1977 WL 46010 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 10, 1977

MEMORANDUM

Re: Possible Action Against Writer of Threatening Letter

***1** Mr. McLeod

QUESTIONS PRESENTED

I. Can the language at pages three and four of Vernon Ward's letter of March, 1977, to Chief Justice Lewis be considered a "threat"?

II. Is the making of a threat, without more, legally punishable under South Carolina law?

III. If the language cited above is not a "threat" within the common meaning of the word or is not legally punishable under South Carolina law, are there other remedies available-for the threatened person?

DISCUSSION

I.

Mr. Ward states in his letter at pp. 3, 4:
If no one in this State is willing to see that the Deputy Sheriff did lie to the Court.[sic] I intend to see that he doesn't lie to another Judge about me. For I would rather it end that way then [sic] have to live my life with expectations that the same thing could happen again.

A threat may be made by means of innuendo or suggestion as well as by express language. Wilcox v. State, 60 L.A. 571. No precise or particular form of words is necessary in order to constitute a "threat"; threats can be made by innuendo and the circumstances under which the threat is uttered and relations between the parties may be taken into consideration in making a determination. People v. Massengale, 68 Cal.Reptr. 415, 419; 261 C.A.2d 758. "Threats" as used in the statute pertaining to offense of threats to do bodily harm means only that the words have a reasonable tendency to intimidate. U.S. v. Smith, 337 A.2d 499, 504.

These decisions when read in the context of the entire letter and other circumstances surrounding the relationship between the Deputy Sheriff and Mr. Ward, indicate the presence of a good argument for the existence of a threat. Phrases such as "I intend to see that he doesn't lie to another Judge...," and "I would rather it end that way...," together with the fact that Mr. Ward is obviously still upset with the Deputy eight years later and after he has finished serving his jail term, show Mr. Ward is not simply making idle threats.

A problem arises over the fact that the threat was communicated not directly to the Deputy Sheriff, but to a third party, Chief Justice Lewis. Resolution of this problem will be unnecessary, however, in view of what is stated in part II of this memorandum.

II.

There is no statute in South Carolina making it a criminal offense to do no more than threaten a person with harm to his person or property. Additionally, C.J.S. states that "At common law a mere threat was not a cirminal offense... although it might be sufficient to invoke security to keep the peace." 86 C.J.S., Threats and Unlawful Communications, Section 2. It was an indictable offense at common law to make threats of a nature calculated to overcome a firm and prudent man when the threats were made with a view toward extorting money. 86 C.J.S., Threats and Unlawful Communications, Section 3; United States v. Metzdorf, 252 F. 933. Such a rule has no application to the present cause, however, since no attempt was made to extort money from anyone. Therefore, even if statements contained in a letter to a third party were construed as threats, there would be no legal remedy under South Carolina law against the maker of such threats merely for the communication thereof.

III.

***2** Under South Carolina law, it appears the best course of action is a proceeding under Section 22-5-150, 1976 Code, to either invoke security to keep the peace or to prosecute for an actual breach of the peace. That section provides in part that:
Magistrates may cause to be arrested...(c) such as utter menaces or threatening speeches.. Persons arrested for any of such offenses shall be examined by the magistrate before whom they are brought and may be tried before him. If found guilty they may be required to find sureties of peace and be punished within the limits prescribed in Section 22-3-560 or, when the offense is of a high and aggravated nature, they may be committed or bound over for trial before the court of general sessions.

Section 22-3-560 allows magistrates to punish breaches of the peace when not of a high and aggravated nature requiring in their judgment greater punishment, by a fine not exceeding one hundred dollars or imprisonment not exceeding thirty days. C.J.S. notes that "threats, especially when accompanied by acts showing an intent to exercise them and intended to put the person threatened in fear of bodily harm, while not an indictable offense at common law, may be punishable by statute as a breach of the peace. And, indeed, South Carolina's statute so provides when it speaks in terms of person guilty of uttering "menaces."

Just to note in passing, 18 U.S.C. 876, Mailing Threatening Communications (see attached copy), seems to apply to all respects to the present situation.

CONCLUSION

Although the language of Mr. Ward's letter would probably constitute a "threat" within the meaning of that term's construction by other jurisdictions interpreting applicable statutes of those jurisdictions, there is no South Carolina statute on threats, per se, and the mere making of a threat was not a criminal offense at common law. Therefore, the best course of action is a charge of breach of the peace under Section 22-5-50, 1976 Code, or pursuit of a remedy under the Federal statute, 18 U.S.C. 876.

NOTE: The constitutionality of peace bond proceedings in various states has come under recent and serious attack. A clear and scholarly consideration of the various constitutional pitfalls which inhere in most of these proceedings is discussed in Ex Parte James, 303 So. 2d 133, and is attached hereto.

Doug Robinson

1977 WL 46010 (S.C.A.G.)