

Amicus Curiae Submissions

Case Title:	R v Joel Davis [2025] NSWLC
Jurisdiction:	Criminal
Legislation Cited:	<i>Criminal Code Act 1995</i> (Cth), s 474.17
Cases Cited:	Bazzi v Dutton [2022] FCAFC 84 Philippsohn v Attorney General for New South Wales [2025] NSWSC 267
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WIT WITH THE RHETORIC

INTRODUCTION

- 1 On Thursday 20th November 2025 I was made aware of a recent arrest by the AFP.

"#BREAKING: National Socialist Network activist Joel Davis arrested by the Australian Federal Police in Sydney for "using a carrier service to harass"."

EVIDENCE

- 2 The accused on Telegram shared an X post by Member for Wentworth Allegra Spender that was published on 8th November 2025:

"The neo-Nazi demonstration today is appalling.

This group is seeking to spread vile hatred against Jewish people and undermine our great Australian multiculturalism.

Their use of a Hitler Youth slogan is chilling."

The accused wrote in the caption:

"Patriots – I bid thee to rhetorically rape Allegra Spender."

- 3 On 20th November 2025 the media platform, The Noticer, published an article titled "*Nationalist activist² charged over Telegram post and refused bail*"³:

"Mr Davis later responded to criticism over the post by telling 9News he did not condone rape, emphasised his use of the word "*rhetorically*", and said the media should focus on rapes committed by immigrants.

"*It's rhetorical, I said 'rhetorical', people should engage in spirited rhetoric, in a democracy we should convey ideas hotly, these are very important – this is about freedom of speech and the future of our nation,*" he said."

FACT

- 4 The word "rape" is commonly regarded to mean "sexual intercourse without consent".
- 5 The accused's publication coupled the term with "rhetorically", meaning a figure of speech⁴.

¹ The Noticer, <https://x.com/NoticerNews/status/1991388997336383943>

² A fair characterisation of the accused's political identity

³ The Noticer, <https://www.noticer.news/joel-davis-arrested-sydney-telegram-post/>

⁴ Antonym of 'literal'

- 6 The intervener (author of these submissions) originates from Campbelltown, NSW 2500 where his social upbringing was "harsher" more "abrasive" and language such as swear words and offensive humour was tolerated.

LAW

Criminal Code Act 1995 (Cth)

- 7 The purported charge:

474.17 Using a carriage service to menace, harass or cause offence

(1) A person commits an offence if:

(a) the person uses a carriage service; and

(b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Penalty: Imprisonment for 5 years.

Case Law

- 8 In *Bazzi v Dutton* [2022] FCAFC 84 the respondent had been accused of defaming the plaintiff by posting on Twitter "Peter Dutton is a rape apologist." The Full Court overturned the previous ruling and found at [76]ff:

"It is, ... difficult to reconcile the reported statements, or the inferences that might be drawn from them, with Mr Bazzi's assertion that Mr Dutton was a "rape apologist". Even if it is accepted that the ordinary meaning of "apologist" is a person who defends someone or something, that would tend to suggest that to say that someone is a "rape apologist" is to say that they defend the act of rape. That is materially different to accusing someone of being dismissive or sceptical of rape claims, or lacking empathy towards people who claim to have been raped.

While it is somewhat difficult in those circumstances to ascertain what the tweet would have conveyed to the ordinary reasonable Twitter reader, I am on balance not persuaded that the tweet conveyed to the ordinary reasonable reader that Mr Dutton excuses rape. To excuse rape is to seek to somehow justify, pardon, overlook or perhaps trivialise the act of rape. When approached in an impressionistic manner, and taking into account the whole tweet and the context in which it was posted, I do not accept that the tweet conveys, or would have conveyed, to the ordinary reasonable reader that Mr Dutton is a person who has that approach or attitude to the act of rape.

The tweet no doubt conveys an impression that is derogatory and critical of Mr Dutton's attitude to rape or rape allegations, but it does not go so far as to convey the impression that Mr Dutton is a person who excuses rape. That is so even if it be accepted that the word "apologist" may, depending on the context in which it is used, convey that the person to whom that label is attached is a person who defends someone or something. The tweet does not, when considered as a whole and in context, convey the impression that Mr Dutton defends the act of rape. It may, particularly when read in the context of the discussion and debate which was occurring at the time concerning the specific rape allegation referred to earlier, have conveyed that Mr Dutton may on occasion be dismissive of rape claims, or lack empathy towards people who make rape claims. That again, however, is different to defending or excusing the act of rape."

- 9 In *NSW Police v Louis Tessler* (AVO proceedings) (see **Appendix A**) an application was made due to an allegation of intimidation for transmitting via electronic carrier:

" "If you try and construe this as witness intimidation, I will cut your fucking throat." "

- 10 The defense argued that the communication was made in "quotation marks" and didn't constitute any serious, direct threat, rather a dark sense of humor. The absence of a knife certainly had assisted.

- 11 I wasn't present for the outcome but I assume it was dismissed.

SUBMISSIONS

- 12 The accused comes from a socio-cultural background that uses intense language such that among his group and peers, would not be regarded as offensive or intimidating.
- 13 There is no intention to incite violence towards the complainant.
- 14 The accused intended to mean "social intercourse" (see *Philippsohn v Attorney General for New South Wales* [2025] NSWSC 267 at [58]) without consent.
- 15 But due to the polarity of the two characters it has resulted in a shock factor.
- 16 The appropriate and proportional solution is to injunct the publication of the accused via civil proceedings and make a referral to social counselling or education.
- 17 Basically, a caution.
- 18 I encourage Mr Davis to re-organise with his White Australia members to reflect and sensitise themselves to the polite and courteous conduct that public officers and parliamentarians are expecting.
- 19 It was a proportional reaction to, what Mr Davis, and I, perceive as potential intimidation towards themselves (ie. the right to speak freely, protest and represent their racial identity).⁵
- 20 Reasonable persons would not *in all the circumstances* regard the accused as having used a carriage service with intention to menace, harass or be offensive.
 - (a) There is no intention.
- 21 The elements of the purported charge are not satisfied and the accused must be acquitted.

Anton Tutoveanu (Amicus)
21st November 2025

⁵ There is a distinction between neo-nazis and white nationalism.

Appendix A - Louis Tessler Police Brief

Provided with permission.

NSW Police (PHQ) 24/10/2023 6:38:05 PM PAGE 8/009 Fax Server

APPLICATION (to be heard at court)

Grounds of the Application:

Reasons for making this application and the duration sought:

The applicant is seeking an apprehended domestic violence order for **a period of: 2 Years**

The reasons the applicant is making an application for an apprehended domestic violence order and seeks the period specified above are as follows:

The defendant in this matter is Louis TESSLER The PINOP in this matter is [REDACTED] The defendant and PINOP are former work colleagues at Macquarie University. On the 6th of September 2023, the defendant was terminated from his employment at Macquarie University after being involved in an internal misconduct investigation and subsequent Apprehended Personal Violence court matter that the PINOP is a witness in. On the 22nd of October 2023, the defendant has contacted the PINOP on 'Signal' - an online digital encrypted messaging platform. The defendant at 8.38pm on the 22nd of October 2023, sent the following messages to the PINOP: "Let the record show my milkshake brings a non zero number of boys to the yard. They have signed an affidavit to the effect of damn right its better than yours." The defendant sent a follow up message at 8.47pm stating "If you try and construe this as witness intimidation, I will cut your fucking throat." According to the PINOP these messages are in reference to the current Apprehended Personal Violence court matter that the PINOP is a witness in. The PINOP stated that he did not feel fearful about these messages however wanted a record made as he is uncertain about what the defendant will do. The PINOP did not want any police action taken however, police hold concerns for the PINOPs safety due to the serious nature of the threats being made. Police are also aware that the defendant knows the home address and work address of the PINOP increasing the risk of the defendant carrying out the treats made. Apprehended Personal Violence Order made for the victims protection whilst the matter is being investigated. The matter is now before the court.

Orders Sought:

The applicant asks that the court make the following orders against the defendant.

Orders about behaviour

1. You must not do any of the following to [REDACTED], or anyone he has a domestic relationship with:
 - A) assault or threaten him,
 - B) stalk, harass or intimidate him, and
 - C) intentionally or recklessly destroy or damage any property or harm an animal that belongs to or is in the possession of [REDACTED]