flat on the ground.

When Mahan heard about Farca's statement from the sheriff's deputy, Mahan interpreted it as a threat to kill him. Mahan was concerned by Farca's threat because Farca made the threat publicly and called him "Private," indicating Farca viewed him as a solider and therefore an acceptable target. Mahan was also concerned because he was in the middle of testifying at the preliminary hearing and knew what Farca had posted online about being willing to die by provoking a law enforcement response. Mahan feared an assault in front of the courthouse. Mahan later learned that a few days after the threat Farca had removed his federal probation ankle monitoring bracelet. Mahan took various steps to increase his security, including implementing security measures at his house and changing his routes to and from work.

Farca was charged by information with (1) manufacturing an assault weapon (§ 30600, subd. (a)); (2) possessing an assault weapon (§ 30605, subd. (a)); (3) interfering with another person's exercise of civil rights by threat of force (§ 422.6, subd. (a)) through his online posts; (4) making a criminal threat against

Mahan (§ 422, subd. (a)); (5) threatening Mahan as a public officer (§ 71); and (6) dissuading Mahan as a witness by threat of force (§ 136.1, subd. (c)(1)).

At trial, Farca called as witnesses his mother and a clinical psychologist, who both testified that Farca was autistic. The psychologist explained that autistic people commonly have verbal outbursts and difficulty regulating their emotions. She believed Farca's threat to Mahan would be an example of this. She questioned whether Farca would understand the impact his online postings would have on other people.

The jury acquitted Farca of the charge of dissuading a witness but convicted him of the other charges. The trial court sentenced Farca to the low term of four years on count 1, manufacturing an assault weapon. The court imposed two years for count 2, possession of an assault weapon, stayed pursuant to section 654. The court imposed one year in county jail on count 3, interfering with another person's exercise of civil rights by threat of force, consecutive to the prison sentence and to be served first. The trial court explained that it was doing this as an act of leniency, since if it could not impose the county jail sentence consecutively it would have imposed the middle term on count 1, which would have been six years. (§ 30600, subd. (a).) On count 4, the criminal threat against Mahan, the trial court imposed a consecutive eight months. The trial court imposed two years for count 5, threatening Mahan as a public officer, but stayed it under section 654. Farca's total sentence was therefore one year in county jail, followed by four years and eight months in state

prison. Farca earned 579 days of actual credit and an equal number of good behavior credits, for a total of 1,158 credits, which meant that he had effectively already completed the county jail term at the time of sentencing.

DISCUSSION

I. Constitutionality of sections 30600 and 30605

Farca first argues that sections 30600 and 30605, the statutes prohibiting the manufacture and possession of assault weapons, are unconstitutional because they infringe on the right under the Second Amendment to possess arms for self-defense. Farca calls this a facial challenge to sections 30600 and 30605. Farca principally relies on *New York State Rifle & Pistol Assn, Inc. v. Bruen* (2022) 597 U.S. 1 (*Bruen*). *Bruen* "reiterate[d]" its prior holdings in *District of Columbia v. Heller* (2008) 554 U.S. 570 (*Heller*) and *McDonald v. Chicago* (2010) 561 U.S. 742 that "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." (*Id.* at pp. 8, 20–24.) In its analysis of whether the Second Amendment's plain text covered the gun regulation at issue in *Bruen*, the Supreme Court first noted that the two individual plaintiffs were part of " 'the people' whom the Second Amendment protects" and the firearms at issue, handguns, were "weapons 'in common use' today for self-defense." (*Id.* at p. 31–32.) The Supreme Court then found it was properly undisputed that the plain text of the Second

Amendment's guarantee of the right to "keep and bear Arms" (U.S. Const., 2nd Amend.) protected the plaintiffs' proposed conduct of publicly carrying handguns for self-defense. (*Bruen*, at p. 32.)

Bruen's reference to weapons in "common use" came from *Heller, supra,* 554 U.S. at pp. 626–627, where the Court affirmed that the Second Amendment right is not a right to carry any weapon whatsoever, and, as the Court had held in *United States v. Miller* (1939) 307 U.S. 174, 179, only protects the sorts of weapons "in common use at the time" the Second Amendment was adopted. *Heller* found this limitation on the right to keep and bear arms was "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.' " (*Heller*, at p. 627.) *Miller* had held that the Second Amendment did not protect a shotgun with a barrel less than 18 inches long. (*Miller*, at p. 178.) *Heller*, at page 627, likewise accepted that "weapons that are most useful in military service — M-16 rifles and the like — may be banned."

Farca implicitly admits that he failed to raise this argument in the trial court, arguing that facial challenges may be raised for the first time on appeal. However, the case he cites for this proposition, *In re Sheena K.* (2007) 40 Cal.4th 875, is more nuanced on this point than Farca acknowledges. Read properly, and as applied to the context of Farca's Second Amendment challenge, *In re Sheena K.* requires us to conclude that Farca forfeited his Second Amendment challenge by failing to raise it below.

In *In re Sheena K.*, *supra*, 40 Cal.4th at page 878, the defendant did not challenge in the trial court a probation condition that she not associate with anyone disapproved of by the probation officer. The defendant then argued on appeal that the condition was unconstitutionally vague and overbroad because it did not specify that she know which persons were disapproved of by the probation officer. (*Id.* at p. 880.) *In re Sheena K.* began from the principle that generally a constitutional right, like any other right, will be forfeited by failing to raise it in the trial court. (*Id.* at pp. 880–881.) This forfeiture rule properly applies to appellate claims involving discretionary sentencing choices or unreasonable probation conditions, since "characteristically the trial court is in a considerably better position than the Court of Appeal to review and modify a sentence option or probation condition that is premised upon the facts and circumstances of the individual case." (*Id.* at p. 885.) By contrast, a facial challenge that a probation condition is unconstitutionally vague or overbroad, such as the one in *In re Sheena K.* that the condition lacked a knowledge requirement, "does not require scrutiny of individual facts and circumstances but instead requires the review of abstract and generalized legal concepts — a task that is well suited to the role of an appellate court." (*Id.* at p. 885; accord, *id.* at p. 887.) *In re Sheena K.* cautioned that the forfeiture rule will still apply when constitutional challenges to probation conditions do not raise pure questions of law. (*Id.* at p. 889.)

Even if we accept that Farca's challenge to sections 30600 and 30605 is a facial one, it is not the type of facial constitutional challenge that *In re Sheena K.* permits to be raised for the first time on appeal. The first step in the analysis under *Heller* and *Bruen* requires us to determine whether the weapon Farca manufactured and possessed is "in common use" or is "dangerous and unusual." (*Bruen*, *supra*, 597 U.S. at pp. 24, 32; *Heller*, *supra*, 554 U.S. at p. 627.) The second step looks for relevantly similar historical analogues to the statutes at issue. (*Bruen*, at pp. 24, 28–29.) *Bruen* noted that "cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach" when looking for relevantly similar historical analogues. (*Id.* at p. 27.) These inquiries require the development of a record that is entirely missing in this case.

Farca's own briefing reveals the problem. He cites government reports and survey results that are purportedly replete with facts about the number of rifles manufactured in the last decade (but not the numbers of assault weapons), the number of AR-15 owners, the number of AR-15 users who say they acquired their weapon for self-defense, how often guns are needed or used defensively, and how many homicides are committed with rifles. He asserts that AR-15 rifles are as common as Ford F-series pickups (without citing supporting evidence for the assertion). He cites media reports about specific incidents in which AR-15 rifles were used defensively. He also cites law review articles and reference works about the history of

gun manufacture and regulation in the country. Farca has to cite to such sources for these assertions because none of the relevant facts are in the record.

Farca admits that his argument largely tracks the federal district court decision in *Miller v. Bonta* (S.D.Cal. 2023) 699 F.Supp.3d 956, 1011, which held that sections 30600 and 30605 are unconstitutional. However, that case, and another disagreeing with it, illustrate how important it is to create a record on the questions at issue. *Miller* reached its conclusion after delving into the minutiae of an extensive evidentiary record concerning the history of gun use and regulation, including at least nine expert reports. (*Id.* at pp. 978–1010.) More recently, *Rupp v. Bonta* (C.D.Cal. 2024) 723 F.Supp.3d 837 held that sections 30600 and 30605 are not facially unconstitutional. That district court also considered a considerable body of evidence, including at least ten expert reports about how common and dangerous assault weapons are and a compendium of over 1100 pages of historical laws. (*Id.* at 844, 851–881.) *Rupp* considered the same issues as *Miller*, including reports from some of the same experts, and reached diverging conclusions. (See *Rupp*, at 857 & fn. 16, 862, 872–873, 879, 880.) We would not necessarily expect Farca to provide the same level of detail in a trial court constitutional challenge to sections 30600 and 30605 in a criminal proceeding, but these cases do demonstrate the necessity of a robust factual record for a proper *Heller/Bruen* inquiry. We can hardly take sides on these constitutional issues based on the smattering of news articles and survey results that Farca cites.

Because Farca's challenge requires the development and assessment of a factual record relating to both the gun at issue and relevant historical analogues, he needed to raise it first in the trial court. As an appellate court, absent exceptional circumstances, we consider only evidence in the record. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3 ["normally 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered' "].) Also, as *In re Sheena K.*, *supra*, 40 Cal.4th at page 885, indicated, the trial courts are better suited institutionally for addressing factual disputes, such as the *Heller/Bruen* inquiry into the prevalence or dangerousness of weapons. Only when an inquiry turns on the review of abstract and generalized legal concepts for which appellate courts are well suited will an appellate court permit a litigant to raise a constitutional challenge on appeal for the first time. (See *ibid.*) That is not the case here.

Farca's failure to raise this challenge below and facilitate the creation of a record to support it is particularly noteworthy considering that he is swimming against the tide of case law on this issue. After *Heller* but before *Bruen*, *People v. Zondorak* (2013) 220 Cal.App.4th 829, 836 and *People v. James* (2009) 174 Cal.App.4th 662, 676–677 both held that assault weapons are dangerous and unusual weapons that are not in common use for lawful purposes. After *Bruen*, *People v. Bocanegra* (2023) 90 Cal.App.5th 1236, 1256–1257 rejected a Second Amendment challenge to the prohibition of possession of assault weapons in

what is now section 30605 and affirmed the holdings in *James* and *Zondorak*. Farca contends that *Bocanegra* and (presumably) *James* and *Zondorak* were wrongly decided because their conclusions lack factual support. However, he did not make a record to support this argument.[2]

We recognize that *Bruen* was decided after Farca was sentenced. However, as relevant here, *Bruen* did not endorse a new standard; it merely "reiterate[d]" *Heller*'s standard, as Farca recognizes when he writes, "[a]s *Heller* instructs, we look to what weapons law-abiding citizens have chosen to defend themselves. that is, what weapons are currently in common use for lawful purposes." (*Bruen*, *supra*, 597 U.S. at p. 24; accord, *id.* at p. 26 [referring to the "test that we set forth in *Heller* and apply today"].) And *Heller* itself reaffirmed the Court's holding in *United States v. Miller*, *supra*, 307 U.S. at page 179, that the government can prohibit the possession of dangerous and unusual weapons not in common use. (*Heller*, 554 U.S. at p. 627.) The relevant law has remained the same since long before Farca's trial. Accordingly, by waiting to raise his Second Amendment challenge until this appeal, Farca has forfeited it.

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[2] *Rupp v. Bonta*, *supra*, 723 F.Supp.3d at 849–850, placed the burden of proving that a weapon is protected by the Second Amendment on the party claiming the law was unconstitutional, which would be Farca here. By contrast, *Miller v. Bonta*, *supra*, 699 F.Supp.3d at page 1007, placed the burden on the government to justify prohibiting any firearm. The burden of proof is irrelevant to this case. Even if the government has the burden of proof, Farca still forfeited his argument by failing to raise it in the trial court and thereby give the prosecution the opportunity to build the record on the issue.

II. Interference with civil rights by threat

Section 422.6, subdivision (a) states, "No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55." The characteristics listed in section 422.55, subdivision (a) include gender, nationality, race or ethnicity, and religion. Section 422.6, subdivision (c) limits subdivision (a) by stating that "no person may be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat." A violation of section 422.6, subdivision (a) is punishable by up to one year in jail. (§ 422.6, subd. (c).)

Our Supreme Court in *In re M.S.* (1995) 10 Cal.4th 698, 711, rejected an argument that section 422.6 was not sufficiently specific as to the persons threatened and therefore unconstitutionally vague. The court interpreted the phrase " 'group of persons' " in section 422.6, subdivision (c) "to mean a specific group of individuals, not abstract groups or protected classes." (*In re M.S.*, at p. 711.) The Supreme Court explained, "Reading the statute as a whole, we are persuaded the

Legislature meant to proscribe 'true threats' as traditionally understood, not what might be termed 'group libel.' So read, section 422.6 is neither overbroad nor vague in this respect." (*Ibid.*) Consistent with this decision, the pattern jury instruction for section 422.6, which the trial court delivered, requires the prosecution to prove that a defendant threatened physical violence against "a specific group of people." (CALCRIM No. 1351.)

Based on *In re M.S.*, Farca contends there is insufficient evidence that he threatened a specific group of people. To assess the sufficiency of evidence for a conviction, "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict — i.e., evidence that is reasonable, credible, and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ' . . . We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support" ' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Even recognizing the lenient standard of review, we agree with Farca that the record does not support his conviction. Farca's Steam posts contained vile anti-Semitic rhetoric and statements about using his assault weapon to kill like 30 kikes" or "over 30 subhumans." However, Farca did not threaten violence against any specific individuals or group of Jewish people, so his statements do not satisfy the "group of persons" victim element of the offense as our Supreme Court interpreted it in *In re M.S.*.

The Attorney General contends that Farca's Steam posts were more than simply group libel of an abstract group or protected class because he targeted Jewish people worshipping in a synagogue. The Attorney General points to evidence that Farca's Steam profile and posts expressed support for Earnest and talked about killing over 30 "high value targets" at a synagogue.

Reviewing the evidence in the light most favorable to the prosecution, a reasonable jury could have reasonably construed Farca's statements as expressing a desire to kill only "high value" Jews in a synagogue. But narrowing the threat from Jewish people generally to Jewish people worshipping in a synagogue, without more, does not meaningfully define a "*specific* group of individuals." (*In re M.S.*, *supra*, 10 Cal.4th at p. 711, italics added.) Farca did not identify any individual Jewish worshippers, any specific synagogue, or even a town, county, or state whose synagogue or synagogues he intended to target. Nor did he explain what would make any Jewish person a "high

value" target. Farca's reference to unidentified "high value" Jewish worshippers in synagogues worldwide does not satisfy "specific person or group of persons" requirement in section 422.6, subdivision (c). If the undefined category of "high value" Jews in synagogues were sufficient to satisfy that requirement, the requirement would be meaningless, as would the Supreme Court's distinction between specific groups of individuals and abstract groups or protected classes.

The Attorney General cites the testimony from Deborah K. that she and members of her congregation in Lafayette felt threatened by Farca's posts because he lived nearby. The People cannot make Farca's words more specific merely by presenting testimony from someone who falls within the protected classes of Jews or worshippers in synagogues. Farca's speech must have "*itself* threatened violence against a specific person or group of persons." (§ 422.6, subd. (c), italics added.) Deborah K. was not specifically threatened in Farca's posts, nor was the synagogue where she worships. Indeed, Deborah K. learned of Farca's posts from a police bulletin and media article only after police arrested him and seized his rifle. It would be anomalous to allow law enforcement to define a specific target for those posts by publicizing them in a certain community, after any danger Farca posed had already been neutralized through his arrest and the confiscation of his weapon.

In any event, it does not appear that Deborah K.'s synagogue or its congregants are within the category of "high value targets" in synagogues to which Farca referred. As noted,

nothing in Farca's posts identified Deborah K.'s synagogue or its congregants. Deborah K. herself admitted as much. Nor is there any indication in the record that Deborah K.'s synagogue was noteworthy in any way, or that Farca would consider the people who attended services there to be "high value targets." This is significant because Farca's Steam post said explicitly that he "would need a better target than f,ucking [*sic*] some random synagogue with kikes that aren't really a threat."

Accordingly, notwithstanding the repugnant and disturbing sentiments Farca expressed on his Steam account, his conviction for violating section 422.6, subdivision (a) must be reversed.

III. Threatening a public officer

Section 71, subdivision (a) states that every person is guilty of a public offense "who, with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out." "The statutory elements of a violation of section 71 are: '"'(1) A threat to inflict an unlawful injury upon any person or property; (2) direct communication of the threat to a public officer or employee; (3) the intent to influence the performance of the officer or employee's official duties; and (4) the apparent ability to carry out the threat.'"'" (*People v. Chaney* (2005) 131 Cal.App.4th 253, 256–257.) For this offense, the trial

court instructed the jury with CALCRIM No. 2650, telling the jury that the prosecution had to prove (1) Farca "willingly threatened to kill a police officer"; (2) "he intended that his statement be taken as a threat"; (3) "he knew that the person he threatened was a police officer"; (4) "he had the apparent ability to carry out the threat"; and (5) "the person threatened reasonably feared for his safety."

Farca argues, and the Attorney General concedes, that the trial court's instruction was error because it omitted the element that Farca made the threat with the intent to influence Mahan's performance of his official duties. We agree that the trial court's instruction was inadequate. CALCRIM No. 2650, which the trial court used, is designed to instruct on the elements of the offense of threatening a public official under section 76. Section 76 does not include a requirement that a threat be made with the intent to influence the performance of an officer's official duties. (See § 76, subd. (a).) The trial court therefore should have modified CALCRIM No. 2650 to tell the jury that a guilty verdict required a finding that Farca intended to influence Mahan's performance of his duties.

"The trial court has a sua sponte duty to instruct the jury on the essential elements of the charged offense." (*People v. Merritt* (2017) 2 Cal.5th 819, 824.) Failing to do so "is, indeed, very serious constitutional error because it threatens the right to a jury trial that both the United States and California Constitutions guarantee." (*Ibid.*) "[T]he prejudice from an instruction that omits an element of an offense is assessed under

Chapman [(1967) 386 U.S. 18]. [Citations.] [¶] In this assessment, we 'conduct a thorough examination of the record. If, at the end of that examination, [we] cannot conclude beyond a reasonable doubt that the jury verdict would have been the same absent the error — for example, where the defendant contested the omitted element and raised evidence sufficient to support a contrary finding — [we] should not find the error harmless.' [Citation.] Conversely, where we conclude 'beyond a reasonable doubt that the omitted element was uncontested and supported by overwhelming evidence, such that the jury verdict would have been the same absent the error, the erroneous instruction is properly found to be harmless.' [Citation.] [¶] 'In assessing prejudice in this context, the question is not whether there is evidence in the record that would support a jury finding of the missing element. Instead, we ask whether we can conclude beyond a reasonable doubt that "the jury verdict would have been the same" had the jury been instructed on the missing element.' [Citation.] 'Our task, then, is to determine "whether the record contains evidence that could rationally lead to a contrary finding with respect to the omitted element." ' " (*People v. Lamb* (2024) 16 Cal.5th 400, 448–449.)

The Attorney General argues the omission of the intent to influence official duties element was harmless here because with a proper instruction the jury would have found Farca intended to cause Mahan to do or refrain from doing something in the performance of his duties. The Attorney General notes that at the time of Farca's threat, Mahan was assisting federal probation

authorities with a search of Farca's residence. The threat also occurred in between sessions of the preliminary hearing in this case, at which Mahan testified.

This evidence would have been sufficient to allow the jury to find Farca intended to influence Mahan's performance of his duties, but it is not so strong that we can say beyond a reasonable doubt that the jury would have found the prosecution satisfied that element. Beginning with the preliminary hearing testimony theory, it is significant, as Farca notes, that the jury acquitted him of the charge of dissuading a witness. The elements of that charge were that (1) Farca tried to prevent or discourage Mahan from testifying at the preliminary hearing, (2) Mahan was a witness, (3) Farca knew he was trying to prevent or discourage Mahan from testifying, (4) Farca acted maliciously, and (5) Farca threatened, either directly or indirectly, to use force or violence on Mahan. (§ 136.1, subds. (a)(2), (c)(1); CALCRIM Nos. 2622–2623.) The first and third elements of this offense, which asked the jury whether Farca knowingly tried to prevent or discourage Mahan from testifying, overlap with the Attorney General's theory that Farca attempted to cause Mahan not to perform his duty of testifying. The jury's acquittal on the dissuading a witness count therefore supports a reasonable argument that the jury would have also rejected the same theory on the count of violating section 71. The Attorney General points out that an acquittal of one count must not be deemed an acquittal of another count (§ 954) and the sufficiency of evidence of each count must be assessed independently (*United States v. Powell* (1984)

469 U.S. 57, 67). But even if the acquittal on the dissuading a witness count is not deemed to be an actual acquittal on the count of threatening Mahan in the performance of his duties based on the testimony theory, it still raises a genuine question as to whether the jury would have also acquitted him on that theory. This is sufficient for the harmless error inquiry here.

The evidence at trial also " ' "could rationally lead to a contrary finding with respect to the omitted element" ' " (*People v. Lamb, supra*, 16 Cal.5th at p. 449) on the theory that Farca intended to influence Mahan's performance of his duties during the federal probation search. Mahan testified that he did not participate in the search and instead stood on the sidewalk down the street from Farca's house until the scene was secured. He briefly walked down the sidewalk and into the home, and then left, seemingly immediately. Mahan was walking towards his car and away from Farca's house when Farca yelled the threat at him. This could suggest that Farca was threatening Mahan in retaliation for Mahan's participation in the search, rather than to influence Mahan's involvement in the search. Farca's behavior after his comment supports this view of the evidence. After Farca yelled his comment, the sheriff's deputy asked him to calm down and stop yelling. Farca complied, apologized, and explained that he hated Mahan because Mahan ruined Farca's life. Farca then laid down flat on the ground. The jury could have concluded from this that Farca was angry and wanted to get revenge on Mahan for his involvement in Farca's prosecution, without necessarily intending to influence Mahan in the performance of

his duties. We do not mean to suggest that the jury necessarily had to view the evidence in this fashion, or even that it was more likely than not that it would have done so. But the evidence could rationally support a finding that Farca did not intend to influence Mahan's performance of his duties, so we cannot say the omission of that element from the jury instruction was harmless as a matter of law.

IV. Criminal threat

Section 422, subdivision (a) states, "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety . . . , shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." Farca contends there is insufficient evidence to support the jury's findings that the threat was unequivocal and unconditional, that Mahan's fear was reasonable, and that Farca had the apparent ability to carry out the threat.[3] When considering this argument,

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[3] Farca also directs this argument at the count of threatening a public officer in the performance of duties under

we review the whole record for evidence that is reasonable, credible, and of solid value supporting the verdict, construing the evidence in the light most favorable to the prosecution and not considering credibility or resolving evidentiary conflicts. (*People v. Zamudio*, *supra*, 43 Cal.4th at p. 357.)

The record contains sufficient evidence of each of the elements of this offense. Nothing in Farca's threat was conditional. Farca contends no officer of Mahan's experience would take seriously the frustrated ramblings of an autistic person sitting on the sidewalk outside his mother's house while police were searching it. This may be Farca's view of the evidence, but we must consider the record in the light most favorable to the prosecution. Mahan testified that he was afraid because Farca called him "Private," indicating that Farca viewed the situation through a military lens and believed Mahan was a legitimate target for violence. Mahan was also concerned because he knew what Farca had posted online about being willing to die by provoking a law enforcement response, which suggested to Mahan that Farca wanted to create a confrontation outside the courthouse. The fact that Farca removed his federal probation ankle monitoring bracelet a few days after making the threat increased the risk from the threat and Farca's ability to carry it out, in Mahan's view.

Farca argues his compliant behavior with the sheriff's deputy after he shouted at Mahan indicates he was frustrated

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section 71. Because we conclude the judgment on that count must be reversed for other reasons, we do not discuss it here.

and did not intend to make a threat. But Mahan could have reasonably been uncertain how Farca's autism would affect his reactions to the police investigations and could have concluded, based on Farca's online postings advocating for violence, that Farca intended his words seriously. Although the police had seized the assault weapon from Farca, Mahan could not know for certain whether Farca had any other weapons available to him. The physical impossibility of Mahan seeing Farca after Farca murdered him is perhaps indicative of some irrationality on Farca's part, but the jury could nonetheless have concluded from the evidence that Farca intended to threaten Mahan with violence and had the apparent ability to carry out the threat and that Mahan's resulting fear was reasonable.

DISPOSITION

Farca's conviction on the charges of manufacturing an assault weapon, possessing an assault weapon, and making a criminal threat are affirmed. His convictions on the charges of interfering with a person's exercise of civil rights by threat of force and threatening a public officer to influence the performance of the officer's duties are reversed. The matter is remanded to the trial court for further proceedings consistent with this opinion.

BROWN, P. J.

I CONCUR:

DOUGLAS, J.*

People v. Farca (A165339)

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* Judge of the Superior Court of California, County of Contra Costa, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

GOLDMAN, J., Concurring.

I concur in the majority opinion, but as to Farca's conviction for interference with civil rights by threat (§ 422.6, subds. (a), (c)), I would reverse on the ground the majority does not reach; namely, that there is insufficient evidence that Farca had "a specific intent to interfere with a person's right protected under state or federal law." (*In re M.S.* (1995) 10 Cal.4th 698, 713 (*In re M.S.*).) While I do not find unreasonable the majority's conclusion that Farca's posts were insufficiently specific when all the surrounding circumstances are taken into account, I would not adopt as a rule that a threat of violence against a synagogue or other house of worship necessarily lies outside the statute's reach in the absence of additional information about the location of the speaker or the threatened attack.

I. Specific Intent to Interfere

In response to Farca's claim that there is insufficient evidence that he specifically intended to interfere with others' civil rights, the Attorney General argues that "[t]he ease with which [Detective] Mahan accessed appellant's profile and posts demonstrates that appellant's threats were made publicly." If recklessness were all that were required under the statute (cf. *Counterman v. Colorado* (2023) 600 U.S. 66, 79–80 (*Counterman*) [adopting recklessness as the minimum mental state required for threats under the First Amendment]), the fact that the posts were publicly accessible in some way would almost certainly suffice. But proof of specific intent requires more. (*People v. Superior Court (Duval)* (1988) 198 Cal.App.3d 1121, 1134.) The

FBI provided Detective Mahan with Farca's unique Steam user identification number, and there is nothing in the record demonstrating the "ease" with which Farca's posts could be accessed by someone without it. Farca was engaged in a "chat" with three other users whom he apparently believed to be of like mind; the Attorney General does not dispute that there is no evidence that Farca believed them to be potential targets of the violence he was discussing. One of those people was apparently concerned enough to report Farca to law enforcement, but there is no evidence about the identity of that person or that other users of the Steam platform saw Farca's posts.

The Attorney General's only other argument on this point is that section 422.6, subdivision (a) "imposes no requirement that appellant communicate his threats directly to the group of people he targeted." But to have a specific intent to interfere with others' civil rights, at a minimum one must reasonably have some expectation or understanding that the targets of the threats would see or learn of them. To be sure, the evidentiary bar here is not very high, but it does not appear that the prosecution did anything to try to meet it. On this issue, too, there is no evidence in the record.

For these reasons, I agree that Farca's conviction on this charge should be reversed.

II. Specificity of Threats

Farca contends that his threats were not specific because—assuming they can be read to target Jews in a synagogue—they did not identify any synagogue in particular. The Attorney

General responds that threatening an attack against Jews worshipping in a synagogue is sufficiently precise in light of the statute's purpose to proscribe "threats of violence motived by prohibited bias and made by a speaker having the apparent ability to carry the threats out." *In re M.S.* endorsed the Court of Appeal's view that "group of persons" in section 422.6, subdivision (c) means "a specific group of individuals, not abstract groups or protected classes" (*In re M.S., supra*, 10 Cal.4th at p. 711), but the Attorney General points out that, by referring to a synagogue, Farca did not simply target a "protected class" as a whole. Neither party has addressed what renders a group "abstract."

In re M.S. also construed the statute to reach only " 'true threats,' " which do not receive First Amendment protection. (*In re M.S., supra*, 10 Cal.4th at p. 711.) While the court did not say that section 422.6, subdivision (c) requires no more particularity than necessary to bring a threatening statement within that category, its discussion at least suggests that First Amendment law may be relevant. But there are few cases that have addressed what degree of specificity the First Amendment requires.

The United States Supreme Court has written that 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." (*Virginia v. Black* (2003) 538 U.S. 343, 359 (*Black*).) But the Court did not discuss what the phrase "particular

individual or group of individuals" means, and the Virginia statute at issue itself prohibited cross burning "with 'an intent to intimidate a person or group of persons.' " (*Id.* at p. 347.) The case involved members of the Ku Klux Klan burning a cross on private property with the owner's permission; it was apparently sufficient that the cross was visible from a nearby public road and from neighboring houses. (See *id.* at p. 348; cf. *United States v. Hussaini* (S.D. Fla. Jan. 14, 2022, No. 19-60387-CR) 2022 U.S. Dist. Lexis 7328, at *25 & fn. 7; *United States v. Dennison* (D. Me., Mar. 21, 2022, No. 2:21-CR-00149-JDL-1) 2022 U.S. Dist. Lexis 49786, at *5–*6.)

In its most recent formulation, the Court defined true threats simply as " 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.' " (*Counterman, supra*, 600 U.S. at p. 74 [quoting *Virginia v. Black, supra*, 538 U.S. at p. 359]; see also *People v. Lowery* (2011) 52 Cal.4th 419, 422 (*Lowery*); *United States v. Davitashvili* (3d Cir. 2024) 97 F.4th 104, 113 [observing that "the [Supreme] Court has never held that a threat must be particularized to count as a true threat"].) As *In re M.S.* pointed out, threats of violence differ from other forms of unprotected speech "because they coerce by unlawful conduct, rather than persuade by expression, and thus play no part in the 'marketplace of ideas.' " (*In re M.S., supra*, 10 Cal.4th at p. 714; see *Counterman, supra*, 600 U.S. at p. 81 ["the protected speech near the borderline of true threats . . . is, if anything, further from the First Amendment's central concerns than the chilled speech in

Sullivan-type[4] cases (*i.e.*, truthful reputation-damaging statements about public officials and figures)"].) There is no claim here that Farca's posts were " 'political hyperbole' " (*In re M.S.*, at p. 710) or expressions of "jest or frustration" (*Lowery, supra*, 52 Cal.4th at p. 427) that a reasonable person would not take seriously.

A threat's failure to identify a target precisely does not suggest that it is unlikely to be carried out — or that the victims will not be specific individuals. For someone who seeks to "injure, intimidate, interfere with, oppress, or threaten" members of a religious group "in the free exercise or enjoyment" of their religion (§ 422.6, subd. (a)), a failure to identify the location of the house of worship could be an intentional effort to spread fear more widely. A threat does not necessarily become innocuous or unimpactful simply because its reach is broad enough that the people described as its targets may find some solace in statistical probabilities. However they might estimate the odds that the person making the threat would ultimately choose their own congregation for the attack, they could reasonably understand that the threat was directed at *them*.[5]

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[4] *New York Times Co. v. Sullivan* (1964) 376 U.S. 254.

[5] The majority writes that "it does not appear that Deborah K.'s synagogue or its congregants are within the category of 'high value targets' in synagogues to which Farca referred." (Maj. opn. *ante*, at p. 18.) I have some doubt that a reasonable person would regard Farca's unelaborated reference to "high value targets" as a meaningful limiting principle given the context here, and I do not consider Deborah K.'s concern for her congregation unreasonable notwithstanding the absence of

For that reason, I do not think a person who takes to social media to threaten an attack against a house of worship necessarily falls outside the scope of section 422.6, subdivision (c) simply by failing to indicate a geographic location. Suppose, for example, that Farca had announced on a widely visited website that he would seek to kill 30 Jews at a synagogue and would choose its location at random. Such a threat, with its express effort to invoke the terror of unpredictability, seems to lie close to the core of what the statute is intended to prevent. Moreover, contextual clues could effectively narrow a threat geographically regardless of what the person says explicitly.

Here, however, there does not appear to be anything purposeful about the vagueness in Farca's posts. The Attorney General has not argued that Farca's reference to "high value targets" supplied meaningful additional specificity, nor that there was any context for the threats beyond what Farca wrote in his posts. Given those considerations, I find the majority opinion to be a reasonable resolution of a close question, but for the reasons discussed above, I would expressly leave open the possibility that, under even slightly different circumstances, a threat could be sufficiently specific under subdivision (c) of section 422.6 notwithstanding the absence of geographical particularity.

"any indication in the record that [her] synagogue was noteworthy in any way." (*Id.* at pp. 18–19.) That said, I agree with the majority that the activities of law enforcement in publicizing the threats "in a certain community" cannot be used to "define a specific target" that Farca's posts did not identify either directly or indirectly. (*Id.* at p. 18.)

I ignorance is no ... until ... as you realize that you will CC2011G088
/I mean incarcerate me until the end of time if you so desire, as long as you realize ... anything else ... 3/25/...
... fact that my stack contains stationary parts & experiences friction during adjustment prevents it from moving in a fashion. telescoping

Ross Fauca
CC20MG088
10/27/21

Cross examination Responses Responses to be Memorized

Responses To AW: My rifle does NOT possess the any §30515 features or even a detachable mag magazine as defined by CCR§5471, which I read for multiple times in 2018 & ref beferenced when assembling my rifle to ensure total compliance with AWCA!

Pistol Grip: §5471(z) is limited to grips on bullpup rifles which my rifle isn't. My grip does NOT protrude conspicuously below/beneath the action cuz it is located behind action. My trigger isn't even exposed cuz I have a trigger guard to protect it from NDs. Finally, when appling a pistol style grasp my web is well above the trigger, right at the beavertail, just under the ~~fire~~ fire selector. Pistol style grasp means that your hand is as high as possible on the grip. The grip's angle forces prevents my web well above the trigger cuz I have small hands.

(NDs, snags & disarms)

Telescoping Stock: ~~I~~ My stock ~~isn~~ is ~~N~~ literally NOT[*1] telescoping cuz it works by depression & insertion NOT telescoping & sliding. Furthermore even if it was originally telescoping (which wasn't the case) because my sling has a high tendency ~~to~~ ~~I disabled~~ that ability by ~~addin~~ attaching a sling to my stock & rail. Slings ~~ma~~ render telescoping stocks non-telescoping cuz of the high tendency to snag & given that a stock must be telescoping at all times in order to qualify as such, especially when shouldered (which is the whole point of a stock) the mere presence of a sling is sufficient to fully negate its otherwise telescoping ability. Finally I pushed my stock all the way forward & tighted my ~~stock~~ sling so much that I couldn't extend the stock backwards while shouldered, thus turning an already non-telescoping stock into an immobile stock.

eliminated

Detachable Magazine: Under §5471(m), a finger & qualifies as a tool cuz it has very similar dimensions to a bullet or cartridge which were the examples provided here. Since an AR15 lacking a magazine catch assembly constitutes a detachable magazine then the fact that my rifle (factually) has a magazine catch assembly precludes it from constituting a detachable magazine. Lack of a detachable magazine is the operational equivalent of a fixed magazine under my interpretation (both in May 2019 & now), henceforth I could LEGALLY have all §30515 features on my rifle without turning it into an AW, even though in reality my rifle has ZERO such features. (This was the case before 6/10/19, so if the rifle currently differs ~~from~~ in any way from my aforementioned discriptions then that is solely the result of tampering by CPD.) Objection, §30505/30600 were struck down by judge Benitez in Miller v. Becerra & are in any event null/void by Article 6, Sect. 2 of US constitution as applied via/through Marbury v. Madison (1803)

subsequently

If ignorance is no excuse then incarceration is no detterant, especially for me → Ross Farca CC2016088
...ate me until the end of time if you so desire, as long as you realize that you will... anything else, cuz I'm... 3-26-22

Mahan Threats: I was angry & irrational when I said those words. (that he can arrest me for PC 187 on him.) I never intended to kill him or to cause him to believe that. I never meant for my words to be taken as a threat.

422.6 Threats: I was only trying to get a rise out of people or what I perceived to be video game characters. I would never do something like that in real life & didn't intend to be taken seriously in any event. It's just words on a screen aggregate, so I don't see the big deal! 12/11/21 Addendum →

§30515 AR-15 is neither: A rifle must be BOTH centerfire & semiautomatic to qualify as an AW, But my AR-15 is neither: In order for a rifle to qualify as centerfire §5471(g), the rifle must NOT be capable of firing §5471(ff) rimfire cartridges, henceforth my AR-15 is NOT centerfire cuz it can fire both centerfire & rimfire cartridges. Why? My barrel is .223 Wylde with a 1-7 twist rate (which can shoot 90 grain .223 tracer bullets) so I can fire .22LR 40 grains bullets & retain most of the cartridge's ~~accuracy~~ inherent accuracy, velocity & ballistic coefficient (BC) for its 400m max. effective range. .223 = 5.56, .22 = 5.56, The difference is infintesimal, furthermore there has to be some brand of .223/5.56 rimfire ammo. The Wylde .223 can shoot the higher pressure 5.56mm ~~W/ higher pressure~~ round WITHOUT sacrificing accuracy so it can definitely shoot .22LR without significantly deminished accuracy as a result. On the Calgunners Discord server, several people shot .22LR out of .223 barrels (not 5.56) & ~~failed to see~~ observe any differences in accuracy or at all really. .22LR is the most common rimfire caliber. Bottom line: .223 Remington/Wylde barrels are neither strictly centerfire or rimfire but rather a hybrid of both. (You might have to adjust the orientation of a centerfiring pin or rimfire cartridge so that the primer can be ignited when the hammer hits the firing pin which ignites the primer or even the cartridge itself via the flange.)

Semiautomatic §5471(hh): I deliberately misaligned my BCG (with the extractor claw facing rearward) so that a round cannot be chambered should a child or negligent adult pick up a loaded magazine & decide to play with my rifle. I was planing to buy bulk .223 ammo & keep my magazines loaded for home defense, but since our house was listed for sale in 2019 & potential home buyers would bring their children along, I had to take this affirmative safety measure. So I had purposely disabled the action & left the AR-15 in that state perpetually ~~as~~ to ensure safety during OPEN HOUSEs & visits! My AR-15 was subsequently in a nonfunctional, non-semiauto status when CPD took it into evidence on 6/10/19, but since Mahan & Provost admittingly tampered with my rifle so they likely correctly aligned my BCG so that to ensure successful prosecution by transmuting it from non-functional to semiauto.

No, Since the main [illegible] FCG only ignites the powder - distinct from action which it enables - not part of loading, firing & reloading process; In order to buy a firearm in CA you must pass a 30 question test with at least 70% correct answers, & I got 29 out of 30 correct answers. I carried my FSC, but there was no AWB content on either the test or the handbook

Ross Farca
CC20MG088
Page 1

AW Arguments Summarized - My rifle is featureless, therefore! - -

Pistol grip 1 CCR § 5471 definition only applies to bullpup firearm designs of which my rifle isn't, bullpup means magazine is behind the trigger/grip

2 My pistol grip does not "protrude conspicuously beneath the action" because it is situated behind the action, which starts at the magwell & continues onward to the muzzle; receiver only contains the action, but is not a component thereof; Fire Control Group is not part of the action

3 My grip is angled in such a way as to preclude a pistol-style grasp "beneath/below the exposed part of trigger" or spur/cresent specifically, my hand is also small, therefore my web is on the beavertail well above the trigger & level with the reciever; pistal style grasp means that your hand must be as high as possible on the grip this is how I was trained & how CA LEOs are trained, to maximize control of gun

Stock telescoping - does not telescope - refer to dictionary definition of "telescoping", my stock works via insertion & depression; furthermore anything that [illegible] cannot have any fixed parts - definition is dependent on cylindrical hand telescope - [illegible] the telescoping or folding definitions to apply, the stock must [illegible] in all physically possible circumstances especially when [illegible] against the shoulder; (official CADOJ) statement of definition of rifle, my rifle can [illegible] telescope when shouldered - it is practically a fixed stock at that point - [illegible] start with a stock that is originally capable of telescoping but you [illegible] an attachment that hinders, impedes or prevents the telescoping motion in any/all circumstances then the stock is no longer telescoping - my stock has a sling attached which is not only unincluded in "stock, telescoping" but [illegible] disables such movement by snagging onto parts of rifle or foreign objects, this is consistent with a (CADOJ) public statement & legislative intent - So even if my stock was originally telescoping or folding, it ceases to be such whenever you attach something that interferes with or changes this movement for example a sling of any sort - I have a magpul tactical sling on my rifle, attached to the stock, therefore it does NOT have a folding or telescoping stock!

[illegible] tools even when attached to [illegible] as a result of its [illegible] that doesn't make it [illegible] regardless if it's organic or [illegible] continuous [illegible] detachable

Page 2- absent a signed document where I have accepted the duty specifically to learn about & comply with the AWB provisions, I fundamentally maintain that such a duty does not apply to me. Since I have autism I cannot reasonably be expected to recognize ANY duties prohibited 30605 which I was not specifically advised of, so no signature = no duty! = NOT GUILTY! "salient"

PC 30500 has a mens rea requirement based on negligent failure to know regarding characteristics [illegible] pistol grip is specially padded & adjustable to 18°, 25° & 33° respectively. It is designed for people with sensory issues like ASD & also with poor grip strength [illegible] stock is lightweight, compact & specially designed cushion making it ideal for short people especially if they have back problems like me. It also is desirable for people with tactile sensitivities like me, with respect to recoil management & to ensure firm, comfortable pressure against my shoulder so I did NOT knowingly (or at all for that matter) possess/manufacture [illegible] because when you have ASD your ultimate priority when picking a [illegible], computer, car etc. is not only cost vs objective performance but also comfort of use, [illegible] & even cosmetic appearance. Our requirements are stricter than what the average consumer wants so we are willing to spend more money/time to get exactly what we want! This is NOT a legal argument! Rather it is a factual defense to the second element of PC605 & I am willing to state all [illegible] the jury! Auxillary Arguments: the prosecution has to prove that 1) the rifle is semiautomatic & 2) Centerfire; We should contend that 1) the rifle is lacking essential internal components such as gas tube & firing pin etc. therefore it is not semiautomatic or even functional! 2) that it is compatible with rimfire ammunition thus making it NOT centerfire! Impeach Pvt. Malhan at every single opportunity!

extensive research into CA compliance parts such as maglocks & various firearms laws (both CA & Federal) prove my intent to comply with all applicable firearm laws which means I really did not consider my rifle to harbor prohibited characteristics! I henceforth concluded that my rifle is featureless according to CADOJ's own definitions & am willing to state so under oath before the jury! [illegible] exception applies because if a reputable vendor sells you a product then a reasonable person would presume both that 1) possession of the product in question is lawful & 2) that its intended use is also lawful, in this case, taking a firearms component & using it to turn a lower into a fully-functioning rifle, pistol or shotgun. Despite the tort negligence standard, I do NOT have a duty to even know that AWB exists - there is NO document with my signature where I accepted this duty!

Ross Fauca
CC20MG088
9/14/21

*1 Following this procedure will not disable the action on an AR-15 lower receiver, instead you [illegible] converting your rifle from SA to single-shot, & reduce its accuracy significantly similar to that of a black powder muzzle loading pistol. Because you lack a BCG now (part of upper receiver) you will have to manually lock the hammer back just like a crossbow. However you can discharge a bullet with the lower receiver alone: hammer ignites primer which in turn ignites the smokeless powder necessary to fire off a shot. Henceforth there is no such thing as disassembly of action in AR-15 which means that "fixed magazine" in an AR-15 is simply lack → the lack of a detachable magazine. Con[illegible] since my AR-15 LACKS a detachable magazine & there is no way to disassemble the action in my AR-15, this means my AR-15 is NOT an AW! — 9/6/21 lower. Standalone lower receiver of AR-15 SHALL function, albeit with the action of a crossbow & the accuracy of muzzleloading pistol at speed of bolt-action rifle.

§ 5471. Registration of Assault Weapons Pursuant to Penal... 11 CA ADC § 5471

Barclays Official California Code of Regulations Currentness
Title 11. Law
Division 5. Firearms Regulations
Chapter 39. Assault Weapons and Large-Capacity Magazines
Article 2. Registration Requirement, What Qualifies for Registration, and Definitions

11 CCR § 5471

§ 5471. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Explanation of Terms Related to Assault Weapon Designation.

For purposes of Penal Code section 30900 and Articles 2 and 3 of this Chapter the following definitions shall apply:

(a) "Ability to accept a detachable magazine" means with respect to a semiautomatic shotgun, it does not have a fixed magazine.

(b) "Action" means the working mechanism of a semiautomatic firearm, which is the combination of the receiver or frame and breech bolt together with the other parts of the mechanism by which a firearm is loaded, fired, and unloaded.

Because FCG is NOT part of the action, it is self-evident that the action commences subsequently [illegible] beneath action. If the [illegible] [illegible] do NOT have a pistol grip conspicuously protruding beneath action.

(c) "Barrel" means the tube, usually metal and cylindrical, through which a projectile or shot charge is fired. Barrels may have a rifled or smooth bore.

(d) "Barrel length" means the length of the barrel measured as follows. Without consideration of any extensions or protrusions rearward of the closed bolt or breech-face the approved procedure for measuring barrel length is to measure from the closed bolt (or breech-face) to the furthermost end of the barrel or permanently attached muzzle device. Permanent methods of attachment include full-fusion gas or electric steel-seam welding, high-temperature (1100° F) silver soldering, or blind pinning with the pin head welded over. Barrels are measured by inserting a dowel rod into the barrel until the rod stops against the closed bolt or breech-face. The rod is then marked at the furthermost end of the barrel or permanently attached muzzle device, withdrawn from the barrel, and measured.

(e) "Bullet" means the projectile expelled from a gun. It is not synonymous with a cartridge. Bullets can be of many materials, shapes, weights, and constructions such as solid lead, lead with a jacket of harder metal, round-nosed, flat-nosed, hollow-pointed, et cetera.

(f) "Bullet-button" means a product requiring a tool to remove an ammunition feeding device or magazine by depressing a recessed button or lever shielded by a magazine lock. A bullet-button equipped fully functional semiautomatic firearm does not meet the fixed magazine definition under Penal Code section 30515(b).

(g) "Bore" means the interior of a firearm's barrel excluding the chamber.

§ 5471. Registration of Assault Weapons Pursuant to Penal... 11 CA ADC § 5471

(h) "Caliber" means the nominal diameter of a projectile of a rifled firearm or the diameter between lands in a rifled barrel. In the United States, caliber is usually expressed in hundreds of an inch; in Great Britain in thousandths of an inch; in Europe and elsewhere in millimeters.

(i) "Cartridge" means a complete round of ammunition that consists of a primer, a case, propellant powder and one or more projectiles.

(j) "Centerfire" means a cartridge with its primer located in the center of the base of the case.

(k) "Contained in" means that the magazine cannot be released from the firearm while the action is assembled. For AR-15 style firearms this means the magazine cannot be released from the firearm while the upper receiver and lower receiver are joined together.

(l) "Department" means the California Department of Justice.

(m) "Detachable magazine" means any ammunition feeding device that can be removed readily from the firearm without disassembly of the firearm action or use of a tool. A bullet or ammunition cartridge is considered a tool. An ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine. Since a [illegible] finger has [illegible] subsequently [illegible] a tool [illegible] An AR-15 style firearm that has a bullet-button style magazine release with a magnet left on the bullet-button constitutes a detachable magazine. An AR-15 style firearm lacking a magazine catch assembly (magazine catch, magazine catch spring and magazine release button) constitutes a detachable magazine. An AK-47 style firearm lacking a magazine catch assembly (magazine catch, spring and rivet/pin) constitutes a detachable magazine. So [illegible] AR-15 style firearm which contains a magazine catch assembly does NOT [illegible] a detachable magazine! This is the only logical conclusion [illegible]. My rifle has a magazine catch assembly which means it lacks the ability to [illegible] detachable magazines. Also my rifle is featureless.

(n) "Disassembly of the firearm action" means the fire control assembly is detached from the action in such a way that the action has been interrupted and will not function. For example, disassembling the action on a two part receiver, like that on an AR-15 style firearm, would require the rear take down pin to be removed, the upper receiver lifted upwards and away from the lower receiver using the front pivot pin as the fulcrum, before the magazine may be removed. *1

(o) "Featureless" means a semiautomatic firearm (rifle, pistol, or shotgun) lacking the characteristics associated with that weapon, as listed in Penal Code section 30515.

(p) "Fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

(q) "Flare launcher" means a device used to launch signal flares.

(r) "Flash suppressor" means any device attached to the end of the barrel, that is designed, intended, or functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision. A hybrid device that has either advertised flash suppressing

No detachable magazine [illegible]!
Since I need a tool such as fingers [illegible] to activate the magazine release button [illegible] means I lack a detachable magazine!

Though counterintuitive, there [illegible] in the detachable magazine context. See [illegible] make it not a tool, so something may not be disqualified [illegible] as teeth, nails, fingers, pinkies, toes etc. are tools even when attached to [illegible] regardless. It's against [illegible] lack a detachable magazine due finger/nail = tool!

Government Counsel SBI: 328491 desired the banishment of David Marsh, Gutsweiller & Williamson because they would uphold the 2nd Amendment's fine print instead of Commiefornia's nonsensical abominations! ***All statutes which criminalize mere possession of anything are abysmally retarded & I'm extremely frustrated that they even exist***!!!

MS. SCOFIELD: I -- on the grounds of whether they should be excused for cause, I am objecting on behalf of my client Mr. Farca. He is entitled to a jury of his peers. I would argue that a jury of his peers would include people who believe in the Second Amendment, but Mr. Farca does and so my record would be that I would object to their being excused by this Court for cause reasons.

THE COURT: And it's certainly not as simple as that. Because just to say you believe in the Second Amendment -- we could say we believe in the First Amendment. We can we believe in the Fourth Amendment. We believe in the Fifth Amendment. But those amendments have been enacted. And they've been interpreted to have limitations. And just like one of the jurors said -- I don't know if he said something about a rocket launcher or something like that, he'd be okay with a rocket launcher not being allowed. But other than that, the People should have a right to have firearms and did not believe that any law in California that outlawed firearms was valid.

So what I have is three men who said that they would not follow the California law with regards to gun possession. Normally, you know, if there was any other argument besides the Second Amendment, nobody would be suggesting that they should stay on the jury or I could, in good faith, deny a challenge for cause on those jurors. So if there's nothing further, what I'd like to do is hear those -- if you're not going to question them anymore, to try to rehabilitate them or try to get them to change what their answers are so far. I'd

I was referring to (& literally pointed at) Government Counsel SBI: 328491 when I exclaimed the word "they're." So what should have been transcribed is "We object to them being excused because PROSECUTION is acting against the 2nd Amendment."

MS. SCOFIELD: Submitted. I have no further questions for those jurors.

THE COURT: So the People's case-in-chief -- I'm just curious. As unfortunate as they are, how do we get around that? If we can't, why is there a stip with regards to them?

MS. WHITE: Your Honor, the People will be raising those three jurors for -- as jurors that should be kicked for cause due to their inability to follow the law.

THE COURT: And the defense doesn't agree with that?

MS. SCOFIELD: I object.

THE COURT: You object to them being excused?

THE DEFENDANT: We object to them being excused because they're acting against the Second Amendment. Yes.

THE COURT: Don't talk to the Court, you understand? Your attorney is here to talk to the Court.

So, Counsel, I'll -- that's what --

THE DEFENDANT: I have to confront my witnesses and my judge.

THE COURT: So if you're not going to ask any more questions, I guess my inquiry of those -- I think there's three of them, right, three men who said they would not follow the law?

MS. WHITE: Yes.

THE COURT: So is there some -- I'm all willing to -- if there's some theory in which that is not proper reason to remove them for cause, they would never follow the law with regards to illegal gun possession.

Is there a theory upon which I could keep them here?

Ross Farca
CC20MG0SP
12/7/3/21

Judge Cope was fucking retarded here because the law is clear on functionality they tampered with my rifle - We need to appeal! - I kept my mouth shut in regards to the functionality question; I tried to stay silent as much as possible.

Please continue to stay silent. If you act at, the jury will be afraid of you and convict you. We have a good record. Pay attention to the law. I shall not react then! Even if I am convicted & receive max. penalty I do NOT regret going to trial. Also I never stipulated to anything or whatsoever. ; Thank you for everything you did to prove my innocence - Dorinta gave a good narrative yesterday & did especially well on cross-examination. Cope was inevitably corrupt & strongly biased against defence. Is the 1118 motion available to the jury? May I look at the gov's exhibits folder?

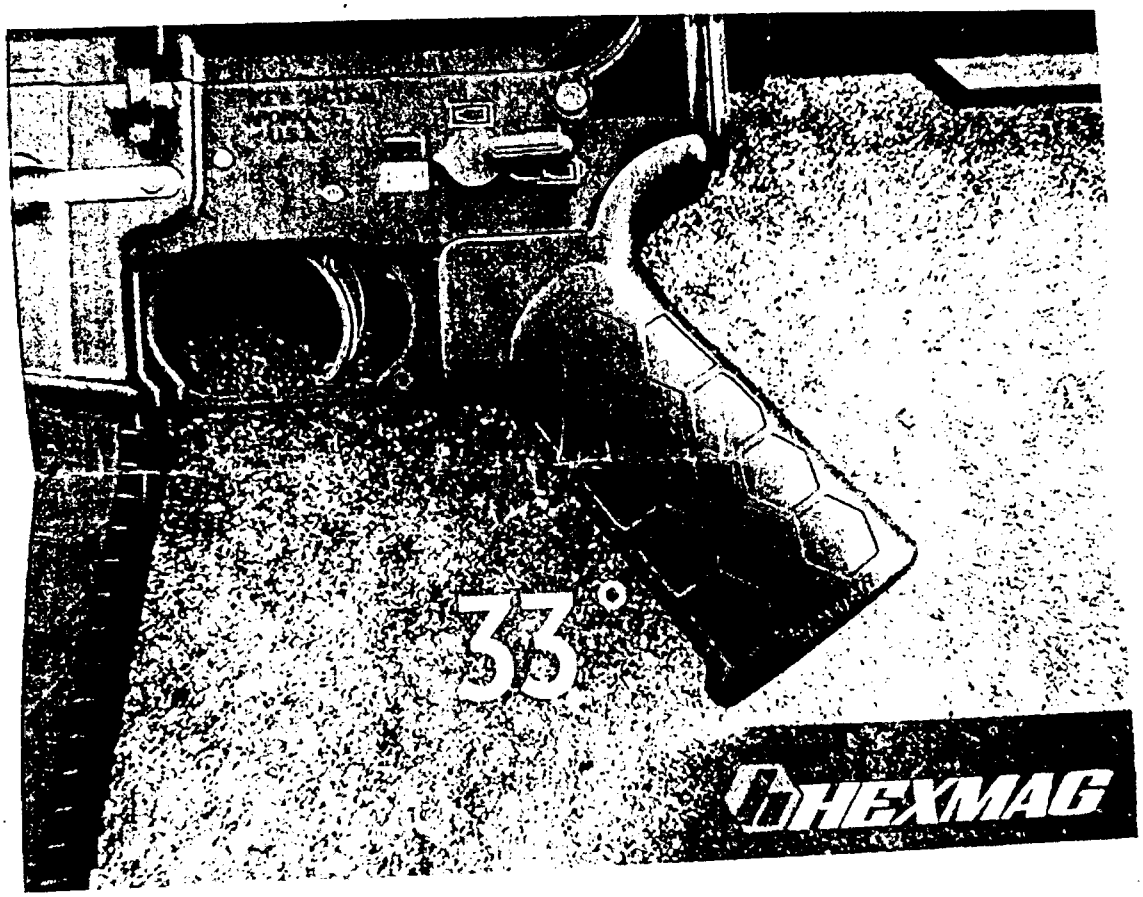
└ No but it is part of the appeal.

No. I want you to pay attention. The jury is watching you and observing if you are interested in listening to the law like they are asked to.

How did I do when Cope was reading the law? "easier to conceal, reload & kill large numbers of people with"; What cause? "furthering his cause" - When did I ever speak in state I had a cause? ; It doesn't tell you how to build the rifle, it's only a nomenclature map. I used the mat to prevent small parts from getting lost in the carpet / no attempt to define pistol grip or telescoping stock features;

- circular logic in AWhite's "rebuttal"

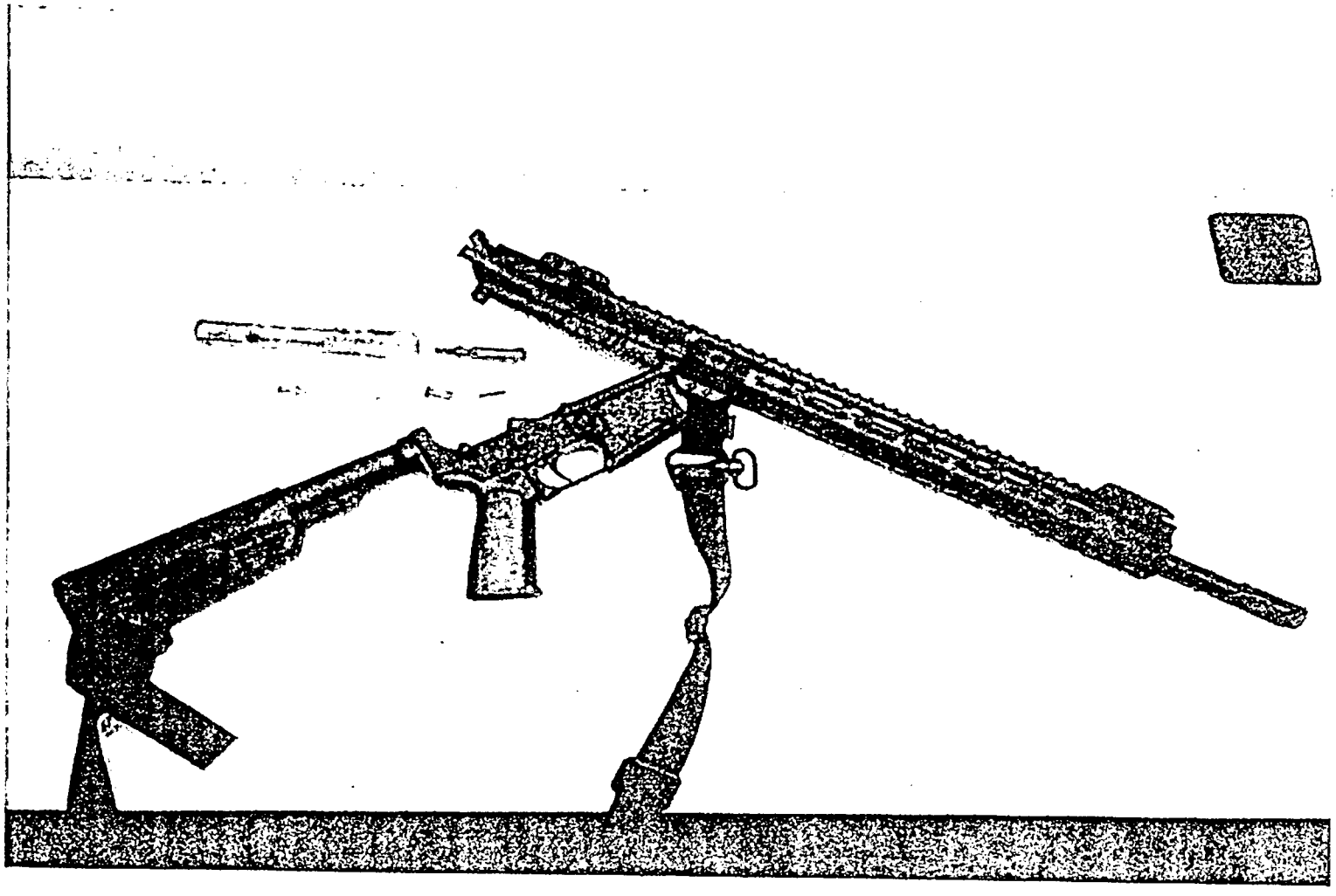
NOT AN AW!



https://media.mwstatic.com/product-images/src/alt3/848/848907.jpg?imwidth=680

SBI: 328491 must prove both the evolutionary missing link which magically transmutes my otherwise legal riffle into a illegal firearm and my ACTUAL KNOWLEDGE of the attainted link according to official definitions. An LEO cannot only state that the wipe powdery substance you were carrying in a crime-infested ghetto is necessarily cocaine, he must forensically differentiate it from flour. Logically speaking you will never distinguish counterfeit bills and forged documents without providing the originals for lateral comparison. Try proving my rifle is shorter than 30 inches without using a measuring stick or that my .9 mm is armor-piercing handgun ammunition without consulting the periodic table and its very specific official definition. 18 USC §921(a)(17) CAPC §16660

On 6/10/19 my rifle was NOT semiautomatic but obviously it was later tampered with through disassembly. Because an "assault weapon" MUST be semiautomatic & my rifle was NOT semiautomatic prior to Mahan tampering with it, my rifle could NOT qualify as an "assault weapon," even if it theoretically met all other criteria, which was NOT the case in reality. Ultimately it was Mahan or whoever tampered with my rifle that made it semiautomatic, assuming they succeeded in this endeavour. §5471(hh)



I have a HEXMAG Tactical RIFLE grip NOT a pistol grip because pistol grips only get added to handguns not rifles & shotguns.

Notwithstanding SBI: 167626's grievous incompetence, a 2nd Amendment challenge was actually raised!

them defensively and offensively depending upon the situation.

Q. And would you agree that this assault rifle has a legitimate self-defense use?

A. Yes.

Q. I want to talk to you about the search of the house on June 10th of 2019.

You had all this background about Mr. Farca, correct?

A. Correct.

Q. And you were about to execute a search warrant of his home; is that accurate?

A. That's accurate.

Q. And you knew who resided at that home before you even went there, didn't you?

A. We had -- I know -- I believed that Ross Farca resided at that home. I didn't know exactly what other roommates or people could be there and what their temperament was, pro/anti law enforcement. But I believe Mr. Farca -- Ross Farca lived there with his family.

Q. Okay. And so you surveilled the house and you saw Ms. Farca, Dorinta Farca, leave the house, correct?

A. Correct.

Q. And then as part of this search you asked that Dorinta Farca call Ross Farca and ask him to come out of the house, correct?

A. Correct.

Q. And when his mother asked him to come out of this house you recall Mr. Ross Farca saying, is it the police? Is it the police? Do you remember that?