

A man intensely disliked his neighbors. One night, intending to frighten them, he spray-painted their house with racial epithets and threats to kill them. The man was arrested and prosecuted under a state law providing that "any person who threatens violence against another person with the intent to cause that person to fear for his or her life or safety may be imprisoned for up to five years." In defense, the man claimed that he did not intend to kill his neighbors, but only to scare them so that they would move away.

Can the man constitutionally be convicted under this law?

- A. No, because he was only communicating his views and had not commenced any overt action against the neighbors.
- B. Yes, because he was engaged in trespass when he painted the words on his neighbors' house.
- C. Yes, because his communication was a threat by which he intended to intimidate his neighbors.
- D. Yes, because his communication was racially motivated and thus violated the protections of the Thirteenth Amendment.

Explanation:

Unprotected speech

- Fighting words/threats
- Inciting crime
- Defamation
- Obscenity

Mnemonic: **FIDO**

The First Amendment **free speech clause** generally prohibits the government from regulating speech based on its content (ie, the message being communicated). But **certain categories** of speech fall **outside First Amendment protection** and can be freely regulated by the government. This includes fighting words and **threats of violence** that are **intended to intimidate** the recipient—regardless of whether the speaker acts on the threat or intends to carry it out (**Choice A**). And since the man threatened to kill his neighbors so that they would be scared and move away, he can be constitutionally convicted under the state law.

(Choice B) The fact that a person engages in unlawful conduct (eg, trespassing) as an incident to speech has no bearing on whether the person can be constitutionally punished for the content of that speech.

(Choice D) The Thirteenth Amendment prohibits both government and private actors from engaging in slavery or involuntary servitude. But racially motivated threats (as seen here) do not violate this amendment.

Educational objective:

Threats of violence that are communicated with the intent to intimidate the recipient are not protected by the free speech clause—regardless of whether the speaker acts on the threat or intends to carry it out.

References

- Virginia v. Black, 538 U.S. 343, 359–60 (2003) (explaining that the First Amendment permits the government to ban true threats of violence).

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