SUPREME COURT

OF THE

State of Connecticut

JUDICIAL DISTRICT OF MIDDLESEX

S.C. 19950

STATE OF CONNECTICUT

V.

EDWARD TAUPIER

BRIEF OF THE STATE OF CONNECTICUT-APPELLEE
WITH ATTACHED APPENDIX

To Be Argued By:

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TABLE OF CONTENTS

COUNTERSTATEMENT OF THE ISSUES

I. DID THE TRIAL COURT PROPERLY REJECT A REQUIREMENT OF PROOF OF THE DEFENDANT'S SPECIFIC INTENT TO COMMUNICATE A THREAT IN ITS ASSESSMENT OF WHETHER, CONSISTENT WITH THE FIRST AMENDMENT, HIS EMAIL CONVEYED TRUE THREATS?

II. WHETHER THE DEFENDANT'S CONVICTIONS WERE CONSISTENT WITH THE FIRST AMENDMENT IN PUNISHING HIS UNPROTECTED TRUE THREATS?

TRANSCRIPT REFERENCES

The transcript comprises twenty-eight volumes, each separately and sequentially paginated. Reference to the transcript will be by number and volume according to the following division: 1T:February 3, 2015; 2T:March 4, 2105; 3T:March 6, 2015; 4T:March 9, 2015; 5T:March 10, 2015; 6T:March 12, 2015; 7T:March 27, 2015; 8T:April 6, 2015 (a.m. session); 9T:April 6, 2015 (p.m. session); 10T:April 7, 2014 (a.m. session); 11T:April 7, 2014 (p.m. session); 12T:April 8, 2015 (a.m.) ; 13T:April 8, 2015 (p.m.); 14T: April 14, 2015; 15T:April 15, 2015; 16T:April 21, 2015; 17T:April 22, 2015; 18T:April 27, 2015; 19T:April 28, 2015; 20T:April 29, 2015; 21T:April 30, 2015; 22T:May 1, 2015; 23T:May 4, 2015; 24T: May 20, 2015; 25T:June 2, 2014; 26T:June 23, 2015; 27T:October 2, 2015; and 28T:January12,2016.

TABLE OF AUTHORITIES

Page

CASES

STATUTORY PROVISIONS

CONSTITUTIONAL PROVISIONS

NATURE OF THE PROCEEDINGS AND COUNTERSTATEMENT OF THE FACTS

On October 2, 2015, the trier of fact, *Gold, J.*, convicted the defendant, Edward Taupier, of first degree threatening, in violation of General Statutes § 53a-61aa(a)(3); two counts of disorderly conduct, in violation of General Statutes § 53a-182(a)(2); and breach of the peace, in violation of General Statutes § 53a-181(a)(3).[1] 27T:4. On January 12, 2016, the trial court sentenced the defendant on his threatening conviction to five years of incarceration, execution suspended after eighteen months and five years of probation. 28T:102. The trial court sentenced the defendant on each count of his disorderly conduct convictions to three months of incarceration. 28T:102. In addition, the trial court sentenced the defendant on his breach of the peace conviction to sixth months of incarceration. 28T:103. The trial ordered concurrent sentences, for a total effective term of five years of imprisonment, execution suspended after eighteen months, and five years of probation. 28T:103.

The following evidence was presented at trial: The defendant and Tanya were married on September 25, 2005, and resided at 6 Douglas Drive, Cromwell, with their son and daughter, who were nine and eight years old, respectively, at the time of trial.[2] 14T:7-8. Tanya initiated divorce proceedings in November 2012 because the defendant had made her "fear for [her] life" in the last week of August 2012, during a family vacation in Maine.

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[1]The trial court did not "return a separate verdict" on the charge of second degree threatening, pursuant to General Statutes § 53a-62(a)(3), "in light of its verdict" on first degree threatening. 28T:4.

[2]The trial court's memorandum of decision provides an exhaustive rendition of the evidence in the case. Defendant's Appendix:70-99.

14T:8, 61.[3] Tanya moved out of their home in September 2012; 14T:61; and the defendant called Tanya and threatened to "kill" himself, "ruin [Tanya's] life using social media," and make their "divorce a[] painful process" that would "almost kill [their] children." 14T:84.

In June 2014, Judge Elizabeth Bozzuto was managing the pre-trial phase of the Taupiers' divorce and child custody proceedings, which were "hotly contested" and had been delayed by the defendant injecting his opinions about reform of the family court system into a custody evaluation that an officer of the Family Services Unit of the Court Support Services Division was conducting. 8T:11-15; 13T:15. At a June 18, 2014, status conference convened by Judge Bozzuto to address the delay, she apprised the defendant that he was barred from injecting these opinions into the custody evaluation upon its resumption, but was not otherwise precluded from expressing his views. 8T:14; 13T:12. The defendant was dissatisfied with the outcome of the status conference and, as noted by Tanya's attorney, "blitz[ed]" social media (email and Facebook) with disparaging comments about Judge Bozzuto, Tanya, and Tanya's attorney. 13T:12-13. According to Tanya, the defendant was "contentious [and] really adversarial to judges, lawyers, family services [personnel], [and] really anyone involved in the process." 14T:14.

At the end of August 2014, the Taupiers' divorce and child custody proceedings were further roiled by the recrudescence of their differences over where their children would attend school. Approximately one year earlier, on August 13, 2013, the defendant

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[3] The couple's daughter, who was then five years old, had come into the defendant and Tanya's bed in the middle of the night in need of "soothing," which upset the defendant and prompted him to say, as a loaded gun lay within reach on the bureau, that he would "put a bullet in [Tanya's] head and bury [her] in the backyard." 14T:83. The next day, when Tanya spoke to the defendant about his threat to shoot her to death, he remorselessly stated that he meant what he had said. 14T:84.

and Tanya had signed a parenting agreement that provided for their children to enroll in the Ellington school system and barred changing the school system without a joint agreement. 13T:2-3; 14T:11, 45. Nevertheless, the defendant emailed Tanya to inform her that he intended to enroll their children in the Cromwell school system; Tanya emailed in reply that she opposed the change; but Tanya later learned that the defendant had made the change during a week-long stay by the children at his home in Cromwell that was scheduled to end on August 24, 2014, pursuant to a parenting schedule previously approved by Judge Bozzuto. 13T:3-4; 14T:10, 12, 44-45. On August 22, 2014, Tanya's attorney responded to the school change by filing a motion for contempt and further relief, which she emailed to the defendant, who was acting as his own attorney at the time.[4] 13T:5-6; 14T:5, 9-10; 18T:68.

The defendant then received emails about the contempt motion from several people who were "very loose[ly]" "associated" with him in advocating for reform of the family court system, which they alleged was rife with the unjust enrichment of professionals, collusion in case fixing, and child endangerment. 11T:6, 39, 48-50; 19T:100, 107; 21T:62, 69; 22T:71. Ann Stevenson questioned the motion's lack of supporting legal authority; Michael Nowacki opined that the defendant was on "shaky ground" and faced incarceration by failing to abide by the parental agreement, and he stated that only Judge Bozzuto's opinion mattered; and

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[4]The parenting schedule that had been approved by Judge Bozzuto on June 18, 2014, authorized Tanya to pick up her children at the defendant's residence on August 24, 2014, at 7:00 p.m., after their week-long stay there, but the defendant was not home. 14T:45, 48. On August 25, 2014, Judge Bozzuto ordered that the parties abide by the August 13, 2013 agreement that the children attend school in Ellington. 13T:23-24. On August 27, 2014, the police located the children in a school in Cromwell. 14T:49. On August 27, Tanya and a police escort took the children out of school. 20T:9-10, 15. The defendant, who was agitated, videotaped Tanya and the children's exit from the school, which made Tanya nervous and caused the children to cry. 20T:15-16.

Jennifer Verraneault seconded Nowacki's opinion. *State v. Taupier*, 2015 WL 6499803, *4-5 (Oct. 2, 2015); 11T:14-16.

Subsequently on August 22, 2014, the defendant sent an email (the one that is the subject of his convictions) to Verraneault, Nowacki, and Stevenson, and he copied that email to Susan Skipp, Sunny Kelley, and Paul Boyne, other individuals who were part of a loosely associated group pushing for family court reform. *Taupier*, *supra*, at *5. The defendant's August 22, 2014 email that these individuals received reads as follows:

> 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 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.

Taupier, *supra*, at *5; Defendant's Appendix (Dap):74.

On August 23, 2014, Nowacki emailed the defendant and stated that the defendant's email was "disturbing" and should not be sent to anyone else. *Id.* Shortly thereafter, the defendant emailed the following reply:

> 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, 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 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

Taupier, supra, at *6; Dap:75. Nowacki replied 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." *Id.;* Dap:75.

Verraneault read the defendant's email on August 23, 2014. 11T:12. Verraneault found the email to be "sad," and it made her "cry" over its depiction of the defendant as someone "in a lot of pain." 11T:11, 27. Also, the email's contents made her "feel scared" and "really disturbed." 11T:27. At the time, Verraneault was in Massachusetts with Jerry Angelo, her partner in a family court consultation business, and ten other people. 11T:27, 39-40. Over breakfast, Verraneault spoke to Angelo and those ten people about the email. 11T:27, 43, 46. In addition, Verraneault texted the defendant that she was "worried" about him, and she spoke on the telephone with Connecticut State Representative Minnie Gonzalez, with whom the group had regular contact regarding family court matters, and forwarded the defendant's email to her. 11T: 42-45, 48. Verraneault spoke as well with Scott Buden and forwarded the defendant's email to him, stating that the defendant had

"scare[d]" her. 11T:43, 51. Finally, on August 28, 2014, Verraneault photographed the defendant's email and emailed it to Attorney Linda Allard, whom Verraneault described as a "very loose[] acquaint[ance]" on family court matters. 9T:90-91; 11T:29-31. Verraneault considered Allard to be the "best person to keep [the defendant's email] confidential" and "advise" her if she "didn't need to do something." 11T:32. The email had made Verraneault "scared to think" "how [the defendant] would react to [her]" "if [he] found out that [she had] shared" the email with Allard, and Verraneault was, therefore, concerned for her own safety. 11T:32. Allard texted back that Verraneault should "warn" Judge Bozzuto; 11T:91; and Allard then contacted Judicial Branch officials and the State Police about the defendant's email and sent it to them. 10T:56; 11T:92-93, 100, 102, 106; 13T:71- 73.

At the time, Judge Bozzuto was out of state, and Judicial Branch personnel apprised her of the defendant's email, characterized it as threatening her and her children, and then sent it to her along with a photograph of the defendant. 8T:30-31, 33-35, 38; 10T:58-59, 62; 13T:73, 75, 78. The email's threats upset Judge Bozzuto. 13T:78. She placed the email in the context of the Taupiers' "hotly contested" divorce and child custody proceedings that she had been handling: Judge Bozzuto was aware that the defendant had been "struggling" with the proceedings, that family services personnel had safety concerns about conducting a custody evaluation at the defendant's home, that the defendant had agreed to relinquish his firearms,[5] and that a criminal case involving Tanya had been brought against the defendant. 8T:47, 50.

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[5]Approximately fifteen months prior, on March 14, 2013, as part of the divorce and child custody proceedings, the defendant had transferred his firearms and ammunition to his friend, Dan Sutula, and agreed to purchase no additional firearms for the proceedings' duration. 13T:8-9; 14T:14, 90, 92. However, in mid-summer 2014, the defendant asked (continued...)

Broadly, the email's contents led Judge Bozzuto to conclude that the defendant was an "angry" person who possessed a weapon. 8T:51, 53, 54-55. Specifically, she considered the email's depiction of a dying and bleeding defendant holding explosives and loading a multiple-round magazine as "just alarming." 8T:54. Equally alarming to Judge Bozzuto was the email's detailed references to her residing in her home with her children and a partner, her bedroom's double-pane windows looking out onto a cemetery providing "cover and concealment," and the envisioned trajectory of a bullet shot from the cemetery into her bedroom. 8T:54-57. In her mind's eye, these references described the defendant as "taking aim from the back of the yard and shooting into [her] bedroom[,] which has double pane windows[,] [from a] very nice area of concealment" near the cemetery. 8T:56. Judge Bozzuto also viewed the email's warning that jailing the defendant would set off a bell that could not be unrung as a sign of his "desperation" and indifference to "what happens." 8T:55. And Judge Bozzuto discerned another sign of the defendant's "desperation" in the email's warning that people who tried to take his children from him would be "found and adjusted" unless they used F-35s and smart bombs. 8T:55-56. For Judge Bozzuto, the email depicted the defendant as having "completely unraveled"; 8T:57; a picture that reoccurred to her every time she pulled her car into her driveway late at night, parked, exited to pick up the mail, and, as her dogs barked, looked out onto the cemetery's trees and brush to the rear of her bedroom.[6] 8T:58. Because Judge Bozzuto could not gauge the

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(...continued)
Sutula to return his firearms, and, on August 27, 2014, the defendant retrieved some of those firearms from Sutula. 14T:93, 95, 98-99.

[6]Judge Bozzuto related that, around the time of trial, when she was "kissing [her] daughter goodbye" for the day, her daughter, who was naturally "anxious," responded (continued...)

extent of the defendant's desperation that was manifested in his email, she alerted Tanya, family services, and the family of her niece, who had been coming to her home to care for her dogs while she was out of town. 8T:59, 67-68, 70. Also, the email prompted Judge Bozzuto to request that Judicial Branch personnel contact the police department where she resided to ask for protection, and the police guarded her home for two weeks. 8T:58; 10T:63-64. In addition, Judge Bozzuto instituted a "massive upgrade" of her home's security, which entailed the instillation of cameras and lights. 8T:58. Furthermore, at Judge Bozzuto's request, judicial marshals began escorting her to her car from the courthouse at night when she worked late. 8T:58-59.

Based on the threats and references to firearms in the defendant's email, which the state police considered to be "alarming enough," their major crimes unit initiated an investigation, obtained a warrant, searched the defendant's home on September 9, 2014, and seized multiple high powered rifles with gun sights, handguns, high capacity magazines, and ammunition. 8T:110; 9T:7-11, 17-20, 33, 73. The state police tested four of the rifles and found them to be operable, capable of firing a projectile 245 yards, and capable of firing the ammunition seized from the defendant's home. 9T:18, 20; 10T:19-22, 24-25, 27. In addition, the state police seized seven more of the defendant's long guns from Sutula's home, including a twelve-gauge shotgun. 9T:21-24.

Finally, on January 6, 2015, the defendant gave an interview on an internet radio program and asserted that he had "flipped out" against Judge Bozzuto and "vented to six people on a private email," that he never intended for his email to reach Judge Bozzuto,

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(...continued)
spontaneously by saying, "Mom, let's move ... inside because [the defendant] could be there." 8T:60.

and that his email constituted the weaving together of "a bunch of hyperbole," including references to "F35s and smart bombs." The defendant pointed out that he had never explicitly indicated in the email that he wanted to kill or injure Judge Bozzuto, and that he had simply "list[ed] facts" rather than issued a direct threat. Skipp, one of the recipients of the defendant's email, did not feel endangered by the email and considered it to be a "hyperbol[ic]" expression of the defendant's "negative opinion" of, and "dissatisfaction" with, the family court system. 21T:82-85. Kelley, another recipient of the defendant's email and his friend, viewed the email as a "hyperbolic rant[]." 22T:43.

ARGUMENT

I. THE TRIAL COURT PROPERLY REJECTED A REQUIREMENT OF PROOF OF THE DEFENDANT'S SPECIFIC INTENT TO COMMUNICATE A THREAT IN ITS ASSESSMENT OF WHETHER, CONSISTENT WITH THE FIRST AMENDMENT, HIS EMAIL CONVEYED TRUE THREATS

The defendant claims that the trial court erred in analyzing, and therefore in rejecting, his claim that convictions for first degree threatening, disorderly conduct, and breach of the peace violated the first amendment to the United States constitution. The defendant points out that this constitutional provision imposes a true threats definition on the threat element of these offenses to ensure that they reach only statements that fall outside of free speech protections, and that the trial court rejected his contention that the true threats doctrine requires that the speaker specifically intend to communicate a threat. Instead, according to the defendant, the trial court considered whether the state had proven a true threat for First Amendment purposes only by requiring the foreseeability of a true threat's effect on the listener, which is a negligence requirement, when it should have looked to the defendant's intent. Defendant's Brief (Dbrf):6-15, 32. The defendant also maintains that free speech provisions of our state constitution, article first, §§ 4, 5, and 14,

recognize the true threats doctrine and require that the speaker intend to communicate a threat. Dbrf:15-18, 32. Alternatively, the defendant requests that this Court exercise its supervisory authority to impose an intent to threaten requirement on the true threats element of the statutes at issue. Dbrf:18-20, 32.

The defendant's claim is wide of the mark. The true threats doctrine is a constitutional doctrine, and the First Amendment imposes no specific intent requirement on its definition of a true threat. This is so because the speaker's intentions are not integral to the reason why a true threat lacks constitutional protection. Specifically, when the First Amendment mandates the reading of a true threats definition into a statute's threat element, it does so because the definition helps ensure that the statute does not reach a protected category of speech. But that definition does not dictate the answer to the separate question of whether the statute requires a mens rea element for a criminal prohibition that designates speech as wrongful conduct and subject to punishment. Nor is altering the true threats definition, which is constitutionally sound in and of itself, necessary to ensure that a statute, and its language surrounding a true threats definition, comports with the First Amendment by being content neutral in its application and not overbroad.

A. The Pertinent Facts

After the parties had rested, the defendant argued that he had been charged with threatening, disorderly conduct, and breach of the peace for communicating purely verbal threats of violence with a reckless state of mind, in derogation of the First Amendment, which he alleged required a showing that he specifically intended to communicate such a threat. 26T:4-6, 8, 11. On June 22, 2015, the defendant moved to dismiss the charges against him on the ground that his convictions would violate the First Amendment. Dap:16-

33. The state opposed the defendant's motion, arguing that the recklessness element of the charged offenses was consistent with First Amendment dictates. Dap:35-43. On October 2, 2015, the trial court denied the defendant's motion to dismiss and then convicted the defendant of the charges against him. In its denial of the defendant's motion, the trial court pointed out that, in *United State v. Elonis*, 135 S. Ct. 2001 (2015), the United States Supreme Court did not reach the question of whether the First Amendment's true threats doctrine required a showing that the speaker intended to communicate a threat. Dap:59-62. The trial court then determined, relying on Justice Alito's concurring and dissenting opinion in *Elonis*, that the charges against the defendant passed First Amendment muster because a defendant's specific intent to threaten is not a constitutional requirement in prosecutions based on threatening speech, and that recklessness – acting with knowledge of the threatening nature of the communication and with reckless disregard of the substantial risks that would be created by the communication – "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." Dap:64-68. In the memorandum of decision accompanying its verdict, the trial court: (1) considered the state's proof of the true threat element of the statutory allegations against the defendant; (2) applied, under *State v. DeLoreto*, 265 Conn. 145, 156 (2003), and its progeny *State v. Krijger*, 313 Conn. 434, 449-50 (2014), the binding test to determine whether the true threats definition of that element was satisfied; and (3) concluded that the definition had been satisfied and that, therefore, there was no First Amendment violation. Dap:84-91 & nn.17 & 25. Also, the trial court assessed the sufficiency of the state's proof of the true threat element of the statutes at issue and its requirement that the speaker harbor a

reckless state of mind in issuing the true threats. The court determined that, for due process purposes, the state had proven the true threats beyond a reasonable doubt. Dap:91-99

B. Pertinent Law

1. Statutes and constitutional provisions

As charged, General Statutes § 53a-61aa provides in pertinent part as follows:

> (a) A person is guilty of threatening in the first degree when such person ... (3) commits threatening in the second degree as provided in section 53a-62 (3), [namely, threatens to commit a crime of violence -- an assault -- in reckless disregard of the risk of causing terror], and in the commission of such offense such person ... represents by such person's words or conduct that such person possesses a ... rifle ....[7]

As charged, General Statutes § 53a-182 provides in pertinent part as follows:

> (a) A person is guilty of disorderly conduct when, ... recklessly creating a risk [of] inconvenience, annoyance or alarm ..., such person ... (2) engages in offensive or disorderly conduct [by disseminating an email containing threatening language] ....[8]

As charged, General Statues § 53a-181 provides in pertinent part as follows:

> (a) A person is guilty of breach of the peace in the second degree when, ... recklessly creating a risk [of inconvenience, annoyance or alarm], such person ... (3) threatens to commit [the crime of assault] ....[9]

The first amendment to the United States constitution provides that "Congress shall make no law ... abridging the freedom of speech." Article first, § 4, of the constitution of Connecticut provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty." Article first, § 5, of the constitution of Connecticut provides in relevant part: "No law shall ever be passed to curtail

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[7] The state alleged that the threat was against Elizabeth Bozzuto. Dap:4.

[8] In two counts, the state alleged that the threatening email was disseminated to Elizabeth Bozzuto and Jennifer Verraneault. Dap:4-5.

[9] The state alleged that the threat was against Judge Bozzuto. Dap:6.

or restrain the liberty of speech...." Article first, § 14, of the constitution of Connecticut provides: "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."

2. First Amendment jurisprudence and standard of review

The defendant was convicted of violating criminal statutes punishing his speech in the form of violent threats, which he communicated by email. In the circumstances of this case, it is uncontested that the First Amendment imposed upon these statutes a requirement of proof that these threats constitute true threats, a category of pure expression that may be proscribed in the interests of societal "order and morality" because its content has such "slight social value as a step to truth" that it falls outside of First Amendment protections. (Internal quotation marks omitted.) *Virginia v. Black*, 538 U.S. 343, 358-59 (2003). In *Black*, 538 U.S. at 359-60, and *R.A.V. v. City of St. Paul,* 505 U.S. 377, 388 (1992), the United States Supreme Court defined a true threat for First Amendment purposes as a violent threat that is communicated to a listener, that engenders fear of the violence possibly occurring, and that causes disruption as a consequence of the fear. There is a conflict in First Amendment jurisprudence over the question of whether this definition of a true threat requires that the speaker specifically intend to communicate a threat. This conflict stems from differing interpretations of *Black*'s language that: (1) refers to true threats as "encompass[ing] 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"; (emphasis added.) *Black,* 538 U.S. at 359; (2) explicates "[i]ntimidation in the constitutionally proscribable sense of the word [a]s a type of

true threat, where[by] 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"; *id.* at 360; and (3) suggests that this mens rea of the speaker distinguishes a true threat from a threat that is not true. *Id.* at 359 (citing *Watts v. United States,* 394 U.S. 705, 708 (1969) ("`political hyperbole'" is not a "true threat")); see *Krijger*, 313 Conn. at 451 n.10 (noting split in authority over whether *Black*'s language created true threats requirement of speaker's intention to communicate a threat; collecting cases).

A majority of the federal circuit court of appeals have construed *Black's* language to require only that the speaker have the general intent to communicate the words that he knowingly says.[10] A minority of the federal court of appeals view the natural reading of *Black's* language as creating a true threats requirement that the speaker specifically intend to threaten violence.[11] The circuit court majority did not take *Black*'s language literally because the question of whether the true threats doctrine requires that the speaker have

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[10]See *United States v. Elonis,* 730 F.3d 321, 329 (3rd Cir. 2013), *overruled on other grounds*, 135 S. Ct. 2001 (2015); *United States v. White,* 670 F.3d 498, 508-09 (4th Cir. 2012), *abrogation recognized on other grounds,* 810 F.3d 212, 220 (2016); *United States v. Jeffries,* 692 F.3d 473, 480 (6th Cir. 2012), *cert. denied,* 134 S. Ct. 59 (2013), *abrogation recognized on other grounds by United States v. Houston,* 2017 WL 1097138, at *4 (Mar. 23, 2017); *United States v. Martinez,* 736 F.3d 981, 987 (11th Cir. 2013), *cert. granted, judgment vacated and remanded in light of United States v. Elonis,* 135 S. Ct. 2001 (2015), 135 S. Ct. 2798 (2015); see also *United States v. Nicklas*, 713 F.3d 435, 438-40 (8th Cir. 2013) (declining to read *Black* as imposing requirement of speaker's intent to communicate violent threat); see also *State v. Trey*, 383 P.3d 474, 481-83 (Wash. 2016) (*en banc*) (declining to adopt subjective intent requirement when *Black's* meaning subject to continuing disagreement), *pet. cert. filed* Docket No. 167712 (U.S. Jan. 26, 2017).

[11]See *United States v. Heineman*, 767 F.3d 970, 980 (10th Cir. 2014); *United States v. Cassel*, 408 F.3d 622, 631 (9th Cir. 2005); accord *United States v. Bagdasarian*, 652 F.3d 1113, 1116-18 (9th Cir. 2011); see *United States v. Parr,* 545 F.3d 491, 500 (7th Cir.2008) (declining to decide issue but noting that objective test for true threat likely is "no longer tenable" after *Black), cert. denied*, 556 U.S. 1181 (2009); see also *Brewington v. State,* 7 N.E.3d 946, 964 (Ind. 2014), *cert. denied,* 135 S. Ct. 1524 (2015).

the specific intent to communicate a threat of violence was not presented in the case. The circuit court majority pointed out that, in the face of a First Amendment challenge, a plurality of the *Black* Court upheld a state statute's prohibition of cross burning with the "intent to intimidate" that punished unprotected true threats, but struck down as overbroad a statutory provision deeming cross burning alone to constitute prima facie evidence of the intent to intimidate. *United States v. Jeffries,* 692 F.3d 473, 479-480 (6th Cir. 2012), *cert. denied,* 134 S. Ct. 59 (2013), *abrogation recognized on other grounds by United States v. Houston,* 2017 WL 1097138, at *4 (Mar. 23, 2017); *United States v. Mabie,* 663 F.3d 322, 332 (8th Cir. 2011), *cert. denied,* 133 S. Ct. (2012). According to the *Black* plurality, the statute's cross burning prohibition reached both unprotected threats and protected expressions of anger, resentment, and group solidarity, but the prohibition was narrowed to unprotected true threats by requiring proof of the speaker's specific intent to intimidate; at the same time, the statute's allowance for prima facie proof of this intent requirement to be based on cross burning alone threatened to leave the prohibition's overbroad reach untouched, without being narrowed to unprotected intimidation. 538 U.S. at 365-67. The rationale of the circuit court majority appears to be that there is a world of difference between the *Black* plurality's recognition that a specific intent requirement can narrow a statute's overbroad prohibition of threats to unprotected true threats and a determination that it is necessary to add an intent to threaten requirement to a First Amendment doctrine that is already limited to true threats. For the circuit court majority, what is integral to true threats – as with libel, obscenity, and fighting words, other unprotected categories of pure speech -- is that the speech inflicts injury on the listener, and therefore is proscribable on this basis rather than on the speaker's intent. *Jeffries*, 692 F.3d at 480*; Mabie,* 663 F.3d at 333 (because true

threats prohibition meant to protect listeners from fear of violence and corresponding disruption engendered by fear, subjective intent of speaker not of paramount importance).[12] In contrast, the circuit court minority deems an "intent to threaten as the *sine qua non* of a constitutionally punishable threat ...." *Cassel*, 408 F.3d at 631. In line with the saliency of an intent to threaten requirement for purposes of a true threat, the court in *United States v. Heineman*, 767 F.3d 970, 980 (10th Cir. 2014), reasoned: "As we understand *Black,* the Supreme Court has said [that] ... [w]hen the speaker does not intend to instill fear, concern for the effect on the listener must yield." *Id.* at 981-82.

Recently, in *Elonis*, the United States Supreme Court expressly declined to resolve the conflict under the First Amendment. Instead, it construed the federal statute at issue, which prohibited interstate communication of threats to cause injury, to contain a mens rea element. 135 S. Ct. at 2008. Allowing for exceptions and recognizing its reluctance to "infer that a negligence standard was intended in criminal statutes," the *Elonis* Court noted the general rule of a guilty mind constituting a necessary element of proof of every crime, as well as the principle that reading a mens rea element into a criminal statute that is silent on the required mental state should be limited to the mens rea that is "necessary to separate wrongful conduct from otherwise innocent conduct."[13] (Internal quotation marks omitted.) *Id.* at 2009-11. The court in *Elonis* pointed out that there was no dispute that the mental state required by the statute was satisfied by a showing that the defendant intended to issue

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[12]See also *People v. Stanley*, 170 P.3d 782, 788 (Colo. Ct. App. 2007) ("a threat of violence is no more an idea, opinion, or part of a dialogue in the marketplace of ideas than if it had been made with such intent" to threaten).

[13]In *United States v. Balint,* 258 U.S. 250, 252-53 (1922), the court held that it is permissible for legislatures to pass penal laws that lack an intent element, and that the omission of the element from a statute's text may indicate a legislative intent not to require an intent showing.

threats or knew that his communication would be viewed as a threat, and it reversed the defendant's conviction because the jury had not been instructed to consider his mental state. *Id.* at 2012. The *Elonis* Court decided not to consider the question of whether a reckless state of mind was sufficient under the statute. *Id.* at 2013.

However, Justice Alito would have reached the question of whether the First Amendment's true threats doctrine required a showing of an intent to threaten. Justice Alito reasoned that reading a speaker's recklessness into the true threats doctrine would provide adequate protection against punishing speech that was "literally threatening but ... plainly not meant to be taken seriously," just as libel's component of actual malice in making false statements requires that the writer recklessly disregard the fact of falsity. *Elonis,* 135 S. Ct. at 2017 (*Alito, J.*, concurring in part and dissenting in part).

Under Connecticut's jurisprudence, our Supreme Court considered the decision in *Black* before concluding in *DeLoreto*, that, for First Amendment purposes, 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. Although a threat must be distinguished from what is constitutionally protected speech this is not a case involving statements with a political message. A true threat, where a reasonable person would foresee that the listener will believe he will be subjected to physical violence upon his person, is unprotected by the first amendment.

(Internal quotation marks and ellipses omitted.) 265 Conn at 156. In *Krijger*, the court employed *DeLoreto's* true threats test and declined to consider whether the First Amendment's true threats test required that the speaker intend to communicate a threat. 313 Conn. at 451 n.10. This Court exercises plenary authority in reviewing an issue of constitutional construction. *State v. Arokium*, 143 Conn. App. 419, 434, *cert. denied,* 310 Conn. 904 (2013).

C. The True Threats Doctrine Lacks An Intent To Threaten Requirement

The defendant's contention that the First Amendment's true threats doctrine requires that the speaker specifically intend to communicate a threat, and that the trial court erred in failing to read this requirement into the statutes at issue runs afoul of *DeLoreto's* binding construction of a true threat, which requires a showing that a reasonable person foresee that his speech would be interpreted by a listener as a serious expression of intent to harm or assault. 265 Conn. at 156; see *State v. Madera*, 160 Conn. App. 851, 862 (2015) (intermediate court bound by Supreme Court precedent). This is a negligence standard; *Elonis,* 135 S. Ct. at 2011 (negligence standard based on whether reasonable person would recognize that social media posts would be read as genuine threats); which does not require either a specific intent or a reckless mental state.[14] *Id.* at 2015 (*Alito, J.*, concurring in part and dissenting in part). However, because this intermediate court may decide to address the question of the propriety of *DeLoreto*'s negligence standard under article first, §§ 4, 5, and 14, of our state constitution; because these free speech provisions may furnish greater free speech safeguards than their federal counterparts; *State v. Linares,* 232 Conn. 345, 351 (1995); and because, as will be argued below in section I.D., resolving this question under the First Amendment effectively resolves the matter under the Connecticut constitution, demonstrating that the First Amendment's true threats doctrine

[14]See General Statutes § 53a-3(13) (acting recklessly by being aware of and consciously disregarding a substantial and unjustifiable risk of statutory result or circumstance occurring); General Statutes § 53a-3(14) ("criminal negligence" where failure "to perceive a substantial and unjustifiable risk" of statutory result or circumstance occurring).

requires no intent at all on the part of the speaker -- either to intend specifically to communicate a threat or to intend generally to communicate -- is warranted.[15]

Where the First Amendment requires the reading of the true threats doctrine into a statute's threat element, thereby intertwining the constitutional doctrine with the statutory element, the doctrine's role in requiring satisfaction of a true threats definition is, essentially, to permit an unprotected category of pure speech to be deemed wrongful under a statutory prohibition and punished. Therefore, resolution of the open question of whether the true threats definition contains an intent requirement turns on whether intent is integral to generally separating unprotected categories of speech from protected speech, and specifically protected speech from unprotected true threats, which broadly involves a balancing of expression's "social value as a step to truth" against the "societal interest in order and morality." (Internal quotation marks omitted.) *Black,* 538 U.S. at 358-59; *R.A.V.,* 505 U.S. at 382-83. In contrast, resolution of the question of whether an intent requirement is "necessary to separate wrongful conduct from otherwise innocent conduct" for purposes of a statutory prohibition is guided by the "general rule ... that a guilty mind is a necessary element in the indictment and proof of every crime" and, consequently, that criminal statutes are to be broadly interpreted on review to include "applicable scienter requirements, even where the statute[s] by [their] terms do[] not contain them." (Internal quotation marks omitted.) *Elonis*, 135 S. Ct. at 2009-10. No similar rule governs First Amendment jurisprudence defining the role of any intent requirement.

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[15]See General Statutes § 53a-3 (11) (person acts "intentionally" with respect to conduct when conscious objective is engagement in such conduct).

The First Amendment defines a true threat as a threat of violence against the person to whom it is communicated, which engenders fear of violence possibly occurring and causes disruption. *Black*, 538 U.S. at 358-60; *R.A.V.*, 505 U.S. at 388. Under this definition, what separates protected speech from unprotected true threats is the injurious effect of speech on the listener, which subjects her to the fear of violence and the disruption that that fear engenders, and renders the threat of "slight social value." *Black, supra.* Because speech that inflicts such injury does so irrespective of the speaker's intent; *Jeffries,* 692 F.3d at 480; *Mabie*, 663 F.3d at 333; *Stanley*, 170 P.3d at 788; an intent requirement is not integral to a true threat. Moreover, a specific intent requirement plays no other role in distinguishing true threats from protected speech in light of the character of the true threats doctrine itself. That doctrine is not content based and, as a result, disfavors no views on any subject. *Black,* 538 U.S. at 359-63; *R.A.V.*, 505 U.S. at 391, 393. Neither is the doctrine overbroad in as much as true threats must be "serious" threats; *Black*, 538 U.S. at 359; rather than protected "puffery, bluster, jest"; *State v. Moulton,* 310 Conn. 337, 368 (2013); or political hyperbole. *Black*, 538 U.S. at 359. To the extent that a particular statute has incorporated a true threats definition into its threat element, but surrounding statutory language threatens to render the statute either content based in its application, as occurred in *R.A.V.,* or overbroad, as occurred in *Black*, in violation of the First Amendment, these types of encroachment on free speech are statutory in origin and require a statutory remedy rather than a change in the constitutionally sound true threats doctrine.

In the same vein, fighting words constitute a category of pure speech that is unprotected by the First Amendment because, by their very utterance, such words have an injurious effect on the listener by making it likely that they will provoke him into immediately

and violently retaliating against the speaker with violence. *Black*, 538 U.S. at 359; *Cohen v. California,* 403 U.S. 15, 20 (1971); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). Because fighting words, like true threats, inflict injury upon the listener irrespective of the speaker's intent, his intent is not integral to distinguishing unprotected fighting words from protected speech for First Amendment purposes.

In contrast, the speaker's subjective intent is integral to another category of speech that is unprotected by the First Amendment – namely, "advocacy [that] is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio,* 395 U.S. 444, 447 (1969) *(per curiam).* An intent requirement is necessary for purposes of distinguishing unprotected incitement under *Brandenburg* from protected expression because such incitement does not involve inflicting injury on the listeners. Instead, incitement involves the high level of intentionality that is inherent in a speaker advocating for lawless action against third parties, inciting the listener with this aim in mind, and making it likely that such lawlessness will occur. *Cf. Davidson v. Time Warner, Inc.*, 1997 WL 405907, at *19 (S.D. Tex. Mar. 31, 1997) (fighting words "address[] a person's reactions to another's *personal* insults, `incitement' addresses speech that results in attacks on *third* parties"); see also *United States v. Turner*, 720 F.3d 411, 432 (2d Cir. 2013) (incitement directed towards third parties), *cert. denied,* 135 S. Ct. 49 (2014).

As for libel, the written form of defamation and a category of unprotected speech applicable in the civil arena, it occupies a middle ground. For purposes of recovering damages involving a public figure, the First Amendment defines libel as statements "made with 'actual malice' -- that is, with [the writer's] knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U.S. 254,

279-80 (1964). This definition combines the intentionality inherent in writing and the writing's infliction of injury with forgiving the "occasional injury to the reputation[]" and "private character" of the public figure, the subject of the writing's falsehoods, in order to ensure that criticism of official conduct will flourish and public debate will be vigorous and varied. *Id.* at 279, 281.

Analyzing whether unprotected categories of speech contain an intent requirement, based on whether the requirement is integral to placing those categories outside of the First Amendment's ambit, demonstrates the invalidity of the defendant's contention that upholding *DeLoreto*'s negligence standard for true threats would result in that standard somehow governing incitement under *Brandenburg*. Dbrf:13-15. After all, as shown above, a high level of intentionality is inherent in incitement, but not true threats. This analysis also lays bare the flaw in the defendant's contention that resolution of the question of whether the true threats doctrine contains an intent to threaten requirement should be guided by the decision in *State v. Pond*, 315 Conn. 451 (2015), which required that a specific intent element be read into General Statutes § 53a-48(a), the conspiracy statute, for purposes of the substantive crime that the conspirators specifically agree to pursue, where that crime does not require a specific intent to commit all of its elements. The *Pond* court reasoned that an agreement, or meeting of minds, lies at the core of a conspiracy, that any overt act in furtherance of the crime constitutes a *de minimus* component of a conspiracy, and that the agreement's intent to commit a specific crime applies to all its elements. 315 Conn. at 473-77. The defendant analogizes true threats to a conspiratorial agreement with its specific intent element based on the proposition that a threat's speech is similarly, and for the most part, a reflection of "one's mind," that the actus reus of such speech, or the

"conduct of speaking," is "relatively thin," and that true threats require an "exacting specific intent requirement to insulate against inadvertent criminality." Dbrf:12. But, unlike the crime of conspiracy, the First Amendment's true threats doctrine focuses on the threat's injurious effect on the listener, and that effect is comparable to the physical force of a "projectile[]" stoking fear and creating a disturbance. *DeLoreto*, 265 Conn. at 163. In addition, the true threats doctrine uniquely guards against the punishment of inadvertent speech by requiring proof that the threat is a serious threat.

Finally, the defendant contends that a negligence standard favors the majority's speech over the minority's right to engage in unpopular speech, which is purportedly at odds with the public good and the First Amendment role of shielding the beliefs of weaker, even obnoxious people. Dbrf:12-13. This contention, however, arbitrarily employs a zero-sum method in examining the true threat doctrine, with winners and losers. Instead, there is a universal interest in giving the exchange of ideas the widest berth from violent threats and the constraints that fear and the disruption it engenders impose on speech irrespective of the speaker's intent. It is for this very reason that, for First Amendment purposes, *DeLoreto's* standard should not even be supplanted by libel's recklessness standard, which is far removed from violent threats, notwithstanding the legislature employing the recklessness standard for statutory purposes as the mens rea element of the crimes at issue.

In sum, the trial court properly relied on *DeLoreto* in assessing whether, consistent with the First Amendment, the defendant was punished for communicating true threats of violence.

D. Neither The State Constitution Nor Supervisory Authority Supports Adding An Intent Requirement To The True Threats Doctrine

The defendant argues in the alternative that article first, §§ 4, 5, and 14, of the Connecticut constitution recognize true threats as an unprotected category of speech, and that the state constitutional true threats doctrine requires that the speaker specifically intend to communicate a threat to the listener. Dbrf:15-18. The defendant's claim relies on standard factors of state constitutional analysis set out in *State v. Geisler,* 222 Conn. 672 (1992): the constitutional text and its history, Connecticut, federal, and sister-state jurisprudence, which includes *dicta*, and public policy. *Id.* at 684-86; Dbrf:14-18. But his analysis is short on state constitutional substance, save for invoking the right to peaceably petition and remonstrate government officials for redress of grievances, which is afforded by article first, §14, and asserting that this constitutional provision "**suggests** a state constitutional requirement of specific intent under the true threats doctrine." (Emphasis added.) Dbrf:14. The defendant offers no explanation as to how a right that safeguards communicating peacefully and directly with government officials can dictate whether the unprotected status of a violent threat hinges on the speaker's intent, rather than solely on the fear and disruption such a threat engenders and inflicts on the listener. Otherwise, the defendant's analysis is limited to a brief summary of his previous First Amendment analysis; Dbrf:16-17; which reflects the wholly federal and recent origins of the true threats doctrine, beginning with *Watts* and running through *R.A.V.* and *Black*, as well as the fact that Connecticut's free speech jurisprudence is silent about that doctrine.

Recently, in *State v. Kono,* 324 Conn. 80 (2017), the court opined that "if the federal constitution does not clearly and definitively resolve the issue in the defendant's favor, [it] will turn first to the state constitution to ascertain whether its provisions entitle the

defendant to relief." *Id.* at 123. Nevertheless, because the defendant would have this Court reach the specific intent issue under the state constitution merely by the wholesale importation of First Amendment jurisprudence and its principles into article first, §§ 4, 5 and 14, he has necessarily failed to identify, let alone analyze, any independent and unique state constitutional basis for his claim other than the existing text of §§ 4, 5, and 14, which must bar review in the absence of any pertinent explication of their unique meaning. See generally *State v. Saturno*, 322 Conn. 80, 113 n.27 (2016). Moreover, where the First Amendment furnishes the substantive rationale for resolving an undecided federal constitutional issue on state constitutional grounds, reliance on the state constitution not only would be unnecessary, but would mean that a dispositive state decision could not profit from the subsequent development of the federal jurisprudence and ultimate resolution of the issue. At bottom, there would be a risk of an insular and indelible state constitutional jurisprudence taking root and constraining this Court's role as the "ultimate arbiter of the state constitution...." (Internal quotation marks omitted.) *Kono*, 324 Conn. at 123.

Thus, the flaws inherent in the defendant's First Amendment challenge to his convictions also demonstrate the baselessness of his same challenge under the state constitution, because there is no substantive difference between the two, and the challenge's lack of any free speech foundation should dissuade this Court from exercising its supervisory authority to resolve the challenge. Simply put, this Court's exercise of supervisory authority is unwarranted because existing First Amendment and statutory safeguards are more than sufficient to protect the defendant's free speech rights and, thereby, safeguard the judicial system's integrity. *State v. Moore*, 169 Conn. App. 470, 487 (2016), *cert. granted in part on other grounds,* 323 Conn. 915 (2017).

E. Any Error Was Harmless

Assuming, *arguendo,* that the true threats doctrine requires that the defendant intend to communicate a threat, rather than foresee such a threat under *DeLoreto*, or perceive and ignore the effect of the threat pursuant to the reckless standard of the statutes at issue, the trial court's adherence to *DeLoreto* was harmless. The defendant appears to assume that the trial court's error amounts to a constitutional violation that cannot be rendered harmless. But, as is the case where an instruction omitting an entire element of a crime may be rendered harmless beyond a reasonable doubt by overwhelming evidence establishing that any rational jury could conclude that the missing element was satisfied; *Neder v. United States,* 527 U.S. 1 (1999); so a missing intent requirement of the true threats doctrine may be rendered harmless by overwhelming evidence of defendant's intent to communicate a threat, for purposes of this Court's First Amendment analysis and ultimate conclusion as to whether his email conveyed a true threat. Thus, here, scrutiny of the record reveals overwhelming evidence of the defendant's intent to communicate a threat based on: (1) his threat to shoot Tanya in the head while a gun lay within reach, when she welcomed their frightened five-year-old into their bed at night on vacation; (2) his storage of firearms in his home despite previously agreeing in his divorce and child custody proceedings to transfer custody of all of them to Sutula, and his retrieval of some of those guns; *Taupier supra,* *9-10 & n.12; Dafp:79 & n.12; (3) his craftsmanship of an email detailing a serious message of violence, including identifying the steps he already had taken in preparation for shooting a rifle into Judge Bozzuto's bedroom; (4) his reaffirmation of the email's violent message roughly a half-day after he had sent it, in an email exchange with Nowacki, by dismissing Nowacki's concern about the message's disturbing character

and threatening that he knew where Judge Bozzuto lived, asserting that the only way to force the "evil court assholes" to "change" was "an escalation," which he would "gladly" undertake, and specifying that such an escalation involved having an "impact [on] their personal lives and families" so that family court personnel "figure[d] out [that] they [were] not protected from bad things and [that] their families [would be] taken from them in the same way they took [our families]'; and (5) his purposefulness in emphasizing to Nowacki in their email exchange that, assisted by his "2nd amendment rights," he would "persevere," "never quit," and "accept death" in "fiercely" "fighting" the family court system over his children. *Taupier, supra*, at *5-6; Dap:75. This overwhelming evidence of the defendant's intent to communicate a threat, which may be drawn from his "conduct before, during, and after" the alleged offenses; *State v. Perugini*, 153 Conn. App. 773, 780 (2014); establishes the harmlessness of the trial court concluding that the defendant's convictions passed First Amendment muster by punishing a true threat, despite failing to determine that he intended to communicate a threat. Alternatively, even if the true threats doctrine required the state to demonstrate the defendant's recklessness in sending the email, the same evidence that established his intent to communicate a threat also establishes the harmlessness of the trial court finding a true threat for First Amendment purposes without determining such recklessness, even though it did so for due process purposes in finding, unchallenged on appeal, sufficient evidence of the reckless element of the crimes at issue.

II. THE DEFENDANT'S CONVICTIONS WERE CONSISTENT WITH THE FIRST AMENDMENT IN PUNISHING HIS UNPROTECTED TRUE THREATS

The defendant argues in the alternative that even if *DeLoreto* and its negligence requirement governs the definition of a true threat for First Amendment purposes, the trial erred in concluding that his email communicated true threats. Dbrf:20-31, 33-35. According

to the defendant, the state failed to establish that a reasonable person would have foreseen that the contents of his email would be interpreted by Judge Bozzuto and Verraneault as a serious expression of intent to harm or assault. *DeLoreto*, 265 Conn. at 156; see also *Krijger*, 313 Conn. at 449-50 (same); Dbrf:24. Specifically, the defendant maintains that he never communicated a true threat to Judge Bozzuto because: (1) the comments in his email were "devoid of substantive political content," were merely "offensive," repugnant," and "ugly," and sounded like "drunken bluster"; Dbrf:28, 30; (2) the comments "did not convey a promise to cause harm," in as much as they were "expressed in the language of contingencies," "in the subjunctive," which would have "attenuated" the effect of any such "promise" and placed the prospect of that promise being carried out in the "distan[ce]"; Dbrf:30; and (3) the email was not conveyed directly to Bozzuto in a face-to-face confrontation; instead, the email "found its way" to Bozzuto "[m]ore than a week" after the defendant had sent it to third parties, "a handful of political fellow travelers dedicated to reform of the family courts," "in a private setting," revealing that he never "intend[ed] to have his email made known to [Judge Bozzuto]" and was simply "posturing, venting" to "six" "discrete" "friends."[16] Dbrf:21, 29-30. As for Verraneault, the defendant argues that the email did not contain a true threat, and only made her worry about the pain he was experiencing, rather than experiencing fear herself. Dbrf:34-35.[17] The defendant's claims lack merit.

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[16]Although the defendant also argues that when Bozzuto was apprised of the defendant's email, her response could not have taken into account either the "operable weapons in [the defendant's] home" at the time or a second email the defendant had sent to Nowacki because she was unaware of the presence of either the weapons or the second email; Dbrf:21-23, 28, 31 & n.15; the state relies below on ample other evidence.

[17]State's Issue II addresses defendant's Issues II and III.

Where a defendant has been convicted of an offense that punishes his pure speech, and where, as here, the offense's threat element must fall within the First Amendment's true threats doctrine in order to pass free speech muster, a reviewing court resolves a challenge to the constitutionality of the conviction alleging that the speech at issue was not a true threat by making an ultimate, *de novo* determination as to whether it was highly likely that speech satisfied the true threats doctrine. *Krijger,* 313 Conn. at 446-47, 460. Importantly, in doing so, the reviewing court must accept all of the trier of fact's credibility determinations and subsidiary factual findings that are not clearly erroneous. *Id.* at 447. However, there is an exception for facts that have constitutional significance, which are measured against the benchmark of whether they are inseparable from the First Amendment principles that distinguish an unprotected category of speech from protected speech. *Bose Corp. v. Consumers Union of the United States, Inc.*, 466 U.S. 485, 501 n.17, 508 n.27, 514 n.31 (1984) (actual malice integral to definition of unprotected libel and reviewed *de novo*, but not falsity of writing); *Gleason v. Smolinski*, 319 Conn. 394, 437-38 (2015) (same). The category of unprotected speech in this case, true threats, requires that a speaker communicate a threat of violence, which engenders fear in the listener and causes disruption. *DeLoreto*, 265 Conn. at 156. What renders such a threat, rooted in its effect on the listener, unprotected for First Amendment purposes is that the threat is a true one, in the sense that a "reasonable person would foresee" that his words would be interpreted by those to whom they are communicated as a "serious expression of intent to harm or assault"; (ellipses and quotation marks omitted.); *id.* at 156-57; rather than "mere puffery, bluster, jest or hyperbole." *Moulton,* 310 Conn. at 368. Consequently, a trial court's finding of a violent threat's foreseeability and seriousness are subject to *de novo* review,

but clear error review applies to other subsidiary factual findings, including whether the defendant issued a threat of violence and whether that threat rendered the listener fearful and had a disruptive effect on her. Thus, the defendant is wide of the mark in contending that all of the trial court's factual findings are reviewed *de novo*.[18] Dbrf:21.

Here, the trial court made the factual finding that the defendant's email contained a threat of violence: "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." *Taupier*, *supra*, at *15; Dap:85. This factual finding, one of the predicate facts upon which its finding of a true threat was based, constituted an inferred fact, which the trial court drew in turn from its other factual findings:

> 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 to risk imprisonment in order to commit the threatened assault.

Taupier, supra, at *15; Dap:85.

Satisfaction of the clearly erroneous standard requires a showing of a complete absence of supporting evidence or, based on the entire evidence, the commission of a mistake; *Bose Corp.*, 466 U.S. at 499; and the defendant cannot overcome the deference

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[18]The standard of review in First Amendment cases has been fully briefed by the parties in *State v. Parnoff*, S.C. 19588, and oral argument is pending.

afforded to the trial court's fact finding under this standard by skirting the email's contents and merely labeling it as "offensive," repugnant," "ugly," and "drunken bluster," which constitute the defendant's subjective value judgments. Dbrf:28, 30.

Similarly insufficient is the defendant's characterization of his statements in the email as amounting to a contingent threat and, therefore, not a threat all, based on the rationale that the realization of its promise of violence to come was too uncertain, at some far future point if a condition precedent was not satisfied. Dbrf:30. This rationale suffers factually from the defendant's failure to identify a condition precedent in the email, which is telling in light of its language indicating that the defendant already was well on the way to carrying out a violent threat by identifying the town where Judge Bozzuto resided, the location of her bedroom at the rear of her home, the bedroom's double pane windows opening out onto a cemetery, positions of concealment and cover in the cemetery, the distance between those positions and the bedroom, and the capacity of a bullet to be shot over that distance, through the glass panes and into the bedroom. *Taupier*, *supra*, at *5; Dap:74.[19] More importantly, the defendant's rationale is unmindful of a contingent threat's ability to engender the key fear and disruption that is integral to a true threat. "[W]hen a threat is used to intimidate or dissuade an individual from taking a particular action, the threat will

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[19]Furthermore, to the extent that the defendant's condition precedent is the email's references to Judge Bozzuto ruling against him in his divorce and child custody proceedings and his children being stolen or taken away; *Taupier*, *supra*, at *5; Dap:74; satisfaction of that condition precedent was in the offing due to: (1) the defendant's previous delay of a custody review; (2) his violation of both a court approved August 13, 2013 parenting agreement designating the town where his children would be schooled and a June 18, 2014 parenting schedule, which was approved by Judge Bozzuto; and (3) in response to these violations, Tanya's attorney filing a motion for contempt and relief. In fact, Judge Bozzuto ordered that the August 13, 2013 agreement be abided by on August 25, 2014, only three days after the defendant sent the email on August 22, 2014. See *infra*, p.3 & n.4.

often be contingent, with the threatener suggesting that violence only will be used if the listener fails to comply with the threatener's demands." *United States v. Dillard*, 795 F.3d 1191, 1200 (10th Cir. 2015); *United States v. Schneider*, 910 F.2d 1569, 1570 (7th Cir.1990) ("Most threats are conditional; they are designed to accomplish something; the threatener hopes that they *will* accomplish it, so that he won't have to carry out the threats. They are threats nonetheless."). A contingent threat of violence harnesses the fear and disruption it engenders to forestall the listener from accomplishing something that the listener intends to undertake in the future, but ultimately foregoes due to fright (e.g., "I'll kill you if you rule against me"), and its future effect is open ended until the listener is undeterred.[20] The lingering effect of a violent threat, whether conditional or assured, is exemplified by Judge Bozzuto picturing the email and a "completely unraveled" defendant every time she pulled her car into her driveway and parked late at night; 8T:57-58; or her daughter, approximately seven months after the email had been sent, urging her mother to move inside as they said their goodbyes for the day in case the defendant was nearby. 8T:60.

Here, the trial court accompanied its factual finding that the defendant's email contained a violent threat with its finding of another factual predicate of a true threat – namely, that this threat had the effect of "causing [Judge Bozzuto] to fear for her own safety and that of her family." *Taupier*, *supra*, at *8; Dap:77. In part, the trial court inferred Judge Bozzuto's fearful state of mind from the following subordinate facts:

> 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

[20]The issue of whether the true threats doctrine has an imminence requirement was briefed and argued in *State v. Pelella*, S.C. 19760, and a decision is pending.

> personal life and relationships. Most frightening to Judge Bozzuto 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."

Taupier, *supra*, at *8; Dap:28. The trial court derived these subordinate facts from Judge Bozzuto's trial testimony explicating how the email had affected her; 8T:54-58; see, *supra*, pp. 7-9; thereby effectively crediting what she had said. This credibility determination must be deferred to on review. *Krijger*, 313 Conn. at 447. In addition, the trial court found that Judge Bozzuto's fears stemming from the email had driven her to take precautionary measures to protect herself and others: extensively upgrading her home's security system, arranging for the local police to evaluate whether she was safe in her home, and contacting her niece, who had been caring for her dogs at her home in her absence, her children's schools, and Tanya about the defendant. *Taupier*, *supra*, at *9; Dap:28 Dap:78. This factual finding is not clearly erroneous and demonstrates, in conjunction with Judge Bozzuto's recurring recollection of the defendant and his email as well as the judicial marshals escorting her to her vehicle at night, the extensive disruption that her fears engendered, the final factual predicate of a true threat. See *United States v. Stacy*, 586 Fed.Appx. 545, 548 (10th Cir. 2014) (Judge's perception of email as true threat shown by him taking "additional precautions in his day-to-day life to ensure his safety"). "The fact that [Judge Bozzuto] act[ed] as if [s]he believed the threat is evidence that it could be reasonably believed and therefore that it is a threat." *United States v. Schneider*, 910 F.2d 1569, 1571 (7th Cir. 1990).

The trial court's factual finding that, from a reasonable person's perspective, it was foreseeable that Judge Bozzuto would have interpreted the email as conveying a true threat, or a a serious expression of intent to harm or assault; *Taupier*, *supra*, at *12-19; Dap:82-90; is subject to *de novo* review. In undertaking this *de novo* review, this Court should be guided by the trial court's factual finding that Judge Bozzuto reacted fearfully to the defendant's email and the fear caused disruption. See *United States v. Clemens*, 738 F.3d 1, 13 (1st Cir. 2013) (email recipient's reaction to email by not fearing physical harm and not taking precautions for self-protection relevant to what reasonable person making statement should have foreseen). This is so because a reasonable person could be expected to be cognizant or mindful of the content of his own email and its likely effect, particularly where, as here, it was crafted in a manner that was so degrading (referring to Judge Bozzuto as "dog shit" and a "Nanny Fucker"), infinitely menacing (detailing his ongoing surveillance of Judge Bozzuto's home and the vulnerability of her bedroom window to specific ammunition, shot over a specific distance from the concealment of a cemetery into her bedroom), and frighteningly graphic (picturing himself inexorably shooting and dying with cordite and blood stained hands). *Taupier*, 2015 WL 6499803, at *6; Dap:74. As for the email's references to F35 fighter jets, smart bombs, and the International Space Station, the trial court was not clearly erroneous in finding that their effect would have been to "add[], rather than detract[] [by way of exaggeration] from the overall threatening nature of the email" and its foreseeable impact. *Taupier, supra,* *15 n.18; Dap:85 n.18.

Further ensuring the foreseeability of the email's message sowing fear and causing disruption was that the defendant identified his reason for sending the email and placed it in the email itself: his outrage over Judge Bozzuto's rulings that interfered with the children he

professed to "own." *Taupier, supra,* *15 n.18; Dap:85 n.18. In pinpointing his reason for targeting Judge Bozzuto, the defendant showed how serious, rather than careless or spontaneous, he had been in composing the email and issuing a violent threat. See *Stacy*, 568 Fed.Appx. at 548 (rejecting claim that defendant's email mere idle, careless exaggeration because it pointed to source of his "rage" – the trial court's imposition of sentences). Also conveying the seriousness underlying the defendant's threat of violence was the context of the email. See generally *Krijger,* 313 Conn. at 454. Prior to the email, Judge Bozzuto had presided over contentious divorce and child custody proceedings marked by the defendant's open dissatisfaction with her rulings, and the proceedings also revealed that there had been a criminal case against the defendant involving Tanya and that he owned guns, although he had relinquished them until the proceedings' conclusion. 13T:12-13; 14T:14; 8T:47, 50-51, 53, 54-55. What the proceedings made apparent was that the defendant was, by temperament, well-suited for carrying out his violent threat and familiar with the means to do so – namely firearms. See *Clemens*, 73 8 F.3d at 13 (rejecting claim that violent threat not true threat having been communicated to opposing counsel during civil litigation because litigation "contentious" and "significan[t]," which increased likelihood of threat being "carried out"); *cf. Krijger,* 313 Conn. at 456 (defendant not type of person capable of carrying out threat).

Another way to gauge the foreseeability of the email's impact on Judge Bozzuto is to compare it to the email's effect on the other individuals who had received it. See *DeLoreto*, 265 Conn. at 450 (one factor in foreseeability of threat as true threat is surrounding events, including listeners' reaction). Scrutiny of the record indicates that Nowacki, one of the email recipients, informed the defendant in an exchange of emails that the email at issue was

unsuitable for "communication[] to anyone" because it was "disturbing" and "allude[d] to violence." *Taupier*, *supra*, at *5-6; Dap:74-75. Verraneault, another email recipient, found that the email was sad and worrisome, in the sense that it showed how much pain the defendant was experiencing; but she also described the email as scary and disturbing. 11T:27, 51. The email also made Verraneault "scared to think" about "how [the defendant] would react to [her] if [he] found out that [she had] shared" the email with Allard, which caused Verraneault to fear for her own safety.[21] 11T:32.[22] From this evidence, the trial court drew the factual inference, which is not clearly erroneous, that Nowacki and Verraneault had experienced the email as a "serious threat to commit violence," bearing in mind that they, unlike Judge Bozzuto, were not even the direct subjects of the email. *Taupier*, *supra*, at *18-19; Dap:88-89.

It is the fact that the email was a true threat of violence and its powerful character that explains why a reasonable person would have foreseen that one among the email recipients would have apprised the authorities of its lawless message and sent it along its pathway from Attorney Allard, to the Judicial Branch, to the state police, and to Judge Bozzuto, the very people Connecticut empowers to shield its citizenry from such criminality. "A threat doesn't need to be communicated directly to its victim or specify when it will be carried out"; it may be conveyed to its "object" or a "third party." (Internal quotation marks

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[21]Thus, the record does not support the defendant's analysis that limits Verraneault's reaction to the email to her being sad and worried about the defendant. Dbrf:33-35.

[22]As for the other recipients, the record is limited to the testimony of Skipp and Kelley that they considered the email to be little more than a hyperbolic reaction to the defendant's dissatisfaction with the family court system; 21T:43, 82-85; but the trial court found that there were ample grounds to conclude that they lacked objectivity and credibility; *Taupier, supra*, at *19 n.22; Dap:89 & n.22; a determination that must be deferred to on review. *Krijger*, 313 Conn. at 447.

and emphasis omitted.) *United State v. Parr*, 545 F.3d 491, 497-98 (7th Cir. 2008), *cert. denied*, 556 U.S. 1181 (2009). Here, the six "third party" recipients very loosely cohered around their shared advocacy of family court reform, their occasional use of the internet to communicate with each other about this matter, and, to this end, their occasional attendance at various types of live fora to speak out in public.[23] Only two -- Skipp and Kelley -- had a friendship with the defendant; *Taupier, supra*, at *19 n.22; Dap:89 & n.22; but, Verraneault, who reported the email to Attorney Allard, did not and was on the periphery of this intermittently associated group of people. It reasonably could be expected that individuals like Verraneault, who worked for legal reform and employed its means of

[23] Stevenson lived in Massachusetts, and her role among the email recipients was limited to internet reporting on judicial ethics and family court issues. 11T:23, 49; 19T:110-11, 113; 23T:6. Verraneault had encountered the defendant at a social event attended by the email recipients, a judicial rules committee hearing, and a state legislative bill signing. 11T:6-7; 21T:122, 128. Verraneault and the defendant also had spoken on the telephone on two occasions and exchanged six emails between March 2014 and August 23, 2014. 11T:8. Their communication concerned guardian ad litem legislation and the location of a therapist who had been assigned to a family court matter. 21T:118, 123-24. Skipp had met the defendant in January 2014, communicating with him in person, on the telephone, and via email about corruption in the family court system. 19T:99, 108. Skipp had encountered Sunny Kelley in a law library while doing research on family court issues, and they became "close friends" who communicated in person, on the telephone, and via email about cases involving parents losing custody of their children. 19T:114-16; 21T:80. Skipp was less friendly with Stevenson, Nowacki, and Verraneault. 21T:80-81. Skipp shared no emotional connection to Nowacki. 21T:80. Skipp considered Stevenson, Boyne, and Kelley to be "like minded" because they had children who were involved in family court, but she excluded Verraneault from this "like minded" group because she had "no children endangered by state action." 21T:68-69. Kelly had met Nowacki in 2011 or 2012, attended various legislative and judicial committee meetings with him, and communicated with him by telephone and email about their experiences in family court and the unethical behavior purportedly marring that system. 19T:123-25; 21T:59-62. Kelly was "good friends" with the defendant and had stayed at his home on several occasions, but they were not romantically involved. 22T:27-28. Kelly viewed herself as part of a group of people who were dissatisfied with the family court's child custody decisions. 22T:29. She did not consider Verraneault, whom she had met in 2012 or 2013, to be part of that group, and they had maintained infrequent contact about reforming the family court system. 22T:12-13, 29.

redress, would inform the authorities about, rather than countenance, an email's lawless message, particularly where, as occurred here, the email is so revelatory about the author's capacity for violence and his minimal personal ties to many of the recipients. Indeed, Verraneault did just that in turning the email over to an attorney after consulting with people who had previously accompanied her along a lawful pathway to reforming the family court system -- a state legislator and associates in a business connected to family court matters. 11T:27, 39-40, 42-45, 46, 48.

In addition, because the email identified the source of the anger that coursed through the defendant's email -- the family court system's interference with the defendant's "own[ership]" of his children -- a reasonable person would have foreseen that the email's true threat of violence was aimed not only at Judge Bozzuto and her rulings, but also at anyone else who received the email and abetted that system, as was the case with Verraneault when she shared the email with Attorney Allard and started the email along its route to the authorities. The upshot was that Verraneault put herself, so to speak, in the crosshairs of the email's violent message, which initially scared and disturbed her, and then made her fear for her own safety as she became one of its targets. Therefore, contrary to the defendant's contention, his email communicated a true threat to Verraneault as well as Judge Bozzuto. Dbrf:33-35.

Thus, all of the underlying facts in the record, including those of constitutional significance, support an ultimate and *de novo* conclusion by this Court that it is highly likely that the defendant's email constituted, for First Amendment purposes, a true threat. *Krijger*, 313 Conn. at 447, 460.

CONCLUSION

For the foregoing reasons, this Court should affirm the defendant's convictions.

Respectfully submitted,

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CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that

(1) the electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) the electronically submitted brief and appendix and the filed paper brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(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 the appeal, in compliance with Section 62-7; and

(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.

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