STATE OF CONNECTICUT
APPELLATE COURT

A.C. 38809

STATE OF CONNECTICUT
Appellee,
v.
EDWARD F. TAUPIER
Defendant-Appellant.

JUDICIAL DISTRICT OF MIDDLESEX at
MIDDLETOWN
(Hon. David P. Gold)

DEFENDANT-APPELLANT'S APPENDIX

FOR THE DEFENDANT-APPELLANT

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ARREST WARRANT APPLICATION
JD-CR-64b Rev. 3-11
C.G.S. § 54-2a
Pr. Bk. Sec. 36-1, 36-2, 36-3

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

For Court Use Only
Supporting Affidavits sealed ☐ Yes ☐ No

Police Case number	Agency name	Agency number
CFS 1400537444	CT State Police - Central District Major Crime Squad - H	

Name (Last, First, Middle Initial)	Residence (Town) of accused	Court to be held at (Town)	Geographical Area number
Taupier, Edward	Cromwell	Hartford	14

Application For Arrest Warrant

To: A Judge of the Superior Court

The undersigned hereby applies for a warrant for the arrest of the above-named accused on the basis of the facts set forth in the: ☒ Affidavit Below. ☐ Affidavit(s) Attached.

Date	Signed (Prosecuting authority)	Type/print name of prosecuting authority
8/29/14		Vicki DeMelchiorre

Affidavit

The undersigned affiant, being duly sworn, deposes and says:

1. That the Affiant, Trooper Daniel D. DeJesús #494 is a regular sworn member of the Department of Emergency Services & Public Protection, Division of State Police and has been a member of said department since November of 2007. That Affiant DeJesús is presently assigned to the Central District Major Crime Unit at Troop "H" in Hartford. That at all times mentioned herein after, Affiant DeJesús was acting in his official capacity as a member of said department. Affiant DeJesús has received specialized training in the investigation of violent crimes and white collar crimes and how to process the scenes of such crimes. That the facts and circumstances contained herein are related from personal knowledge and / or information obtained by Affiant DeJesús and by other persons with personal knowledge of the facts and circumstances contained herein, and / or information obtained by Affiant DeJesús from reading reports or writings furnished or made available to Affiant DeJesús by fellow police officers.

2. That on August 28, 2014, at approximately 1429 hours, Troop H dispatch was contacted by Chief Judicial Marshal Brian Clemens who explained that he received a call from Greater Hartford Legal Aid Attorney Linda Allard. Allard stated that she was in receipt of several text messages from an acquaintance, Jennifer Verraneault, which were threatening in nature towards Judge Bozzuto. Verraneault had explained to Allard that the messages she had forwarded were screen shots off of an e-mail she received from Edward Taupier.

3. That on August 28, 2014, CSP Troop H Troopers arrived at Allard's office and obtained a written statement and a printed copy of what she had received from Verraneault. The printed copy appeared to be a partial e-mail and described in part where Judge Bozzuto resided and further described in detail the layout of her residence.

4. That the following is the e-mail as provided to CSP-CDMCS by Allard:
"Facts: JUST an FYI

(This is page 1 of a 3 page Affidavit.)

Date	Signed (Affiant)
08/29/2014	TPR D. DeJesus #494
Jurat — Subscribed and sworn to before me on (Date)	Signed (Judge/Clerk, Commissioner of Superior Court, Notary Public)
#177	

Finding

The foregoing Application for an arrest warrant, and affidavit(s) attached to said Application, having been submitted to and considered by the undersigned, the undersigned finds from said affidavit(s) that there is probable cause to believe that an offense has been committed and that the accused committed it and, therefore, that probable cause exists for the issuance of a warrant for the arrest of the above-named accused.

Date and Signature	Signed at (City or town)	On (Date)	Signed (Judge/Judge Trial Referee)	Name of Judge/Judge Trial Referee
	Hartford	8/29/14		

ARREST WARRANT APPLICATION
JD-CR-64a Rev. 3-11
C.G.S. § 54-2a
Pr. Bk. Sec. 36-1, 36-2, 36-3

STATE OF CONNECTICUT
SUPERIOR COURT
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Name *(Last, First, Middle Initial)*	Residence *(Town)* of accused	Court to be held at *(Town)*	Geographical Area number
Taupier, Edward	**Cromwell**	**Hartford**	14

Affidavit - Continued

1) Im still married to that POS.. we own our children, there is no decision... its 50/50 or whatever we decide. The court is dog shit and has no right to shit they dont have a rule on.

2) They can steal my kids from my cold dead bleeding cordite filled fists .. as my 60 round mag falls to the floor and im dying as a I change out to the next 30 rd ..

3) Buzzuto lives in watertown with her boys and Nanny ... there is 245 yrds between her master bedroom and a cemetery that provides cover and concealment

4) They could try and put me in jail but that would start the ringing of a bell that can be undone....

5) Someone wants to take my kids better have an f35 and smart bombs.. otherwise they will be found and adjusted ...they should seek shelter on the ISS (Int space station)

6) BTW a 308 at 250yrd with a double pane drops .5 inches per foot beyond the glass and loses 7% of ft lbs of force @ 250 yrds- non armor piercing ball ammunition

7) Mike may be right ... unless you sleep with level 3 body armor or live on the ISS you should be careful of actions

8) Fathers do not cause cavities, this is complete bullshit

9) Photos of children are not illegal

10) Fucking Nannies is not against the law, especially when there is no fucking going on, just ask Buzzuto .. she is the ultimate Nanny fucker"

5. That on August 28, 2014 at approximately 2045 hours, CSP-CDMCS personnel arrived at Verraneault's residence and obtained a written statement which stated in part that she had received e-mails from Taupier within the previous week regarding family court matters using the same e-mail account that sent the threatening messages: "tedtaupier@att.net". Verraneault stated Edward Taupier commonly went by the name Ted, and had confirmed via that e-mail address that he was in fact Edward Taupier, who was a party to a family court case in which Verraneault knows Edward Taupier to be involved. Verraneault further stated that she received the threatening e-mail on Saturday, August 23, 2014.

6. That investigation confirms that there is a cemetery in close proximity to Judge Bozzuto's residence as described in the e-mail.

Date 08/29/2014		Signed *(Affiant)* TPR 494	
Jurat	Subscribed and sworn to before me on *(Date)* 8/29/2014	Signed *(Judge/Clerk, Commissioner of Superior Court, Notary Public)*	
Reviewed *(Prosecutorial Official)*	Date 8/29/14	Reviewed *(Judge/Judge Trial Referee)*	Date 8-28-14

ARREST WARRANT APPLICATION
JD-CR-64a Rev. 3-11
C.G.S. § 54-2a
Pr. Bk. Sec. 36-1, 36-2, 36-3

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

Name *(Last, First, Middle Initial)*	Residence *(Town)* of accused	Court to be held at *(Town)*	Geographical Area number
Taupier, Edward	**Cromwell**	**Hartford**	**14**

Affidavit - Continued

7. That an inquiry through the the State of Connecticut Judicial Branch website revealed that Judge Bozzuto recently presided over Taupier's dissolution of marriage case (HHD-FA12-4065159-S).

8. That an inquiry through the State of Connecticut Department of Emergency Services and Public Protection Special Licensing and Firearms Unit (SLFU) database revealed Edward Taupier possesses a valid CT pistol permit (#965512) and has a total of twelve (12) firearms registered to him, including five (5) hand guns and seven (7) long barreled guns, as well as forty-two (42) high capacity magazines.

9. That criminal, motor vehicle and SLFU inquiries all revealed the same last known address for Taupier, as listed above.

10. That based upon the above stated facts and circumstances, this Affiant believes that Edward Taupier sent the aforementioned e-mail on August 23, 2014 using the e-mail account: tedtaupier@att.net to Verraneault where he described and represented by his own words having possessed a firearm and high capacity magazine rounds dropping to the floor as he reloaded with another high capacity magazine, provided a description of Judge Bozzuto's residence and described an area immediately outside of her residence where cover and concealment was provided. With this action, he *threatened* Judge Bozzuto *with intent to place her in fear of imminent serious physical injury*. In doing so, this Affiant believes that Edward Taupier violated Connecticut General Statues 53a-61aa: Threatening in the first degree, Connecticut General Statute 53a-183(a)(2) Harassment in the second degree and that probable cause exists for his arrest.

That this affiant respectfully requests an arrest warrant be issued for Edward Taupier.

(This is page 3 of a 3 page Affidavit)

Date 08/29/2014		Signed *(Affiant)* TPD #494	
Jurat	Subscribed and sworn to before me on *(Date)* 8/29/14	Signed *(Judge/Clerk, Commissioner of Superior Court, Notary Public)*	
Reviewed *(Prosecutorial Official)*	Date 8/29/14	Reviewed *(Judge/Judge Trial Referee)*	Date 8-29-14

OFFICE OF THE CLERK

2015 MAR 10 AM 8 47

SUPERIOR COURT
GEOGRAPHICAL AREA 9

CR14-0675616-T	:	SUPERIOR COURT
STATE	:	JUDICIAL DISTRICT OF MIDDLETOWN
V.	:	March 10, 2015
EDWARD TAUPIER		

AMENDED INFORMATION

FIRST COUNT

In the Superior Court for the State of Connecticut, the undersigned Assistant State's Attorney accuses EDWARD TAUPIER of the crime THREATENING IN THE FIRST DEGREE

and alleges that on or about August 22, 2014 in the town of Cromwell, Connecticut, the defendant, Edward Taupier, threatened to commit a crime of violence, to wit: assault, against Elizabeth Bozzuto, in reckless disregard of the risk of causing terror. Further, in commission of such offense, the defendant represented by his words or conduct that he possessed a firearm, to wit: a rifle, in violation of Sections 53a-62 (3),53a-61aa (a) (3), and 53a-61(a)(1) of the Connecticut General Statutes.

SECOND COUNT

In the Superior Court for the State of Connecticut, the undersigned Assistant State's Attorney accuses EDWARD TAUPIER of the crime THREATENING IN THE SECOND DEGREE

and alleges that on or about August 22, 2014 in the town of Cromwell, Connecticut, the

Defendant, Edward Taupier, threatened to commit a crime of violence, to wit: assault, against Elizabeth Bozzuto, in reckless disregard of the risk of causing terror, in violation of Section 53a-62 (3) and 53a-61(a)(1) of the Connecticut General Statutes.

THIRD COUNT

In the Superior Court for the State of Connecticut, the undersigned Assistant State's Attorney accuses EDWARD TAUPIER of the crime DISORDERLY CONDUCT

and alleges that on or about August 22, 2014 in the town of Cromwell, Connecticut, the defendant, Edward Taupier, recklessly created a risk of causing inconvenience, annoyance and alarm to Elizabeth Bozzuto by his offensive and disorderly conduct, to wit: disseminating an email containing threatening language, in violation of Section 53a-182 (a) (2) of the Connecticut General Statutes.

FOURTH COUNT

In the Superior Court for the State of Connecticut, the undersigned Assistant State's Attorney accuses EDWARD TAUPIER of the crime DISORDERLY CONDUCT

and alleges that on or about August 23, 2014 in the town of Cromwell, Connecticut, the defendant, Edward Taupier, recklessly created a risk of causing inconvenience, annoyance and alarm to Jennifer Verraneault by his offensive and disorderly conduct, to wit: disseminating an email containing threatening language, in violation of Section 53a-182 (a) (2) of the Connecticut General Statutes.

FIFTH COUNT

In the Superior Court for the State of Connecticut, the undersigned Assistant State's Attorney accuses EDWARD TAUPIER of the crime BREACH OF PEACE IN THE SECOND DEGREE

and alleges that on or about August 22, 2014 in the town of Cromwell, Connecticut, the defendant, Edward Taupier, recklessly created a risk of causing inconvenience, annoyance and alarm by threatening to commit the crime of assault against Elizabeth Bozzuto, in violation of Section 53a-181 (a) (3) and 53a-61(a)(1) of the Connecticut General Statutes.

THE STATE OF CONNECTICUT

By: Brenda Hans

BRENDA HANS, Assistant State's Attorney, Juris# 420294
State's Attorney's Office
1 Court Street
Middletown, CT 06067
(860) 343-6379

CERTIFICATION

I hereby certify that a copy of the foregoing was emailed to counsel for the defendant, Rachel Baird, Old Post Office Square, 8 Church Street Suite 3 B, Torrington, CT 06790 rbaird@rachelbairdlaw.com on March 10, 2015.

Brenda Hans

BRENDA HANS, Assistant State's Attorney

DOCKET NO. MMXCR140675616T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF MIDDLESEX
V.	:	AT MIDDLETOWN
EDWARD F. TAUPIER	:	JUNE 1, 2015

DEFENDANT'S MOTION FOR CONTINUANCE OF TRIAL TO DETERMINE IMPACT OF *ELONIS V. UNITED STATES*

The Defendant Edward F. Taupier ("Taupier"), by and through his undersigned counsel, hereby moves for time to consider the impact of the decision issued today by the Supreme Court of the United States in *Elonis v. United States*, No. 13-983, prior to requests for instructions and closing argument.

Elonis is a pertinent and significant authority for the issues raised in a motion to dismiss prior to trial in the above-captioned matter, for evidentiary rulings made during trial, and for the law that will apply to the facts of the case. For these reasons the defense requests time to consider renewal of a pre-trial motion to dismiss, a motion for mistrial based on evidentiary rulings, a motion for judgment of acquittal at close of evidence, and any other motions to preserve Taupier's appellate claims connected to the issuance of a Supreme Court decision after the close of evidence in the instant trial addressing the fundamental principal of scienter as applied to the "true threat" doctrine.

I. *ELONIS V. UNITED STATES*

In the district court, Anthony Douglas Elonis ("Elonis") moved to dismiss a five-count indictment alleging that he had threatened to injure park patrons and employees, his estranged

ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED

wife, police officers, a kindergarten class, and an FBI agent in violation of 18 U.S.C. § 875(c). Elonis argued that the indictment failed to allege that he had intended to threaten anyone. The district court denied the motion holding that Third Circuit precedent required only that Elonis "intentionally made the communication, not that he intended to make a threat." Elonis requested a jury instruction that "the government must prove that he intended to communicate a true threat." The district court denied the request and instructed the jury as follows:

> A statement is a true threat when a defendant intentionally makes a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily injury or take the life of an individual.

The Third Circuit affirmed holding that the intent required by 18 U.S.C. § 875(c) is only the intent to communicate words that the defendant understands and that a reasonable person would understand as a threat.

The Supreme Court reversed holding that 18 U.S.C. § 875(c) requires not only proof that a communication was transmitted and that it contained a threat but that the presumption in favor of a scienter requirement should apply to require proof of the mental state of the defendant. In the district and appellate courts, according to the Supreme Court, Elonis' conviction was premised solely on how his posts would be understood by a reasonable person. According to the Supreme Court: Having liability turn on whether a reasonable person regards the communication

as a threat – regardless of what the defendant thinks – reduces the government's proof of the scienter requirement for the defendant's mental state to one of mere negligence.[1]

II. RECKLESSNESS

The Supreme Court declined to address whether recklessness is sufficient to meet the mental state requirement for a true threat.

> There is no dispute that the mental state requirement in Section 875(c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. In response to a question at oral argument, Elonis stated that a finding of recklessness would not be sufficient. Neither Elonis nor the government has briefed or argued that point, and we accordingly decline to address it. ... Given our disposition, it is not necessary to consider any First Amendment issues.

In *State v. Taupier*, the instant case captioned-above, the Court must decide the First Amendment issue left undecided by the Supreme Court. The jury instruction for recklessness in Connecticut is substantively the same as the jury instruction given by the district court in *Elonis* that was rejected by the Supreme Court as contrary to the general interpretation of criminal statutes to include broadly applicable scienter requirements when the statute by its own terms does not contain them.

"A person acts 'recklessly' with respect to a result or to a circumstance described by a statute defining an offense when the defendant is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists." Connecticut Criminal Jury Instructions, § 2.3-4 Recklessness -- § 53a-3 (13) (Revised to

[1] Due to time limitations, certain sections quoted from the Court's decision may not be properly indicated at this time. The Slip Opinion may be found at http://www.supremecourt.gov/opinions/14pdf/13-983_7l48.pdf.

December 1, 2007) The State alleges that Taupier was aware of and consciously disregarded a risk that an email would have a certain effect on the recipients and/or a reasonably, objective person. This is substantively identical to the rejected jury instruction in *Elonis* that defined a true threat as an intentional communication of a statement where a reasonable person would foresee that those hearing the statement would interpret the statement as a threat. Both the rejected jury instruction in *Elonis* and the jury instruction for recklessness in Connecticut omit from the government's burden of proof a subjective intent to threaten. "Having liability turn on whether a 'reasonable person' regards the communication as a threat – regardless of what the defendant thinks – reduces culpability on the all important element of the crime to negligence." In *Taupier*, liability turns on whether the defendant disregarded what a reasonable person would think – a standard that fails to consider, identical to the jury instruction in *Elonis* – what the sender, alleged to be Taupier, thought.

III. CONCLUSION

For the reasons stated and due to the uncommon circumstance of the issuance of a Supreme Court decision addressing a principal of law at issue in a pending case, the defense moves for one week to consider the impact of *Elonis v. United States* and the guidance of the Supreme Court on the legal sufficiency of the five counts in the State's March 10, 2015, Amended Information.

EDWARD F. TAUPIER

JUN 02 2015

GRANTED
To 6.2.15

Gold, J.

BY: _____

Rachel M. Baird, Attorney
Rachel M. Baird & Associate (JURIS 433409)
8 Church St, Ste 3B
Torrington CT 06790-5247
Tel: 860-626-9991 / Fax: 860-626-9992
Email: rbaird@rachelbairdlaw.com

His Attorney

ORDER

The Court, upon due consideration hereby Orders the Defendant's Motion

Granted / Denied.

_____
Judge / Clerk of the Superior Court

CERTIFICATION OF SERVICE

Pursuant to Practice Book § 10-14, I hereby certify that a copy of the above was transmitted by electronic transmission on June 1, 2015:

Brenda Hans, Attorney
Office of the State's Attorney
One Court St
Middletown CT 06457-3377
Email: Brenda.hans@ct.gov

Rachel M. Baird, Attorney
Commissioner of the Superior Court

DOCKET NO. MMXCR140675616T	:	SUPERIOR COURT
	:	
STATE OF CONNECTCUT	:	JUDICIAL DISTRICT OF MIDDLESEX
	:	
V.	:	AT MIDDLETOWN
	:	
EDWARD F. TAUPIER	:	JUNE 23, 2015

DEFENDANT'S RENEWED MOTION TO DISMISS AMENDED INFORMATION

The Defendant, Edward F. Taupier, by and through his undersigned counsel and pursuant to Practice Book § 41-8(8), hereby renews his motion to dismiss the five-count Amended Information.[1]

A Memorandum of Law is attached.

THE DEFENDANT
EDWARD TAUPIER

Rachel M. Baird

BY:_____

Rachel M. Baird, Attorney
Rachel M. Baird & Associate (JURIS 433409)
8 Church St, Ste 3B
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Tel: 860-626-9991 / Fax: 860-626-9992
Email: rbaird@rachelbairdlaw.com

JUN 23 2015
Filed in Ctrm 3B
@ 2:24 pm by
atty R. Baird.

6-23-201

[1] A previous motion was brought pursuant to Practice Book, § 41-8(2) and denied.

ORDER

The forgoing, having been duly heard/considered, is hereby ordered:

Granted **Denied**

OCT 02 2015
See MEMORANDUM OF DECISION re: D's RENEWED MOTION TO DISMISS filed by Gold, J and dated 10/2/2015

_____

J. Date

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Request for Discovery was electronically transmitted on June 23, 2015, to counsel of record as follows:

Brenda Hans, A.S.A.
Office of the State's Attorney
One Court Street,
Middletown, Connecticut

Rachel M. Baird

_____

Rachel M. Baird
Commissioner of the Superior Court

DOCKET NO. MMXCR140675616T	:	SUPERIOR COURT
STATE OF CONNECTCUT	:	JUDICIAL DISTRICT OF MIDDLESEX
V.	:	AT MIDDLETOWN
EDWARD F. TAUPIER	:	JUNE 22, 2015

DEFENDANT'S RENEWED MOTION TO DISMISS AMENDED INFORMATION

The Defendant, Edward F. Taupier ("Taupier"), by and through his undersigned counsel and pursuant to Practice Book § 41-8(8), hereby renews his motion to dismiss the five-count Amended Information.[1] The laws defining the offenses charged which require proof merely of a reckless *mens rea* to hold Taupier criminally liable for speech are unconstitutional under the First Amendment to the United States Constitution.

I. STATEMENT OF ISSUE

The recent United States Supreme Court holding in *Elonis v. United States*, 135 S. Ct. 2001, 83 USLW 4360 (2015) and the First Amendment are inconsistent with a standard that permits convictions in criminal prosecutions for speech attributed to a reckless *mens rea*. *Elonis* requires subjective intent. Recklessness, however, "does not involve intentional conduct because one who acts recklessly does not have a conscious objective to cause a particular result." *In re Jeremy M.*, 100 Conn. App. 436, 447-50 (2007).[2] A person alleged to have threatened another recklessly does not have the conscious objective to terrorize another person or to inconvenience, annoy, or alarm another person. At most, such a person has a conscious objective to take a risk

[1] A previous motion was brought pursuant to Practice Book, § 41-8(2) and denied.

[2] For example, a person cannot attempt to be "reckless." *See State v. Messier*, 16 Conn. App. 455, 470 (1988) ("Our Supreme Court has held that [a]ttempt liability requires that the defendant entertain the intent required for the substantive crime. Because the charge as given created the element of "reckless attempt," which element does not exist, the charge impermissibly expanded the manner in which the defendant could have been convicted of burglary in the first degree. We find error and remand the case for a new trial on that charge.") (citing *State v. Almeda*, 189 Conn. 303, 309, 455 A.2d 1326 (1983) and *State v. Beccia*, 199 Conn. 1, 505 A.2d 683 (1986) (conspiracy to commit reckless arson not legally cognizable) (internal quotations omitted).

that what they say is a gross deviation from what a reasonable person would foresee that another reasonable person would interpret as a threat.

In Connecticut there have been only two reported cases addressing prosecutions for reckless threats under § 53a-62(a)(3) and neither of these two cases involve threats alleged to have been communicated by email or the Internet. *See State v. Krijger*, 313 Conn. 434, 97 A.3d 946 (2014) (conviction after trial for § 53a-62(a)(3) reversed); *State v. Warecke*, No. CR03117690, 2006 WL 329781 (Supr. Ct. Danbury, Jan. 24, 2006) (Sentence review of plea to § 53a-62(a)(3)). In *Krijger* the conviction was reversed and in *Warecke* the defendant pleaded.

Krijger affirmed this jurisdiction's reliance upon an "objective test" to evaluate "whether allegedly threatening language is entitled to first amendment protection." *Krijger*, 313 Conn. at 456 n. 10. In noting the split among authorities after by *Virginia v. Black*, 538 U.S. 343, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003), the court recognized that "some courts have indicated that this language [in *Black*] requires proof that the speaker subjectively intended to threaten the victim." *Krijger*, 313 Conn. at 452 n. 10. *Krijger* did not decide whether *Black* required a subjective test because the evidence in *Krijger* was insufficient to establish a true threat even under an objective test. *Id.*

A prosecution for threatening alleging speech recklessly communicated which relies on an objective test to determine whether the speech is protected under the First Amendment comports with logic: In *Krijer* the court started by analyzing the statements at issue using three factors: (1) Prior relationship between the parties; (2) Immediate circumstances surrounding the threat; and (3) The recipient's reaction to the threat. *Id.*, at 454. In assessing the third factor, the court clarified:

> Although a recipient's reaction to an alleged threat is one factor to consider in evaluating whether a statement amounted to a true threat, the test we apply is ultimately an objective one. ... Under that test, the state must prove beyond a reasonable doubt that 'a reasonable person *would* foresee that the statement *would be* interpreted ... as a serious expression of intent to harm or assault.

Id., at 962 (citing *State v. Cook*, 287 Conn. 237, 249, cert. denied, 555 U.S. 970 (2008)). All three factors impact the assessment of how a reasonable recipient would place a statement in context and react to it as threatening or not. They do not assess at all the subjective intent of the speaker. They assess how a reasonable speaker would assess how a reasonable recipient would react. The *Krijer* test applies a reasonable person standard, an objectives test, to the speaker's conduct.

A prosecution for threatening alleging speech recklessly communicated which necessarily consider the subjective intent of the speaker to determine whether the speech is protected under the First Amendment does not comport with logic or the First Amendment. In the context of the First Amendment recklessness cannot suffice as a *mens rea* to separate wrongful speech conduct from otherwise innocent or protected speech conduct. The chilling effect on speech arising from criminal liability for disregarding a risk in making a statement, especially statements that address public issues and persons, renders the right to free speech captive to determinations by government officials of whom to arrest based on determinations of what a reasonable speaker should have foreseen would be the reaction of a reasonable listener. Recklessness as a *mens rea* applicable to criminal acts that do not implicate the guaranteed right to free speech under the First Amendment may be sufficient to separate wrongful conduct from innocent conduct. Where a *mens rea* includes within its scope innocent conduct it is not sufficient. Where a *mens rea* includes within its scope protected First Amendment speech it is not sufficient. Where a *mens rea* chills the exercise of protected First Amendment speech

because it criminalizes the disregard of a risk in the context of a right where risk has brought about changes in society including the abolition of slavery, equality, and countless exhortatory appeals that for better or worse have changed society, a reckless *mens rea* is not sufficient.

II. BACKGROUND OF THE FEDERAL CIRCUIT SPLIT

Ten years before the Supreme Court's decision in *Elonis*, Circuit Judge Diarmuid F. O'Scannlain decided that the First Amendment does not permit "the government to punish a threat without proving that it was made with the intent to threaten the victim." *United States v. Cassel*, 408 F.3d 622, 624 (9th Cir. 2005). The disputed question in *Cassel* was whether "the government must prove that the defendant intended his words or conduct to be understood by the victim as a threat." *Cassel*, 408 F.3d at 628. The government argued "mere negligence with regard to the victim's understanding is enough: in other words, speech is punishable if a reasonable person would understand it as a threat, whether or not the speaker meant for it to be so understood." *Id.* In rejecting Cassel's claim that the statute at issue was facially unconstitutional because it failed to specify the requisite subjective intent, Judge O'Scannlain wrote on behalf of the three-judge panel:

> The existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence. Thus, except in unusual circumstances, we construe a criminal statute to include a *mens rea* element even when none appears on the face of the statute... Having held that intent to threaten is a constitutionally necessary element of a statute punishing threats, we do not hesitate to construe 18 U.S.C. § 1860[3] to require such intent.

[3] *See* 18 U.S.C. § 1860 ("Whoever bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale; or Whoever, by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale-- Shall be fined not more than $1,000 or imprisoned not more than one year, or both.").

Cassel, 408 F.3d at 634-35 (internal citations omitted). The Ninth Circuit was alone among the eleven federal circuits in its absolute rejection of a standard permitting criminal liability for threatening conduct based only on an objective listener's reaction. The *Cassel* decision was met with outright derision: "The Third Circuit does not share the Ninth Circuit's apparent inability to determine what comprises a 'true threat.'" *United States v. D'Amario*, 461 F. Supp. 2d 298, 302 (D.N.J. 2006). The Third Circuit remained dismissive of the Ninth Circuit in its 2013 *Elonis* decision affirming the sufficiency of the objective listener standard in Elonis's conviction for threatening:

> Regardless of the state of the law in the Ninth Circuit, we find that *Black*[4] does not alter our precedent. We agree with the Fourth Circuit that *Black* does not clearly overturn the objective test the majority of circuits applied to § 875(c).[5] *Black* does not say that the true threats exception requires a subjective intent to threaten.

United States v. Elonis, 730 F.3d 321, 332 (3d Cir. 2013). In defense of its interpretation, the Third Circuit explained that § 875(c) already required the jury to find that a defendant knowingly and willfully transmitted the communication containing the threat. Since, according to the Third Circuit, a threat "is made willfully when a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily harm," the "objective intent standard protects non-threatening speech while addressing the harm caused by true threats." *Elonis*, 730 F.3d at 332. The Supreme Court granted Elonis's petition for writ of certiorari to the Third Circuit, stating:

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[4] *See Virginia v. Black*, 538 U.S. 538, 359-60 (2003) ("'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat.... Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.").

[5] *See* 18 U.S.C. § 875(c) ("Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.").

> In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Whether, as a matter of statutory interpretation, conviction of threatening another person under 18 U.S.C. § 875(c) requires proof of the defendant's subjective intent to threaten."

Elonis v. United States, 134 S. Ct. 2819 (2014). In a 7-2 decision reversing and remanding *Elonis* the Supreme Court held on June 1, 2015, that the conviction for threatening could not stand:

> ... Elonis's conviction cannot stand. The jury was instructed that the Government need prove only that a reasonable person would regard Elonis's communications as threats, and that was error. Federal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state.

Elonis v. United States, 135 S. Ct. 2001, 2012 (2015).[6] The *Elonis* majority expressly declined to decide whether recklessness suffices for criminal liability under § 875(c)[7] and reversed on grounds that omitted consideration of the broader constitutional question set forth below by Circuit Judge Scirica in the Third Circuit's decision: "This case presents the question whether the true threats exception to speech protection under the First Amendment requires a jury to find the defendant subjectively intended his statements to be understood as threats." *United States v. Elonis*, 730 F.3d 321, 323 (3d Cir. 2013). The question left unanswered by the Supreme Court in *Elonis* is whether the true threats exception to speech protection under the First Amendment requires a finding that a defendant intends to achieve a specific result or whether one who acts

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[6] The instruction read to the Elonis jury in the district court required only a finding of negligence:

> A statement is a true threat when a defendant intentionally makes a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily injury or take the life of an individual.

Elonis v. United States, 135 S. Ct. 2001, 2007 (2015) (citation omitted).

[7] *See Elonis*, 135 S. Ct. at 2013 ("Justice ALITO also suggests that we have not clarified confusion in the lower courts. That is wrong. Our holding makes clear that negligence is not sufficient to support a conviction under Section 875(c), contrary to the view of nine Courts of Appeals. Pet. for Cert. 17. There was and is no circuit conflict over the question Justice ALITO and Justice THOMAS would have us decide—whether recklessness suffices for liability under Section 875(c). No Court of Appeals has even addressed that question. We think that is more than sufficient "justification," *post,* at 2014 (opinion of ALITO, J.), for us to decline to be the first appellate tribunal to do so.).

recklessly without a conscious objective to cause a particular result is protected under the First Amendment. *See State v. Williams*, 237 Conn. 748, 755-56 (1996).[8]

III. LEGAL ARGUMENT

A. *United States v. Bagdasarian* and the First Amendment True Threat Analysis

In *United States v. Bagdasarian*, 652 F.3d 1113 (9th Cir. 2011), the Ninth Circuit considered a federal statute which prohibits threats to kill or injure a major presidential candidate.[9] A jury found that Bagdasarian, described by Circuit Judge Reinhardt as "an especially unpleasant fellow," posted statements on an online message board two weeks before the 2008 presidential election, quote: "(1) 'Re: Obama fk the niggar, he will have a 50 cal in the head soon and (2) shoot the nig.'" *Bagdasarian*, 652 F.3d at 1115. Government agents executed a search warrant at Bagdasarian's home a month after the statements were posted and seized six firearms including a Remington model 700ML .50 caliber muzzle-loading rifle, as well as .50 caliber ammunition. *Id.*, at 1116. The agents also searched Bagdasarian's home computer and recovered an email sent on Election Day in the subject matter line stating: "Re: And so it begins." The text of the email stated: "Pistol??? Dude, Josh needs to get us one of these, just shoot the nigga's car and POOF!" and linked to a web page showing a large caliber rifle. Another email sent the same day with the same subject matter line stated: "Pistol ... plink plink

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[8] *See Williams*, 237 Conn. at 755-56 ("With respect to the same victim and the same act, however, specific intent and recklessness are distinct and mutually exclusive mental states under our penal code because one who acts recklessly does not have a conscious objective to cause a particular result.... Therefore, the transgression that caused the victim's injuries was either intentional or reckless; it could not, at one and the same time, be both.... Where a determination is made that one mental state exists, to be legally consistent the other must be found not to exist.").

[9] *See* 18 U.S.C. § 879(a) ("Whoever knowingly and willfully threatens to kill, kidnap, or inflict bodily harm upon--(1) a former President or a member of the immediate family of a former President; (2) a member of the immediate family of the President, the President-elect, the Vice President, or the Vice President-elect; (3) a major candidate for the office of President or Vice President, or a member of the immediate family of such candidate; or (4) a person protected by the Secret Service under section 3056(a)(6); shall be fined under this title or imprisoned not more than 5 years, or both.").

plink Now when you use a 50 cal on a nigga car you get this" and linked to a web page with a video of a propane tank, a pile of debris, and two junked cars being blown up. *Id.* Bagdasarian waived his right to a jury and the matter was heard before a district court judge.

In reversing the district court judgment of guilty on two counts of threatening, the Ninth Circuit began its analysis by noting that a statute, such as § 879, "'which makes criminal a form of pure speech, must be interpreted with the commands of the First Amendment clearly in mind.'" *Id.* (quoting *Watts v. United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969). These First Amendment constitutional commands do not immunize true threats from prosecution. True threats are an exception to the right to speak freely. *Bagdasarian* reviewed circuit precedent noting the "perceived confusion as to whether a subjective or objective analysis is required when examining whether a threat is criminal under various threat statutes and the First Amendment." *Id.*, at 1116-17.[10] *Black* confirmed that the "element of intent is the

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[10] The Ninth Circuit's application of subjective and objective standards to the intent element in statutes criminalizing pure speech was confusing prior to the *Black* decision in 2003. *See* n. 2, *supra*. In *Roy v. United States*, 416 F.2d 874 (9th Cir. 1969), a 20-year old Marine at Camp Pendleton disappointed that he would be attending a training school instead of going with his unit to fight in Vietnam called the telephone operator who testified later at trial that Roy had said: "Tell the President that he should not come aboard the base or he would be killed." Roy testified that he said: "Hello, baby. I hear the President is coming to the base. I am going to get him." The Ninth Circuit upheld Roy's conviction for threatening the President under 18 U.S.C. § 871 finding that Roy had not challenged his conviction on First Amendment grounds claiming as a defense that he had been "joking-around" "[u]nlike the situation in *Watts*" where a free speech issue was addressed. The court applied only an objective standard to the intent element in *Roy*. In *United States v. Gordon*, 974 F.2d 1110, 1113 (9th Cir. 1992) the same circuit applied both subjective and objective standards to the intent element in 18 U.S.C. § 879 for threats against former President Ronald Reagan. *Id.*, at 1117 ("In addition, because Congress 'construe[d] "knowingly and willfully" [in section 879] as requiring proof of a subjective intent to make a threat,' 128 Cong.Rec. 21,218 (1982), the jury must find that Mr. Gordon intended the statements to be taken as threats.") (brackets in original). Despite the different analyses in *Roy* and *Gordon*, both §§ 871(a) and 879(a)(1) require that threats be made "knowingly" and "willfully." The Supreme Court decision in *Black* cured the confusion in the Ninth Circuit:

> Because *Black* requires that the subjective test must be met under the First Amendment whether or not the statute requires it, an objective test is not an alternative but an additional requirement over-and-above the subjective standard. To be clear, we are not suggesting that an objective determination does not provide a worthwhile test or that statutes criminalizing threats against the President or others should require only a subjective test. We merely point out a paradox in our treatment of threat statutes now that *Black* requires proof of intent under the First Amendment in such cases.

determinative factor separating protected expression from unprotected criminal behavior" binding on the Ninth Circuit even though in tension with prior cases. *Id.*, at 1118. In applying the objective standard to Bagdasarian's statements the court found that neither statement conveyed either an explicit or implicit threat. The court analyzed the statements:

> Neither statement constitutes a threat in the ordinary meaning of the word: "an expression of an intention to inflict ... injury ... on another." *Webster's Third New International Dictionary* 2382 (1976). The "Obama fk the niggar" statement is a prediction that Obama "will have a 50 cal in the head soon." It conveys no explicit or implicit threat on the part of Bagdasarian that he himself will kill or injure Obama. Nor does the second statement impart a threat. "[S]hoot the nig" is instead an imperative intended to encourage others to take violent action, if not simply an expression of rage or frustration. The threat statute, however, does not criminalize predictions or exhortations to others to injure or kill the President. It is difficult to see how a rational trier of fact could reasonably have found that either statement, on its face or taken in context, expresses a threat against Obama by Bagdasarian.

Id., at 1119. Only three or four members of the board discussion group indicated that they planned to contact authorities after reading the Bagdasarian's posts and only one reader actually did contact the authorities. The court considered this probative to the objective intent standard: "It is certainly more significant that among the numerous persons who read Bagdasarian's messages, the record reveals only one who was significantly disturbed to actually notify the authorities." *Id.*, at 1121. "Predictive"[11] and "exhortatory"[12] statements are not true threats. *Id.*, at

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Bagdasarian, 652 F.3d at 1117 n. 14.

[11] *See Bagdasarian*, 652 F.3d at 1122 ("[T]he prediction that Obama 'will have a 50 cal in the head soon' is not a threat on its face because it does not convey the notion that Bagdasarian himself had plans to fulfill the prediction that Obame would be killed, either now or in the future.").

[12] *See N. A. A. C. P. v. Claiborne Hardware Co.*, 458 U.S. 886, 927-28 (1982) ("This Court has made clear, however, that mere *advocacy* of the use of force or violence does not remove speech from the protection of the First Amendment. In *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430, we reversed the conviction of a Ku Klux Klan leader for threatening 'revengeance' if the 'suppression' of the white race continued; we relied on 'the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.'") (emphasis in original). In *Claiborne Hardware*, civil rights activist Charles Evers addressed a crowd on April 19, 1969, during a boycott in

1122. The statements failed the subjective intent test because the government failed to show that Bagdasarian "made the statements intending that they be taken as a threat." *Id.*[13] Judge Reinhardt interpreted Bagdasarian's statements as direct encouragements to violence but "nevertheless" held that neither constitutes a threat." *Id.*, at 1116.

B. *United States v. Jeffries* and the Statutory Interpretation Analysis

In *United States v. Jeffries*, 692 F.3d 473 (6th Cir. 2012), Jeffries recorded a video of his performance of a song that he had written about his daughter which expressed his feelings about an upcoming child custody hearing and the judge who had ordered the hearing. The song included a threat to kill the judge if he doesn't "do the right thing" at the hearing. *Id.*, at 475. Five days prior to the hearing Jeffries posted the video on YouTube and shared it with friends, family, and a few others. Jeffries posted a link to the hearing on his Facebook page and sent links to the media and local politicians.[14] Jeffries was arrested for violation of 18 U.S.C. § 875(c) for communicating a threat to injure the judge. The Sixth Circuit considered the jury instruction given by the district court and the proper elements of § 875(c). Jeffries claimed that the jury should have been instructed to convict only if it found that Jeffries had "subjectively meant to threaten the judge." *Id.*, at 477. The district court rejected Jeffries' request based on circuit court

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Mississippi. *See* Rothman ("Thus, political speech may be useful shorthand to suggest that in context a statement was mere rhetoric for persuasive rather than threatening purposes. This is true because the speaker is often speaking to supporters and may be exaggerating for effect as was the case in both *Watts* and *Claiborne*."). Rothman at 23 of 59.

[13] *See United States v. White*, 670 F.3d 498, 510 (4th Cir. 2012) ("Only the Ninth Circuit's decision in *Cassel*, 408 F.3d at 631–32, seems to have adopted a distinct subjective test in light of *Black*, holding that after *Black* a subjective intent to threaten is a necessary part of the definition of a true threat. But even *Cassel* stands in doubt, as a later Ninth Circuit opinion applied the objective test. *See United States v. Romo*, 413 F.3d 1044 (9th Cir.2005). Moreover, subsequent Ninth Circuit opinions have recognized the inconsistency between *Cassel* and *Romo*. *See Fogel v. Collins*, 531 F.3d 824, 831 (9th Cir.2008); *United States v. Stewart*, 420 F.3d 1007, 1017–18 (9th Cir.2005). Most recently, the Ninth Circuit now appears to be retreating from *Romo*. *See United States v. Bagdasarian*, 652 F.3d 1113, 1117 & n. 14 (9th Cir.2011).").

[14] Circuit Judge Sutton recounts the entirety of the lyrics in his opinion.

precedent and affirmed his conviction. Judge Sutton, writing for the panel on appeal, reflected on the district court's reliance on Sixth Circuit precedent:

> That would be the end of it but for one thing: *Virginia v. Black*, 538 U.S. 343, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). As Jeffries reads the decision, it invalidates all communicative-threat laws under the First Amendment unless they contain a subjective-threat element. The argument is not frivolous, as one court (the Ninth) has accepted it. But the position reads too much into *Black*.

Id., at 479. In a separate opinion, Judge Sutton questioned Sixth Circuit precedent interpreting the intent element of § 875(c):

> The First Amendment, as construed by *Virginia v. Black*, 538 U.S. 343, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003), does not require a different interpretation. I write separately because I wonder whether our initial decisions in this area (and those of other courts) have read the statute the right way from the outset.

Id., at 483. Judge Sutton reviewed the common definitions of the noun "threat" and the verb "threaten" and concluded that the definitions "show that subjective intent is part and parcel of the meaning of a communicated 'threat' to injure another." *Id.*, at 484. His opinion cites *Morissette v. United States*, 342 U.S. 246, 250, 72 S.Ct. 240, 96 L.Ed. 288 (1952) and *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 73, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994) for the principal that "[c]ourts presume that intent is the required mens rea in criminal laws." *Id.* The Supreme Court referenced the same two cases in *Elonis* and in fact cites to Judge Sutton's dubitante opinion in *Jeffries*:

> According to Elonis, every definition of "threat" or "threaten" conveys the notion of an intent to inflict harm. Brief for Petitioner 23. See *United States v. Jeffries*, 692 F.3d 473, 483 (C.A.6 2012) (Sutton, J., *dubitante*). *E.g.*, 11 Oxford English Dictionary 353 (1933) ("to declare (usually conditionally) one's intention of inflicting injury upon"); Webster's New International Dictionary 2633 (2d ed. 1954) ("*Law*, specif., an expression of an intention to inflict loss or harm on another by illegal means"); Black's Law

> Dictionary 1519 (8th ed. 2004) ("A communicated intent to inflict harm or loss on another").

Elonis, 135 S.Ct. at 2008. The Supreme Court viewed these definitions as relevant only "to what the statement conveys-not to the mental state of the author." *Id.* In declining to accept either the government's position that § 875 did not require a mental state element or Elonis's position in full, the Supreme Court began its analysis by stating:

> When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute only that *mens rea* which is necessary to separate wrongful conduct from otherwise innocent conduct. ... The mental state requirement must therefore apply to the fact that the communication contains a threat. ... Elonis's conviction, however, was premised solely on how his posts would be understood by a reasonable person.

Id., at 2010. In the instant case of *State v. Taupier* the matter of law left unresolved is whether a mental state of recklessness is sufficient to separate wrongful conduct from conduct protected under the First Amendment. While the Supreme Court found no dispute that "mental state requirement in Section 875(c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be a threat[,]" it did not address whether recklessness would be sufficient to separate wrongful conduct from innocent conduct. Innocent conduct includes conduct protected by the First Amendment. Whether or not conduct is protected by the First Amendment is a matter of law for a court, not a fact-finder.

C. Factors for Consideration in True Threat Analyses or Distinguishing a True Threat from Protected Speech

Prior to the June 1, 2015, decision in *Elonis* and despite the signal given by the Supreme Court when it granted certiorari and added an issue not framed by First Amendment considerations there was anticipation that *Elonis* would clarify *Black*'s definition of a true threat as a statement through which the speaker 'means to communicate a serious expression of intent

to harm another.'" Fuller at 53. "In the years since the *Watts* decision in 1969, the federal circuits have encountered significant challenges in applying the abstract true threats doctrine to nuanced factual circumstances." Fuller at 41. Defendants who "target a specific audience on the Internet by name and personal information have enjoyed greater protection than defendants who happen to frighten anonymous and untargeted readers of the defendants' social media accounts. Fuller at 62.

1. United States v. Watts

In *United States v. Watts*, 394 U.S. 705 (1969) a district court jury convicted Watts of threatening the President in violation of 18 U.S.C. § 871(a). Watts, who was 18 years old when the incident occurred, had attended a public rally and gathering in Washington, D.C. to discuss police brutality. A witness testified that Watts told members of a discussion group at the rally:

> They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J. They are not going to make me kill my black brothers.

Id., at 706. Watts moved for acquittal at the conclusion of the government's case arguing that the statement was made at a political rally, the crowd had laughed at the statement, and the statement was conditioned on Watts' induction into the military which Watts had said would never occur. *Id.*, at 707. The Supreme Court immediately addressed First Amendment implications of the prosecution:

> Nevertheless, a statute such as this one, which makes criminal a form of pure speech, must be interpreted with the commands of the First Amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech.

Id. The Supreme Court reversed the conviction confirming "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wideopen, and that it

may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id.*, at 708. Watts' only offense was "a kind of very crude offensive method of stating a political opposition to the President[]" when "[t]aken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners" the Supreme Court, did not see how it could be interpreted otherwise." *Id.*

2. United States v. Alkhabaz

In *United States v. Alkhabaz*, 104 F.3d 1492 (6th Cir. 1997), Alkhabaz, known as Jake Baker at the time of the incident and arrest, exchanged email communications with another individual, Arthur Gonda, about violent fantasies directed toward women and young girls. Baker was indicted for violations of 18 U.S.C. § 875(c), which prohibits interstate communications containing threats to kidnap or injure another person. *Alkhabaz*, 104 F.3d at 1493. The district court quashed the indictment "reasoning that the e-mail messages sent and received by Baker and Gonda did not constitute "true threats" under the First Amendment and, as such, were protected speech." *Id.* The Sixth Circuit affirmed the district court holding that as a matter of law the indictment failed and therefore did not reach the First Amendment issue.

3. United States v. Patillo

In *United States v. Patillo*, 438 F.2d 13 (4th Cir. 1971), an en banc court considered a heightened standard of proof when the target of the threat is unlikely to receive the threat. The court held that "where, as in Patillo's case, a true threat against the person of the President is uttered without communication to the President intended, the threat can form a basis for conviction under the terms of Section 871(a) only if made with a present intention to do injury to the President." *Id.*, at 15.

In *Patillo*, a Norfolk Naval Shipyard security guard made statements on two occasions to his co-worker about President Nixon that were recounted at trial as: (1) "I'm going to kill President Nixon, and I'm going to Washington to do it." (2) "I will take care of him personally." (3) " ... he would gladly give up his life doing it." (4) "Getting close to the President would present no problem because 'he (Patillo) did not need to get close to him (the President) to do it.'" *Id.*, at 295. The court held:

> We hold that where, as in Patillo's case, a true threat against the person of the President is uttered without communication to the President intended, the threat can form a basis for conviction under the terms of Section 871(a) only if made with a present intention *298 to do injury to the President.

Id., at 297-98.

A California appellate court has adopted a similar balancing test that considers whether a speaker has a present intention to carry out a threat when the communication is made under circumstances when the target is unlikely to receive the threat. In *In re Ryan D.*, 100 Cal. App. 4th 854, 861 (2002), the court recognized that the statute at issue did not require that a threat be personally communicated to the target by the individual who made the threat. The court emphasized, nevertheless, "that the statute was not enacted to punish emotional outbursts, it targets only those who try to instill fear in others." *Id.*

> In other words, section 422 does not punish such things as mere angry utterances or ranting soliloquies, however violent. Accordingly, where the accused did not personally communicate a threat to the victim, it must be shown that he specifically intended that the threat be conveyed to the victim.

Id. See State v. McWilliams, No. 2011-CA-00051, 2012 WL554435, §4 (Ohio Ct. App. Feb. 13, 2012) ("The Court of Appeals ... held that to sustain an aggravated menacing conviction, a threat to cause harm need not be made directly to the intended victim, but may be sufficient of made to

a third-party to whom defendant knew or reasonably should have known would convey the threat to intended victim."); *People v. Chase*, No. 09CA1908, 2013 WL 979519, §13 (Colo. App. Mar. 14, 2013) ("Contrary to Chase's argument that the emails cannot constitute true threats because most of them were not directed at a particular individual, a true threat can be directed to a group of individuals. Further, all of the emails were sent by Chase to the named victims, and he knew them personally, as well as where they lived." "[A] factor to be considered in identifying a true threat is to whom the statement is communicated."); *People v. Felix*, 92 Cal. App. 4th 905, 908 (2001) ("In a session with his psychotherapist, a patient makes threatening statements about his ex-girlfriend. Penal Code section 422 makes it a crime to threaten another with great bodily injury or death even when that threat is made to a third party with the intent that it be conveyed to the victim. Here we conclude, among other things, that the patient's statements do not constitute a violation of section 422 even though the third party psychotherapist has a duty to warn the intended victim. It must be shown that the patient intended the threatening remarks to be communicated to the victim.").

4. United States v. Fulmer

In *United States v. Fulmer*, 108 F.3d 1486 (1st Cir. 1997), Fulmer was alleged to have threatened a FBI agent in violation of 18 U.S.C. § 115(a)(1)(B) after the agent informed Fulmer that the United States Attorney was unwilling to prosecute Fulmer's complaint against his father-in-law and brother for failing to disclose bankruptcy assets. Fulmer left a voicemail for the agent stating:

> Hi Dick, Kevan Fulmer. Hope things are well, hope you had an enjoyable Easter and all the other holidays since I've spoken with you last. I want you to look something up. It's known as misprision. Just think of it in terms of misprision of a felony. Hope all is well. The silver bullets are coming. I'll talk to you. Enjoy the

> intriguing unraveling of what I said to you. Talk to you, Dick. It's been a pleasure. Take care.

Fulmer, 108 F.3d at 1490. The agent testified that he was "shocked" by the message and found it "chilling" and "scary." *Id.* Fulmer presented two witnesses who testified that Fulmer had used the term "silver bullets" to refer to information about illegal transactions. Fulmer argued that "the appropriate standard for determining a true threat is whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." *Id.*, at 1490-91 (internal quotations omitted). The government argued that "the proper standard is whether an ordinary, reasonable recipient who is familiar with the context of the [statement] would interpret it as a threat of injury." *Id.* (internal quotations omitted). The court, adopting Fulmer's argument, held that "the appropriate standard under which a defendant may be convicted for making a threat is whether he should have reasonably foreseen that the statement he uttered would be taken as a threat by those to whom it is made." *Id.*, at 1491-92.

> This standard not only takes into account the factual context in which the statement was made, but also better avoids the perils that inhere in the "reasonable-recipient standard," namely that the jury will consider the unique sensitivity of the recipient. We find it particularly untenable that, were we to apply a standard guided from the perspective of the recipient, a defendant may be convicted for making an ambiguous statement that the recipient may find threatening because of events not within the knowledge of the defendant. Therefore, we follow the approach of several circuits by holding that the appropriate focus is on what the defendant reasonably should have foreseen.

Id.

5. United States v. Kelner

In *United States v. Kelner*, 534 F.2d 1020, 1021 (2d Cir. 1976), Kelner held a news conference on November 11, 1974, responsive to a United Nations visit by Yasser Arafat that

same day. The news conference was telecast by WPIX-TV from New York City with a 50 mile range into New Jersey and Connecticut. Kelner was dressed in military fatigues armed with a .38 caliber handgun when he gave a statement and answered questions, including:

> We have people who have been trained and who are out now and who intend to make sure that Arafat and his lieutenants do not leave this country alive . . .. We are planning to assassinate Mr. Arafat . . .. Everything is planned in detail.

Kelner, at 1025. The *Kelner* court deemed "the question of the application of the First Amendment to the statute" at issue in the case as "properly for the court rather than the jury under *Dennis v. United States*, 341 U.S. 494, 511-15, 71 S.Ct. 857, 868-870, 95 L.Ed. 1137, 1153-1155 (1951). *See Kelner*, 534 F.2d at 1028, n. 10 ("In referring to *Dennis*, as an inferior court we must accept its formulation of the respective roles of judge and jury in free speech cases[.]") (internal citations omitted). In affirming Kelner's conviction the Second Circuit found "it cannot be said as a matter of law that appellant was stating only ideas." *Id.*, at 1025.

IV. CONCLUSION

For the foregoing reasons and arguments of law, Taupier respectfully asks the Court to dismiss the Amended Information in its entirety.

EDWARD F. TAUPIER

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His Attorney

CERTIFICATION OF SERVICE

Pursuant to Practice Book § 10-14, I hereby certify that a copy of the above was hand-delivered on June 23, 2015, to counsel below:

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Rachel M. Baird, Attorney
Commissioner of the Superior Court

CR14-0675616 -T	:	SUPERIOR COURT
STATE	:	JUDICIAL DISTRICT OF MIDDLETOWN
V.	:	July 7, 2015

EDWARD TAUPIER

STATE'S OBJECTION TO RENEWED MOTION TO DISMISS

The State objects to the "Defendant's Renewed Motion to Dismiss Amended Information" dated June 22, 2015. In support of the objection, the State submits the accompanying memorandum of law.

THE STATE OF CONNECTICUT

By: Brenda Hans

BRENDA HANS, Assistant State's Attorney, Juris # 420294
State's Attorney's Office
1 Court Street
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7/7/2015

ORDER

The State' objection to the renewed motion to dismiss the amended information, having been reviewed by the Court, is hereby ORDERED:

_____ SUSTAINED _____ OVERRULED

OCT 02 2015
See MEMORANDUM OF DECISION re: Δ's RENEWED MOTION TO DISMISS filed by Court (Gold, J.) and dated 10/2/2015

CERTIFICATION

I hereby certify that a copy of the foregoing was emailed to counsel for the defendant, Rachel Baird, Esq., 8 Church Street, Suite B Torrington, CT 06790 rbaird@rachelbairdlaw.com on July 7, 2015.

Brenda Hans

BRENDA HANS, Assistant State's Attorney

CR14-0675616 -T	:	SUPERIOR COURT
STATE	:	JUDICIAL DISTRICT OF MIDDLETOWN
V.	:	July 7, 2015
EDWARD TAUPIER		

STATE'S MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO RENEWED MOTION TO DISMISS

The State submits this memorandum in support of its objection to the defendant's renewed motion to dismiss the amended information dated June 22, 2015. The defendant contends that our state's threatening statute, which allows a "reckless" state of mind, is unconstitutional under the First Amendment's free speech provision within the United States Constitution. Our state threatening statute is similar to at least a dozen other states, all of which contain a "reckless" mental state. The argument that a "reckless" mental state for threatening crimes contravenes the First Amendment is without merit for all of the reasons outlined below.

I. ARGUMENT

In its brief, the defense primarily relies upon the recent United States Supreme Court case of *Elonis v. United States*, to support its assertion that our state threatening statute is unconstitutional for having a "reckless" *mens rea*[1]. The State submits that the defendant's reliance upon *Elonis* as well as the other federal cases is misplaced. The

[1] *Mens rea* definition: " A guilty mind; a guilty or wrongful purpose; a criminal intent" **Black's Law Dictionary p. 889, Fifth Edition**

Elonis case examined a jury instruction concerning the federal threatening statute of 18 U. S. C. § 875(c). Under 18 U.S.C. § 875(c), any person who "transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another" commits a felony federal crime punishable for up to five years imprisonment. *Elonis* at p. 2008. Under the federal statute, unlike our state threatening statute, there is no mental state outlined in the text. *Elonis* at p. 2009 ("statute does not specify any required mental state").

In *Elonis*, the defendant was convicted after trial for making various threats against his estranged wife, police officers, an FBI agent, and a kindergarten class. *Id.* The jury was instructed as follows:

> A statement is a true threat when a defendant intentionally makes a statement in context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily injury or take the life of an individual.

The defendant challenged the instruction on the basis that "the jury should have been required to find that he intended his [Facebook] posts to be threats." *Id.* at 2007. The Supreme Court reversed the Third Circuit Court of Appeals holding, which was "that the intent required by Section 875(c) is only the intent to communicate words that the defendant understands, and that a reasonable person would view as a threat." *Id.* at 2007. The Supreme Court noted that " . . . Elonis's conviction cannot stand. The jury was instructed that the Government need prove only that a reasonable person would regard Elonis's communications as threats, and that was error. Federal criminal liability generally does not turn solely on the results of the act without considering the defendant's mental state" *Id.* at 2012. The Supreme Court stated that "negligence is

not sufficient to support a conviction under Section 875(c)." *Id.* at 2013.

It is crucial to point out that the Supreme Court expressly declined to address the issue of whether or not "recklessness" is sufficient for criminal liability under Section 875(c). The Court stated as follows:

> There was and is no circuit conflict over the question Justice Alito[2] and Justice Thomas would have us decide-whether recklessness suffices for liability under Section 875(c). No court of appeals has even addressed that question. We think that is more than sufficient 'justification' . . . for us to decline to be the first appellate tribunal to do so . . .We may be 'capable of deciding the recklessness issue . . . but following our usual practice of awaiting a decision below and hearing from the parties would help ensure that we decide it correctly.

Id. at 2013.

It is also important to note that the *Elonis* Court specifically did not address any First Amendment issues in its decision. The Court opined, "[g]iven the disposition here, it is unnecessary to consider any First Amendment issues." *Id.* at 2004.

The defense cites the Ninth Circuit case of *United States v. Bagdasarian*, 652 F. 3d 113 (9th Cir. 2011) to support the premise that the defendant's objective intent, not a reckless mental state is required for a true threat. Unfortunately for the defense, like *Elonis*, the *Bagdasarian* case is a narrow federal statutory interpretation for threats made against the president. Similar to *Elonis,* the *Bagdasarian* case doesn't address the issue of reckless behavior in the spectrum of various types of mental state. Accordingly, this case cannot assist this court in determining the validity of the reckless component in Connecticut's threatening statute.

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[2] In Justice Alito's concurring/dissenting opinion, he **unequivocally** states that a "reckless" state of mind is "enough" under Section 875(c). "There can be no real dispute that recklessness regarding a risk of serious harm is wrongful conduct. In a wide variety of contexts, we have described reckless conduct as morally culpable." *Id.* at 2014-15.

While there is no controlling federal authority for the proposition that a "reckless" mental state suffices for a threatening crime, numerous other states, in addition to the great state of Connecticut, have included the "reckless" state of mind in their threatening statutes. See Attachments 1-13.

In *State v. Bjergum*, 771 N. W. 2d 53 (2009), the Minnesota appellate court considered whether the defendant, who threatened to bring guns to his former workplace and open fire, "was entitled to a jury instruction relating to voluntary intoxication when his criminal charge for making a touristic threat was premised on his recklessness." *Id.* at 54. The court held that the "voluntary-intoxication statute regards only specific-intent crimes and that the crime of recklessly making terroristic threats is not a specific-intent crime." *Id.* The court noted that, "[b]ecause threats are context specific, a person who may lack a specific intent to threaten or terrorize may nevertheless utter an objectively threatening statement recklessly . . . "*Bjergum* at page 5 of the opinion, paragraph 8.

Like *Bjergum*, our Connecticut courts have recognized that criminal liability can attach to threats made recklessly. In the Connecticut Supreme Court case of State v. Krijger, 313 Conn. 434, 435-36 (2014), the jury convicted the defendant of threatening in the second degree under General Statutes § 53a-62(a)(3), which provides in pertinent part as follows: "[a] person is guilty of threatening in the second degree when: (3) such person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror." While the Connecticut Supreme Court examined the criteria for determine whether or not statements constitute a "true threat," it was silent on the issue of whether or not reckless conduct is sufficient. In Krijger, the Court overturned

the appellate court's finding that statements a defendant made to a town attorney because he was angry for being fined constituted a true threat. The Krijger Court only addresses the first element for a finding of guilty of threatening, namely, whether or not the words constitute a true threat. The Court presumes (as it should) that the statute is constitutional and never addresses the second element of the crime, which is whether or not the defendant was reckless in making the statements. "It is important at the outset, to recognize that the challenge of any state statute on constitutional grounds imposes a difficult burden on the challenger. We have consistently held that every statute is presumed to be constitutional and have required invalidity to be established beyond a reasonable doubt." (citations omitted) *Heslin v. Connecticut Law Clinic of Trantolo and Trantolo*, 190 Conn. 510, 521-23 (1983).

In *Lansdell v. State*, 25 So. 3d 1169, 1178-79 (2007), writ denied *sub nom Ex parte Lansdell*, 25 So. 3d 1183 (2009), the court considered the issue of whether the trial court erred in" submitting the question of Landsdell's [the defendant's] guilt to the jury." Landsdell made a threat to blow up the victim's house. The court stated, "[t]hus, the State was required to prove that Lansdell acted intentionally or *recklessly* to terrorize Jones by threatening to "blow up" Jones's house . . . . " (Emphasis added) *Id.* at 1178.

In *State v. Mayo*, 237 Neb. 128, (1991), the Nebraska Supreme Court held that the phrase "reckless disregard of the risk of causing terror or evacuation" in the threatening statute was not unconstitutionally vague." The undersigned prosecutor has not uncovered any cases in its research that show that any of the above state court decisions regarding reckless threats have been granted a petition for certiorari to the

United States Supreme Court. As such, the State would urge this court to follow our threatening statute as mirrored by many other states and deny the defense motion to dismiss the Amended Information. The statute in no way violates free speech and properly criminalizes threats in reckless disregard of the risk of causing terror. We all understand that someone can't recklessly scream "fire" in a crowded theater if there is no fire just to create chaos. "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic." *Schenck v. United States*, 249 U.S. 47, 52, 39 S. Ct 247, 63 L. Ed. 470 (1919).

II. CONCLUSION

The defendant's renewed motion to dismiss the amended information should be denied. Neither federal case law nor state case law support the premise that a threat requires specific intent as opposed to a reckless state of mind.

THE STATE OF CONNECTICUT

By: Brenda Hans

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ORDER

The State' objection to the motion to dismiss, having been reviewed by the Court, is hereby ORDERED:

_____ SUSTAINED _____ OVERRULED

CERTIFICATION

I hereby certify that a copy of the foregoing was emailed to counsel for the defendant, Rachel Baird, Esq., 8 Church Street, Suite B Torrington, CT 06790 rbaird@rachelbairdlaw.com on July 7, 2015.

Brenda Hans

BRENDA HANS, Assistant State's Attorney

WestlawNext

ATTACHMENT 1- ALABAMA

§ 13A-10-15. Terrorist threats.
Code of Alabama Title 13A. Criminal Code (Approx. 2 pages)

NOTES OF DECISIONS (10)

Appeal and review
Constitutionality
Construction and application
Disruption of school activities
Evidence sufficiency
Indictment and information
Lesser included offenses
Particular circumstances
Practice and procedure
Sufficiency of evidence

Code of Alabama
Title 13a. Criminal Code. (Refs & Annos)
Chapter 10. Offenses Against Public Administration. (Refs & Annos)
Article 1. Obstruction of Public Administration.

Ala.Code 1975 § 13A-10-15

§ 13A-10-15. Terrorist threats.

Currentness

(a) A person commits the crime of making a terrorist threat when he or she threatens by any means to commit any crime of violence or to damage any property by doing any of the following:

(1) Intentionally or recklessly:

a. Terrorizing another person.

b. Causing the disruption of school activities.

c. Causing the evacuation of a building, place of assembly, or facility of public transportation, or other serious public inconvenience.

(2) With the intent to retaliate against any person who:

a. Attends a judicial or administrative proceeding as a witness or party or produces records, documents, or other objects in a judicial proceeding.

b. Provides to a law enforcement officer, adult or juvenile probation officer, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state, of the United States, or a violation of conditions of bail, pretrial release, probation, or parole.

(b) The crime of making a terrorist threat is a Class C felony.

Credits
(Act 2000-807, p. 1919, § 1.)

Notes of Decisions containing your search terms (0) View all 10

Ala. Code 1975 § 13A-10-15, AL ST § 13A-10-15
Current through Act 2015-449 of the 2015 Regular Session.

End of Document

ATTACHMENT 2- ARIZONA

§ 13-1202. Threatening or intimidating; classification
Arizona Revised Statutes Annotated Title 13. Criminal Code Effective: September 19, 2007 (Approx. 2 pages)

NOTES OF DECISIONS (17)

Attempted offense
Elements of offense
Evidence
Included offenses
Sentence and punishment

Arizona Revised Statutes Annotated
Title 13. Criminal Code (Refs & Annos)
Chapter 12. Assault and Related Offenses (Refs & Annos)

Effective: September 19, 2007

A.R.S. § 13-1202

§ 13-1202. Threatening or intimidating; classification

Currentness

A. A person commits threatening or intimidating if the person threatens or intimidates by word or conduct:

1. To cause physical injury to another person or serious damage to the property of another; or

2. To cause, or in reckless disregard to causing, serious public inconvenience including, but not limited to, evacuation of a building, place of assembly or transportation facility; or

3. To cause physical injury to another person or damage to the property of another in order to promote, further or assist in the interests of or to cause, induce or solicit another person to participate in a criminal street gang, a criminal syndicate or a racketeering enterprise

B. Threatening or intimidating pursuant to subsection A, paragraph 1 or 2 is a class 1 misdemeanor, except that it is a class 6 felony if:

1. The offense is committed in retaliation for a victim's either reporting criminal activity or being involved in an organization, other than a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity.

2. The person is a criminal street gang member.

C. Threatening or intimidating pursuant to subsection A, paragraph 3 is a class 3 felony.

Credits

Added by Laws 1977, Ch. 142, § 61, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 128, eff. Oct. 1, 1978; Laws 1990, Ch. 366, § 1; Laws 1994, Ch. 200, § 11, eff. April 19, 1994; Laws 2003, Ch. 225, § 2; Laws 2007, Ch. 287, § 3.

<Title 13, the revised Criminal Code, consisting of Chapters 1 to 33, 35, 35.1, and 36 to 38, was adopted by Laws 1977, Ch. 142, §§ 1 to 178, effective October 1, 1978, Laws 1978, Ch. 200, § 3, effective October 1, 1978, and Laws 1978, Ch. 215, § 3, effective October 1, 1978.>

Notes of Decisions containing your search terms (0)

View all 17

A. R. S. § 13-1202, AZ ST § 13-1202
Current through the First Regular Session of the Fifty-Second Legislature

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ATTACHMENT 3- DELAWARE

§ 621. Terroristic threatening
West's Delaware Code Annotated Title 11 Crimes and Criminal Procedure Effective: April 29, 2015 *(Approx. 2 pages)*

NOTES OF DECISIONS (28)

Defenses
Elements of offenses
Evidence
Guilty plea
Indictment and information
Jurisdiction
Removal to federal court

West's Delaware Code Annotated
Title 11. Crimes and Criminal Procedure
Part I. Delaware Criminal Code
Chapter 5. Specific Offenses
Subchapter II. Offenses Against the Person
Subpart A. Assaults and Related Offenses

Effective: April 29, 2015

11 Del.C. § 621

§ 621. Terroristic threatening

Currentness

(a) A person is guilty of terroristic threatening when that person commits any of the following:

(1) The person threatens to commit any crime likely to result in death or in serious injury to person or property;

(2) The person makes a false statement or statements:

a. Knowing that the statement or statements are likely to cause evacuation of a building, place of assembly, or facility of public transportation;

b. Knowing that the statement or statements are likely to cause serious inconvenience; or

c. In reckless disregard of the risk of causing terror or serious inconvenience; or

(3) The person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

(b) Any violation of paragraph (a)(1) of this section shall be a class A misdemeanor except where the victim is a person 62 years of age or older, in which case any violation of paragraph (a)(1) of this section shall be a class G felony. Any violation of paragraph (a)(2)a. of this section shall be a class E felony. Any violation of paragraph (a)(2)b. or c. of this section shall be a class G felony unless the place at which the risk of serious inconvenience or terror is created is a place that has the purpose, in whole or in part, of acting as a daycare facility, nursery or preschool, kindergarten, elementary, secondary or vocational-technical school, or any long-term care facility in which elderly persons are housed, in which case it shall be a class F felony. Any violation of paragraph (a)(3) of this section shall be a class F felony. Notwithstanding any provision of this subsection to the contrary, a first offense of paragraph (a)(2) of this section by a person 17 years old or younger shall be a class A misdemeanor.

(c) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of paragraph (a)(2) of this section shall:

(1) Pay a fine of not less than $1,000 nor more than $2,500, which fine cannot be suspended; and

(2) Be sentenced to perform a minimum of 100 hours of community service.

(d) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of paragraph (a)(3) of this section shall pay a fine of not less than $2,000, which fine cannot be suspended

Credits

58 Laws 1972, ch. 497, § 1; 67 Laws 1989, ch. 130, § 8; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 70 Laws 1996, ch. 330, § 1, eff. May 8, 1996; 73 Laws 2001, ch. 126, §§ 5, 6, eff. July 9, 2001; 73 Laws 2002, ch. 255, § 1, eff. May 9, 2002; 80 Laws 2015, ch. 14, § 1, eff. April 29, 2015.

ATTACHMENT 4- GEORGIA

§ 16-11-37. Terroristic threats and acts
West's Code of Georgia Annotated Title 16. Crimes and Offenses Effective: July 1, 2015 *(Approx. 2 pages)*

West's Code of Georgia Annotated
Title 16. Crimes and Offenses (Refs & Annos)
Chapter 11. Offenses Against Public Order and Safety (Refs & Annos)
Article 2. Offenses Against Public Order

Effective: July 1, 2015

Ga. Code Ann., § 16-11-37

§ 16-11-37. Terroristic threats and acts

Currentness

(a) A person commits the offense of a terroristic threat when he or she threatens to commit any crime of violence, to release any hazardous substance, as such term is defined in Code Section 12-8-92, or to burn or damage property with the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience. No person shall be convicted under this subsection on the uncorroborated testimony of the party to whom the threat is communicated.

(b) A person commits the offense of a terroristic act when:

(1) He or she uses a burning or flaming cross or other burning or flaming symbol or flambeau with the intent to terrorize another or another's household;

(2) While not in the commission of a lawful act, he or she shoots at or throws an object at a conveyance which is being operated or which is occupied by passengers; or

(3) He or she releases any hazardous substance or any simulated hazardous substance under the guise of a hazardous substance for the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.

(c) A person convicted of the offense of a terroristic threat shall be punished by a fine of not more than $1,000.00 or by imprisonment for not less than one nor more than five years, or both. A person convicted of the offense of a terroristic act shall be punished by a fine of not more than $5,000.00 or by imprisonment for not less than one nor more than ten years, or both; provided, however, that if any person suffers a serious physical injury as a direct result of an act giving rise to a conviction under this Code section, the person so convicted shall be punished by a fine of not more than $250,000.00 or imprisonment for not less than five nor more than 40 years, or both.

(d) A person who commits or attempts to commit a terroristic threat or act with the intent to retaliate against any person for:

(1) Attending a judicial or administrative proceeding as a witness, attorney, judge, clerk of court, deputy clerk of court, court reporter, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, or party or producing any record, document, or other object in a judicial or official proceeding; or

(2) Providing to a law enforcement officer, community supervision officer, county or Department of Juvenile Justice juvenile probation officer, probation officer serving pursuant to Article 6 of Chapter 8 of Title 42, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state or of the United States or a violation of conditions of bail, pretrial release, probation, or parole

shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall be punished, for a terroristic threat, by imprisonment for not less than five nor more than ten

NOTES OF DECISIONS (290)

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ATTACHMENT 5- HAWAII

§ 707-716. Terroristic threatening in the first degree
West's Hawai'i Revised Statutes Annotated Division 5. Crimes and Criminal Proceedings (Approx. 2 pages)

West's Hawai'i Revised Statutes Annotated
Division 5. Crimes and Criminal Proceedings
Title 37. Hawaii Penal Code
Chapter 707. Offenses Against the Person (Refs & Annos)
Part III. Criminal Assaults and Related Offenses

HRS § 707-716

§ 707-716. Terroristic threatening in the first degree

Currentness

(1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

(a) By threatening another person on more than one occasion for the same or a similar purpose;

(b) By threats made in a common scheme against different persons;

(c) Against a public servant arising out of the performance of the public servant's official duties. For the purposes of this paragraph, "public servant" includes but is not limited to an educational worker. "Educational worker" has the same meaning as defined in section 707-711.

(d) Against any emergency medical services provider who is engaged in the performance of duty. For purposes of this paragraph, "emergency medical services provider" means emergency medical services personnel, as defined in section 321-222, and physicians, physician's assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital;

(e) With the use of a dangerous instrument or a simulated firearm. For purposes of this section, "simulated firearm" means any object that:

(i) Substantially resembles a firearm;

(ii) Can reasonably be perceived to be a firearm; or

(iii) Is used or brandished as a firearm; or

(f) By threatening a person who:

(i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or

(ii) Is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order.

(2) Terroristic threatening in the first degree is a class C felony.

Credits

Laws 1979, ch. 184, § 1(2); Laws 1984, ch. 90, § 1; Laws 1989, ch. 131, § 1; Laws 2006, ch. 230, § 31; Laws 2007, ch. 79, § 2, eff. May 21, 2007; Laws 2010, ch. 146, § 2, eff. May 27, 2010; Laws 2011, ch. 63, § 4, eff. July 1, 2011; Laws 2013, ch. 255, § 1, eff. July 2, 2013.

Notes of Decisions (73)

H R S § 707-716, HI ST § 707-716
Current with provisions in effect June 29, 2015, through Act 139 of the 2015 Regular Session, pending classification of undesignated material and text revision by the revisor of statutes. For research tips relating to newly added undesignated material, see scope.

NOTES OF DECISIONS (73)

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ATTACHMENT 6- KANSAS

21-5415. Criminal threat; aggravated criminal threat
West's Kansas Statutes Annotated Chapter 21. Crimes and Punishments (Approx. 2 pages)

West's Kansas Statutes Annotated
Chapter 21. Crimes and Punishments
Kansas Criminal Code [2011 Codification]
Article 54. Crimes Against Persons

K.S.A. 21-5415
Formerly cited as K.S.A. 21-3419; 21-3419a

21-5415. Criminal threat; aggravated criminal threat

Currentness

(a) A criminal threat is any threat to:

(1) Commit violence communicated with intent to place another in fear, or to cause the evacuation, lock down or disruption in regular, ongoing activities of any building, place of assembly or facility of transportation, or in reckless disregard of the risk of causing such fear or evacuation, lock down or disruption in regular, ongoing activities;

(2) adulterate or contaminate any food, raw agricultural commodity, beverage, drug, animal feed, plant or public water supply; or

(3) expose any animal in this state to any contagious or infectious disease.

(b) Aggravated criminal threat is the commission of a criminal threat, as defined in subsection (a), when a public, commercial or industrial building, place of assembly or facility of transportation is evacuated, locked down or disrupted as to regular, ongoing activities as a result of the threat.

(c)(1) A criminal threat is a severity level 9, person felony.

(2) Aggravated criminal threat is a severity level 5, person felony.

(d) As used in this section, "threat" includes any statement that one has committed any action described by subsection (a).

Credits
Laws 2010, ch. 136, § 50, eff. July 1, 2011.

Notes of Decisions containing your search terms (0) View all 75

K. S. A. 21-5415, KS ST 21-5415
Current through 2014 regular and special sessions

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NOTES OF DECISIONS (75)

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ATTACHMENT 7- MINNESOTA

609.713. Terroristic threats
Minnesota Statutes Annotated Crimes; Expungement; Victims (Ch. 609-624) (Approx. 2 pages)

Minnesota Statutes Annotated
Crimes; Expungement; Victims (Ch. 609-624)
Chapter 609. Criminal Code (Refs & Annos)
Public Misconduct or Nuisance

Proposed Legislation

M.S.A. § 609.713

609.713. Terroristic threats

Currentness

Subdivision 1. Threaten violence; intent to terrorize. Whoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, vehicle or facility of public transportation or otherwise to cause serious public inconvenience, or in a reckless disregard of the risk of causing such terror or inconvenience may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both. As used in this subdivision, "crime of violence" has the meaning given "violent crime" in section 609.1095, subdivision 1, paragraph (d).

Subd. 2. Communicates to terrorize. Whoever communicates to another with purpose to terrorize another or in reckless disregard of the risk of causing such terror, that explosives or an explosive device or any incendiary device is present at a named place or location, whether or not the same is in fact present, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

Subd. 3. Display replica of firearm. (a) Whoever displays, exhibits, brandishes, or otherwise employs a replica firearm or a BB gun in a threatening manner, may be sentenced to imprisonment for not more than one year and one day or to payment of a fine of not more than $3,000, or both, if, in doing so, the person either:

(1) causes or attempts to cause terror in another person; or

(2) acts in reckless disregard of the risk of causing terror in another person.

(b) For purposes of this subdivision:

(1) "BB gun" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter; and

(2) "replica firearm" means a device or object that is not defined as a dangerous weapon, and that is a facsimile or toy version of, and reasonably appears to be a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher, or any other firearm. The term replica firearm includes, but is not limited to, devices or objects that are designed to fire only blanks.

Credits

Laws 1971, c. 845, § 19, eff. July 1, 1971. Amended by Laws 1988, c. 712, § 15, eff. Aug. 1, 1988; Laws 1990, c. 461, § 3; Laws 1993, c. 326, art. 4, § 34; Laws 1994, c. 636, art. 2, § 45; Laws 1994, c. 636, art. 3, § 23; Laws 1995, c. 244, §§ 24, 25; Laws 1998, c. 367, art. 6, § 15, eff. Aug. 1, 1998.

Editors' Notes

RULES OF CRIMINAL PROCEDURE

<Section 480.059, subd. 7, provides in part that statutes which relate to substantive criminal law found in chapter 609, except for sections 609.115 and 609.145, remain in full force and effect notwithstanding the Rules of Criminal Procedure.>

NOTES OF DECISIONS (58)

ATTACHMENT 8- NEBRASKA

WestlawNext

28-311.01. Terroristic threats; penalty
West's Revised Statutes of Nebraska Annotated Chapter 28. Crimes and Punishments (Approx. 2 pages)

West's Revised Statutes of Nebraska Annotated
Chapter 28. Crimes and Punishments
Article 3. Offenses Against the Person
(a) General Provisions

Enacted Legislation Amended by 2015 Nebraska Laws L.B. 605

Neb.Rev.St. § 28-311.01

28-311.01. Terroristic threats; penalty

Currentness

(1) A person commits terroristic threats if he or she threatens to commit any crime of violence:

(a) With the intent to terrorize another;

(b) With the intent of causing the evacuation of a building, place of assembly, or facility of public transportation; or

(c) In reckless disregard of the risk of causing such terror or evacuation.

(2) Terroristic threats is a Class IV felony.

Credits

Laws 1986, LB 956, § 11.

Relevant Notes of Decisions (77)

View all 88

Notes of Decisions listed below contain your search terms.

Validity

Terroristic-threats statute is not unconstitutionally vague for using the words "terror" and "terrorize"; those words are words of common usage and meaning capable of being readily understood by an individual of common intelligence. Neb.Rev.St. § 28-311.01. State v. Nelson, 2007, 739 N.W.2d 199, 274 Neb. 304. Threats, Stalking, And Harassment ⚖ 5

Statutes governing committing terroristic threats and first degree false imprisonment were not unconstitutional as applied to defendant; although defendant contended statutes were unconstitutional since legislature did not intend statutes to apply to conduct that occurred during private, consensual relationship involving bondage, discipline, and sadomasochism (BDSM) activities, object of statutes was to protect citizens from injury and to maintain public order, and case law did not restrict ability of state to regulate such conduct through its criminal laws. Neb.Rev.St. §§ 28-311.01, 28-314. State v. Van, 2004, 688 N.W.2d 600, 268 Neb. 814. False Imprisonment ⚖ 43; Threats, Stalking, And Harassment ⚖ 5

Terroristic threat statute is not unconstitutionally overbroad, notwithstanding that it fails to limit "crime of violence" to felony crimes and exposes accused who may only threaten misdemeanor crime of violence to felony punishment, as it is narrowly tailored to achieve substantial and legitimate state interest; state has substantial governmental interest in protecting persons against harm, including anxiety produced by threats, and may achieve that legitimate objective by preventing or punishing terroristic threat, even if speech is used to communicate or express threat. Neb.Rev.St. § 28-311.01(1)(a), (2); U.S.C.A. Const.Amend. 1; Const. Art. 1, § 5. State v. Schmailzl, 1993, 243 Neb. 734, 502 N.W.2d 463. Threats, Stalking, And Harassment ⚖ 5

Words "threats" and "threatens" are terms of common usage and understanding which supply adequate and fair notice of conduct prohibited by terroristic threat statute and, thus, statute is not unconstitutionally vague. Neb.Rev.St. § 28-311.01(1). State v. Schmailzl, 1993, 243 Neb. 734, 502 N.W.2d 463. Threats, Stalking, And Harassment ⚖ 5

NOTES OF DECISIONS (88)

<< NE ST § 28–311.01 >>
28–311.01.
(1) A person commits terroristic threats if he or she threatens to commit any crime of violence:
(a) With the intent to terrorize another;
(b) With the intent of causing the evacuation of a building, place of assembly, or facility of public transportation; or
(c) In reckless disregard of the risk of causing such terror or evacuation.
(2) Terroristic threats is a Class IIIA ~~IV~~ felony.

CRIMES AND OFFENSES—SENTENCE AND PUNISHMENT—GENERALLY, 2015 Nebraska Laws L.B. 605

ATTACHMENT 9- NEW HAMPSHIRE

Revised Statutes Annotated of the State of New Hampshire
Title LXII. Criminal Code (Ch. 625 to 651-F) (Refs & Annos)
Chapter 631. Assault and Related Offenses (Refs & Annos)

Effective: January 1, 2011

N.H. Rev. Stat. § 631:4

631:4 Criminal Threatening.

Currentness

I. A person is guilty of criminal threatening when:

(a) By physical conduct, the person purposely places or attempts to place another in fear of imminent bodily injury or physical contact; or

(b) The person places any object or graffiti on the property of another with a purpose to coerce or terrorize any person; or

(c) The person threatens to commit any crime against the property of another with a purpose to coerce or terrorize any person; or

(d) The person threatens to commit any crime against the person of another with a purpose to terrorize any person; or

(e) The person threatens to commit any crime of violence, or threatens the delivery or use of a biological or chemical substance, with a purpose to cause evacuation of a building, place of assembly, facility of public transportation or otherwise to cause serious public inconvenience, or in reckless disregard of causing such fear, terror or inconvenience; or

(f) The person delivers, threatens to deliver, or causes the delivery of any substance the actor knows could be perceived as a biological or chemical substance, to another person with the purpose of causing fear or terror, or in reckless disregard of causing such fear or terror.

II. (a) Criminal threatening is a class B felony if the person:

(1) Violates the provisions of subparagraph I(e); or

(2) Uses a deadly weapon as defined in RSA 625:11, V in the violation of the provisions of subparagraph I(a), I(b), I(c), or I(d).

(b) All other criminal threatening is a misdemeanor.

III. (a) As used in this section, "property" has the same meaning as in RSA 637:2, I; "property of another" has the same meaning as in RSA 637:2, IV.

(b) As used in this section, "terrorize" means to cause alarm, fright, or dread, the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation.

IV. A person who responds to a threat which would be considered by a reasonable person as likely to cause serious bodily injury or death to the person or to another by displaying a firearm or other means of self-defense with the intent to warn away the person making the threat shall not have committed a criminal act under this section.

Notes of Decisions containing your search terms (0) View all 26

N.H. Rev. Stat. § 631:4, NH ST § 631:4

2C:12-3. Terroristic threats
New Jersey Statutes Annotated Title 2C. The New Jersey Code of Criminal Justice Effective: June 18, 2002 (Approx. 2 pages)

NOTES OF DECISIONS (50)

- Admissibility of evidence
- Construction and application
- Double jeopardy
- Guilty plea
- Indictment
- Intent
- Jury instructions
- Juveniles
- Merger of offenses
- New trial
- Probable cause
- Questions for court
- Review
- Sentence and punishment
- Severance of charges
- Standard of proof
- Sufficiency of evidence
- Threats within section
- Validity

New Jersey Statutes Annotated
Title 2C. The New Jersey Code of Criminal Justice (Refs & Annos)
Subtitle 2. Definition of Specific Offenses
Part 1. Offenses Involving Danger to the Person
Chapter 12. Assault; Reckless Endangering; Threats (Refs & Annos)

Proposed Legislation

Effective: June 18, 2002

N.J.S.A. 2C:12-3

2C:12-3. Terroristic threats

Currentness

a. A person is guilty of a crime of the third degree if he threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience. A violation of this subsection is a crime of the second degree if it occurs during a declared period of national, State or county emergency. The actor shall be strictly liable upon proof that the crime occurred, in fact, during a declared period of national, State or county emergency. It shall not be a defense that the actor did not know that there was a declared period of emergency at the time the crime occurred.

b. A person is guilty of a crime of the third degree if he threatens to kill another with the purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out.

Credits

L.1978, c. 95, § 2C:12-3, eff. Sept. 1, 1979; L.1981, c. 290, § 15, eff. Sept. 24, 1981. Amended by L.2002, c. 26, § 11, eff. June 18, 2002.

Relevant Notes of Decisions (2)

View all 50

Notes of Decisions listed below contain your search terms.

Threats within section

N.J.S.A. 2C:12-3, subd. b, which proscribes threatening to kill another with purpose to put him in the imminent fear of death under circumstances reasonably causing victim to believe immediacy of threat and likelihood that it will be carried out, requires only that words or conduct be of nature such as would reasonably convey menace or fear of death to ordinary hearer. State v. Nolan, 205 N.J.Super. 1, 500 A.2d 1 (A.D.1985). Homicide ⇐ 736

Guilty plea

Defendant's statement in support of his plea of guilty to charge of terroristic threats [N.J.S.A. 2C:12-3, subd. b] established all of the statutory elements so as to justify entry of plea, where defendant stated he threatened to kill his brother and threat was made while defendant was reaching for a machete during struggle with victim, as the statement established that intended victim reasonably feared immediate harm or death under the circumstances. State v. Nolan, 205 N.J.Super. 1, 500 A.2d 1 (A.D.1985). Criminal Law ⇐ 273(4.1)

N. J. S. A. 2C:12-3, NJ ST 2C:12-3
Current with laws effective through L.2015, c. 61.

End of Document

WestlawNext ATTACHMENT 11- NORTH DAKOTA

§ 12.1-17-04. Terrorizing
West's North Dakota Century Code Annotated Title 12.1. Criminal Code (Approx. 2 pages)

West's North Dakota Century Code Annotated
Title 12.1. Criminal Code
Chapter 12.1-17. Assaults--Threats--Coercion--Harassment

NDCC, 12.1-17-04

§ 12.1-17-04. Terrorizing

Currentness

A person is guilty of a class C felony if, with intent to place another human being in fear for that human being's or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, the person:

1. Threatens to commit any crime of violence or act dangerous to human life, or

2. Falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false.

Credits

S.L. 1973, ch. 116, § 17, S.L. 1983, ch. 166, § 1.

Relevant Notes of Decisions (8)

View all 33

Notes of Decisions listed below contain your search terms.

In general

To be convicted of terrorizing, the State must prove: (1) the defendant intended to cause another person to fear for his or another person's safety or acted with reckless disregard of the risk of causing such fear, and (2) the defendant made a threat to commit a crime of violence or act dangerous to human life. State v. Brossart, 2015, 2015 WL 138159. Threats, Stalking, And Harassment ⇐ 8

Threats

Defendant's statement that he was going to kill sheriff who arrested him and hurt his family threatened criminal violence or act dangerous to human life and was terrorizing, if committed with intent to place another human being in fear for safety or in reckless disregard of risk of causing such terror. NDCC 12.1-17-04, subd. 1. State v. Carlson, 1997, 559 N.W.2d 802, rehearing denied. Homicide ⇐ 736; Threats, Stalking, And Harassment ⇐ 16; Threats, Stalking, And Harassment ⇐ 17

Defendant's statement to complainant that she and her children would wake up with either flat tires, or sugar in their gas tank, or "not wake up at all" was sufficiently definite to constitute the threat of a crime of violence or act dangerous to human life for purpose of offense of terrorizing; defendant had a history of harming complainant, approximately one hour before statement, defendant claimed to have beheaded one kitten and he brutally mutilated another in the presence of complainant and her five-year old son, and he made the threatening statement after being told by the authorities to cease further menacing contact with complainant. NDCC 12.1-17-04. State v. Gefroh, 1993, 495 N.W.2d 651. Threats, Stalking, And Harassment ⇐ 9

Lesser included offense

Disorderly conduct is lesser-included offense of terrorizing; terrorizing requires threat to commit crime of violence or act dangerous to human life, and disorderly conduct requires threatening behavior, but does not require threatening behavior to involve any crime of violence or act dangerous to human life. NDCC 12.1-17-04, subd. 1, 12.1-31-01. State v. Carlson, 1997, 559 N.W.2d 802, rehearing denied. Indictment And Information ⇐ 191(.5)

NOTES OF DECISIONS (33)

WestlawNext ATTACHMENT 12- PENNSYLVANIA

§ 2706. Terroristic threats
Purdon's Pennsylvania Statutes and Consolidated Statutes Title 18 Pa.C.S.A. Crimes and Offenses Effective: August 27, 2002 (Approx. 2 pages)

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)
Part II. Definition of Specific Offenses
Article B. Offenses Involving Danger to the Person (Refs & Annos)
Chapter 27. Assault (Refs & Annos)

Proposed Legislation

Effective: August 27, 2002

18 Pa.C.S.A. § 2706

§ 2706. Terroristic threats

Currentness

(a) Offense defined.--A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to:

(1) commit any crime of violence with intent to terrorize another,

(2) cause evacuation of a building, place of assembly or facility of public transportation; or

(3) otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

(b) Restitution.--A person convicted of violating this section shall, in addition to any other sentence imposed or restitution ordered under 42 Pa.C.S. § 9721(c) (relating to sentencing generally), be sentenced to pay restitution in an amount equal to the cost of the evacuation, including, but not limited to, fire and police response; emergency medical service or emergency preparedness response; and transportation of an individual from the building, place of assembly or facility.

(c) Preservation of private remedies.--No judgment or order of restitution shall debar a person, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.

(d) Grading.--An offense under subsection (a) constitutes a misdemeanor of the first degree unless the threat causes the occupants of the building, place of assembly or facility of public transportation to be diverted from their normal or customary operations, in which case the offense constitutes a felony of the third degree

(e) Definition.--As used in this section, the term "communicates" means conveys in person or by written or electronic means, including telephone, electronic mail, Internet, facsimile, telex and similar transmissions.

Credits

1972, Dec. 6, P.L.1482, No. 334, § 1, effective June 6, 1973. Amended 1998, June 18, P.L. 534, No. 76, § 1, effective in 60 days; 1999, Dec. 15, P.L. 915, No. 59, § 2, effective in 60 days; 2002, June 28, P.L. 481, No. 82, § 1, effective in 60 days.

Editors' Notes

OFFICIAL COMMENT--1972

This section is derived from Section 211.3 of the Model Penal Code. There is no similar provision in existing law.

This section covers oral threats as well as written threats. The purpose of the section is to impose criminal liability on persons who make threats which seriously impair personal security or public convenience. It is not intended by this section to penalize mere spur-of-the-moment threats which result from anger.

NOTES OF DECISIONS (146)

WestlawNext

ATTACHMENT 13- WYOMING

§ 6-2-505. Terroristic threats; penalty
West's Wyoming Statutes Annotated Title 6. Crimes and Offenses (Approx. 2 pages)

West's Wyoming Statutes Annotated
Title 6. Crimes and Offenses
Chapter 2. Offenses Against the Person
Article 5. Assault and Battery (Refs & Annos)

W.S. 1977 § 6-2-505

§ 6-2-505. Terroristic threats; penalty

Currentness

(a) A person is guilty of a terroristic threat if he threatens to commit any violent felony with the intent to cause evacuation of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such inconvenience.

(b) A terroristic threat is a felony punishable by imprisonment for not more than three (3) years.

Credits

Laws 1982, ch. 75, § 3

NOTES OF DECISIONS (16)

Relevant Notes of Decisions (16)

View all 16

Notes of Decisions listed below contain your search terms

Validity

Terroristic threats statute was not facially vague, so as to be unconstitutional, making violent threats against society was not protected speech and specified prohibited conduct, including threatening to bomb public facility with intent to force evacuation. W.S.1977, § 6-2-505(a); U.S.C.A. Const.Amends. 5, 14. McCone v. State, 1993, 866 P.2d 740, dismissal of habeas corpus affirmed 83 F.3d 432, appeal from denial of habeas corpus 161 F.3d 18. Threats, Stalking, And Harassment ⇐ 5

Construction and application

Criminal statute prohibiting terroristic threats was not unconstitutionally vague as applied to defendant accused of placing telephone calls threatening to bomb a nursing home; person of ordinary intelligence would be aware that imminent bomb threat directed at nursing home facility could cause prohibited "serious public inconvenience" and statute was not enforced in arbitrary or discriminatory manner. W.S.1977, § 6-2-505(a); U.S.C.A. Const.Amends. 5, 14. McCone v. State, 1993, 866 P.2d 740, dismissal of habeas corpus affirmed 83 F.3d 432, appeal from denial of habeas corpus 161 F.3d 18. Threats, Stalking, And Harassment ⇐ 5

Criminal statute prohibiting terroristic threats was not overbroad as applied to defendant accused of threatening to bomb a nursing home and shoot one of nursing home's employees. W.S.1977, § 6-2-505; U.S.C.A. Const.Amends. 5, 14. McCone v. State, 1993, 866 P.2d 740, dismissal of habeas corpus affirmed 83 F.3d 432, appeal from denial of habeas corpus 161 F.3d 18. Threats, Stalking, And Harassment ⇐ 5

Terroristic threat statute proscribes threat to commit any violent felony with intent to cause evacuation of building, place of assembly or facility of public transportation, or to otherwise cause serious public inconvenience, and likewise proscribes threat to commit any violent felony with reckless disregard of risk of causing such serious public inconvenience. W.S.1977, § 6-2-505. McCone v. State, 1993, 866 P.2d 740, dismissal of habeas corpus affirmed 83 F.3d 432, appeal from denial of habeas corpus 161 F.3d 18. Threats, Stalking, And Harassment ⇐ 9

"Terroristic threat" includes threat to commit violent felony and reckless disregard of risk of causing evacuation of building. W.S.1977, § 6-2-505. McCone v. State, 1993, 866 P.2d 740,

DOCKET NO. MMX-CR140675616T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF MIDDLESEX
V.	:	AT MIDDLETOWN
EDWARD F. TAUPIER	:	OCTOBER 2, 2015

MEMORANDUM OF DECISION RE: DEFENDANT'S RENEWED MOTION TO DISMISS

In his Renewed Motion to Dismiss Amended Information filed pursuant to Practice Book § 41-8 (8),[1] the defendant, Edward Taupier, moves this court to dismiss the charges against him on the ground that they are unconstitutional. The defendant's constitutional challenge is premised on his contention that laws that seek to criminalize the making of allegedly threatening statements will comport with the first amendment to the United States Constitution only if those laws require proof that the defendant specifically intended to threaten the victim. In support of his claim, the defendant relies first on the United States Supreme Court's recent decision in *Elonis* v. *United States*, 575 U.S. —, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015), and then on a handful of pre-*Elonis* cases that he cites and discusses in his motion. *Elonis* and these other cases, the defendant argues, compel the conclusion that the offenses at issue in the present prosecution—threatening in the first degree, threatening in the second degree, disorderly conduct, and breach of the peace in the second degree—violate the first amendment because they each allege that he acted with a reckless state of mind, and not with the type of specific intent that he contends is constitutionally mandated. He therefore urges dismissal of the charges.

By way of response to the defendant's assertions, the state disputes the defendant's

Gold, J
M/61
DENIED
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[1]Practice Book § 41-8 (8) authorizes a motion to dismiss to be filed where a defendant asserts the "[c]laim that the law defining the offense charged is unconstitutional or otherwise invalid."

OCT 02 2015
Filed in Court 3B
by Court (Gold, J)
@ 9:00 am

interpretation of *Elonis*, minimizes the relevance and precedential value of the other cases cited by him, and asks the court to reject the defendant's constitutional challenge. For the reasons set forth below, the court agrees with the positions advanced by the state and, accordingly, denies the defendant's renewed motion to dismiss.

Elonis v. *United States*

In the court's opinion, the defendant's reliance on *Elonis* is misplaced. Contrary to the statement contained in the defendant's motion, *Elonis* did not hold that "the First Amendment [is] inconsistent with a standard that permits conviction in criminal prosecutions for speech attributed to a reckless mens rea." Defendant's Renewed Motion to Dismiss Amended Information (Defendant's Motion), 1. In addition, the defendant's later statement that "*Elonis* requires subjective intent," id., is similarly in error if by "subjective intent" the defendant is referring to a specific intent to threaten. As the court reads it, *Elonis* lends no support to the type of constitutional challenge the defendant asserts in his renewed motion to dismiss, and, as will be explained, actually seems to signal that the statutes charged in the present case are fully consistent with the requirements of the first amendment.

The defendant in *Elonis* was indicted in connection with certain allegedly threatening statements he had posted on Facebook. He was charged with violating 18 U.S.C. § 875 (c), a federal statute that makes it a crime to "transmit[] in interstate or foreign commerce any communication containing any threat . . . to injure the person of another." Although 18 U.S.C. § 875 (c) expressly requires the defendant to transmit a communication containing a threat, the statute is silent as to the defendant's requisite mental state—that is, the statute does not indicate whether the defendant must have an awareness of the threatening nature of his communication.

Given the absence of any such mental state requirement in the statute, Elonis requested at his trial that the jury be instructed that the government was required to prove that he had intended to communicate a threat. The trial court denied that request. It instead instructed the jury that the government need only prove that the defendant transmitted a communication and that the communication contained a "true threat," a term it defined as follows: "A statement is a true threat when a defendant intentionally makes a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily injury or take the life of another." (Internal quotation marks omitted.) *Elonis* v. *United States*, supra, 135 S. Ct. 2007. Apart from this definition of a "true threat," the jury was given no instruction regarding the government's burden to prove, or the jury's duty to find, the defendant's subjective state of mind as it pertained to the threatening nature of those statements. Elonis was subsequently convicted and sentenced to three years and eight months of imprisonment.

After his conviction was affirmed by the Court of Appeals for the Third Circuit, the Supreme Court granted certiorari. Noting that the petitioner had been convicted of a violation of 18 U.S.C. § 875 (c) under jury instructions that required the jury only to find that he communicated what a reasonable person would regard as a threat, the Supreme Court framed the issue before it as follows: "The question is whether the statute also requires that the defendant be aware of the threatening nature of the communication, and—if not—whether the First Amendment requires such a showing." *Elonis* v. *United States*, supra, 135 S. Ct. 2004.

Relying exclusively on principles of substantive federal criminal law and the jurisprudential maxim that "wrongdoing must be conscious to be criminal," id., 2009, the court

decided that 18 U.S.C. § 875 (c), though silent on the issue of scienter, nonetheless *did* require proof of the defendant's awareness, to some unspecified degree, of the nature of his statements. At the outset, the court pointed out that it "generally interpreted criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them," (internal quotation marks omitted) id., and that, as a result, "[t]he fact that [18 U.S.C. § 875 (c)] does not specify any required mental state . . . does not mean that none exists." Id. The court then went on to hold that Elonis's conviction, having been predicated *solely* on how his posts would be understood by a reasonable person, could not be sustained because such a reasonable person standard "reduces culpability on the all-important element of the crime to negligence," id., 2011, and, as such, "is inconsistent with the conventional requirement for criminal conduct—*awareness* of some wrongdoing." (Emphasis in original.) Id. To secure a conviction under 18 U.S.C. § 875 (c), in other words, the court concluded that the government was required to prove that the defendant possessed some mental awareness of the threatening nature of the communication. Proof that the communication would be viewed as threatening on an objective basis (pursuant to a reasonable person analysis) was alone not enough.

Having been decided so narrowly and only on the basis of substantive federal law and general principles of criminal liability, *Elonis* may be seen as more important for what it did not decide than for what it did. First, although many (including the court and the parties here) may have anticipated that *Elonis* would address constitutional questions, it did not. *Elonis* v. *United States*, supra, 135 S. Ct. 2012 ("Given our disposition, it is not necessary to consider any First Amendment issues."). Moreover, although deciding that proof of negligence alone is not enough to support a conviction under 18 U.S.C. § 875 (c), the court declined to set forth what more is

needed. The court did say, as noted earlier, that "wrongdoing must be conscious to be criminal." Id., 2009. It also stated that there could be "no dispute that the mental state requirement in § 875 (c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat." Id., 2012. As Justice Alito points out in his concurring and dissenting opinion, however, "[t]he Court holds that the jury instructions in this case were defective because they required only negligence in conveying a threat. But the Court refuses to explain what type of intent was necessary." Id., 2013-14.

Elonis is, therefore, of little help to the defendant's claim that the "laws defining the offenses charged [in this case] which require proof merely of a reckless mens rea . . . are unconstitutional under the First Amendment to the United States Constitution." Defendant's Motion, 1. *Elonis* addressed no constitutional issues, and it neither held, nor for that matter even suggested, that recklessness is an inadequate scienter requirement, as a matter of law, in cases involving the prosecution of allegedly threatening speech. Accordingly, the court rejects the defendant's claim that the holding in *Elonis* undermines the constitutionality of, or otherwise invalidates, the criminal statutes at issue in this case.

The Other Cited Cases

The defendant fares no better in his effort to cite pre-*Elonis* cases in support of his claim that the laws under which he is charged are "unconstitutional or otherwise invalid." Practice Book § 41-8 (8). Most of the cases referenced in his brief miss the mark because they do not involve, and therefore fail to address, the type of first amendment challenge to the language and application of criminal statutes that the defendant makes here. For example, while *United States v. Watts*, 394 U.S. 705, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969), upheld the constitutionality of

the statute there at issue, id., 707 ("[c]ertainly, the statute under which the petitioner was convicted [18 U.S.C. § 871 (a)] is constitutional on its face"), the court did not undertake the kind of constitutional analysis required in the present case, and provided no guidance as to whether recklessness is a sufficient mental state for statutes prohibiting threatening speech. Like *Watts*, *United States* v. *Alkhabaz*, 104 F.3d 1492 (6th Cir. 1997), is similarly lacking in constitutional analysis given that the court expressly "decline[d] to address the First Amendment issues raised by the parties." Id., 1493. For the same reason, the defendant's citations to *United States* v. *Patillo*, 438 F.2d 13 (4th Cir. 1971), *United States* v. *Fulmer*, 108 F.3d 1486 (1st Cir. 1996), *United States* v. *Kelner*, 534 F.2d 1020 (2d Cir. 1976), cert. denied, 429 U.S. 1022, 97 S. Ct. 639, 50 L. Ed. 2d 623 (1976), and *In re Ryan D.*, 100 Cal. App. 4th 854, 123 Cal. Rpt. 2d 193 (2002), are equally unavailing.

The remaining two cases the defendant cites in his brief, *United States* v. *Jeffries*, 692 F.3d 473 (6th Cir. 2012), cert. denied, 134 S. Ct. 59, 187 L. Ed. 2d 25 (2013), and *United States* v. *Bagdasarian*, 652 F.3d 1113 (9th Cir. 2011), contain some discussion of first amendment issues, but they too ultimately fail to provide this court with any rational basis to conclude that the charges in the present case are unconstitutional. Even as persuasive authority, the value of *Jeffries* is obviously undermined by the fact that the defendant finds support for his claim *not* in that court's unanimous decision, but in a separate dubitante opinion filed by the same judge who authored the controlling opinion of the court. More importantly, as to the portion of the dubitante opinion that the defendant asks the court here to adopt—namely, that proof of a specific intent to threaten is constitutionally required because a "threat," by virtue of that word's common understanding, conveys a notion of an intent to inflict harm—*Elonis* expressly rejected

that contention, stating that the term "threat" "speaks to what the statement conveys—not to the mental state of [its] author." *Elonis* v. *United States*, supra, 135 S. Ct. 2008 ("For example, an anonymous letter that says 'I'm going to kill you' is 'an expression of an intention to inflict loss or harm' regardless of the author's intent. A victim who receives that letter in the mail has received a threat, even if the author believes (wrongly) that his message will be taken as a joke.").

With regard to *United States* v. *Bagdasarian*, supra, 652 F.3d 1113, the defendant's reliance on Ninth Circuit precedent is understandable given that circuit's determination that *Virginia* v. *Black*, 538 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003), compels proof of a specific intent to threaten as a necessary part of a constitutionally punishable threat. As our state Supreme Court noted in *State* v. *Krijger*, 313 Conn. 434, 451 n.10, 97 A.3d 946 (2014), however, the view of the Ninth Circuit does not represent the majority view of the courts, and it is at odds with the law "traditionally applied" in Connecticut. The court, therefore, declines the defendant's invitation to adopt the Ninth Circuit's view, and, accordingly, it rejects his claim that the charges against him are unconstitutional because they fail to allege that he acted with the specific intent to threaten.

Proof of Recklessness Satisfies the First Amendment

Finally, the court here concludes that proof of a defendant's specific intent to threaten is not a constitutional requirement in prosecutions based on threatening speech, and that recklessness strikes the most appropriate balance between one person's right to free speech and another's right to be free from the fear and disruption that true threats engender. In *Elonis*, the court appears to have considered, and rejected, the claim that an intent-to-threaten requirement is

required by law. In the context of a 18 U.S.C. § 875 (c) prosecution, *Elonis* held that the government's obligation to prove the defendant's subjective awareness of the nature of the threat could be satisfied by evidence showing that he transmitted the communication *either* "for the purpose of issuing a threat" *or* "with knowledge that the communication will be viewed as a threat." *Elonis* v. *United States*, supra, 135 S. Ct. 2012. The first of these alternatives obviously relates to proof of the defendant's specific intent—that is, his conscious objective in transmitting the communication. By contrast, however, the second alternative looks not at the objective the defendant sought to achieve by transmitting the communication, but instead at what he knew about the character of his communication. By expressing its approval of this second type of proof, *Elonis* indicates that criminal liability can be validly based on evidence that a person knew that a communication would be viewed as a threat, even if that person transmitted the communication for a purpose other than as a means by which to threaten the victim. *Elonis* signals, therefore, that the state is not required to prove, in cases of this variety, that a defendant transmitted a threat with the specific intent to threaten its target. Indeed, in his dissenting opinion in *Elonis*, Justice Thomas expressed precisely that view, noting that trial courts "can safely infer that a majority of [the Supreme] Court would not adopt an intent-to-threaten requirement . . . ." *Elonis* v. *United States*, supra, 135 S. Ct. 2018.

If criminal liability can be validly imposed when a defendant acts with knowledge that a communication will be viewed as a threat, then liability can also be imposed when a defendant recklessly communicates a threat. As Justice Alito wrote in his concurring and dissenting opinion in *Elonis*, "[t]here can be no real dispute that recklessness regarding a risk of serious harm is wrongful conduct. In a wide variety of contexts, we have described reckless conduct as

morally culpable. . . . Someone who acts recklessly with respect to conveying a threat necessarily grasps that he is not engaged in innocent conduct. He is not merely careless. He is aware that others could regard his statements as a threat, but he delivers them anyway." *Elonis* v. *United States*, supra, 135 S. Ct. 2015. In Justice Alito's view—one shared by the court here—proof of recklessness in cases such as these is therefore consistent with the first amendment and "[n]othing in the Court's [majority opinion in *Elonis*] prevents lower courts from adopting that standard." Id., 2016.

Justice Alito's description of the nature of recklessness as a state of mind is reflected in the language of Connecticut statutes. Under General Statutes § 53a-3 (13), a person acts "recklessly" with respect to a result or to a circumstance described by a statute when "he is *aware of* and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists." (Emphasis added.) As this statutory definition makes clear, proof of recklessness requires proof of the defendant's "awareness," that is, proof of what the defendant actually knew. For proof of recklessness, it is not enough for the state to show that a reasonable person would have known of the risk, or even that the defendant *should* have known of it. Rather, the defendant must be proven to have subjectively known of the risk described by the statute, and then to have acted in conscious disregard of that risk.

In order to prove recklessness in a prosecution for threatening speech and to demonstrate that the defendant was aware of the risk of harm described in the statute, the state therefore will be required to present evidence, consistent with the requirement of *Elonis*, that the defendant knew that his statement would be viewed as a threat. Given that burden of proof, there is, in this court's judgment, no legitimate constitutional purpose to be served by imposing on the state the

further obligation to prove what the defendant may have subjectively sought to accomplish by transmitting the threat—that is, to show the defendant's purpose for doing what he did. As Justice Alito noted in *Elonis*, it ultimately does not matter that a defendant may have communicated a threat specifically "for a therapeutic purpose, to deal with the pain . . . of a wrenching event, or for cathartic reasons;" (internal quotation marks omitted) *Elonis* v. *United States*, supra, 135 S. Ct. 2016 (*Alito, J.* concurring and dissenting); and not with the conscious objective of causing fear and harm to the victim. The particular evil of a true threat is that it "works" either way because, as Justice Alito pointed out, "whether or not the person making a threat intends [for his words] to cause harm, the damage is the same." Id.

For these reasons, an intent-to-threaten requirement seems particularly ill-suited for cases like the present one where the defendant does not communicate the threat directly to the person who is threatened by it. If the state is required in such cases to prove that it was the defendant's conscious objective to threaten the victim, then the defendant would be undeservedly afforded the following built-in defense: "If it really was my conscious objective to threaten the victim, then why didn't I send the threat to the victim directly?" The state should not be required to rebut this defense if the evidence clearly demonstrates that the defendant acted recklessly by being aware that his statement would be seen as a threat, and by communicating it anyway.

To require proof of specific intent in these cases will serve only to promote the type of "indirect" threat that has become so prevalent on social media and the internet, and to insulate from criminal liability—to a degree not required by the first amendment—those who traffic in that type of threatening speech. Although the means of communicating threats, especially in today's digital world, may in certain circumstances have become more indirect, the same cannot

be said about the damage those threats cause to the victim's sense of safety and security. To paraphrase Justice Alito, the resulting damage of these threats is always direct.

At least as a matter of Connecticut law, recklessness will require proof that the defendant acted with knowledge of the threatening nature of his communication and with reckless disregard of the substantial risks that would be created by the transmission of the communication to others. As a result, and consistent with a fair reading of *Elonis*, the court here is firmly convinced that when it is proven beyond a reasonable doubt that a defendant was aware that a statement would be seen as threatening, and then intentionally communicated the statement in the face of that knowledge and with an awareness that statutory harm could be caused, then, regardless of what that defendant's conscious objective may have been in conveying the threat, neither the defendant nor the words he expressed are entitled to first amendment protection.

Conclusion

Because the defendant's motion has challenged the constitutionality of the statutes charged in the present case, there is a fundamental legal principle that must inform the court's ruling. "[A] validly enacted statute carries with it a strong presumption of constitutionality [and] those who challenge a statute's constitutionality must sustain the heavy burden of proving its unconstitutionality beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Rizzo*, 266 Conn. 171, 291, 833 A.2d 363 (2003). Given this presumption of constitutionality, "when a question of [the] constitutionality [of a statute] is raised, courts must approach it with caution, examine it with care, and sustain the legislation unless its invalidity is clear." (Internal quotation marks omitted.) *State* v. *McCahill*, 261 Conn. 492, 505, 811 A.2d 667 (2002). In the court's opinion and for the reasons stated herein, the defendant has failed to sustain his heavy

burden of proving that the statutes charged against him are unconstitutional. Accordingly, his renewed motion to dismiss is hereby denied.

BY THE COURT

GOLD, J.

State v. Taupier

Superior Court of Connecticut, Judicial District of Middlesex at Middletown

October 2, 2015, Decided; October 2, 2015, Filed

MMXCR140675616T

Reporter
2015 Conn. Super. LEXIS 2532

State of Connecticut v. Edward F. ***Taupier***

Notice: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Judges: [*1] David P. Gold, J.

Opinion by: David P. Gold

Opinion

VERDICT AND MEMORANDUM OF DECISION

The defendant, Edward "Ted" ***Taupier***, is charged in a five-count, long-form Amended Information dated March 10, 2015 (Information), with the crimes of threatening in the first degree, in violation of General Statutes §§53a-62(a)(3), 53a-61aa(a)(3), and 53a-61(a)(1); threatening in the second degree, in violation of General Statutes §§53a-62(a)(3) and 53a-61(a)(1); two counts of disorderly conduct, each in violation of General Statutes §53a-182(a)(2); and breach of the peace in the second degree, in violation of General Statutes §§53a-181(a)(3) and 53a-61(a)(1). Each charge relates to the state's allegation that the defendant authored and sent to others an email in which he threatened to shoot the Superior Court judge who was overseeing the progress of the defendant's dissolution of marriage action and presiding over the pretrial issues in that case.

On March 12, 2015, the defendant waived his right to a jury and elected to be tried by the court. The court heard evidence from twenty-five witnesses between April 6, 2015 and May 4, 2015, many of whom were called first by the state and then recalled by the defense. After the parties had rested, they sought and were granted permission to file post-trial memoranda of facts and law. Prior to the date on which these briefs were to be filed, the parties [*2] were granted additional time to review the United States Supreme Court's decision in *Elonis v. United States*, 575 U.S. __, 135 S.Ct. 2001, 192 L.Ed.2d 1 (2015), which was issued on June 1, 2015, and, if necessary, to submit supplemental memoranda on the significance of that case to the matters at issue here. Briefs were eventually submitted by both parties, with the last being received by the court on July 7, 2015.

The court has considered all of the evidence presented by the parties at trial, and has drawn such inferences that it deems reasonable and logical from that evidence. The court also has resolved all questions of credibility, and decided the proper weight to be given to the testimony of each witness and to the other evidence that it has received. Against these factual findings, the court has applied the law that pertains to this case and to the charges alleged in the Information.

In the sections that follow, the court will indicate its verdict as to the each of the charges—verdicts that this court today announced from the bench in open court in the presence of the parties—and

then set forth the facts and law on which those verdicts are based.

I. THE COURT'S VERDICT

Having applied the law applicable to this case to the facts it has found, the court's [*3] verdict as to each count of the Information is as follows:

As to the first count, on the charge of threatening in the first degree, the court hereby finds the defendant guilty.

As to the second count, on the charge of threatening in the second degree, the court, in light of its verdict on the first count, does not return a verdict.[1]

As to the third count, on the charge of disorderly conduct, the court hereby finds the defendant guilty.

As to the fourth count, on the charge of disorderly conduct, the court hereby finds the defendant guilty.

As to the fifth count, on the charge of breach of the peace in the second degree, the court hereby finds the defendant guilty.

II. THE COURT'S FACTUAL FINDINGS

The verdicts in this case are based on the following facts that the court [*4] finds were proven by the reliable and credible evidence presented at trial. As will be explained later in this opinion, the determination of whether a defendant's allegedly threatening statements may be prosecuted and punished under the law requires that they be examined and considered in light of their entire factual context and with reference to all surrounding events. By necessity, therefore, the court's factual findings in this case must be set out at considerable length. For convenience and ease of understanding, these facts are catalogued under separate headings that identify the nature and timing of the events described.

The Family Court Action: Matters of Significance Occurring Prior to August 2014

The defendant was married to Tanya ***Taupier*** on September 25, 2004, and the couple had two children: a son born November 4, 2005, and a daughter born March 23, 2007. By September 2012, the relationship between the defendant and his wife had significantly and irretrievably deteriorated. As a result of that breakdown, Ms. ***Taupier*** moved out of the family home located at 6 Douglas Drive in Cromwell, Connecticut, and soon thereafter commenced a dissolution of marriage action, ***Taupier*** v. ***Taupier*** [*5] , Docket No. FA-12-4018627-S (family case), against the defendant in the Hartford Judicial District family court. Ms. ***Taupier*** has been represented by Attorneys Geraldine Ficarra and Michael Peck from the filing of the dissolution matter in October 2012, to the present time.

Although many motions and other pleadings were filed by the parties in the early stages of the family case, the court here finds two of those filings, in particular, to be relevant to the criminal proceedings currently at issue. The first of those filings was a written agreement entered into by the parties on March 6, 2013, and approved by and made an order of the family court, Carbonneau, J., on the same date. That agreement, and the court order incorporating it, established limitations on the defendant's possession of firearms and ammunition during the pendency of the dissolution action, and specifically provided as follows:

The defendant husband shall remove all his guns, firearms & ammunition from the marital

[1] General Statutes §53a-61aa provides that a person cannot be convicted of both threatening in the first degree under subdivision (3) of that statute and threatening in the second degree in connection with the same incident. Given that this court has found the defendant guilty of threatening in the first degree under subdivision (3) by its verdict on the first count, the court does not return a verdict on the charge of threatening in the second degree as alleged in the second count.

> home at 6 Douglas Drive, Cromwell, CT and place them in the custody of Dan Satulo who shall keep them in a gun safe until further order of the court. The defendant shall obtain a receipt for said items along [*6] with an inventory and give it to his counsel who shall give it to plaintiff's counsel. The defendant shall not attempt to retrieve these items until further order of the court. The defendant shall not obtain any new/additional firearms during the pendency of this action.[2]

On March 14, 2013, and in purported compliance with this firearms restriction, the defendant turned over to Dan Sutula, at Mr. Sutula's residence in Harwinton, Connecticut, thirteen firearms and a large quantity of ammunition. These items were more specifically described in a typed inventory prepared by the defendant and bearing the title "Edward ***Taupier*** Firearms Inventory—To be held until court says otherwise," which was signed by the [*7] defendant and Mr. Sutula at the time of the transfer.

The second relevant filing from the family case is an agreement pertaining to the ***Taupier*** children entered into by the parties on August 13, 2013, and on the same date approved by and issued as a further order of the family court, *Carbonneau, J.* The second paragraph of the order specifically addressed the children's schooling and provided as follows:

> During the school year, the children shall have primary residency with mother and attend Windermere Elementary School in Ellington. There should be no change in the children's school pending written agreement by the parents or further Court order.

Although the parties had negotiated the above-referenced agreements, the family case still had not gone to judgment by the spring of 2014. At that time, the Honorable Elizabeth A. Bozzuto, whose duties as a family court judge in Hartford included the management of cases and dockets, was alerted to and became involved in the family case because it had been pending for approximately a year and a half. Believing that the case needed to be actively monitored, Judge Bozzuto assumed sole responsibility for the management of the case to ensure that [*8] it would either be resolved by the parties or adjudicated by the court in a timely manner. To that end, Judge Bozzuto scheduled status conferences with the lawyers and the guardian ad litem in order to oversee the matter's progress. On May 23, 2014, she also ordered a full comprehensive evaluation to be completed by the Family Services Unit of the Court Support Services Division and directed the parties to cooperate fully with that evaluation.

Shortly after issuing this order, the Family Services Unit advised Judge Bozzuto that its ability to complete the court-ordered evaluation was being thwarted by the defendant's persistent effort to inject into the evaluation process his personal views and opinions regarding the family court system generally. In response to this report, Judge Bozzuto conducted an in-court proceeding on June 18, 2014, at which the parties were present. During that hearing, Judge Bozzuto advised the defendant that he was free to express his political beliefs and his views of the family court process, but ordered him to refrain from doing so during the interviews being conducted in the context of the comprehensive evaluation. Before concluding the hearing, Judge Bozzuto [*9] also reiterated to the parties that, going forward, she alone would be managing the case and monitoring its progress.

Children's Enrollment in Cromwell Schools: August 16, 2014-August 22, 2014

[2] This order appears here exactly as it was written, with the court neither correcting the errors it may contain (i.e. the actual name of the person designated to hold the defendant's firearms is "Dan Sutula," not "Dan Satulo"), nor signaling those errors with the notation "[sic]." The court has followed the same practice with regard to the particular words that appear in the emails and in the excerpt from the transcript of the radio program that are quoted verbatim later in this opinion.

In accordance with the parenting plan then in place, the ***Taupier*** children were visiting and staying with the defendant in his Cromwell home from August 16, 2014 until August 24, 2014. Either shortly before or during that week, Ms. ***Taupier*** received a series of emails from the defendant in which he indicated that he would be enrolling the children in the Cromwell public school system. Aware that the existing court order expressly provided for the children to attend school in the town of Ellington, Ms. ***Taupier*** advised the defendant in email replies that she was not in agreement with the change. In his responses to Ms. ***Taupier***'s objections, the defendant reiterated his insistence that the children be registered in Cromwell, and intimated that the children would not be returned to Ms. ***Taupier*** absent the school change.

On August 20, 2014, Ms. ***Taupier*** received an email from the defendant stating that he had registered the children in Cromwell and that they would be attending the Edna C. Stevens Elementary [*10] School (Stevens School). Upon learning of this, Ms. ***Taupier*** contacted her attorney, Attorney Ficarra, to seek enforcement of the existing court order. On August 22, 2014, Attorney Ficarra prepared an application for an emergency ex parte order of custody that she planned to file with the court and serve on the defendant on the following Monday, August 25, 2014. Attorney Ficarra also prepared a motion for contempt and a separate pleading seeking an immediate hearing on that motion (together, the contempt motions). The contempt motions were emailed by Attorney Ficarra to the defendant on the afternoon of August 22, 2014.[3]

The Emails at Issue: August 22, 2014-August 23, 2014

Soon after receiving the contempt motions from Attorney Ficarra in the afternoon or early evening of August 22, 2014, the defendant shared them or discussed their substance with other persons by email. At 7 p.m. on that date, Anne Stevenson, who had become aware of the contempt motions and their manner of service upon the defendant, emailed the defendant, copying on the email Michael Nowacki and others, under the subject line "third times a charm?" Both Ms. Stevenson and Mr. Nowacki had been involved in family court reform efforts and previously [*12] had communicated with the defendant regarding those efforts and their individual experiences within that court system. In her email, Ms. Stevenson offered the following opinion as to the contempt motions filed by Attorney Ficarra: "I still don't understand how the attorney can file a motion without citing a single law in support, not sign them, not get them endorsed by the court, then serves you by email. Is that legal?"

At 7:16 p.m., in a response he directed to Ms. Stevenson and the defendant (among others), Mr. Nowacki expressed his understanding of the defendant's legal status and the propriety of Attorney Ficarra's contempt motions. Under the same subject line, "third times a charm?" Mr. Nowacki stated:

> He is self represented. Previous orders of the court remain intact until they are modified.

[3] Attorney Ficarra emailed these motions directly to the defendant because he had filed an appearance in the family case on August 11, 2014, as a self-represented party, and had indicated on that appearance form that he would accept pleadings and service electronically. See Practice Book §10-13. The defendant originally had been represented in the family case by Brown, Paindiris and Scott, a firm that had appeared on November 15, 2012. Three months later, on February 11, 2013, the Law Office of Henry B. Hurwitz appeared on the defendant's behalf in lieu of Brown, Paindiris and Scott. Thereafter, [*11] by motion dated December 3, 2013, Attorney Hurwitz sought permission to withdraw his appearance on the stated grounds that the defendant had insulted and demeaned him, had accused him of stealing, and had threatened to sue Attorney Hurwitz for malpractice. Although that motion was never ruled upon by the family court, the firm of Lobo and Associates, LLC filed an appearance on the defendant's behalf on January 10, 2014, in lieu of the earlier appearance of Attorney Hurwitz. Lobo and Associates. LLC remained the defendant's counsel of record until he filed his pro se appearance on August 11, 2014.

> Ted is on shaky ground here in enrolling his daughter in Cromwell. The court order is the prevailing order—like it or not. He could be incarcerated for contempt. While it may not seem fair, it doesn't matter what any of us thinks. Only Bozzuto's opinion matters.

That same evening, Jennifer Verraneault,[4] who was acquainted with the defendant, Mr. Nowacki and Ms. Stevenson and shared their desire **[*13]** to improve the family court system, learned through email correspondence of the contempt motions filed against the defendant, and of Mr. Nowacki's opinion as to their legal merit. At 9:21 p.m., she emailed the defendant, Mr. Nowacki and Ms. Stevenson to express her agreement with Mr. Nowacki's view, writing simply: "Mike is right."

At 11:24 p.m. on August 22, 2014, the defendant sent the email that is the immediate subject of the charges in the present matter. Under a modified subject line that read "third times a charm? plus knowledge" the defendant emailed the following remarks to Ms. Verraneault, Mr. Nowacki and Ms. Stevenson, and copied the email to three other individuals: Susan Skipp, Sunny Kelley and Paul Boyne:[5]

> Facts: JUST an FYI
>
> 1) Im still married to that POS . . . we own our children, there is no decision . . . its 50/50 or whatever we decide. The court is dog shit and has no right to shit they don't have a rule on.
>
> 2) They can steal my kids from my cold dead bleeding cordite filled fists . . . as my 60 round mag falls to the floor and im dying as a I change out to the next 30 rd . . .
>
> 3) Buzzuto **[*14]** lives in watertown with her boys and Nanny . . . there is 245 yrds between her master bedroom and a cemetery that provides cover and concealment.
>
> 4) They could try and put me in jail but that would start the ringing of a bell that can be undone . . .
>
> 5) Someone wants to take my kids better have an f35 and smart bombs . . . otherwise they will be found and adjusted . . . they should seek shelter on the ISS (Int space station).
>
> 6) BTW a 308 at 250yrd with a double pane drops .5 inches per foot beyond the glass and loses 7% of ft lbs of force @ 250yrds—non armor piercing ball ammunition
>
> 7) Mike may be right . . . unless you sleep with level 3 body armor or live on the ISS you should be careful of actions.
>
> 8) Fathers do not cause cavities, this is complete bullshit.
>
> 9) Photos of children are not illegal-
>
> 10) Fucking Nannies is not against the law, especially when there is no fucking going on, just ask Buzzuto . . . she is the ultimate Nanny fucker.

It is not known when Mr. Nowacki first accessed this email, but he replied to it **[*15]** early the following morning, August 23, 2014, at 7:51 a.m. Under the subject line "third times a charm? plus knowledge" Mr. Nowacki directed the following response solely to the defendant: "Ted, There are disturbing comments made in this email. You will be well served to NOT send such communications to anyone."

Less than an hour later at 8:50 a.m., the defendant replied to Mr. Nowacki's comment and warning,

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[4] Ms. Verraneault's involvement in this case is addressed at greater length below.

[5] Ms. Skipp, Ms. Kelley and Mr. Boyne also were involved in family court reform efforts and had previously communicated and interacted with the defendant on that subject.

again under the same subject heading, with the following:

> Hi Mike: the thoughts that the courts want to take my civil rights away is equally disturbing, I did not have children, to have them abused by an illegal court system.
>
> My civil rights and those of my children and family will always be protected by my breath and hands.
>
> I know where she lives and I know what I need to bring about change . . .
>
> These evil court assholes and self appointed devils will only bring about an escalation that will impact their personal lives and families.
>
> When they figure out they are not protected from bad things and their families are taken from them in the same way they took yours then the system will change.
>
> This past week in FERGESON there was a lot of hurt caused by an illegal act, if it were my son, [*16] shot, there would be an old testament response.
>
> 2nd amendment rights are around to keep a police state from violating my families rights.
>
> If they—courts . . . need sheeeple they will have to look elsewhere. If they feel it's disturbing that I will fiercely protect my family with all my life . . . they would be correct, I will gladly accept my death and theirs protecting my civil rights under my uniform code of justice.
>
> They do not want me to escalate . . . and they know I will gladly . . .
>
> I've seen years of fighting go un-noticed, people are still suffering . . . Judges still fucking sheeple over. Time to change the game.
>
> I don't make threats, I present facts and arguments. The argument today is what has all the energy that has expended done to really effect change, the bottom line is—insanity is defined as doing the something over and over and expecting a different outcome . . . we should all be done . . . and change the game to get results . . . that's what Thomas Jefferson wrote about constantly . . .
>
> Don't be disturbed . . . be happy there are new minds taking up a fight to change a system.
>
> Here is my daily prayer:
>
> > I will never quit. I persevere and thrive on adversity.
> >
> > My Nation and Family expects [*17] me to be physically harder and mentally stronger than my enemies.
> >
> > If knocked down, I will get back up, every time.
> >
> > I will draw on every remaining ounce of strength to protect my FAMILY & teammates and to accomplish our mission.
> >
> > I am never out of the fight.—ML

Mr. Nowacki tersely replied to the defendant at 9:08 a.m., as follows: "Violence is not a rational response to injustice. Please refrain from communicating with me if you are going to allude to violence as a response."

Reaction and Response of Jennifer Verraneault: August 23, 2014-August 24, 2014

As noted above, the defendant also had sent his August 22, 2014 email to Jennifer Verraneault. Ms. Verraneault first accessed and read that email on the morning of Saturday, August 23, 2014,[6] and, like Mr. Nowacki, found its content to be disturbing. She was especially frightened by those portions of the email that were directed at Judge

[6] At that time, Ms. Verraneault was traveling in Massachusetts with a group of friends and was not to return to Connecticut until August 24, 2014.

Bozzuto, particularly given the detailed references to the judge's home. Within minutes of reading the email, and because of the concerns and fears she had about it, Ms. Verraneault emailed the defendant telling him that she was worried about him. The defendant never responded to Ms. Verraneault, which served [*18] only to heighten her level of distress.

Unsure as to what action, if any, she should take, Ms. Verraneault discussed the email and its contents over the course of that weekend with some of her traveling partners in Massachusetts, and by phone and email with other friends who were involved with her in family court reform. Among the friends with whom she spoke over that weekend was Connecticut State Representative Minnie Gonzalez. Around that time in 2014, Ms. Verraneault and Representative Gonzalez talked with one another on a nearly daily basis regarding family court issues and legislative efforts related thereto. On August 23, 2014, Ms. Verraneault forwarded Representative Gonzalez a copy of the defendant's email, and during a follow-up phone call later that day, read the defendant's email to her as well.

Ms. Verraneault also sought advice that weekend from Attorney Linda Allard. Ms. Verraneault and Attorney Allard had become acquainted in the course of their joint service on a state task force addressing family court issues. In speaking with [*19] Attorney Allard by phone from Massachusetts, Ms. Verraneault described generally the nature of the defendant's email and its references to a judge, but did not identify either the defendant or Judge Bozzuto by name.

Removal of the Children from Stevens School: August 25, 2014-August 27, 2014

On the morning of August 25, 2014, the application for an emergency order of custody that had been prepared by Attorney Ficarra was submitted to the family court and was promptly considered by Judge Bozzuto.[7] Although she denied the request for temporary custody, Judge Bozzuto ordered that the parties were to abide by the August 13, 2013 agreement regarding the children's schooling and that, "consistent therewith, the children shall attend school in Ellington, forthwith."[8] Later on August 25, 2014, the defendant was served by a judicial marshal with Judge Bozzuto's order.

On Wednesday, August 27, 2014, and in accordance with Judge Bozzuto's order that the children attend school in Ellington, Ms. ***Taupier*** took steps to remove her children from Stevens School. Arriving at the school with Cromwell police because she feared a possible confrontation with the defendant, Ms. ***Taupier*** went to the school office and took [*21] her children into her care. As she left the school with the children and walked toward her car, she observed that the defendant was in the school parking lot and that he was videotaping the events as they unfolded.[9] Police efforts to persuade the defendant "not to

[7] This application had taken on greater urgency in the shared view of Attorney Ficarra and Ms. ***Taupier*** because the defendant had not returned the children to Ms. ***Taupier*** at 7 p.m. on August 24, 2014, as required by the terms of the earlier referenced summer parenting plan. Prior to that agreed-upon time, Ms. ***Taupier*** had emailed the defendant to remind [*20] him that she would be at his Cromwell home at 7 p.m. to pick up the children. The defendant did not respond to that email. Upon her arrival at the defendant's home, Ms. ***Taupier*** discovered that the shades were drawn and no one was home. Ms. ***Taupier*** tried to contact the defendant on his cell phone, on his home phone and by email to advise him that she was at his home and would go to the police if she did not hear back from him. When she did not hear from him, Ms. ***Taupier*** went to the police in Cromwell that night to make a report of what had transpired, and also contacted Attorney Ficarra to advise her. The defendant still had not returned the children to Ms. ***Taupier***'s care as of August 27, 2014, when the events next described in the text occurred.

[8] Judge Bozzuto also scheduled a hearing on the issues of custody and visitation for September 2, 2014.

[9] A portion of this video was introduced as evidence at the trial and viewed by the court.

make matters worse" for the children went largely unheeded, as the defendant can be heard on the video directing a series of mocking comments to the police and Ms. ***Taupier*** all in the presence of the children. At one point in the video, after Ms. ***Taupier*** allowed the children to share a few moments with the defendant, the Taupiers' daughter clearly can be seen and heard crying.[10] Eventually, Ms. ***Taupier*** was able to place the children in her car and drive from the scene. As she was doing so, the defendant, making apparent reference to his intention to upload the video to the internet, can be heard on the video stating to Ms. ***Taupier*** and the police: "You Tube. Look for it tonight."

Initial Involvement of Law Enforcement: August 27, 2014-August 28, 2014

On the afternoon of August 27, 2014, Ms. Verraneault received a phone call from Representative Gonzalez in which Representative Gonzalez reported having seen a video of the ***Taupier*** children being removed from school in Cromwell earlier that day. After being told that the children could be seen and heard crying on the video, Ms. Verraneault feared that the events at the school might, in her words, put the defendant "over the edge." Recalling the statements the defendant had made in his email, and despite fears she harbored about her own safety if he were to learn that she was the person who had disclosed the email to law enforcement authorities, Ms. Verraneault contacted Attorney Allard on August 28, 2014, regarding the need to alert police and Judge Bozzuto of the email's content. Unlike her communications with Attorney Allard the previous weekend, Ms. Verraneault at this point identified Judge Bozzuto and the defendant by name, and forwarded to Attorney Allard a screen shot of the contents of the defendant's email.[11]

After discussing the matter with Ms. Verraneault, Attorney Allard immediately phoned the family court clerk's office in Hartford and was directed by a representative there to contact Judicial Marshals Services. Attorney Allard did so, and eventually spoke with Judicial Marshal Brian Clemens and informed him of the contents of the defendant's email. Judicial Marshal Clemens alerted the Connecticut State Police at Troop H in Hartford and then, knowing that Judge Bozzuto was traveling out of state at the time, left a message on her personal cell phone asking that she call him. When Judge Bozzuto returned **[*24]** his call, he told her that she and her family had been the subject of a threat made by the defendant and that State Police investigators were in the process of retrieving a copy of the threatening communication. Early that same evening, Judicial Marshals Services forwarded Judge Bozzuto a copy of the screen shot of the defendant's email, along with a photograph of the defendant.

Reaction and Response of Judge Bozzuto: August 28, 2014 and Days Following

The information Judge Bozzuto received from Judicial Marshals Services caused her to fear for her own safety and that of her family. When she learned that the threat was made by the defendant, Judge Bozzuto recalled who the defendant was and the contentious nature of his dissolution action. She also recalled that court personnel involved in the defendant's family case, including the guardian ad litem and counselors with the

[10] The video images of the defendant holding and attempting to comfort his crying daughter with one hand apparently were filmed by him with a camera he was simultaneously **[*22]** holding and operating in his other hand.

[11] Ms. Verraneault chose to send a screen shot of the content **[*23]** of the defendant's email, rather than forwarding the email itself in its original format, because the screen shot enabled Ms. Verraneault to provide Attorney Allard with the defendant's statements without also disclosing the identities of the other individuals who had been recipients of the defendant's email, and whose names appeared in the email header. Although Ms. Verraneault had made the personal choice to report the defendant's threat to law enforcement, she did not wish for her decision to oblige the other recipients of the email to become involved if they preferred not to do so.

Family Services Unit, at times had expressed concerns about their personal safety in their interactions with him.

Upon reviewing the screen shot of the email, Judge Bozzuto was immediately alarmed by the extent of the defendant's knowledge of aspects of her personal life and relationships. Most frightening to Judge Bozzuto [*25] was the defendant's intimate knowledge of details regarding her personal residence, including not just the town in which she resided, but her home's proximity to a nearby cemetery, the general topography of her property and the land around it, the location of the master bedroom within the home, and the fact that the bedroom had double-pane windows that looked out over the rear yard. The email was so detailed and specific in its substance and so threatening in its tone that Judge Bozzuto concluded that, in her words, the defendant was "desperate," and had "become completely unraveled" and "really d[id]n't care what happens."

In light of these fears, Judge Bozzuto, while still traveling, contacted her electrician and the security company responsible for the alarm system at her home and upgraded its overall level of security. She asked that local police check on the status of her home and to determine whether it was safe. Upon the judge's return to Connecticut, police officers were stationed outside her home for a week or more, and at work judicial marshals escorted her to and from her car, particularly when she was working late. At her request, local police contacted her children's schools [*26] and provided officials there with the defendant's photograph so that they could be on alert and protect her children. Concerned that the defendant might be prepared to do harm to others outside her family, Judge Bozzuto also took steps to see that the threatening nature of the defendant's email was brought to the attention of Ms. ***Taupier***, as well as to court personnel who had interacted with the defendant during proceedings in the family case.

Defendant's Arrest and Simultaneous Search of His Home: August 29, 2014

The investigation into the defendant's email began on the afternoon of August 28, 2014, when Judicial Marshal Clemens contacted Connecticut State Police. By the next day, August 29, 2014, Detective Daniel DeJesus and Trooper Andrew Katreyna of the Central District Major Crimes Unit had prepared and applied for, and were granted by the court, Mullarkey, J., two warrants: an arrest warrant authorizing the defendant's arrest for the crimes of threatening in the first degree and harassment in the second degree; and a so-called risk warrant, issued pursuant to General Statutes §29-38c, authorizing police to enter the defendant's home at 6 Douglas Drive, Cromwell, and to seize any firearms and ammunition [*27] found therein. Both warrants were executed by police on August 29, 2014, at the defendant's Cromwell home. The defendant was arrested pursuant to the authority of the arrest warrant, and in the simultaneous search of the defendant's home authorized by the risk warrant, the police located and seized fifteen firearms, consisting of both handguns and long guns, along with a number of pistol and rifle ammunition magazines of various calibers, and multiple rounds of ammunition also of various calibers.

Law Enforcement Investigation re Defendant's Firearms

As their investigation continued in the days shortly after the defendant's arrest, the police came to learn of the existence of the March 6, 2013 family court agreement and order that had prohibited the defendant from possessing any firearms and pursuant to which the defendant had purportedly surrendered all of his firearms to Mr. Sutula on March 14, 2013. With that information becoming known to them and in light of their August 29, 2014 seizure of multiple firearms from the defendant's home, the police went to the home of Mr. Sutula on September 2, 2014, to conduct further investigation.

Mr. Sutula confirmed to the police that he had, in [*28] fact, received thirteen firearms from the defendant on March 14, 2013. He went on to disclose, however, that at some point during the mid-summer of 2014, the defendant had contacted him indicating he wanted his guns back, and that on August 27, 2014, the defendant came to Mr. Sutula's home and retrieved six of those guns.[12] Mr. Sutula told the police that he still possessed the remaining seven firearms, and then voluntarily turned them over to the police upon their request.

Although having seized a total of twenty-two firearms in the course of their investigation—fifteen from the defendant's home and seven from Mr. Sutula—the police later specifically examined the fifteen weapons that had been seized from the defendant's possession on August 29, 2014, to determine whether any of them was capable of firing a projectile from 245 yards, the distance that the defendant had referenced [*30] in his email. After four of those fifteen firearms were identified as possibly possessing that long-range capacity, Trooper Matthew Eagleston of the Connecticut State Police, a firearms expert, inspected and test fired those four weapons and concluded that each was fully operable and capable of accurately firing a projectile 245 yards. In addition, after reviewing the types of ammunition that police had seized from the defendant's home on August 29, 2014, Trooper Eagleston further determined that the defendant possessed on that date multiple rounds of ammunition that were compatible with and could be fired from each of the four firearms that had been examined.

Other facts found by the court will be noted and addressed as necessary during the court's consideration of the charges.

III. COURT'S CONSIDERATION OF THE CHARGES

Having concluded that the facts set forth above were established at the trial, the court now turns its attention to the charges alleged in this case to determine whether, on the basis of these facts, the state has proven any one or more of these charges beyond a reasonable doubt.

A.

Although the various charges alleged in the Information differ in some respects, they each [*31] require proof of two common elements: first, that the defendant is the person who authored and intentionally sent the email at issue; and second, that the email communicated the type of threatening language that may be punishable by law. The court will address these two elements at the outset, with the court's findings and determinations hereinafter explained being applicable to each count of the Information.

Identity

Upon consideration of the evidence presented at trial, the court finds that the state has proven

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[12] It is significant that the defendant retrieved only six firearms from Mr. Sutula on August 27, 2014, because, as earlier noted, the police seized fifteen firearms from the defendant's residence on August 29, 2014. The defendant's possession of nine additional firearms on August 29, 2014, compels the conclusion either that he had not, as required, surrendered *all* of his firearms to Mr. Sutula on March 14, 2013, or that he had acquired new firearms after that date and before August 29, 2014. In either case, the defendant's conduct clearly was in direct violation of the unambiguous terms of the firearms restriction that the defendant had agreed to and the court had ordered on March 6, 2013.

Moreover, the fact that the [*29] defendant possessed on August 29, 2014, nine firearms in addition to those he had retrieved from Mr. Sutula two days earlier, supports the reasonable inference that the defendant was in possession of firearms on August 22, 2014, when he wrote and sent the email threatening to shoot Judge Bozzuto. While it may be theoretically possible that the defendant did not have a firearm in his possession when he sent his email and that he acquired all nine of these additional firearms in the six days that followed, the existence of such a remote and farfetched possibility wholly lacking in any evidentiary support does not prevent the court from drawing the reasonable inference that the defendant *did* possess at least one, if not several, firearms when he communicated his threat on August 22, 2014.

beyond a reasonable doubt that the defendant was the person who authored and intentionally sent the email at issue. The most compelling evidence in this regard was the series of statements made by the defendant during the course of an interview he gave on an internet radio program hosted by an individual calling himself "The Captain," which aired on January 6, 2015. In this two-hour interview, an audio tape and transcript of which was introduced by the state at trial, the defendant[13] and his interviewer discussed in considerable detail the defendant's family case and the present criminal court matter. As the discussion turned to the basis for the defendant's arrest on the charges [*32] here, the conversation, as it appears verbatim in the transcript entered into evidence, proceeded as follows:

> MR. ***TAUPIER***: Hell is going on? Alright. So we have this coalition or slash group of families, group of people that are involved with this troublesome divorce system that goes on in the State of Connecticut every day. And I vented one afternoon for various reasons. Basically my ex—I was pro se, so I was self-represented—and my ex's attorney filed this fictitious, you know, list of six major complaints like cavities, I was having sex in front of the kids with nanny, all of this—it's like silly—you know, she might as well have said I was absconding to Italy with the children as well. I mean it was just erroneous. And so I flipped out on her and she sent me four different copies of it. And when I looked on the case detail system—now here's the issue—when somebody files these kind of motions, if you're a pro se litigant, the judiciary that receives these motions and the Court case workers that manage the Court cases, are supposed to inform you if they've been approved to move forward or they've been denied. I don't get any denial notice. In fact, I get nothing because I'm pro se [*33] and they don't have to do anything because they know that I don't have any standing in the Court because I'm a pro se self represented litigant. So she approves it and she scheduled a hearing for 9/2, September 2nd.
>
> THE CAPTAIN: Wow.
>
> MR. ***TAUPIER***: And so this motion that was completely b.s. and it made no sense to anyone, I vented to six people on a private email, it was never intended to the Judge, it was—half Charlton Heston, half F35s and smart bombs, and international space stations, and there's a bunch of hyperbole all woven in there.
>
> THE CAPTAIN: Right.
>
> MR. ***TAUPIER***: So one of these people take the email and they start sending it out and her name is Jennifer Verno. Now Jennifer Verno was on this task force to help fix the guardian ad litem and AMC problem and she was the one that was actually was corresponding with me earlier that morning. So I included her—
>
> THE CAPTAIN: So you thought that she was like one of—one of your—
>
> MR. ***TAUPIER***: Us.
>
> THE CAPTAIN:—yeah.
>
> MR. ***TAUPIER***: One of us.
>
> THE CAPTAIN: Yeah.
>
> MR. ***TAUPIER***: So then she spends the next five days surfing the email to many, many, many, many—10, 15 people trying to see if somebody would actually pick up the phone and call the police and [*34] have me arrested.
>
> THE CAPTAIN: Alright.

[13] In concluding that the defendant was the individual who was being interviewed on the radio program and who made the statements hereinafter attributed to him, the court was persuaded by the testimony of Ms. ***Taupier***, who listened to the program and identified the defendant's voice, and also by the fact that the defendant identifies himself on the program and speaks of facts and circumstances that only he would likely have such intimate knowledge of and be in a position to discuss in significant detail.

MR. ***TAUPIER***: So there's no luck, because everybody in the Family Court says, "It's just Teddy, he's ranting. He's extremely intelligent, but he's a little off" and sometimes when things are completely broken and he just went off—it was 11:50 at night and it was a Friday and I had a long work week and I work on Wall Street, so it's not—now that I'm pro se, I'm working full-time on my job at Court and full-time at my job at work. So she then doesn't get the response she needs, so she sends it to this other person, Linda Allard who is part of the Greater Hartford Legal Aid Counsel funded by the judiciary.

THE CAPTAIN: Oh.

MR. ***TAUPIER***: She picks it up and says, "Oh my God, don't send this to me. Send me a screen shot by text." So Jennifer takes a text picture, sends it to Linda Allard by text and telephone, and then Linda Allard sends it to Bozzuto—Judge Bozzuto who's the Judge on my case.

THE CAPTAIN: Wow.

MR. ***TAUPIER***: So get this. Judge Bozzuto then picks up the phone and she starts calling people and probably emailing people.

Now let me ask you this question. Is it in the judicial preview of her job to start to text and email people to have somebody [*35] arrested or is that outside her judicial responsibility which would give her qualified immunity?

THE CAPTAIN: I would say it would be completely outside of her—of her job description by every stretch of the imagination. And I've—

MR. ***TAUPIER***: You're right.

THE CAPTAIN:—read parts of that email and I didn't see a direct threat to anybody.

MR. ***TAUPIER***: Right.

THE CAPTAIN: I mean to anyone. There was no direct threat—

MR. ***TAUPIER***: It's a list of facts—

THE CAPTAIN:—you did not say "I want to kill this person over here," "I want to" you know "maim this person over here," "I want to dismember this"—there was none of that. There was no—

MR. ***TAUPIER***: None of it.

THE CAPTAIN:—none of that. And you do have a first amendment right 'cause I'm holding the Constitution in my hand. I don't know if you can hear that. Well this is one of the last remaining documents that the government hasn't confiscated yet and they're not going to get this document, even from my cold dead hands, they're not going to get it.

MR. ***TAUPIER***: Hands, right.

THE CAPTAIN: My cold dead fingers will still not release this document to the government; it's mine.

MR. ***TAUPIER***: You know, that's a threat according to the state police here in the State of [*36] Connecticut if you say something like that.

* * *

On the basis of these statements of the defendant, the authenticity of which was not seriously disputed, and the other evidence introduced at trial, the court concludes that the defendant authored and intentionally communicated[14] the

[14] In concluding that the defendant "intentionally" communicated the email, the court means to say that it has determined that the defendant transmitted the email with the requisite general intent—that is, he sent it on purpose, and not by accident. The defendant has not contended, for example, that he clicked "send" when he did not [*37] mean to do so, or that his communication of the email was for any other reason inadvertent.

August 22, 2014 email that is the subject of the charges in the present prosecution.[15]

"True Threat"

Having determined that the defendant was the author and sender of the email at issue, the court must next determine whether that email communicated the type of threatening language that may be the subject of a criminal prosecution under the statutes charged in the Information. The resolution of this question initially turns on whether the defendant's statements constitute a "true threat."

1.

Just over one year ago, our state Supreme Court issued its decision in *State v. Krijger*, 313 Conn. 434, 97 A.3d 946 (2014), a case, like the one here, that involved a prosecution for allegedly threatening speech. **[*39]** [16] In undertaking its review of the sufficiency of the evidence, that court first offered extensive comment on the tension between the first amendment and the prosecution of threatening speech, and then went on to identify and define the concept of a true threat. The court wrote:

> The [f]irst [a]mendment, applicable to the [s]tates through the [f]ourteenth [a]mendment, provides that Congress shall make no law . . . abridging the freedom of speech. The hallmark of the protection of free speech is to allow free trade in ideas—even ideas that the overwhelming majority of people might find distasteful or discomforting . . . Thus, the [f]irst [a]mendment ordinarily denies a [s]tate the power to prohibit dissemination of social, economic and political doctrine [that] a vast majority of its citizens believes to be false and fraught with evil consequence . . .
>
> The protections afforded by the [f]irst [a]mendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the [c]onstitution . . . The [f]irst [a]mendment permits restrictions [on] the content of speech in a few limited areas, which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality **[*40]** . . .
>
> Thus, for example, a [s]tate may punish those words [that] by their very utterance inflict injury or tend to incite an immediate breach of the peace . . . Furthermore, the constitutional guarantees of free speech and free press do not permit a [s]tate to forbid or proscribe advocacy of the use of force or of law violation except

[15] On the basis of these same admissions and other evidence, and in the absence of any persuasive evidence to the contrary, the court further concludes that the defendant was a party to the other emails introduced at trial. Specifically, the court finds that the defendant was (1) the author and sender of the email sent to Mr. Nowacki on August 23, 2014, at 8:50 a.m., and (2) a recipient of the following emails: Mr. Nowacki's emails of August 22, 2014, at 7:16 p.m. and August 23, 2014, at 7:51 a.m. and 9:08 a.m.; Ms. Stevenson's email of August 22, 2014, at 7:00 p.m.; and Ms. Verraneault's email of August 22, 2014 at 9:21 p.m.—all of these emails and their content being more particularly described in the court's factual findings above. Based on the testimony received at trial regarding email communications generally, and the communications in this case specifically, the court is persuaded that all of the emails introduced at this trial were what they purported to be—that is, communications to and from the defendant. See Conn. Code Evid. §9-1. Moreover, the nature and content of these emails support this conclusion, especially **[*38]** in light of the fact that they were each a part of the same original email thread, namely "third times a charm?" later modified to "third times a charm? plus knowledge" in which replies were being offered to comments earlier transmitted. These circumstances provide further support for the court's admission of these emails and their attribution to the defendant as a communication either sent or received by him. See *State v. Leecan*, 198 Conn. 517, 533-34, 504 A.2d 480 (1986); *Ferris v. Polycast Technology Corp.*, 180 Conn. 199, 204, 429 A.2d 850 (1980); Conn. Code. Evid. §9-1(a)(4), Commentary ("'reply letter' doctrine, under which letter *B* is authenticated merely by reference to its content and circumstances suggesting it was in reply to earlier letter *A* and sent by addressee of letter *A*").

[16] The defendant in *Krijger* was charged with threatening in the second degree and breach of the peace under the same subsections of those statutes that are charged in the present Information. *State v. Krijger*, 313 Conn. 442.

> [when] such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action . . . And the [f]irst [a]mendment also permits a [s]tate to ban a true threat . . .
>
> True threats encompass those statements [through which] the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals . . . The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. . . . *Virginia v. Black*, 538 U.S. 343, 358-60, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003) (opinion announcing judgment).
>
> Thus, we must distinguish between true threats, which, because of their lack of communicative value, are not protected by the first amendment, and those statements that seek **[*41]** to communicate a belief or idea, such as political hyperbole or a mere joke, which are protected. *State v. DeLoreto*, 265 Conn. 145, 155, 827 A.2d 671 (2003).

State v. Krijger, supra, 448-50.

As these comments of our Supreme Court make clear, true threats fall outside the scope of the first amendment and may be subject to prosecution because they fail meaningfully to convey facts and ideas that foster and contribute to legitimate public debate. Instead, what true threats *do* foster and contribute to are significant emotional and practical costs for the person threatened resulting from fear and the disruption of that person's sense of safety and security. True threats also bring about significant societal costs, financial and otherwise, relating to the investigation of the threat, the need to afford protection to the target of the threat, and the considerable efforts that must be undertaken in order to prevent the threatened violence from occurring.

2.

Under established Connecticut law, courts are directed to apply an objective test in order to determine whether threatening statements constitute a true threat. **[*42]** As recently as last year, the court in *Krijger* expressed the test as follows: "In the context of a threat of physical violence, [w]hether a particular statement may properly be considered to be a [true] threat is governed by an objective standard—whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." (Internal quotation marks omitted.) *State v. Krijger, supra*, 313 Conn. 450. The court here must, therefore, apply this objective standard in considering whether the state, as to each of the charges in the Information, has introduced sufficient evidence to prove beyond a reasonable doubt that the defendant's email constitutes a true threat.[17]

3.

Because the determination of whether the defendant's email constitutes a true threat will

[17] To the extent that the defendant argues that this court should reject this objective standard in favor of a subjective one, the court declines the defendant's invitation. The court here believes that an objective test properly resolves the tension between the first amendment and threatening speech. Even more important than this court's own opinion, *Krijger* remains the last word spoken on this subject by our appellate courts. While that case recognized that *Virginia v. Black, supra*, 538 U.S. 343, has caused some courts to adopt **[*43]** a subjective test, *Krijger* left intact Connecticut's objective standard, noting that a majority of the courts "ha[d] concluded that *Black* did not alter the traditional objective test for determining whether a true threats exists." *State v. Krijger, supra*, 313 Conn. 452 n.10. This precedent is binding on the court here, it being axiomatic that a trial court is "required to follow the prior decisions of an appellate court to the extent that they are applicable to facts and issues in the case before it, and the trial court may not overturn or disregard binding precedent." *Potvin v. Lincoln Service & Equipment Co.*, 298 Conn. 620, 650, 6 A.3d 60 (2010).

require this court's careful consideration of *Krijger*, it is useful at the outset to address the facts that were at issue in that case. In *Krijger*, the defendant was involved in a long-standing zoning dispute with the town of Waterford. *State v. Krijger, supra*, 313 Conn. 438. He was alleged to have made threatening statements to a town attorney immediately after the conclusion of a court hearing at which the town attorney advised the court of the town's intention to seek to impose fines against the defendant for his continued zoning violations. *Id.*, 439. Specifically, the state alleged that the defendant followed the town attorney and a zoning officer out of the courtroom, directed obscenities toward the town attorney, and then made statements to him alluding to a car accident in which the town attorney's son had suffered serious injury. *Id.*, 439-40. Referencing that car accident, the defendant stated that "more of what happened to your **[*46]** son is going to happen to you," and "I'm going to be there to watch it happen." *Id.*, 440. The town attorney then cursed at the defendant and the defendant responded in kind. *Id.* The town attorney and the zoning officer then crossed the street to get away from the defendant. *Id.*, 441. As they walked away, the zoning officer told the town attorney that the defendant had just threatened him. *Id.* The town attorney disagreed with his colleague's characterization, and shrugged it off by saying, "no, no, no, not really." *Id.* Moments later, as the zoning officer was reaching his car that was parked in a nearby lot, the defendant approached and apologized for his outburst. *Id.*, 442. Notwithstanding his initial downplaying of the event to the zoning officer, the town attorney filed a complaint with the police two days later and the defendant was subsequently arrested. *Id.* The defendant was later convicted after a jury trial. *Id.*, 442-43. On appeal, he argued that the evidence at trial was insufficient as a matter of law to prove that his statements constituted a true threat, as required on the charges of threatening in the second degree and breach of the peace, for which he had been convicted. *Id.*, 443.

4.

In determining whether statements **[*47]** of a threatening nature constitute a true threat, *Krijger* holds that the finder of fact must consider the statements "in light of their entire factual context, including the surrounding events and reaction of the listeners." (Internal quotation marks omitted.) *Id.*, 450. To constitute a true threat, *Krijger* also requires that the language used must be "on its face and in the circumstances in which it is [used,] so unequivocal, unconditional, immediate and

Moreover, as to the defendant's suggestion that *Elonis v. United States*, 575 U.S. __, 135 S.Ct. 2001, 192 L.Ed.2d 1 (2015), compels the application of a subjective test, the court does not agree. In *Elonis*, the defendant was charged with violating 18 U.S.C. §875(c), a statute that makes it a crime to "transmit . . . any communication containing any threat . . ." At the defendant's trial, the jury was instructed that the government needed only to prove that the defendant communicated a "true threat," a concept that the District Court defined by means of an objective test nearly identical to that used in Connecticut. Because 18 U.S.C. §875(c) contained no scienter element requiring any proof as to the defendant's state of mind, the jury essentially was instructed that the **[*44]** defendant should be convicted if a reasonable person would see his statements as a threat, irrespective of the defendant's subjective awareness that his statements would be so viewed.

Relying exclusively on principles of substantive criminal law and the jurisprudential maxim that "wrongdoing must be conscious to be criminal," the court decided that 18 U.S.C. §875(c), though silent on the issue of scienter, required proof of the defendant's awareness, to some unspecified degree, of the nature of his statements. The court did not strike down or in any way criticize the District Court's instruction on true threats, which directed the jury only to consider how a reasonable person would have viewed Elonis's statements. Rather, the court held that this instruction alone was not enough, and the government also was required to prove that Elonis possessed some awareness of the nature of his statements before he could be convicted under 18 U.S.C. §875(c). *Id.*, 2004. ("Petitioner was convicted of violating [18 U.S.C. §875(c)] under instructions that required the jury to find that he communicated what a reasonable person would regard as a threat. The question is whether the statute *also* requires that the defendant be aware of the threatening nature of the **[*45]** communication . . ." [Emphasis added]). For these reasons, the objective test described in *Krijger* as the means of determining what constitutes a true threat continues to be good law in Connecticut even after *Elonis*.

specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution . . ." (Internal quotation marks omitted.) *Id.*

Krijger identifies the starting point for a court's true threat analysis to be the threatening words themselves. Adopting that starting point here, the court has carefully considered the words used by the defendant in the present case in light of their entire factual context, and has concluded that the defendant's email communicated an explicit threat that expressly conveyed the defendant's intention to personally undertake a course of action that would culminate in injury to Judge Bozzuto. Unlike the threatening words in *Krijger*, the words contained in the defendant's email are neither vague **[*48]** nor ambiguous, and the court is not "left to speculate as to precisely what he meant." *State v. Krijger*, 130 Conn App. 470, 490, 24 A.3d 42 (2011) (Lavine, J., dissenting), rev'd by, 313 Conn. 434, 97 A.3d 946 (2014). What the defendant meant here is abundantly clear, and it does not require "too much surmise, too much reading into the statements, [or] too much interpretation" to figure it out. *Id.*

The email specifically and unequivocally identified Judge Bozzuto as the target of the defendant's threat, and with equal clarity and precision indicated the type and capabilities of the firearm, magazines, and ammunition the defendant would utilize to bring about the threatened harm. The language of the email further identified where the assault would occur—that is, at Judge Bozzuto's home—and with frightening specificity correctly described (thereby communicating the defendant's knowledge of) the location of the judge's home, the nature and topography of the property surrounding the home, and the precise spot 245 yards from the home's master bedroom window from which the defendant was to commit the threatened acts of violence with "complete cover and concealment." Emphasizing that it was he, personally, who was to carry out the threat, the defendant stated that he was prepared **[*49]** to risk imprisonment in order to commit the threatened assault. These statements, in the court's judgment, simply are not susceptible of a "benign interpretation."[18] *State v. Krijger, supra*, 313 Conn. 456.

5.

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[18] The court has not overlooked the fact that the email contained a few seemingly outlandish references to F35 fighter jets, smart bombs, and the International Space Station. However wild and exaggerated these references may be when considered in isolation, they do not, in the court's view, ultimately render the defendant's email ambiguous or susceptible to a less threatening interpretation. In evaluating whether a statement constitutes a true threat, the court is required to consider the language of that statement in its entirety, and to determine how it would be interpreted by a reasonable person. As Justice Alito pointed out in *Elonis*, "a communication containing a threat may include other statements that have value and are entitled to protection . . . [b]ut that does not justify constitutional protection for the threat itself." *Elonis v. United States, supra*, 135 S.Ct. 2016 (Alito, J. concurring and dissenting). Similarly, a threatening statement that otherwise would be considered a true threat is not automatically converted as a matter of law into protected speech, thereby **[*50]** insulating its speaker or author from criminal prosecution, merely because the statement may include an occasional hyperbolic expression within it. As Justice Alito so aptly put it, "[a] fig leaf of artistic expression cannot convert . . . harmful, valueless threats into protected speech." *Id.*, 2017. For this court "[t]o hold otherwise would grant a license to anyone who is clever enough to dress up a real threat" with a few dramatic flourishes, *id.*, 2016, and render "[statutes proscribing true threats] powerless against the ingenuity of threateners." (Internal quotation marks omitted.) *State v. Krijger, supra*, 313 Conn. 453.

These general principles aside, the fact here is that the references used by the defendant, while perhaps exaggerated, served only to add to, rather than detract from, the overall threatening nature of the email. When considered in the context of the rest of the email, these references are most reasonably interpreted as an expression of the strength of the defendant's resolve and as a warning from him that only extraordinary efforts would be sufficient to protect Judge Bozzuto from the threatened violence. Using rhetorical embellishments to drive home the point, the defendant's language was the rough equivalent of "I am **[*51]** going to shoot Judge Bozzuto and there is nothing she can do to stop me"—thereby reasonably suggesting that the defendant had become desperate enough not only to make the threat, but also to carry it out.

Indeed, even if a tortured interpretation of the defendant's words was used to produce facial ambiguity as to their meaning, that ambiguity necessarily would still be resolved in favor of finding that they constituted a true threat. In *Krijger*, after determining that the statement in that case was "facially ambiguous," *id.*, 453, the court identified a number of factors—the defendant's prior relationship with the person threatened, the circumstances immediately preceding and following the making of the threat, the nature of the harm threatened and its likelihood of commission, and the reactions of the recipients of the threat—that counseled in that case against a finding that the ambiguous statement there was a true threat. But when those same factors are applied to the present case, as they will be below, they support precisely the opposite conclusion.[19]

Parties' Prior Relationship

Krijger holds that an "important factor to be considered in determining whether a facially ambiguous statement constitutes a true threat is the prior relationship between the parties." *State v. Krijger, supra*, 313 Conn. 453-54. In *Krijger*, the defendant and the target of his threat had a "long-standing working relationship that . . . had been quite cordial and professional." *Id.*, 454. Indeed, the town attorney testified at the trial that he had been to the defendant's home on forty or fifty occasions and that the defendant "was always pleasant and cooperative in his demeanor." *State v. Krijger, supra*, 130 Conn.App. 498.

The same cannot be said about the relationship between the defendant and Judge Bozzuto. Ms. ***Taupier*** and Attorney Ficarra each described the defendant's demeanor throughout the course of the family case as contentious and adversarial to all court personnel involved in his case, including the judges. As to Judge Bozzuto specifically, the evidence also proved that the defendant harbored strong **[*53]** sentiments against her—feelings that he held prior to and long after the date of his threatening email. After being admonished by Judge Bozzuto at the hearing on June 18, 2014, the defendant, according to the credible testimony of Attorney Ficarra, made frequent disparaging comments about Judge Bozzuto in emails and Facebook postings that were still being authored and communicated by the defendant even up to the date on which Attorney Ficarra was testifying in the present matter in April 2015. The defendant's animus toward Judge Bozzuto, and his willingness to express it in no uncertain terms, can also be seen throughout the course of the radio interview the defendant gave in January 2015. In that interview, the defendant made a number of offensive statements regarding Judge Bozzuto's personal life, using terms that the court declines to repeat here.

In sum, this is not a case where the statements at issue, like those in *Krijger*, were communicated in the context of a prior cordial relationship that was lacking in acrimony or animosity. Rather, the defendant's remarks must be viewed by this court through the "clarifying lens," *State v. Krijger, supra*, 313 Conn. 454, of the strained, if not hostile, relationship between the **[*54]** defendant and Judge Bozzuto because "reasonable people necessarily take an ambiguous threat more seriously when it comes from someone who holds a long-standing grudge." (Internal quotation marks omitted.) *Id.*

Circumstances Immediately Preceding the Threat

Krijger also holds that "the immediate circumstances surrounding the alleged threat" can be significant to the true threat determination. *Id.* In that case, the defendant's statements were made "on the heels of a contentious court hearing,

[19] The court conducts this analysis *not* because it believes that the defendant's statements in the present case are ambiguous; to the contrary, **[*52]** the court, as noted, finds that they are an explicit true threat, capable of only one meaning. The analysis that follows, however, will demonstrate that the *Krijger* factors would resolve any ambiguity in a manner consistent with the same conclusion.

at which, for the first time and apparently unbeknownst to the defendant, [the town attorney] had decided to seek the imposition of approximately $6,000 in fines . . . It was against this backdrop, and immediately following the court hearing, while the defendant and [the town attorney] were leaving the courthouse, that the defendant uttered the offending statements." *Id.*, 454-55. Resolving the facial ambiguity of the statements there, the court held that their timing—"that is, right after the court hearing, when the defendant was still very agitated over what had occurred," *id.*, 456—made a "benign interpretation [of the statements] . . . more plausible." *Id.*

The statements of the defendant in the present case are a far [*55] cry from the spontaneous, almost reflexive, statements described in *Krijger*. The defendant's email was not prompted, as in *Krijger*, by an event that occurred only minutes earlier, but by his receipt *hours* earlier of Attorney Ficarra's contempt motions. Moreover, whereas the triggering event in *Krijger*—the town's decision to seek fines—came as a complete surprise to the defendant there, the same cannot be said for the motions filed by Attorney Ficarra. These contempt motions were filed in direct response to the fact that the defendant had enrolled his children in school in Cromwell over Ms. ***Taupier***'s objection and in violation of an existing court order. Given the defendant's awareness of these facts and his involvement in two years of often contentious litigation, it cannot be seriously contended that it "was unbeknownst to the defendant" that sanctions would be sought as a remedy for his provocative challenge to the family court's authority. These circumstances, in the court's opinion, counsel in favor of viewing the defendant's statements as a true threat rather than the type of "spontaneous act of frustration" at issue in *Krijger*. *State v. Krijger, supra*, 130 Conn.App. 498.

Circumstances Following the Threat

Because the "surrounding [*56] circumstances" of an alleged threat include relevant events that may have followed the threat's utterance, *Krijger* additionally considered whether the defendant's behavior after he made the statements at issue shed any light on how its words were most plausibly interpreted. *State v. Krijger, supra*, 313 Conn. 457-58. In holding that the defendant's threatening words were deserving of an innocuous interpretation, that court found it significant that the defendant apologized for his statements within minutes of making them. *Id.* The court concluded that the defendant's expression of contrition following the incident was "decidedly at odds with the view that, just moments beforehand, he had communicated a serious threat to inflict grave bodily injury or death" to the town attorney. *Id.*, 458.

It would be a gross understatement to say that the defendant's post-threat behavior differed from that occurring in *Krijger*. Having received Mr. Nowacki's email response on the morning of August 23, 2014—a response that characterized comments in the defendant's email of the night before as "disturbing" and that urged the defendant to refrain from making such statements—the defendant's reply, sent an hour later, was neither contrite nor apologetic in [*57] language or tone. To the contrary, the defendant's email reply to Mr. Nowacki unequivocally reasserted the defendant's threat to Judge Bozzuto, doing so in words that were equally, if not more, chilling than those communicated by the defendant the night before. The renewal and restatement of the threat, particularly having come in response to Mr. Nowacki's warning, belies any suggestion that the defendant's earlier email should not be viewed as having communicated a serious threat.

Nature of Threat and Defendant's Capacity to Carry it Out

Yet another factor that is properly considered in the evaluation of an alleged threat is the nature of

the threat and the defendant's ability to cause harm to the victim in the particular manner threatened. In *Krijger*, the defendant appeared to have threatened to tamper with the town attorney's car in some unspecified manner and thereby to cause the attorney to be involved in a car accident. The court there commented that "[a]lthough vehicular sabotage is a ubiquitous plot device in spy novels and movies, it is practically unheard of in the real world"; *State v. Krijger, supra*, 313 Conn. 456 n.11; and pointed out that the state had "presented no evidence that the defendant had access to [the town attorney's] [*58] vehicle or that he possessed the skills or wherewithal necessary to carry out such a threat." *Id.* Under such circumstances, the court determined that a threat of vehicular sabotage would not reasonably have been seen as a serious expression of an intent to cause harm to the town attorney.

In sharp contrast to vehicular sabotage, gun violence of the kind threatened by the defendant is neither practically unheard of in the real world, nor ubiquitous only in spy novels and movies. It is ubiquitous in the real world, and the defendant here had the wherewithal to commit it. The state not only proved that the defendant was in possession of a number of firearms and compatible ammunition on August 29, 2014, and by reasonable inference on the date of the email as well, it also proved that four of those guns were operable and capable of firing a shot from the distance he had threatened. The defendant's access to these firearms, particularly in light of his knowledge of and apparent access to the area around Judge Bozzuto's home, lends clear support to the conclusion that his statements were a true threat by demonstrating that he had the ability "to follow through on [the] threat" and there was [*59] an "imminent prospect of [its] execution." *Id.*

Reactions of Recipients of the Threat

Finally, the *Krijger* court held that "a recipient's reaction to an alleged threat is [another] factor to consider in evaluating whether a statement amounted to a true threat."[20] *State v. Krijger, supra*, 313 Conn. 459. In response to the defendant's alleged threat there, the town attorney in *Krijger* responded with angry and taunting words of his own, and moments later was dismissive of the suggestion that he had been threatened. *Id.*, 459 n.12. He then did not report the matter to police until approximately two days later. *Id.* The court concluded that the town attorney's behavior in these respects was "inconsistent with the response of a person who believed that the defendant had just communicated a serious threat of injury or death." *Id.*

As to the reactions of the recipients of the defendant's email in the present case, the court has already discussed Judge Bozzuto's and Ms. Verraneault's testimony on this subject, and has noted Mr. Nowacki's reaction, as described [*60] by his August 23, 2014 emails. With regard to Judge Bozzuto, the court found particularly compelling her testimony that, even as she was then testifying nearly eight months after the defendant's email was sent, the threat it contained was still affecting her daily life: "[E]very night when I get home and it's usually pretty late and during the winter it was dark, as soon as . . . I pull up to the driveway and pull in and stop to get the mail, every time I get out of that car I look up on the hill in the back where all the brush and trees are and think of only Mr. ***Taupier***. And the same thing, you know, I do my best to live my life and I'm busy and active, but it's those bumps in the night, it's when the dogs start barking in the middle of the night and the first thing that comes to mind is Mr. ***Taupier*** . . . And I have to say as I was kissing my daughter goodbye yesterday in the driveway and we were having [a] conversation, she said, mom, let's move it inside because Ted could be up there . . . And I didn't think really it's

[20] In citing this subjective factor and authorizing its consideration, the court emphasized, however, that the test to be applied in a true threat analysis remained "ultimately an objective one." *State v. Krijger, supra*, 313 Conn. 459.

on my kid's mind but that came up just spontaneously as we were having a conversation in that driveway where you could clearly see, you know, up on the hill where someone [*61] could lie in wait." Contrasted with the relatively cavalier reaction of the town attorney in *Krijger*, the reactions of Judge Bozzuto, Ms. Verraneault and Mr. Nowacki to the defendant's email reflect the type of sober and serious fear and concern that is very much consistent with "the response of a person who believed that the defendant had just communicated a serious threat of injury or death."[21] *State v. Krijger, supra*, 313 Conn. 459, n.12.

It is true, of course, that the court also heard testimony from two of the other original recipients of the defendant's email—Susan Skipp and Sunny Kelley—both of whom described their reactions upon reading the defendant's email. Ms. Skipp [*63] testified that she was not alarmed by the email, and did not consider the defendant's words as a threat nor believed that anyone was truly in danger. Instead, she characterized the email as "hyperbolic writing," later adding that "it was just ranting" and "like Dr. Seuss." Ms. Kelley voiced a similar lack of concern for the email and, using almost the same terms as Ms. Skipp, described it as a "hyperbolic rant."

The fact that there is testimony in this case that the defendant's email was viewed by some as a serious threat to commit violence, but by others more innocuously, does not prevent the court from concluding, as it has, that the defendant's email was a true threat. To begin with, legitimate questions were raised as to whether Ms. Skipp and Ms. Kelley were objective and unbiased witnesses, and those questions significantly undermined the value and credibility of their testimony in the opinion of the court.[22] Even putting aside these issues of credibility, the true threat determination, in any event, turns solely on an objective analysis and requires the state to prove that a reasonable

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[21] In an effort to undermine Ms. Verraneault's testimony that she viewed the threat seriously, the defendant at trial made much of the fact that she did not alert police until August 28, 2014, five days after she first read his email. While recognizing the relevance of Ms. Verraneault's delayed disclosure, the court does not find that the delay means that she did not interpret the email as a serious expression of the defendant's intent. First, it bears note that, unlike the town attorney in *Krijger*, Ms. Verraneault neither shrugged off the threat nor told anyone that she did not view it to be a real one. Rather, it was because she *did* take the threat seriously that she immediately sought out the opinions and counsel of many others, including that of Representative Gonzalez and Attorney Allard, [*62] for guidance as to how she should proceed. Second, since Ms. Verraneault was a recipient of the threat but not the person that it threatened, her delay in coming forward is, in the court's opinion, of lesser significance than the delay occurring in a case like *Krijger*, where the person actually threatened with harm is the one who chooses not to make a prompt complaint. Third, while there was no indication as to why the town attorney in *Krijger* waited two days to lodge his complaint, Ms. Verraneault credibly explained the reason for her delay in this case. Ms. Verraneault testified that she harbored genuine concerns as to how the defendant would react if he was to learn that she was the person who had reported the email to authorities. For all of these reasons, the defendant's claim—that Ms. Verraneault's failure to report the email to the police more quickly means that she did not take the threat seriously—is ultimately unpersuasive to the court.

[22] For example, Ms. Skipp testified that she believes that Judge Bozzuto, despite a conflict of interest, participated in Ms. Skipp's own family case and contributed to the wrongful removal of Ms. Skipp's children from her care. In addition, when she was shown a copy of the defendant's August 23, 2014 email to Mr. Nowacki, Ms. Skipp not only appeared unwilling to acknowledge that the defendant was its author, but went so far as to state that the language of the email "doesn't sound like Ted at all, [but] sounds like Paul [Boyne]," thereby seeming to suggest that, in her view, Mr. Boyne had written the email and communicated it through the defendant's email account, presumably without the defendant's knowledge. Later, when Ms. Skipp commented that she herself had sent emails with language equally as offensive as that contained in the defendant's email, she offered as an example an email in which she stated that she wanted to, in her words, "mail dog poop" to the guardian [*65] ad litem in her own family case. Ms. Skipp's responses, not to mention her effort to equate the language of the defendant's email to Dr. Seuss, reflected a lack of insight or candor that, in either case, caused the court to question the reliability of the entirety of Ms. Skipp's testimony.

Ms. Kelley's objectivity regarding Judge Bozzuto was similarly brought into question when Ms. Kelley testified that she had in the past conducted an "audit" of property owned by Judge Bozzuto for evidence of financial irregularities. Even greater concerns regarding her credibility arose from the nature of her relationship with the defendant. Although Ms. Kelley denied having been involved with the

person would interpret the threat as a serious expression of an intent to do harm. While the reactions [*64] of those who receive the threat may assist the court in making that reasonable person determination, these reactions, either way, are in no sense dispositive of the question of how a reasonable person would view the threat.

By way of summary, it is the court's conclusion that the defendant's August 22, 2014 email contained language that constituted a true threat. The court has made this determination by applying the objective test set out in *Krijger*. Pursuant to that test, and on the basis of the credible evidence presented at trial, the court finds beyond a reasonable doubt, first, that a reasonable person not only *could* foresee, but readily *would* foresee, that the language in the email would be interpreted by those to whom it was communicated as a serious expression of an intent to commit an act of violence to Judge Bozzuto; and, second, that a reasonable recipient of the language of the email, familiar with its entire factual context, would be highly likely to interpret it as a genuine threat of violence. The court additionally finds that the email at issue, by its language and considered in the circumstances in which it was authored and communicated, is unequivocal, unconditional, immediate, and specific as to the person threatened, and conveys a gravity of purpose and imminent [*67] prospect of execution. Although it is this court's conclusion that the language of the email is neither facially ambiguous nor susceptible of a benign interpretation, the court further holds that, to the extent that such ambiguity and multiple interpretations of the defendant's statements are deemed to exist, the state in this case has met its burden of proving that the statements constituted a true threat by producing the type of evidence that the *Krijger* court determined relevant for that purpose and which this court has earlier discussed in this decision.[23]

B.

Having concluded that the state has proven beyond a reasonable doubt that the defendant communicated a true threat—proof that was

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defendant romantically, she admitted that she often visited with his children and babysat for them on occasion, and that she resided with the defendant in his Cromwell home at least from August 27, 2014 until August 29, 2014. She admitted also that she accompanied the defendant to Stevens School on August 27, 2014, and was present when his children were removed, and that, on that same day, she was with the defendant in Harwinton when he retrieved his guns from Mr. Sutula. This testimony raised doubts as [*66] to Ms. Kelley's impartiality, and, as a result, bore negatively on the court's assessment of her credibility as a witness.

[23] In connection with its finding that the defendant's statements constituted a true threat, the court adds one final note. The court's use of Judge Bozzuto's professional title throughout this opinion was not intended to signify or even to suggest that the defendant's statements were held to be a true threat specifically because they targeted a judge. To the contrary, the court's holding in this case is actually that the defendant's statements constituted a true threat *even though* they targeted a judge.

In conducting its true threat analysis, the court necessarily considered the defendant's statements "against the background of a profound [*68] national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *State v. Krijger, supra*, 313 Conn. 450. Judges are often called upon to decide matters of significant public and personal interest, and, as a result, they may themselves become part of the debate that these emotionally charged issues have been known to generate. Judges do not harbor Pollyanna notions about the tone or content of that debate, nor naively expect to be immune from the occasional cruel and offensive personal attack that may be contained within that legitimate expressive activity. However distasteful and discomforting such attacks may be, judges must accept the simple truth that these constitutionally protected comments, for better or for worse, "come with the territory."

But even after affording the defendant's statements in the present case what could be seen as this heightened level of first amendment protection, the court remains convinced beyond a reasonable doubt that the defendant's email communicated a true threat. As noted earlier, robust debate on matters of public interest is afforded [*69] first amendment protection because "[t]he hallmark of the protection of free speech is to allow free trade in ideas." *Id.*, 448. But it is equally true that where the content of speech does *not* promote free trade in ideas—that is, where speech is "of such slight social value as a step to truth that any benefit that may be derived from [it] is clearly outweighed by the social interest in order and morality," *id.*, 449—then such speech is neither entitled to nor deserving of constitutional safeguard.

required for each of the charges alleged in the Information—the court now separately considers each charge to determine whether the state also has proven the other essential elements that each offense contains.

Threatening in the Second Degree—Second Count[24]

Pursuant to General Statutes § 53a-62(a)(3), and as alleged in the second count of the Information, the state was required to prove as to the charge of threatening in the second degree that [*71] the defendant threatened (by way of a true threat) to commit a crime of violence; to wit: an assault against Judge Bozzuto, in reckless disregard of the risk of causing terror to another person. In order to sustain its burden of proof on this charge, the state must prove the following elements beyond a reasonable doubt:

(1) that the defendant threatened (by way of a true threat) to commit a crime of violence; and (2) that, in doing so, the defendant acted in reckless disregard of the risk of causing terror to another person.

Threat to Commit a Crime of Violence

The state was required to prove that the defendant threatened (by way of a true threat) to commit a crime of violence, that is, "one in which physical force is [threatened to be] exerted for the purpose of violating, injuring, damaging or abusing another person." Connecticut Criminal Jury Instructions (4th Ed. 2008) § 6.2-3, available at http://jud.ct.gov/JI/Criminal/Part6/6.2-3.htm (last visited September 28, 2015) (copy contained in the file of this case in the Middlesex Superior Court clerk's office). Given that the defendant in his email threatened to shoot Judge Bozzuto, and in light of the court's earlier finding that the defendant's threat constituted a true threat, the court [*72] finds that this element has been proven beyond a reasonable doubt.

Reckless Disregard of the Risk of Causing Terror to Another

The state also had the burden of proving that the defendant acted in reckless disregard of the risk of causing terror to another person.[25] The concept of recklessness is defined in General Statutes § 53a-3(13) as follows: "A person acts 'recklessly' with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it

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In the court's opinion, the defendant's email contained statements that did not, by any conceivable stretch of the imagination, promote free trade in ideas or aid in the search for truth. It cannot seriously be contended that the statement "Buzzuto lives in watertown with her boys and Nanny [and] there is 245 yrds between her master bedroom and a cemetery that provides cover and concealment," has *any* meaningful "social value as a step to the truth," particularly when that statement appears in the email immediately after the defendant describes firing sixty rounds of ammunition and reloading to fire thirty more, and just before he describes the particular firearm and ammunition capable of carrying out the attack he had planned. [*70] Rather than promoting legitimate debate and a free exchange in ideas, the defendant's statements promoted only a "fear of violence" and "the disruption that [such] fear engenders." *Id.* As such, and even though they were directed at a public official, the defendant's statements constituted a true threat and were not protected by the first amendment.

[24] Although threatening in the first degree is set out as the first count in the Information, the court will first turn its attention to the crime of threatening in the second degree as alleged in the second count, given that proof of threatening in the second degree is required for proof of threatening in the first degree.

[25] The court is aware, of course, that the defendant has challenged the constitutionality of the charges in this case, [*73] claiming that the first amendment and *Elonis v.* United States, supra, 135 S.Ct. 2001, preclude the state from prosecuting threatening speech that was communicated recklessly, but not with the specific intent to threaten. See Defendant's Renewed Motion to Dismiss Amended Information, dated June 23, 2015. For the reasons set forth in its separately filed memorandum of decision denying that motion, the court has rejected the defendant's claim. That decision, and the court's analysis and reasoning contained within it, are incorporated here by reference.

constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation."[26] Within the context of the crime of threatening in the second degree, the "substantial and unjustifiable risk" that the defendant must be aware of and consciously disregard is the risk that his conduct will cause terror to another person. The word "terror" refers to stark fear or a state of intense fright or apprehension. *State v. Dyson*, 238 Conn. 784, 798, 680 A.2d 1306 (1996); Connecticut Criminal Jury Instructions, *supra*, § 6.2-3.

Applying these instructions to the charge of threatening in the second degree as alleged here, and having considered the defendant's subjective state of mind and the extent to which the defendant's conduct deviated from that of a reasonable person, the court concludes that the evidence presented proves beyond a reasonable doubt that the defendant communicated his email on August 22, 2014, in reckless disregard of the risk of terrorizing another person. More specifically, [*74] as to the court's objective analysis of the nature and degree of the risk, the court finds that the evidence proves that a reasonably prudent person in the defendant's circumstances would not have communicated the email at issue to others because of its risk of causing terror; and, in addition, that the defendant's communication of the email constituted a gross deviation—that is, a great and substantial deviation as opposed to a slight or moderate one—from the standard of conduct that a reasonable person would abide by in those circumstances. In addition, as to the defendant's subjective awareness of the email's risk of causing terror, the court further concludes, on the basis of the credible evidence presented, that the defendant was himself aware that his email would be seen as threatening and create a risk of terror, and yet consciously chose to disregard his awareness by transmitting the email to its recipients.

In reaching these determinations, the court has considered, but ultimately rejects, the defendant's claim that the evidence cannot reasonably support the conclusion that he acted with reckless disregard of the risk of causing terror because (1) he did not send the email [*75] directly to Judge Bozzuto, and (2) those to whom he did send it were seen by him as "like-minded individuals" who understood and shared his frustration with the family court system.[27] In the court's opinion, neither of these assertions—even assuming the second one is true—undermines the court's factual finding that the defendant acted with the reckless disregard required by the statute.

It is important to note first the precise language of General Statutes § 53a-62(a)(3), the particular subsection of the statute that is charged here. The statute prohibits a person from threatening to

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[26] Thus, to determine whether a defendant acted recklessly, the fact finder must consider objectively the nature and degree of the risk, as well as the defendant's subjective awareness of that risk. *State v. Davila*, 75 Conn.App. 432, 439, 816 A.2d 673, cert. denied, 264 Conn. 909, 826 A.2d 180, cert. denied, 543 U.S. 897, 125 S. Ct. 92, 160 L. Ed. 2d 166 (2003), 543 U.S. 897, 125 S.Ct. 92, 160 L.Ed.2d 166 (2004).

[27] In this regard, it is important to note that there is no testimony in this case as to the *defendant's* perception of the like-mindedness of those to whom he directed the email; namely, Ms. Verraneault, Mr. Nowacki, Ms. Stevenson, Mr. Boyne, Ms. Skipp and Ms. Kelley. As is his right, the defendant elected not to testify in this case, and no unfavorable inference will be drawn from that election. So to the extent that the defense has argued that the six listed recipients of the email were like-minded, that characterization can only reflect the views held by those witnesses who offered testimony on this question: Ms. Verraneault, Ms. Skipp and Ms. Kelley. These three witnesses, however, did not speak with one voice on the question of whether the six recipients of the defendant's email were like-minded. For [*76] example, when Ms. Skipp was asked whether those who had received the defendant's email were all like-minded, she answered in the negative and specifically excluded Ms. Verraneault from that characterization. Ultimately, however, the court need not decide who was like-minded and who was not. Regardless of how the recipients may be characterized, the evidence in this case proves that the defendant was aware that his email would be seen as a serious threat, even by persons who may have shared his unfavorable view of the family courts.

commit a crime of violence in reckless disregard of the risk of causing terror to another person. Although the statute therefore requires proof that a defendant threatened a crime of violence and thereby recklessly created a risk of terror to another person, the statute is not limited in its application only to those cases in which the defendant communicates a true threat directly to the person threatened.

Where the recipient of a threat is not the party threatened, a defendant's conduct can [*77] be in reckless disregard of the risk of causing terror under various theories. For example, a defendant would act in reckless disregard of the risk of causing terror if he was aware of and consciously disregarded a risk that his threat, though targeting another, would cause the recipient of the threatening communication to be personally terrorized. Alternatively, even if the defendant was unaware of the risk that the recipient would be terrorized, a defendant still could be found to have acted in reckless disregard of the risk of causing terror if he was aware of and consciously disregarded the separate risk that the recipient, whomever that might be, would view the threat as sufficiently serious to warrant its disclosure to law enforcement or the person threatened, thereby creating a risk of terror to the defendant's stated target or others.[28]

In the present case, the court concludes that the evidence introduced at trial, and the reasonable inferences that were properly drawn therefrom, prove beyond a reasonable doubt that the defendant knew of the threatening nature of his email, and was aware of and consciously disregarded the risk that it would be seen by those to whom he sent it as so unambiguously serious and [*79] alarming that one or more of them would alert law enforcement and/or Judge Bozzuto to its existence. In reaching this conclusion, the court has been guided by the principle that a defendant's "[s]ubjective realization of a risk may be inferred from [the defendant's] words and conduct when viewed in the light of surrounding circumstances." (Internal quotation marks omitted.) *State v. James*, 154 Conn.App. 795, 809, 112 A.3d. 791 (2015). Here, it is the defendant's words themselves—in particular, those he used both in the subject email and in his response to Mr. Nowacki the next morning—that circumstantially demonstrate that he was aware of the risk of terror that his actions created.[29]

As to the August 22, 2014 email, the court concludes that the defendant was aware that the

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[28] The following examples may help to illustrate these two theories of liability. Assume a defendant threatened to harm a child. If the defendant communicated that threat to the child's parent, the defendant (depending on the evidence presented) could be found to have been aware of and to have consciously disregarded the risk of causing terror to [*78] that parent, even if the child would never come to learn of the threat. Assume instead that the defendant communicated the same threat not to the child's parent but to a recipient who was unacquainted with the child and who therefore was unlikely to personally experience terror—that is, intense, stark fear—by receiving the threat. Even under those circumstances, the defendant (again, depending on the evidence) still could be found to have acted in reckless disregard of the risk of causing terror if it was proven that he had been aware of and disregarded the risk that the person to whom he had communicated the threat would view it as a serious one and feel compelled to bring it to the attention of law enforcement or the child's parent, creating the risk in either case that the parent ultimately would be terrorized.

[29] In reaching this conclusion, the court found little value in the defendant's contention, advanced by him during his radio interview in January 2015, that he was only "vent[ing] to six people on a private email, and it was never intended to the Judge . . ." The defendant offered this blatantly self-serving characterization more than four months after his arrest and with criminal charges pending against him. As a result, it is difficult not to view the defendant's radio comments as little more than a tidy and well-rehearsed summary of his criminal defense—an attempt by him to win the support [*80] of those listening by rationalizing the conduct that led to his arrest and by making himself appear to have been the victim of overzealous police and prosecutors who had trampled his constitutional rights. Of course, the defendant's desire to be considered as an innocent victim also explains why, in two hours of air time, he failed to mention *any* of the threatening language he used in his August 22, 2014 email or in his response to Mr. Nowacki the following morning—choosing instead to say only that it was "half Charlton Heston, half F35s and smart bombs and international space stations."

words he used in the email, even considered against the backdrop of the type of language used by the most strident and vehement family court critics, were unprecedented in their detailed and specific description of the threatened assault and in its unambiguous expression of an intent to do harm to Judge Bozzuto. In other words, the court has determined that, even in the context of the type of harsh, offensive and even vaguely threatening language directed at judges and other court officials that may have been [*81] expressed in prior communications between the defendant and other frustrated family court litigants, the defendant knew full well that his email would stand out and stand alone, precisely as he had intended. For very good reason, the defendant's email raised grave concern in the minds of Mr. Nowacki and Ms. Verraneault, both of whom, in the court's view, were in a better position than nearly anyone else to assess the seriousness of the defendant's threat and to distinguish it from the hyperbole that the defendant and other family court critics may have uttered in the past.

Perhaps even more compelling proof that the defendant was aware that his email would be viewed as a serious threat and disclosed to others, is found in his response to Mr. Nowacki's August 23, 2014 email. As discussed earlier, Mr. Nowacki had characterized the comments in the defendant's email of the night before as "disturbing," and urged him not to communicate those types of sentiments to anyone. If the defendant truly had been unaware that his earlier email would be seen in that way, then one would have reasonably expected his response to express some measure of surprise at Mr. Nowacki's interpretation, and to [*82] contain statements along the lines of "I was only joking, Mike" or "Sorry for the rant," or maybe "That's not what I meant." But the defendant's response was nothing of the kind.

In the response he sent to Mr. Nowacki, the defendant did not apologize for his words or offer a benign interpretation of them, or state that he had been unaware that they would be (wrongly) taken seriously. Instead of disabusing Mr. Nowacki of his concerns or attempting to explain that the email had merely been a rambling, late-night tirade borne out of frustration, the defendant actually used his response as an opportunity to reassert the threat, stressing that he knew where Judge Bozzuto lived and it had become "time to change the game." Making his response even more chilling, the defendant made repeated references not only to Judge Bozzuto, but to her *children*—stating that "bad things" had to happen to judges and their families, and that judges' "families had to be taken from them" before the family court system would ever improve. It is difficult for the court to conceive of a more paradigmatic and terrifying threat than one indicating an intent to cause harm to one's children, and equally difficult to [*83] conceive that the defendant, a parent himself, was not fully aware of that very fact as he composed his response to Mr. Nowacki. Indeed, at the time he communicated this response, the defendant was not only aware of a *risk* that his email of the night before would be viewed seriously, he knew that it already had been—not by a person who did not know him or could not appreciate his level of frustration with the family court system, but by a "like-minded" person like Mr. Nowacki who understood the defendant's email threat to be a serious one and who therefore warned the defendant against sending such statements to anyone.

For these reasons, the defendant's conduct and statements after the fact fully support the reasonable inference that the defendant knew that his email would be seen as a serious expression of his intentions, and was aware of and consciously disregarded the substantial and unjustifiable risk that, as a result, it would be disclosed to others and cause terror to Judge Bozzuto. Under these circumstances, this court is persuaded that the defendant acted in reckless disregard of the risk of causing terror to Judge Bozzuto, and that the state

has proven beyond a reasonable [*84] doubt the elements of the crime of threatening in the second degree.[30]

Threatening in the First Degree—First Count

Having concluded that the state has proven the elements of threatening in the second degree beyond a reasonable doubt, the court, before returning a verdict on that charge, must consider whether the state proved the crime of threatening in the first degree as alleged in the first count of the Information. Pursuant to General Statutes §53a-61aa(a)(3), and as alleged in the Information, the state was required to prove as to the charge of threatening in the first degree that the defendant committed threatening in the second degree and that, in committing that offense, he "represented by his words . . . that he possessed a firearm . . ." In order to sustain its burden of proof [*85] as to this charge, the state was therefore required to prove the following elements beyond a reasonable doubt:

(1) that the defendant committed threatening in the second degree as alleged in the second count; and

(2) that, in committing that offense, he represented by his words that he possessed a firearm.

As to the first of these elements—that the defendant committed threatening in the second degree—the court incorporates its earlier discussion on that subject and concludes that the state has proven the commission of threatening in the second degree beyond a reasonable doubt.

As to the second element—that the defendant represented by his words that he possessed a firearm—the court similarly incorporates its earlier discussion and, on that basis, concludes that the state proved this aggravating factor beyond a reasonable doubt. Significantly, the defendant's email did more than merely communicate a vague, generalized threat of an assault against Judge Bozzuto. The email communicated the defendant's specific threat to shoot Judge Bozzuto, and went on to identify, and thereby to reflect the defendant's intimate knowledge of, both: (1) the particular type of weapon—a .308 caliber firearm—that [*86] had the sufficient long-range capacity to enable the defendant to carry out the shooting of Judge Bozzuto from the precise distance and location that the email further described, and (2) the particular type of ammunition—non-armor piercing ball ammunition—that would maintain sufficient foot-pounds of force and energy to cause injury to Judge Bozzuto from that stated distance and location.

Given the email's precise description of the manner in which the shooting would be carried out and its specific reference not only to firearms and ammunition generally, but to a firearm of a certain caliber and ammunition of a certain type, and on the basis of the reasonable inferences that the court has drawn therefrom, the court concludes that the defendant, by the words he used in his email, represented that he possessed a firearm. Because the evidence proves beyond a reasonable doubt that the defendant committed threatening in the second degree by transmitting an email that represented by its words that the defendant possessed a firearm, it is the verdict of this court that the defendant is guilty of the crime of

[30] Having determined that the defendant acted in reckless disregard of the risk of causing terror to Judge Bozzuto in the manner above described, the court does not need to reach an alternate manner in which the defendant could have recklessly disregarded the risk of causing terror; namely, whether he recklessly disregarded the risk of causing terror to any of the direct recipients of his email. See footnote 28 and accompanying text, *supra.*

threatening in the first degree as alleged in the first count of the Information.[31]

Disorderly Conduct—Third Count

Pursuant to General Statutes §53a-182(a)(2), and as alleged in the third count of the Information, the crime of disorderly conduct is defined as follows: "A person is guilty of disorderly conduct when, recklessly creating a risk of causing inconvenience, annoyance or alarm to another person, such person by offensive or disorderly conduct annoys or interferes with such person." In order to sustain its burden of proof on this charge, the state must prove the following elements beyond a reasonable doubt:

(1) that the defendant recklessly created a risk of inconvenience, annoyance or alarm to Judge Bozzuto by sending the email;

(2) that the sending of the email constituted offensive or disorderly conduct; and

(3) that the defendant's offensive or disorderly conduct annoyed or interfered with Judge Bozzuto.

As to the first of these elements, the court notes at the outset that it has interpreted "inconvenience" to mean something that disturbs or impedes; "annoyance" to mean vexation or a deep effect of provoking [*88] or disturbing; and "alarm" to mean filled with anxiety as to threatened danger or harm. See *State v. Indrisano*, 228 Conn. 795, 810, 640 A.2d 986 (1994), citing Webster's Third New International Dictionary. Furthermore, the court has assessed the sufficiency of the evidence as to this element in the manner required by *Indrisano* by considering "what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm." *Id.*

The court has already found, in the context of its consideration of the evidence as to the threatening charges in the first and second counts of the Information, that the defendant, by sending his threatening email, was aware of and consciously disregarded the substantial and unjustifiable risk of causing terror to Judge Bozzuto. Consistent with that finding, the court further concludes that the defendant's conduct also recklessly created a risk that Judge Bozzuto would be inconvenienced, annoyed or alarmed by the email's threatening content. Unquestionably, when viewed objectively pursuant to the *Indrisano* standard just stated, the defendant's email would [*89] cause the person threatened by it to experience deep feelings of vexation and anxiety as a result of the threatened harm, and to suffer as well a disturbance to impediment of his or her lawful activities. The court also finds that the defendant was subjectively aware of and consciously disregarded the risk that his email would cause Judge Bozzuto to experience those emotions and to suffer the described disturbance and impediment.

As to the second element, the court finds that the defendant's communication of the email constituted offensive and disorderly conduct

[31] [*87] In light of the court's verdict as to this charge, the court does not return a verdict on the charge of threatening in the second degree, as alleged in the second count. See footnote 1, *supra*.

because that email contained a true threat[32] of a nature that would be "grossly offensive, under contemporary community standards, to a person" who read or otherwise learned of its existence. *State v. Indrisano, supra*, 228 Conn. 818; Connecticut Criminal Jury Instruction, *supra*, §8.4-8. In the court's opinion, the fact that the defendant's threat was so detailed and specific in the many respects discussed previously, supports the court's conclusion that the defendant engaged in conduct that would be viewed not merely as "offensive," but "grossly offensive," under current community standards.

With regard to the third element, the court concludes that the state proved that the defendant's offensive and disorderly conduct annoyed and interfered with Judge Bozzuto. In this regard, the court applies the definition of the phrase "annoyed and interfered with" that *Indrisano* dictates, that is, to be disturbed or impeded in one's lawful activities. *State v. Indrisano, supra*, 228 Conn. 819. The court specifically determines in this regard that the threatening nature of the email disturbed or impeded Judge Bozzuto's lawful activities **[*91]** in at least one of the ways that she described in the course of her testimony at the trial.[33]

The court therefore concludes that the evidence in this case proves beyond a reasonable doubt that the defendant, recklessly creating a risk of causing inconvenience, annoyance and alarm to Judge Bozzuto, engaged in offensive and disorderly conduct by writing and communicating the email at issue, and thereby annoyed and interfered with Judge Bozzuto. In light of this conclusion, it is the verdict of this court that the defendant is guilty of the crime of disorderly conduct **[*92]** as alleged in the third count of the Information.

Disorderly Conduct—Fourth Count

The allegations contained in the fourth count of the Information mirror those in the third count, except to the extent that they contend that the defendant recklessly created a risk of inconvenience, annoyance or alarm to Jennifer Verraneault (rather than to Judge Bozzuto, as in the third count); and that the defendant's offensive and disorderly conduct annoyed or interfered with Ms. Verraneault (again, rather than Judge Bozzuto).

As to the elements of the crime of disorderly conduct that are explained above, the court concludes that the state proved each of these elements beyond a reasonable doubt. As to the element of recklessness, the court specifically finds that the defendant, in sending the email to Ms. Verraneault, was aware of and consciously disregarded the substantial risk that she would herself be inconvenienced, annoyed and alarmed by its content, despite the fact that she was not the person threatened with harm in the email. As noted in the court's discussion of the third count, to "inconvenience" another person means to disturb that person, and to "alarm" another person

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[32] Neither the disorderly conduct statute nor the applicable Judicial Branch Model Jury Instruction expressly references the concept **[*90]** of "true threats." Connecticut Criminal Jury Instruction (4th Ed. 2008) §8.4-8, available at http://www.jud.ct.gov/JI/criminal/part8/8.4-8.htm (last visited September 28, 2015) (copy contained in the file of this case in the Middlesex Superior Court clerk's office). The court believes, however, that in a disorderly conduct prosecution in which the offensive or disorderly conduct alleged relates to the defendant's communication of threatening speech, the state is required to prove that the defendant communicated a true threat. Having imposed that burden on the state, the court has determined on the basis of the reasoning previously explained that the state has proven this "true threat" element for both the third and fourth counts of the Information.

[33] By way of example, Judge Bozzuto's lawful activities were disturbed and impeded because the defendant's threat caused her to take steps to protect herself and her family (i.e. upgrading her home security system and providing officials at her children's schools with the defendant's name and photograph), and to experience the sense of disquietude and anxiety that she still now often experiences when she approaches her home in the evening. Judge Bozzuto's lawful activities clearly included her right *not* to take those actions that she felt compelled to take, or to experience those emotions that she still now is forced to endure.

means to fill that person [*93] with anxiety of threatened danger or harm. *State v. Indrisano, supra*, 228 Conn. 810. For the reasons earlier explained, the court concludes that when the defendant communicated his threatening email to Ms. Verraneault, he was aware that she would view its content as a serious expression of his intent to shoot Judge Bozzuto, and that Ms. Verraneault would be disturbed and filled with anxiety as a result of that threatened harm.[34]

As to the second and third elements of disorderly conduct—that the defendant by offensive and disorderly conduct, annoyed or interfered with Ms. Verraneault—the court, on the basis of the same standards, reasoning and analysis that it applied to the third count, concludes that the state proved these elements beyond a reasonable doubt as to the fourth count as well.[35]

The court therefore concludes that the evidence [*95] in this case proves beyond a reasonable doubt that the defendant, recklessly creating a risk of causing inconvenience, annoyance and alarm to Jennifer Verraneault, engaged in offensive and disorderly conduct by writing and communicating the email at issue, and thereby annoyed and interfered with Ms. Verraneault. In light of this conclusion, it is the verdict of this court that the defendant is guilty of the crime of disorderly conduct as alleged in the fourth count of the Information.

Fifth Count—Breach of the Peace in the Second Degree

Pursuant to General Statutes §53a-181(a)(3), and as alleged in the fifth count, a person is guilty of breach of the peace in the second degree when, recklessly creating a risk of causing inconvenience, annoyance or alarm, such person threatens to commit any crime against another person. The state alleges specifically that the defendant, by authoring and communicating his email, recklessly created a risk of causing inconvenience, annoyance and alarm by threatening to assault Judge Bozzuto. In order to sustain its burden of proof on this charge, the state must prove beyond a reasonable doubt the following elements:

(1) that the defendant recklessly created a risk of inconvenience, annoyance [*96] or alarm to another person; and

(2) that the defendant threatened (by way of a true threat) to commit a crime against Judge Bozzuto.

As to the element of recklessness, the court specifically finds that the defendant, in authoring and sending the email at issue, recklessly created a risk of causing inconvenience, annoyance and

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[34] In fact, Ms. Verraneault testified that she was so disturbed and frightened by the defendant's email that she immediately emailed the defendant to state that she was worried about him. The defendant, however, never responded. In the court's view, had the defendant been unaware that his email would be taken seriously, it would be reasonable to expect that he would have responded to Ms. Verraneault to ask the reasons for her concern or to assuage her fears. The defendant's failure to respond to Ms. Verraneault's email is therefore consistent with his earlier discussed failure to express surprise or contrition at the similar concerns expressed by Mr. Nowacki in his email of August 23, 2014. In both situations, the defendant's behavior supports the reasonable inference that he communicated his email with [*94] full awareness of its threatening character and how seriously it would be viewed.

[35] With regard to the manner in which the defendant's email annoyed or interfered with Ms. Verraneault, she testified, for example, as to the many people she contacted for advice regarding the email and her duty to alert others about it. She also testified that when she did report the email to law enforcement, she did so despite her fears that her personal safety could be jeopardized if the defendant were to learn of what she had done. These actions taken and emotions experienced by Ms. Verraneault, like those taken and felt by Judge Bozzuto; see footnote 33, *supra*; were prompted solely by the defendant's offensive and disorderly conduct and acted to disturb and impede Ms. Verraneault's lawful activities.

alarm to another person.[36] This same element is contained in the disorderly conduct charges that are set forth in the third and fourth counts, and the court incorporates here its previous discussion regarding the sufficiency of the evidence on this element.

As to the second element, the court finds that the evidence also proves that the defendant threatened in his email to commit the crime of assault against Judge Bozzuto. With regard to the nature of the defendant's threat, the court further concludes that the language of the defendant's email constituted a true threat, as that concept has been earlier explained.

The court therefore concludes that the evidence in this case proves beyond a reasonable doubt that the defendant, recklessly creating a risk of causing inconvenience, annoyance and alarm to another person, threatened to commit the crime of assault against Judge Bozzuto. In light of this conclusion, it is the verdict of this court that the defendant is guilty of the crime of breach of the peace in the second degree as alleged in the fifth count of the Information.

IV. FURTHER ORDER OF THE COURT

Having found [*98] the defendant guilty of the charges as indicated, the court continues the matter for sentencing until December 9, 2015.

THE COURT

Gold, J.

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[36] Unlike the disorderly conduct charges in the third and fourth counts of the Information, the breach of the peace in the second degree charge set forth in the fifth count does not specify a "victim"-that is, it does not allege that the defendant recklessly created a risk of inconvenience, annoyance or alarm to a particular named individual. The defendant did not request, either during pretrial proceedings or at trial, that the state identify by name the alleged victim in this count. In any event, as indicated in its discussion of the disorderly conduct offenses, the court has determined that the defendant recklessly [*97] created such a risk which appears in identical language in the disorderly conduct and breach of the peace in the second degree statutes-to both Judge Bozzuto and Jennifer Verraneault. Therefore, the state, as required, has proven that the defendant recklessly created a risk of inconvenience, annoyance or alarm "to another person."

A.C. 38809 **MMX CR14-0675616-T**	:	**STATE OF CONNECTICUT**
STATE OF CONNECTICUT	:	**SUPERIOR COURT**
V.	:	**JUDICIAL DISTRICT OF MIDDLESEX AT MIDDLETOWN**
EDWARD F. TAUPIER	:	**MARCH 29, 2016**

Present, Hon. David P. Gold

JUDGMENT

Upon Information of Vicki Melchiorre, DCJ Supervisor Assistant State's Attorney for Part A, Judicial District of Hartford, filed on August 29, 2014 the defendant, Edward F. Taupier was charged in the First Count with Threatening in the First Degree on or about August 23, 2014 in violation of Connecticut General Statutes (CGS) §53a-61aa, and in the Second Count with Harassment in the Second Degree on or about August 23, 2014 in violation of CGS §53a-183(a)(2).

Uniform Arrest Report (UAR: 1664291) indicates that said defendant was arrested by the Connecticut State Police (CSP) in the town of Cromwell on August 29, 2014. He posted a cash bond of Thirty-Five Thousand Dollars ($35,000) and was assigned a court date of September 2, 2014. On said date, the Defendant, represented by Attorney Jefferson Jelly was arraigned in the Superior Court Geographical Area No. 14 (GA#14) in the City of Hartford by the Honorable Joan Alexander. Said Court increased Defendant's bond by an additional Forty Thousand Dollars ($40,000) cash without prejudice, to be posted in court only. This total cash bond of Seventy-Five Thousand Dollars ($75,000) also included certain conditions of release. Since this case involved the alleged threatening of a Hartford Superior Court Judge, the matter was transferred to the Judicial District of Middlesex, Part A docket.

Presentment before the Honorable David P. Gold in Middletown was scheduled for September 4, 2014 when through his Attorneys Jefferson Jelly and John R. Donovan, the Defendant entered not guilty pleas to the Information and elected a trial by jury. He was also advised of the specific conditions of release that he must comply with, including a 24/7 lockdown with particular exceptions only, surrender of firearms, and surrender of his passport.

On September 8, 2014 the Defendant was called to court to address his alleged failure to comply with certain Court (Gold, J.) imposed, and Office of Adult Probation (OAP) enforced conditions of release. He appeared with Attorneys Jelly, Donovan and Alisha Mathers. The Court (Gold, J.) specifically clarified each condition. Subsequent to this hearing, an Appearance for the defendant and a Motion to Dismiss was filed by Attorney Alisha Mathers in lieu of Attorneys Jelly and Donovan.

On September 11, 2014 an Appearance was filed by Attorney Jon Schoenhorn in place of Attorney Alisha Mathers. Attorney Schoenhorn represented the defendant in a separate hearing regarding a Firearms Risk Warrant and also filed a Motion to Modify Conditions of Release. Another pre-trial hearing was held on September 22, 2014 wherein the Court (Gold, J.) again clarified, and slightly modified the conditions of release. The Court endeavored to be consistent with Middletown Superior Court – GA #9 Family Services Division visitation orders regarding Defendant's pending divorce and child custody proceedings.

On October 1, 2014 another Appearance was filed by Attorney Rachel Baird in lieu of Attorney Jon Schoenhorn. Thereafter the Defendant appeared regularly for discovery, repeated modification of conditions of release, and other pretrial conferences between his attorney and Assistant State's Attorney (ASA) Brenda Hans.

On November 17, 2014 ASA Brenda Hans filed a Substituted and/or Amended Information charging the Defendant in the First Count with Threatening in the First Degree on or about August 23, 2014 in violation of Connecticut General Statutes (CGS) §53a-61aa(a)(3); in the Second Count with Threatening in the Second Degree on or about August 23, 2014 in violation of CGS §53a-62(3); in the Third Count with Harassment in the Second Degree on or about August 23, 2014 in violation of CGS §53a-183(a)(2); in the Fourth Count with Disorderly Conduct (re: Elizabeth Bozzuto) on or about August 23, 2014 in violation of CGS §53a-182(a)(2); in the Fifth Count with Disorderly Conduct (re: Jennifer Verraneault) on or about August 23, 2014 in violation of CGS §53a-182(a)(2); and in the Sixth Count with Breach of Peace in the Second Degree on or about August 23, 2014 in violation of CGS §53a-181(a)(3).

A hearing was held on November 18, 2014 and the Court (Gold, J.) again addressed the defendant's financial / non-financial conditions of release. The parties subsequently agreed on a tentative schedule for pretrial motions and confirmed that the trial would commence on or about March 4, 2015.

On March 3, 2015 ASA Brenda Hans filed a Second Substituted and/or Amended Information charging the Defendant in the First Count with Threatening in the First Degree on or about August 22, 2014 in violation of CGS §53a-61aa(a)(3); in the Second Count with Threatening in the Second Degree on or about August 22, 2014 in violation of CGS §53a-62(3); in the Third Count with Harassment in the Second Degree on or about August 22, 2014 in violation of CGS §53a-183(a)(2); in the Fourth Count with Disorderly Conduct (re: Elizabeth Bozzuto) on or about August 22, 2014 in violation of CGS §53a-182(a)(2); in the Fifth Count with Disorderly Conduct (re: Jennifer Verraneault) on or about August 23, 2014 in violation of CGS §53a-182(a)(2); and in the Sixth Count with Breach of Peace in the Second Degree on or about August 22, 2014 in violation of CGS §53a-181(a)(3).

On March 4, 2015 a hearing was held to address the many pretrial motions filed by the parties and/or several subpoenaed witnesses. On March 6, 2015 another hearing was convened to ascertain defendant's compliance with his conditions of release. On March 9, 2015 an evidentiary hearing was held regarding defendant's Motion to Suppress Evidence of Firearms and Ammunition.

On March 10, 2015 ASA Brenda Hans filed a Third Substituted and/or Amended Information charging the Defendant in the First Count with Threatening in the First Degree on or about August 22, 2014 in violation of CGS §53a-61aa(a)(3); in the Second Count with Threatening in the Second Degree on or about August 22, 2014 in violation of CGS §53a-62(3); in the Third Count with Disorderly Conduct (re: Elizabeth Bozzuto) on or about August 22, 2014 in violation of CGS §53a-182(a)(2); in the Fourth Count with Disorderly Conduct (re: Jennifer Verraneault) on or about August 23, 2014 in violation of CGS §53a-182(a)(2); and in the Fifth Count with Breach of Peace in the Second Degree on or about August 22, 2014 in violation of CGS §53a-181(a)(3).

On this date the Court (Gold, J.) rendered its ruling that the Defendant's Motion to Suppress Evidence of Firearms and Ammunition was denied. This decision is documented in the transcribed Memorandum of Decision dated March 10, 2015 and signed on April 13, 2015.

On March 12, 2015 the parties appeared in court to address outstanding issues. The Defendant elected a bench trial, the Court (Gold, J.) canvassed him in great detail, and the trial was scheduled to commence on April 6, 2015.

Presentation of trial evidence and consideration of additional motions commenced on said April 6, 2015. This process was completed by May 26, 2015. Closing arguments were presented by both parties on June 23, 2015 and more motions were addressed during the ensuing months.

The Court (Gold, J.) filed its written verdict and signed Memorandum of Decision on October 2, 2015. It was distributed to the parties in courtroom 3B and recorded at 9:14 am o'clock as follows:

First Count:	Threatening in the First Degree CGS §53a-61aa(a)(3)	GUILTY
Second Count:	Threatening in the Second Degree CGS §53a-62(3)	NO VERDICT
Third Count:	Disorderly Conduct (re: E.Bozzuto) CGS §53a-182(a)(2)	GUILTY
Fourth Count:	Disorderly Conduct (re: J.Verraneault) CGS §53a-182(a)(2)	GUILTY
Fifth Count:	Breach of Peace in the Second Degree CGS §53a-181(a)(3)	GUILTY

A Pre-Sentence Investigation (PSI) was ordered for the December 9, 2015 sentencing date and the Defendant's bond remained as set at Seventy-Five Thousand Dollars ($75,000) cash only with specific conditions of release. On November 17, 2015 an Appearance was filed by Attorney Norman Pattis "in addition to" the appearance on record of Attorney Rachel Baird. The December 9, 2015 sentencing date was subsequently continued to January 6, 2016 and then to January 12, 2016.

On January 12, 2016 the parties appeared for sentencing. The Court (Gold, J.) acknowledged and reviewed the PSI report dated January 4, 2016 and noted a few corrections. ASA Brenda Hans and the victim, the Honorable Elizabeth Bozzuto addressed the Court. Defense Attorney Rachel Baird had previously filed a collection of letters in favor of the Defendant, and now introduced several individuals who presented statements to the Court.

The Court (Gold, J.) proceeded to impose a total effective sentence (TES) of Five (5) years e/s/a Eighteen (18) months served and Five (5) years probation with special conditions (sc). The sentence was specified as follows:

First Count:	Threatening in the First Degree CGS §53a-61aa(a)(3)	5 years e/s/a 18 months 5 years probation w/ sc
Second Count:	Threatening in the Second Degree CGS §53a-62(3)	NO VERDICT

Third Count:	Disorderly Conduct (re: E.Bozzuto) CGS §53a-182(a)(2)	3 months to serve (conc)
Fourth Count:	Disorderly Conduct (re: J.Verraneault) CGS §53a-182(a)(2)	3 months to serve (conc)
Fifth Count:	Breach of Peace in the Second Degree CGS §53a-181(a)(3)	6 months to serve (conc)

Defense attorney Norman Pattis then orally motioned the Court (Gold, J.) for an appellate bond. ASA Brenda Hans objected. The Court ordered that the $75,000 cash bond (previously posted during the pre-trial process) be refunded by operation of law because the case is now disposed. The Court then granted Defense motion and imposed an appellate bond of Ninety Thousand Dollars ($90,000) cash only. This bond could only be presented in Court with Gold, J. presiding so that additional conditions of release would be imposed.

Defense Attorney Norman Pattis then orally motioned the Court (Gold, J.) for a Stay of Imposition of Sentence. This motion was denied and the defendant was taken into custody by the Department of Corrections (DOC) as per the sentence imposed. The Defendant was served with *Notice of Right to Appeal Judgment of Conviction* (JD-CR-19) and a *Pardon Notice.*

On January 15, 2016 the Defendant appeared with Attorney Fred O'Brien (standing in for Attorney Norman Pattis) and with Attorney Rachel Baird. Court notes that the Defendant is posting the appellate bond of $90,000 cash and imposes particular conditions of release. On January 19, 2015 Attorney Rachel Baird filed a Motion to Withdraw Appearance for particular reasons. This motion was heard by the Court and granted on February 11, 2016. Attorney Norman Pattis remained as the sole attorney of record on this case.

On January 21, 2016 Edward Taupier through Attorney Norman Pattis electronically filed Criminal APPEAL (JD-SC 33) dated January 21, 2016.

Date of Judgment:
January 12, 2016

By the Court:
Gold, J.

E Vargas - Rondon

Evelyn Vargas-Rondon
Court Officer for Criminal Matters

☒ APPEAL ☐ JOINT APPEAL ☐ CROSS APPEAL ☐ AMENDED APPEAL ☐ CORRECTED FORM

JD-SC-33 Rev. 1-16
P.B. Sections 3-8, 60-8, 62-7, 62-8, 63-3, 63-4, 63-10
C.G.S. Sections 31-301b, 51-197f, 52-470

☐ To Supreme Court ☒ To Appellate Court

As of January 1, 2016, all appeals must be filed electronically. For further information about e-filing or this form, see the Appeal Instructions, form JD-SC-34.

Name of case *(State full name of case)*
State of Connecticut v. Edward Taupier

Type of appellate matter
Appeal

Trial Court History

Tried to	Trial court location
Court	**Middletown Superior Court**

Trial court judges being appealed	List all trial court docket numbers, including location prefixes
HON. DAVID P. GOLD	**MMX-CR-14-0675616-S**
All other trial court judges who were involved with the case	Judgment for *(Where there are multiple parties, specify those for whom judgment was rendered)* **EDWARD TAUPIER**

Date of judgment(s) or decision(s) being appealed	Date of issuance of notice on any order on any motion that would render judgment ineffective	Date for filing appeal extended to
01/12/2016		

Case type: **Criminal**

For Civil/Family Case Types, Major/Minor code:

For Juvenile Cases
☐ Termination of Parental Rights ☐ Order of Temporary Custody
☐ Other

Appeal

Appeal filed by *(Party name(s))*
EDWARD TAUPIER

From *(the action that constitutes the appealable judgment or decision)*
Judgment of Conviction

If this appeal is taken by the State of Connecticut, provide the name of the judge who granted permission to appeal and the date of the order

Statutory Basis for Appeal to Supreme Court

By *(Signature of counsel of record)*	Telephone number	Fax number	Juris number *(If applicable)*
▶ **408681**	**203-393-3017**	**203-393-9745**	**408681**

Appearance

Type name and address of counsel of record *(This is your appearance; see Practice Book Section 62-8)*	E-mail address
NORMAN ALEXANDER PATTIS 383 ORANGE ST, 1ST FLOOR NEW HAVEN CT 06511	**npattis@pattisandsmith.com**

"X" one if applicable
☐ Counsel or self-represented party who files this appeal will be deemed to have appeared **in addition to** counsel of record who appeared in the trial court.
☐ Counsel or self-represented party who files this appeal is appearing **in place of:**

Name of counsel of record	Juris number *(If applicable)*

Certification

I certify that a copy of the appeal form I am filing will immediately be delivered to each other counsel of record and I have included their names, addresses, e-mail addresses and telephone and facsimile numbers; the appeal form has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the appeal form complies with all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3.

Date to be delivered **01/21/2016**

If you have an exemption from e-filing under Practice Book Section 60-8, attach a list with the name, address, e-mail address, telephone number, and facsimile number of each counsel of record and the address where the copy was delivered.

If this appeal is a criminal or habeas corpus matter, I certify that a copy of this appeal form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered **01/21/2016**

Signed *(Counsel of record)*	Date signed
▶ **408681**	**01/21/2016**

Required Documents

To be filed with the Appellate Clerk within ten days of the filing of the appeal, if applicable. See Practice Book Section 63-4.
1. Preliminary Statement of the Issues
2. Court Reporter's Acknowledgment or Certificate that no transcript is necessary
3. Docketing Statement
4. Statement for Preargument Conference (form JD-SC-28A)
5. Constitutionality Notice
6. Sealing Order form, if any

☒ Entry Fee Paid ☐ No Fees Required ☐ Fees, Costs, and Security waived by Judge *(enter Judge's name below)*

Court Use Only
Date and time filed

Judge	Date waived

Print Form

Reset Form

MMXCR-14-0675616 T
MMXCR-13-0200821 T

STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF MIDDLESEX
	:	at MIDDLETOWN
	:	
v.	:	
	:	
EDWARD TAUPIER	:	JANUARY 28, 2016

DOCKETING STATEMENT

I. Parties and counsel

A. Appellant: Edward Taupier, c/o. Norman A. Pattis, 383 Orange Street, New Haven, Ct 06511; 203-393-3017

Appellant's Counsel: Norman A. Pattis, 383 Orange Street, New Haven, Ct 06511; 203-393-3017

B. Appellee: Appellate Bureau, Chief State's Attorney's Office, 300 Corporate Place, Rocky Hill, CT 06067; 860-258-5800

II. Case and Docket Numbers for All Pending Appeals

This is the only matter pending on appeal.

III. Exhibits in the Trial Court

Exhibits were admitted into evidence.

IV. The Appellant is NOT Incarcerated.

THE APPELLANT
Edward Taupier

BY: _____
NORMAN A. PATTIS, Juris 408681
Pattis & Smith, LLC
383 Orange Street
New Haven, CT 06511
P: 203-393-3017
F: 203-393-9745
npattis@pattisandsmith.com

CERTIFICATION

The foregoing was sent via regular mail this 29th day of January 2016 to: Chief State=s Attorney's Office, Appellate Bureau, 300 Corporate Place, Rocky Hill, CT and to Maria Sheehan at dcj.ocsa.appellate@ct.gov, this 29th day of January 2016. A copy was also mailed to Edward Taupier at his physical address. He consents to electronic filing.

NORMAN A. PATTIS

State of Connecticut
Judicial Branch

NORMAN ALEXANDER PATTIS (408681) Email: npattis@pattisandsmith.com Logout

You have selected this case:

Number:	Name of Case:
AC 38809	STATE OF CONNECTICUT v. EDWARD TAUPIER

You have successfully E-Filed!

View/Save/Print Preliminary Papers/Appeal Documents form here:

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Confirmation of E-Filing

For questions regarding this payment: Contact Us.

Appellate Docket Number:	**AC 38809**
Trial Court Docket Number:	**MMX-CR-14-0675616-T**
Type of Transaction:	**DOCKETING STATEMENT**
Fee Amount:	**$0.00**
Service Fee:	**$0.00**
Total Transaction Amount:	**$0.00**
Date Filed:	**01/29/2016**
Filed By:	**408681 NORMAN ALEXANDER PATTIS**
Date & Time of Transaction:	**01/29/2016 12:10 PM**
Documents Filed:	**2734-PRELIMINARY PAPER/APPEAL DOCUMENTS**
Payment Confirmation Number:	

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MMXCR-14-0675616 T
MMXCR-13-0200821 T

STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF MIDDLESEX
	:	at MIDDLETOWN
	:	
v.	:	
	:	
EDWARD TAUPIER	:	JANUARY 28, 2016

PRELIMINARY STATEMENT OF THE ISSUES

1. Whether the evidence at trial was sufficient to support a conviction for any of the offenses of conviction.

2. Whether hostile speech about a third party constitutes a threat absent the intent to deliver the contents of that speech to the third party.

3. Such other errors as may become apparent upon review of the transcript.

THE DEFENDANT

By _____

NORMAN A. PATTIS
Pattis & Smith, LLC
383 Orange St., First Floor
New Haven, CT 06511
P: (203) 393-3017
F: (203) 393-9745
Juris No.408681

CERTIFICATION

The foregoing was sent via regular mail this 29th day of January 2016 to: Chief State's Attorney's Office, Appellate Bureau, 300 Corporate Place, Rocky Hill, CT and to Maria Sheehan at dcj.ocsa.appellate@ct.gov, this 29th day of January 2016. A copy was also mailed to Edward Taupier at his physical address. He consents to electronic filing.

_____
NORMAN A. PATTIS

State of Connecticut
Judicial Branch

NORMAN ALEXANDER PATTIS (408681) Email: npattis@pattisandsmith.com Logout

You have selected this case:

Number:	Name of Case:
AC 38809	STATE OF CONNECTICUT v. EDWARD TAUPIER

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Confirmation of E-Filing

For questions regarding this payment: Contact Us.

Appellate Docket Number:	**AC 38809**
Trial Court Docket Number:	**MMX-CR-14-0675616-T**
Type of Transaction:	**PRELIMINARY STATEMENT OF ISSUES**
Fee Amount:	**$0.00**
Service Fee:	**$0.00**
Total Transaction Amount:	**$0.00**
Date Filed:	**01/29/2016**
Filed By:	**408681 NORMAN ALEXANDER PATTIS**
Date & Time of Transaction:	**01/29/2016 12:06 PM**
Documents Filed:	**2732-PRELIMINARY PAPER/APPEAL DOCUMENTS**
Payment Confirmation Number:	

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MMXCR-14-0675616 T
MMXCR-13-0200821 T

STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF MIDDLESEX
	:	at MIDDLETOWN
	:	
v.	:	
	:	
EDWARD TAUPIER	:	JANUARY 28, 2016

CONSTITUTIONALITY NOTICE

This Appeal will raise Constitutional issues involving the scope of the "true threat" doctrine arising under the First Amendment to the United States Constitution.

THE APPELLANT
Edward Taupier

BY: _____
NORMAN A. PATTIS, Juris 408681
Pattis & Smith, LLC
383 Orange Street
New Haven, CT 06511
P: 203-393-3017
F: 203-393-9745
npattis@pattisandsmith.com

CERTIFICATION

The foregoing was sent via regular mail this 29th day of January 2016 to: Chief States Attorney's Office, Appellate Bureau, 300 Corporate Place, Rocky Hill, CT and to Maria Sheehan at dcj.ocsa.appellate@ct.gov, this 29th day of January 2016. A copy was also mailed to Edward Taupier at his physical address. He consents to electronic filing.

_____
NORMAN A. PATTIS

State of Connecticut
Judicial Branch

NORMAN ALEXANDER PATTIS (408681) Email: npattis@pattisandsmith.com Logout

You have selected this case:

Number:	Name of Case:
AC 38809	STATE OF CONNECTICUT v. EDWARD TAUPIER

You have successfully E-Filed!

View/Save/Print Preliminary Papers/Appeal Documents form here:

Print Confirmation of E-Filing here

Confirmation of E-Filing

For questions regarding this payment: Contact Us.

Appellate Docket Number:	**AC 38809**
Trial Court Docket Number:	**MMX-CR-14-0675616-T**
Type of Transaction:	**CONSTITUTIONALITY NOTICE**
Fee Amount:	**$0.00**
Service Fee:	**$0.00**
Total Transaction Amount:	**$0.00**
Date Filed:	**01/29/2016**
Filed By:	**408681 NORMAN ALEXANDER PATTIS**
Date & Time of Transaction:	**01/29/2016 12:07 PM**
Documents Filed:	**2733-PRELIMINARY PAPER/APPEAL DOCUMENTS**
Payment Confirmation Number:	

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MMXCR-14-0675616 T
MMXCR-13-0200821 T

STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF MIDDLESEX
	:	at MIDDLETOWN
	:	
v.	:	
	:	
EDWARD TAUPIER	:	JANUARY 28, 2016

STATEMENT FOR PRE-ARGUMENT CONFERENCE

This is a criminal appeal involving a custodial sentence, and, as such, there will not be a pre-argument settlement conference.

THE APPELLANT
Edward Taupier

BY: _____
NORMAN A. PATTIS, Juris 408681
Pattis & Smith, LLC
383 Orange Street
New Haven, CT 06511
P: 203-393-3017
F: 203-393-9745
npattis@pattisandsmith.com

CERTIFICATION

The foregoing was sent via regular mail this 29th day of January 2016 to: Chief States Attorney's Office, Appellate Bureau, 300 Corporate Place, Rocky Hill, CT and to Maria Sheehan at dcj.ocsa.appellate@ct.gov, this 29th day of January 2016. A copy was also mailed to Edward Taupier at his physical address. He consents to electronic filing.

_____
NORMAN A. PATTIS

State of Connecticut
Judicial Branch

NORMAN ALEXANDER PATTIS (408681) Email: npattis@pattisandsmith.com Logout

You have selected this case:

Number:	Name of Case:
AC 38809	STATE OF CONNECTICUT v. EDWARD TAUPIER

You have successfully E-Filed!

View/Save/Print Preliminary Papers/Appeal Documents form here:

Print Confirmation of E-Filing here

Confirmation of E-Filing

For questions regarding this payment: Contact Us.

Appellate Docket Number:	**AC 38809**
Trial Court Docket Number:	**MMX-CR-14-0675616-T**
Type of Transaction:	**PRE ARGUMENT CONFERENCE STATEMENT**
Fee Amount:	**$0.00**
Service Fee:	**$0.00**
Total Transaction Amount:	**$0.00**
Date Filed:	**01/29/2016**
Filed By:	**408681 NORMAN ALEXANDER PATTIS**
Date & Time of Transaction:	**01/29/2016 12:12 PM**
Documents Filed:	**2735-PRELIMINARY PAPER/APPEAL DOCUMENTS**
Payment Confirmation Number:	

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APPEAL
T ORDER

CONNECTICUT JUDICIAL BRANCH
www.jud.ct.gov

The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at www.jud.ct.gov/ADA.

ERSON ORDERING A TRANSCRIPT FOR AN APPEAL:
...ity and give this form to the Official Court Reporter.
...icial Court Reporter the name and address of all counsel and self-represented parties of record.
... the Official Court Reporter fills out section 3 and returns the form to you, fill out section 4.

Appeal docket number: AC 38809 MX315

Section 1.

Name of case: STATE OF CONNECTICUT V. EDWARD TAUPIER

Trial court docket number: MMX-CR14-0675616

Hearing dates of transcript being ordered: SEE ATTACHED

Trial court location: ONE COURT STREET, MIDDLETOWN, 06457

Judicial district of: MIDDLESEX

Name(s) of Judge(s): DAVID GOLD

Case type ("X" one): [X] Criminal [ ] Family [ ] Juvenile [ ] Civil

Case tried to ("X" one): [ ] Jury [X] Court

Appeal to ("X" one): [ ] Supreme Court [X] Appellate Court

Appeal ("X" one):
- [ ] 1. From judgment in juvenile matters:
  - [ ] (a) concerning Termination of Parental Rights
  - [ ] (b) other than Termination of Parental Rights
- [ ] 2. From a criminal judgment where defendant is:
  - [ ] (a) incarcerated
  - [X] (b) not incarcerated
- [ ] 3. From court closure order
- [ ] 4. Involving the public interest
- [ ] 5. From judgment involving custody of minor children
- [ ] 6. From all other judgments

An electronic version of a previously delivered transcript is being ordered: [ ] Yes [✓] No

Describe in detail, including specific dates, the parts of the proceedings for which a transcript is being ordered. If you are ordering an electronic version of a previously delivered transcript, indicate that the paper transcript already was delivered. Attach a sheet of plain paper if needed.

SEE ATTACHED: MOTIONS, TRIALS, ARGUMENTS, SENTENCING

From — Name and mailing address of person ordering transcript: NORMAN A. PATTIS

Telephone number: 203-393-3017

Relationship (*Attorney for Plaintiff, Defense, etc.*): ATTORNEY FOR DEFENDANT

Signature of person ordering transcript:

Date signed: 4-19-16

Do not write below this line when ordering the transcript.

Section 2. Official Court Reporter's Appeal Transcript Order Acknowledgment *(Completed by Official Court Reporter after satisfactory financial arrangements have been made pursuant to Section 63-8 of the Connecticut Practice Book.)*

Name(s) of reporter(s)/monitor(s)	Name(s) of transcribing reporter(s)/monitor(s) (if different)	Estimated number of pages	Only electronic version of previously delivered transcript? Yes	No	Number of pages previously delivered	Estimated delivery date
J. Wilson		1795	[ ]	[✓]	1445	7-12-16
C. Bogdan		55	[✓]	[ ]	55	5-5-16
J. Shobe		193	[✓]	[ ]	193	5-5-16
C. Gendreau		30	[ ]	[✓]		7-12-16

[✓] *JD-ES-038C attached for additional names of reporter(s)/monitor(s)*

Total estimated pages: 2247

Total delivered pages: 1717

Final Estimated delivery date: 7-12-16

Name of Official Court Reporter: Tracey Garofalo

Signature of Official Court Reporter:

Date signed: 6-14-16

Order Acknowledgment

Section 3. Official Court Reporter's Certificate Of Completion *(Completed by Official Court Reporter upon delivery of the entire transcript ordered above.)*

Actual number of pages in entire Appeal Transcript: _____

Date of final delivery (Practice Book Section 63-8(c)) _____

This certificate is filed as required by Practice Book Section 63-8

Signature of Official Court Reporter

Date signed

Section 4. Certification Of Service By Ordering Party *(Ordering party to send completed certificate to Chief Clerk, 231 Capitol Avenue, Hartford, CT 06106)*

I certify that a copy of the above Certificate of Completion was served on all counsel and self-represented parties of record.

Signature of ordering party

Date signed

NOTICE OF APPEAL TRANSCRIPT ORDER
CONTINUATION OF REPORTER(S)/MONITOR(S) NAMES
JD-ES-38C New 3-16

ADA NOTICE
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at *www.jud.ct.gov/ADA*.

Instruction to Official Court Reporter:
Submit this page with JD-ES-38, Notice of Appeal Transcript Order, when additional space is needed to complete Section 2 for names of reporter(s)/monitor(s).

Name of case: State v. Edward Taupier

Appeal docket number: AC 38809

Trial court docket number: MMX CR14 0675616T

Name(s) of reporter(s)/monitor(s)	Name(s) of transcribing reporter(s)/monitor(s) (if different)	Estimated number of pages	Only electronic version of previously delivered transcript? Yes	No	Number of pages previously delivered	Estimated delivery date
D. Lorenzen		150	☐	☑		7-12-16
D. Ferrucci		24	☑	☐	24	6-8-16
			☐	☐		
			☐	☐		
			☐	☐		
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APPELLATE COURT

STATE OF CONNECTICUT

AC 38809

STATE OF CONNECTICUT

MAY 06 2016

v.

EDWARD TAUPIER

MAY 4, 2016

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT, FILED MAY 2, 2016, FOR PERMISSION TO AMEND CERTIFICATE RE: TRANSCRIPT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **O R D E R E D** GRANTED. A COURT REPORTER'S ACKNOWLEDGMENT FORM WITH AN ESTIMATED DELIVERY DATE SHALL BE FILED ON OR BEFORE MAY 16, 2016.

THE DEFENDANT-APPELLANT'S BRIEF REMAINS DUE ON JUNE 13, 2016.

BY THE COURT,

/S/
ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 5.4.16
COUNSEL OF RECORD
pd

153478

First Amendment to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article 1, Section 4 of the Connecticut Constitution

Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

Article 1, Section 5 of the Connecticut Constitution

No law shall ever be passed to curtail or restrain the liberty of speech or of the press.

Article 1, Section 14 of the Connecticut Constitution

The citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance.

Connecticut General Statute § 53a-61aa

- **(a)** A person is guilty of threatening in the first degree when such person (1) (A) threatens to commit any crime involving the use of a hazardous substance with the intent to terrorize another person, to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience, or (B) threatens to commit such crime in reckless disregard of the risk of causing such terror, evacuation or inconvenience; (2) (A) threatens to commit any crime of violence with the intent to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience, or (B) threatens to commit such crime in reckless disregard of the risk of causing such evacuation or inconvenience; or (3) commits threatening in the second degree as provided in section 53a-62, and in the commission of such offense he uses or is armed with and threatens the use of or displays or represents by his words or conduct that he possesses a pistol, revolver, shotgun, rifle, machine gun or other firearm. No person shall be found guilty of threatening in the first degree under subdivision (3) of this subsection and threatening in the second degree upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.

- **(b)** For the purposes of this section, "hazardous substance" means any physical, chemical, biological or radiological substance or matter which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health.

- **(c)** Threatening in the first degree is a class D felony.

Connecticut General Statute § 53a-48

- **(a)** A person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy.

- **(b)** It shall be a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

18 U.S.C. § 875(c)

- **(a)** Whoever transmits in interstate or foreign commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

- **(b)** Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years, or both.

- **(c)** Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.

- **(d)** Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

PATTIS & SMITH, LLC
383 ORANGE STREET, FIRST FLOOR
NEW HAVEN, CT 06511
TELEPHONE 203-393-3017
FACSIMILE 203-393-9745

NORMAN A. PATTIS (npattis@pattisandsmith.com)
KEVIN M. SMITH (ksmith@pattisandsmith.com)
DANIEL M. ERWIN (derwin@pattisandsmith.com)
BRITTANY B. PAZ (bpaz@pattisandsmith.com)
FREDERICK M. O'BRIEN (fobrien@pattisandsmith.com)

SEP 26 2016

Paul Hartan
Chief Clerk
Connecticut Supreme/Appellate Courts
231 Capitol Avenue
Hartford, CT 06106

September 21, 2016

RE: *State v. Taupier*, A.C. 38809, Request For Permission To File Oversize Brief

Dear Mr. Hartan:

Pursuant to Practice Book §67-3, I am writing to ask that you convey to the Appellate Court the defendant's request to file an oversize brief of no more than 40 pages. The specific grounds for this request are the last paragraph of §67-3 that permits the clerk to grant up to five (5) additional pages "[w]here a claim relies on the state constitution as an independent ground for relief." The issue in this case presents an emerging issue of First Amendment law that has divided the federal courts of appeals. *See State v. Krijger*, 313 Conn. 434, 451 n. 10 (2014). At the writing of this request, I have briefed a succinct state constitutional argument of three (3) pages as an independent grounds for relief. However, I have several other authorities I need to address and may fill the entire five pages. Given that, the voluminous trial record, and several secondary issues I must address in the brief, the additional five pages are necessary to complete the defendant's analysis under the state constitution. I respectfully request that the additional five page request be granted.

Sincerely,

Norman A. Pattis, Esq.

9/21/16
Thank you up to 40 pages.
Deputy Chief Clerk

Cc: State's Attorney, Appellate Bureau

9.22.16 mailed sent to counsel of record

Respectfully submitted,

EDWARD F. TAUPIER
THE DEFENDANT-APPELLANT

By: _____

NORMAN A. PATTIS
DANIEL M. ERWIN
PATTIS & SMITH, LLC
Juris No. 423934
383 Orange Street, 1st Floor
New Haven, CT 06511
T: 203-393-3017
F: 203-393-9745
npattis@pattisandsmith.com

CERTIFICATION

The undersigned certifies, in conformity with Connecticut Practice Book § 67-2, that:

1) The electronically submitted copy of this brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom and e-mail address has been provided;
2) The electronically submitted brief and appendix and the filed paper brief has been redacted or does not contain the names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law;
3) A copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of this appeal, in compliance with Practice Book §62-7;
4) The brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and
5) The brief complies with all provisions of this rule.

_____

NORMAN A. PATTIS
PATTIS & SMITH, LLC