

What Is the Necessary *Mens Rea* for Threats to Kill?

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There Is a Minimal Requirement of Negligence to Demonstrate the *Mens Rea* for True Threats

In *State v. Schaler*, 236 P.3d 858 (Wash. 2010), the Washington Supreme Court held that a trial court's failure to inform the jury of the requirements for conviction in a threat-to-kill case (specifically that the defendant must be at least negligent as to his threats' effect on listeners) constituted an error. They made their ruling in light of the definition of a "true threat." The court noted that the First Amendment protects free speech. One form of speech, however, that is not protected is known as a "true threat." This is a statement made wherein "a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or take the life of another person" (*Schaler*, p 863). The threat does not have to be made with the intention of carrying it out.

Facts of the Case

Glen Schaler, on a morning in August 2005, awoke from a dream wherein he thought he had killed his neighbors. He called a mental health professional at a crisis service, Tonya Heller-Wilson, crying hysterically, upset at the possibility that he may have injured another person, and he threatened suicide. Ms. Heller-Wilson contacted the police to take Mr. Schaler to the hospital. The police arrived at Mr. Schaler's home and encouraged him to take his medication before taking him to the hospital. At the hospital, he received medication via injection and was involuntarily committed on the basis of representing a danger to himself and others. At the hospital, over the course of four hours of evaluation and treatment, Mr. Schaler told Ms. Heller-Wilson that he wanted to harm his neighbors, and she contacted the neighbors to warn them.

During this evaluation at the hospital, Mr. Schaler also informed Ms. Heller-Wilson of an incident that took place earlier that summer that involved a property dispute with the neighbors and threats of harm on the part of Mr. Schaler. In that incident, Mr. Schaler believed that some of his neighbor's fruit trees interfered with his access to an alley. He took a chainsaw to the fruit trees. When the neighbor asked him to stop, he motioned at her with the chainsaw and commanded her to "stay out of this." The police responded to the neighbor's distress call. During an interview with the police, Mr. Schaler stated that when he became angry "he did feel like he wanted to kill someone and that that was a natural human response" (*Schaler*, p 862).

Mr. Schaler was charged with two counts of making threats to kill. At the trial, Ms. Heller Wilson testified that Mr. Schaler was having "some sort of mental breakdown" and that he was "clearly agitated." At the close of the trial, when the jury was sent for deliberations, the definition of "true threat" did not appear in the jury instructions. Mr. Schaler was convicted and sentenced to two 10-month terms. He then appealed, stating that the First Amendment requires the "true threat" instruction. The court of appeals decided that while the trial court erred in not providing the instruction, it was a harmless error beyond a reasonable doubt.

Ruling and Reasoning

The Washington Supreme Court concluded that the error made by the trial court was not harmless, and therefore they reversed the decision of the court of appeals and remanded the case for a new trial. In the appeal, Mr. Schaler had noted that the reason his words did not constitute a "true threat" was because he was "describing his mental state and the contents of a dream to a mental health specialist" (*Schaler*, p 863)—that is, the words were a means of asking for help. Therefore, a reasonable person "in his position would not foresee that a listener would take them as a serious expression of intent to kill his neighbors" (*Schaler*, p 863). In its reasoning, the court noted that the *mens rea* for a "true threat" must include at least negligence in not foreseeing the effects of the threatening speech on listeners. However, because this part of the jury instruction was left out (i.e., instruction regarding the necessary *mens rea* as to the result of the speech), it is possible that Mr. Schaler was convicted for making something less than a "true threat." More

specifically, the court believed that it was possible that the jury could have concluded that the threats Mr. Schaler made were, in fact, a cry for help, had this definition been included in the jury instructions.

There were two different dissenting opinions in this case. In the first, Justice Sanders concurred with the part of the opinion of the majority that stated that Mr. Schaler's conviction should be reversed, but disagreed that the case should be remanded for a new trial, instead opining that it should be dismissed because there was no evidence that any of what Mr. Schaler said constituted a "true threat." Justice Sanders opined that because Mr. Schaler called the mental health crisis hotline and also made comments that he hoped he did not kill anyone, it was evident that his comments were not a threat. Justice Sanders added that "a person having a mental breakdown should not be subject to criminal charges for harassment while he seeks professional help *in earnest*" (*Schaler*, p 869; emphasis in original).

The dissenting opinion of Justice Johnson was quite different. He opined that the jury instruction failure was, in fact, harmless because it was evident beyond a reasonable doubt that the jury would have come to the same conclusion without it. More specifically, he noted that because Mr. Schaler had taken medication on his way to the hospital, had stated his threats over a four-hour period and under the care of mental health professionals, and had made previous threats toward his neighbors, it was obvious that he was negligent in failing to "foresee that his conduct would be taken as a true threat."

Discussion

This case is notable, in that there are three different opinions from the justices regarding whether it is evident beyond a reasonable doubt that the jury, without instructions about a "true threat," would

have reached the same conclusion as they did at the initial trial. Justice Sanders made the point that the statute defining criminal threats was "out of control and must be reined in" (*Schaler*, p 869). He also entered into a discussion of what the implications may be for a person seeking mental health care if the person, upon seeking treatment, might be subjected to criminal charges. On the other side, Justice Johnson suggested that a patient, having received some medication and a few hours of mental health treatment, should have the mental capacity to know how his or her statements may be perceived by others. This vast difference demonstrates that there is in our judicial system, and by extension, in the public, a dearth of understanding of mental illness and how an individual who is mentally ill may behave when decompensated.

This case has several implications for psychiatrists and forensic psychiatrists who engage in risk assessments of patients such as the one described. A thorough assessment of any patient who is mentally ill should include a risk assessment for potential violence followed by careful documentation of that assessment. That includes information about whether the patient has the intent, means, access, and plan to carry out any violent ideas. This case centers on the notion of Mr. Schaler's insight into how the threats toward his neighbors would be perceived by others. The assessment of his understanding of his actions by the clinician working with him at the time of the alleged threats would have been helpful to all involved. Further, the case points out the importance of having psychiatrists and other mental health professionals educate judges, attorneys, and juries about how mental illness may affect individuals' insight into their words and actions.

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