

**STATE OF INDIANA
COURT OF APPEALS
CAUSE NO. 25A-CR-0022**

CRAIG R. HENDRY)	APPEAL FROM VERMILLION
)	CIRCUIT COURT
)	
v.)	Cause No. 83C01-2310-F6-000111
)	
)	Hon. Hunter Reece
STATE OF INDIANA)	Special Judge

APPELLANT'S PETITION TO TRANSFER

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QUESTION PRESENTED ON TRANSFER

Whether the Court of Appeals misapplied this Court's reasoning in *Whittington v. State*, 669 N.E.2d 1363, 1370 (Ind. 1996) when it upheld Craig Hendry's conviction for stalking of a Clinton City (Vermillion County) employee.

BACKGROUND AND PRIOR TREATMENT OF THE ISSUE

Appellant Craig Hendry is a First Amendment Auditor. In that capacity, Craig's source of income was YouTube channels where he would post video-recorded interactions with, and comments about, government officials. Craig posted such videos to his YouTube channel twice - which resulted in a flood of phone calls to Clinton (Vermillion County) City Hall. While some calls/messages were threatening, most expressed dissatisfaction with the conduct of city officials they had viewed. Craig's efforts to speak to the Mayor of Clinton necessarily were initiated by contacts to a female city employee ("Patty"). Patty was employed in the "Water Office" of City Hall, however apparently served also as secretary or gatekeeper for those seeking access to the Mayor. When Craig's efforts were thwarted by Patty, he grew agitated, police responded and spoke to Craig. Craig called police various derogatory names urged at least one to appear outside the building without his gun to fight. In the video posted to YouTube, Craig expresses his belief that Patty was the Mayor's "little play toy". Police finally presented Craig with a letter warning that any further entry into the building was trespassing and he would be arrested. Craig never again appeared inside City Hall. At one point, he was in the parking lot when Patty exited the building at the end of the workday.

Craig remarked to his videographer “[t]here she is” and was told by escorting police officers not to talk to her. Following Craig’s second airing of the video on YouTube, he was charged with and convicted of stalking Patty and harassment of public employees in the Clinton city government office.

On direct appeal, the Court of Appeals found no merit in Craig’s argument that his newsgathering interactions and posting of them was protected political speech. Specifically, the Court of Appeals found Hendry’s political speech argument failed when applied to the stalking charge because Patty was a “private party”. Slip Op. ¶ 64.

ARGUMENT

The record contains no evidence that Craig ever sought to speak to Patty anywhere but City Hall while she was working. There is no evidence he ever attempted to contact her as a private citizen.

Patty testified that that she feared Craig may have been in a red truck she saw drive by the dry cleaner’s one evening on her way home from work, because that day she saw someone get out of a red truck in the parking lot and enter City Hall. Craig entered thereafter causing Patty to assume the truck brought Craig to City Hall. Patty, however, also admitted she could not identify anyone in that truck, and never said she recognized it as the truck she earlier saw in the parking lot. *TR.Vol. 4, p. 75*. In his attempts to speak to the Mayor, Craig was forced to have contact with Patty. On several occasions the videos depict conversations regarding those attempts, and questions as to why Patty would not speak to him.

Craig’s argument regarding protections of freedom of expression guaranteed by Art.1, § 9 of the Indiana Constitution is found on page 17 of the *Brief of Appellant*. After acknowledging Craig’s argument that the video postings were protected political speech, the Appellate Court applied the reasoning of this Court in *Whittington v. State*, 669 N.E.2d 1363, 1370 (Ind. 1996) to conclude that Craig’s video postings could not be “unambiguously political” because he spoke of how *he* was treated by City Hall and government employees. *Slip Op.* ¶ 64,65. (“Hendry, however, does not include the other part of that proposition: ‘where an individual’s expression focuses on the conduct of a private party—including the speaker himself or herself—it is not political’. *Whittington*, 669 N.E.2d. at 1370 (emphasis added). And even when non-political expressions are “coupled with political statements, speech is not necessarily unambiguously political. *McGuire*, 132 N.E.3d at 445.”) Thus, the Appellate Court reasoned, “Given Hendry’s lack of analysis—and considering that much of his speech concerned his own treatment by Clinton officials, which suggests it was not unambiguously political—Hendry has failed to prove that his conduct was protected political speech.” *Slip Op.* ¶ 65. This conclusion does not align with the evidence, or this Court’s analysis in *Whittington*, *supra*.

THE WHITTINGTON CASE

The facts in *Whittington* differ from the facts here. *Whittington* was brought based upon an incident of domestic violence between two private citizens. When police arrived, the defendant began calling them names, and speaking in a loud,

boisterous manner. Following conviction for disorderly conduct, Whittington argued that his expressions to the police were political speech protected under Art.1, § 9 of the Indiana Constitution. This Court reiterated that “ The right to speak is qualified, of course, by [Article 1] § 9's responsibility clause, which provides that ‘for the abuse of that right, every person shall be responsible’.” *Id at 1369*. The Court also made clear that “comment on government action, whether applauding an old policy or proposing a new one, or opposing a candidate for office or criticizing the conduct of an official acting under color of law[]” is protected speech. *Id at 1371*. This Court held that Whittington’s speech was not protected, as it was not unambiguously political because it involved his comments on his own behavior. Ultimately Whittington’s conviction was upheld because the statute criminalizing his conduct “did not contravene the right to speak, as guaranteed by Section 9 of the Indiana Bill of Rights.” *Id*.

Here, as in *Whittington*, the State’s action restricted Craig’s expressive activity by criminalizing his attempts to speak to Clinton government public employees. exercise of political expression. However, unlike Mr. Whittington, *virtually* all of the video footage aired by Craig depicts him “criticizing the conduct” of government officials. This includes the Mayor, Patty, the police chief and police officers. The fact that his statements may have included criticism of how he was being treated, or explanation of his efforts to raise the curtain on what he believed to be irregularities in the Clinton City government should not be interpreted to completely negate Craig’s freedom to exercise his right to complain about the government.

Petition to Transfer

To apply the reasoning by the Appellate Court in this case could result in the prosecution of any individual who attempts to talk to or investigate the conduct of government officials or employees if the official or employee complains that he or she becomes upset. Patty was, at all times relevant to the case, a public employee. Despite Patty's assumptions that Craig may have been in the red truck, there is no competent evidence of that in the record. Craig's only contacts with her were during work hours, at her office - or the Mayor's office - in the Clinton City Hall. Unlike *Whittington* the contacts here were between Craig and government officials, not private parties.

CONCLUSION

Appellant respectfully requests that this Court grant transfer, vacate Craig's conviction for stalking, and revise his sentence accordingly.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I hereby certify that the foregoing *Petition to Transfer* contains no more than 4200 words.

/s/ Kay A. Beehler
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on December 6, 2025 a copy of the *Petition to Transfer* has been filed and served upon Deputy Attorney General Jennifer Anwarzai via the I-EFS.

/s/ *Kay A. Beehler*
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