No. ___-_____

In the
Supreme Court of the United States

EDWARD F. TAUPIER,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

On Petition For Writ of Certiorari to the Connecticut Supreme Court

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Connecticut criminalizes true threats to commit a crime of violence. Like many federal and state jurisdictions, it does not distinguish between speech where the speaker actually intends to convey a true threat and speech where the speaker merely engages in reckless hyperbole and bluster to express his passionate opinions. Connecticut thus prosecutes speakers such as the Petitioner for messages even in cases where they had no intent to convey threats to anyone and were merely using hyperbole that its prosecutors consider to be reckless.

Connecticut asserts that its criminalization of threatening speech where the speaker does not possess or exhibit an intent to threaten persons but merely has spoken recklessly is justified because threats do not constitute ideas, opinions, or part of a legitimate dialogue and cause fear in the minds of others. Thus, Connecticut maintains that the First Amendment only requires that a speaker possess a general intent akin to a recklessness standard.

The question presented is:

Whether the First Amendment prohibits a State from criminalizing threats to commit violence communicated in reckless disregard of the risk of placing another in fear.

PARTIES TO THE PROCEEDING

Petitioner is Edward F. Taupier. He was the defendant in the Connecticut Superior Court, the defendant-appellant in the Connecticut Appellate Court, and the petitioner in the Connecticut Supreme Court.

Respondent is the State of Connecticut. The State of Connecticut was the prosecuting authority in the Connecticut Superior Court, the appellee in the Connecticut Appellate Court, and the respondent in the Connecticut Supreme Court.

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Ambiguity in the criminal law poses a dangerous threat to liberty because it requires ordinary citizens to decipher "riddles that even... top lawyers struggle to solve." *Minnesota Voters Alliance v. Mansky*, 138 S.Ct. 1876, 1891 (2018). The Court has placed particular emphasis on clarity in the narrow categories of the speech that fall outside of the First Amendment's protection and that government may criminally sanction. *See Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942) ("There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem...."); *see also Riley v. National Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 800 (1988) ("government [must] not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored").

One of the narrow categories of speech that the Court has held falls outside the First Amendment's protection is true threats. *Watts v. United States*, 394 U.S. 705 (1969). The Court, however, has only opined on the contours of the true threats exception three times. *See Elonis v. United States*, 135 S.Ct. 2001 (2015); *Virginia v. Black*, 538 U.S. 343 (2003); *Watts*, 394 U.S. 705. The lack of a developed body of jurisprudence from the Court has led to significant differences of opinion among state and federal courts as to what exactly constitutes a true threat. Thus, whether speech constitutes a true threat subject to criminal punishment depends on whether a state or a federal jurisdiction prosecutes the speaker and where the speaker is prosecuted. A national variety of standards that lower courts are forced to revisit every time a

defendant challenges a true threats prosecution makes it impossible for the average member of society to ascertain where his speech may cross the outer borders of First Amendment protection and subject him to criminal liability.

This is a case in point. The petitioner, Edward Taupier, engaged in daily social media rants in which he vehemently expressed his disappointment and opinion of the Connecticut Judiciary, particularly in its treatment of him. Despite the fact that he did not intend to threaten anyone and, in fact, did not threaten any specific person, Connecticut charged him with ten felonies for inciting injury to persons or property and threatening. Relying on this Court's decision in *Virginia v. Black*, Mr. Taupier sought to have the charges against him dismissed on the grounds that he did not specifically intend to threaten anyone or incite violence and that the First Amendment required Connecticut to allege and prove that he specifically intended to threaten or incite violence, which it completely failed to do so. Connecticut courts rejected his arguments as a matter of law, and he pled guilty nolo contendere to five felonies because he believed that he had no chance to secure his acquittal under Connecticut's true threats jurisprudence. He, however, preserved his appellate rights.

Mr. Taupier's plight epitomizes the state of the true threats exception in the United States. For example, if he had spoken in Massachusetts, Rhode Island, Vermont, or Pennsylvania and had been charged by any of those states in a manner similar to the way Connecticut charged him, his charges would have been dismissed because no allegation was ever made that he specifically intended to threaten anyone.

To the contrary, Mr. Taupier had the misfortune of speaking in Connecticut where the prosecution was only required to show that he spoke with reckless disregard for the effect that his words might have on the sensitive.

In other words, whether Mr. Taupier's speech is protected by the First Amendment is currently a matter of location and of who chooses to prosecute him. This Court's intervention is necessary both to establish a uniform true threats jurisprudence and to remove the determination of whether speech constitutes a true threat from the community's sensibilities.

OPINIONS BELOW

The Connecticut Appellate Court's decision is reported at 197 Conn. App 784 is reproduced at App.1-24. The Connecticut Supreme Court's order denying the petition for certification is reprinted at App.26. The Connecticut Superior Court's initial memorandum of decision denying Mr. Taupier's motion to dismiss is reprinted at App.27-44.

JURISDICTION

The Connecticut Supreme Court denied Mr. Taupier's petition for certification on July 7, 2020. On March 19, 2020, this Court issued a general order extending the time for filing any petitions for a writ of certiorari due on or after March 19, 2020 to one hundred and fifty (150) days. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I provides:

> 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.

The relevant portion of Conn. Gen. Stat. § 53a-62 under which the Connecticut Appellate Court affirmed Mr. Taupier's convictions provides:

> (a) A person is guilty of threatening in the second degree when: (1) By physical threat, such person intentionally places or attempts to place another person in fear of imminent serious physical injury, (2) (A) such person threatens to commit any crime of violence with the intent to terrorize another person, or (B) such person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror....

The relevant portion of the Connecticut Penal Code that defines reckless is Conn. Gen. Stat. § 53a-3(13), which provides:

> 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 constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation....

STATEMENT OF THE CASE

Mr. Taupier has been involved in a long and highly contentious divorce that included a bitter custody fight over his children in Connecticut court. App.5. In 2014 while those proceedings were pending, he sent an email to a group of friends with the following comments about the presiding judge (Judge Beth Bozzuto) in his case:

> (1) [t]hey can steal my kids from my cold dead bleeding cordite filled fists ... as my [sixty] round [magazine] falls to the floor and [I'm] dying as I change out to the next [thirty rounds]; (2) [Bo]zzuto lives in [W]atertown with her boys and [n]anny ... there [are] 245 [yards] between her master bedroom and a cemetery that provides cover and concealment; and (3) a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch]

> per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition...."

App.5.

Mr. Taupier was subsequently convicted of a felony and three misdemeanors for threatening the judge. App.5-6. The Connecticut Supreme Court affirmed his convictions after rejecting his claim that his comments in his email were constitutionally protected free speech. App.6. This Court subsequently denied Mr. Taupier's petition for a writ of certiorari. *See Taupier v. Connecticut*, 139 S.Ct. 1188 (2019).

The divorce proceedings, however, had not ceased to agitate Mr. Taupier. In January 2017, Mr. Taupier made approximately ten Facebook comments regarding his divorce case and his criminal conviction while he was under house arrest and his appeal of his previous conviction was pending. App.6. After Connecticut law enforcement learned of Mr. Taupier's comments, they obtained a warrant for his arrest and charged him with ten felonies: five counts of inciting injury to persons or property[1] and five counts of threatening in the second degree.[2] App.6, 120.

Mr. Taupier moved to dismiss the charges against him on the grounds that they were not true threats and that they did not rise to the level of advocacy of imminent lawless action that *Brandenburg v. Ohio*, 395 U.S. 444 (1969) requires. App.6, 89-110. The trial court denied his motion to dismiss, and he then entered into a plea agreement to plead nolo contendere to five felonies of threatening in the second

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[1] Conn. Gen. Stat. § 53a-179a.
[2] Conn. Gen. Stat. § 53a-62.

degree in violation of Conn. Gen. Stat. § 53a-62 while reserving his right to appeal the trial court's denial of his motion to dismiss. App.6-7, 27-44.

On June 9, 2020, the Connecticut Appellate Court rejected Mr. Taupier's First Amendment arguments and affirmed his convictions based on five of his Facebook statements without passing an opinion on his other comments. App.7, 15 n. 11. The five statements in question read as follows:

> I JUST GOT NOTICE OF CONTEMPT FROM THE STATE WEB SITE WITHOUT GETTING OFFICIAL SERVICE, I GUESS THE JEWS THAT RUN THE MIDDLETOWN CLERKS OFFICE (JOE BLACK – JONATHAN FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING. THIS IS WHY WE NEED TO START KILLING WITH LOVE THOSE THAT VIOLATE THE CIVIL RIGHTS OF SOCIETY THAT ARE JUDGES WHO HAPPEN TO PRACTICE THE JEWISH FAITH.

App.15-16 (dated Jan. 9, 2017).

> KILL COURT EMPLOYEES AND SAVE THE COUNTRY.... Stop driving the SUV and save the planet.... This is what a liberal would say....

App.15-16 (dated Jan. 9, 2017).

> JUDGE BOZZUTO FOR LIBERTY TREE CHALLENGE.... The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. Thomas Jefferson.... Nominate Judge Bozzuto to Liberty Tree Refreshment Challenge. Spill some blood, save a tree!

App.15-16 (text accompanying picture of a tree, dated Jan. 9, 2017).

> I was given 5 yrs for disturbing peace hmm no judicial retaliation in CT with Judges... btw Devin said he felt sorry for the cop...and wanted to make it right despite the girl and her family wanting the maximum... im on $1.3m bond for disturbing the peace.... kill every one of theses judges.

App.15-16 (dated Jan. 11, 2017).

> we the public have no trust in the CT judiciary… time to burn the courts down!!

App.15-16 (dated Jan. 12, 2017).

> CT courts destroy this every second of every day! > The family courts in CT are run by Beth Bozzuto, the mother destroying families across the state! Time to burn down the courts.

App.15-16 (Jan 14, 2017 resharing of a post originally made from 2015).

In reviewing the trial court's denial of Mr. Taupier's motion to dismiss, the Connecticut Appellate Court analyzed Mr. Taupier's statements solely under Conn. Gen. Stat. § 53a-62(a)(2)(B), which specifically criminalizes speech where the speaker's state of mind is one of reckless disregard rather than a specific intent to levy a threat. App.13 n.9. Despite Mr. Taupier clearly arguing for a specific intent standard under the First Amendment in his brief, *see* App.75-81, the Connecticut Appellate Court devoted no time to discussing his argument and dismissed it in a footnote disposing of his state constitutional claim.[3] *See* App.6, n. 1.

Having selected a general intent standard in the form of reckless disregard, the Connecticut Appellate Court reviewed Mr. Taupier's previous convictions for threatening statements, the reaction of various readers, and Mr. Taupier's lack of contrition. App.16-22. It then summarily concluded that his speech constituted a true

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[3] The Connecticut Appellate Court's footnote references the Connecticut Supreme Court's rejection of a specific intent requirement under the Connecticut Constitution in *State v. Taupier*, 330 Conn. 149 (2018), but it makes no reference to the same decision's rejection of a specific intent requirement under the First Amendment. App.6 n.1. If the Connecticut Appellate Court had considered Mr. Taupier's First Amendment argument, the principles of stare decisis would have dictated the application of the same decision and holding.

threat because it was made with reckless disregard for the terror that it would cause to others and affirmed his convictions. App.21-22.

Mr. Taupier timely filed a petition for certification with the Connecticut Supreme Court, which denied his petition on July 7, 2020. App.26. He now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

In the past five years, three members of this Court have urged the Court to clarify whether the First Amendment requires a state to prove a speaker's mental state to secure a conviction for a true threat and, if so, what mental state is required.[4] The Court also expressly reserved the question of what mental state the First Amendment requires in a true threats analysis in *Elonis v. United States*, 135 S.Ct. 2001, 2013 (2015) so that it would correctly decide the question with the help of additional lower court opinions and full merits briefing by parties. Those additional lower court opinions have issued, and Mr. Taupier now squarely presents this important question for the Court's consideration.

The Court's intervention is necessary for three reasons. First, a split of authority exists between the federal circuits and state courts of last resort. The consequences of this split are two-fold. The degree of protection that the First

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[4] *See Kansas v. Boettger*, 140 S.Ct. 1956(Mem) (Jun. 22, 2020) (Thomas, J., dissenting from denial of certiorari) (urging the Court to decide what level of intent the First Amendment requires); *Perez v. Florida*, 137 S.Ct. 853(Mem), 855 (2017) (Sotomayor, J., dissenting from denial of certiorari) (same); *Elonis v. United States*, 135 S.Ct. 2001, 2013-14 (2015) (Alito, J., concurring in part, dissenting in part) (same); *id.* at 2018 (Thomas, J., dissenting) (same).

Amendment affords to a person's speech currently depends on their geographical location (i.e., in Connecticut or Kansas), and the degree of protection also depends on whether the person is charged in state or federal court (i.e., California state court or California federal court). Second, despite the split of authority, this Court's decision in *Virginia v. Black*, 538 U.S. 343 (2003) clearly establishes that a government must prove that a speaker specifically intended to communicate a threat. The Connecticut Appellate Court and the Connecticut Supreme Court erroneously concluded otherwise in this case. Third, the question that this petition presents has come to this Court multiple times since its decision in *Black*, and it continues to plague the state courts of last resort at a furious pace with some courts considering the question three or four times over the past three years. The state's universal adoption of statutes criminalizing true threats means that this question will continue to rise without end until this Court intervenes to settle it once and for all.

Thus, Mr. Taupier respectfully requests the Court to grant this petition.

I. A Split of Authority Between The Federal Circuits And State Supreme Courts Exists As To Whether The Court's Decision In *Virginia v. Black* Requires The Prosecution To Prove A Specific Intent To Threaten In Order To Secure A Conviction For Threatening.

In *Virginia v. Black*, 538 U.S. 343, 359 (2003), a plurality of this Court stated that a true threat "encompass[es] 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." A total of eight justices agreed in principle with this definition. *Id.* at 368 (Scalia, J., concurring in part, concurring in

the judgment in part, and dissenting in part); *id.* at 385, 387 (Souter, J., Kennedy, J., Ginsburg, J., concurring in the judgment in part and dissenting in part).

Black's language, however, has led to a vigorous disagreement among lower courts as to whether *Black* requires a prosecutor to prove that a speaker specifically intended to make a true threat or merely requires a prosecutor to prove that the speaker spoke with reckless disregard for causing the fear of violence. This disagreement has caused a substantial split of authority between numerous state courts of last resort including Connecticut's and the federal circuits. Other courts have declined to decide the question until this Court clarifies its *Black* holding. *See People In Interest of R.D.*, 464 P.3d 717, 721 n.1 (Col. Jun. 1, 2020); *Carrell v. United States*, 165 A.3d 314, 324-35 (D.C. 2017). Thus, the Court's intervention is necessary to clarify *Black*'s meaning.

A. The Reckless Disregard Interpretation.

The First, Fourth, Sixth, and Eleventh Circuits[5] and six state courts[6] have held that *Black* does not impose a burden to prove a specific intent to threaten on a prosecutor and have adopted a more general intent formulation that is commonly styled as reckless disregard. To the extent that the Connecticut Appellate Court took

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[5] *United States v. Clemens*, 738 F.3d 1, 10 (1st Cir. 2013); *United States v. Martinez*, 736 F.3d 981, 988 (11th Cir. 2013) *vacated on other grounds*, 135 S.Ct. 2798 (2015); *United States v. Jeffries*, 692 F.3d 473, 479-81 (6th Cir. 2012); *United States v. White*, 670 F.3d 498, 508 (4th Cir. 2012).

[6] *People v. Ashley*, 2020 IL 123989, at *9 (Jan. 24, 2020); *State v. Taupier*, 330 Conn. 149, 173 (2018); *Major v. State*, 301 Ga. 147, 151-52 (2017); *People v. Lowery*, 257 P.3d 72, 77 (Cal. 2011); *Hearn v. State*, 3 So.3d 722, 739 n.22 (Miss. 2008); *People v. Pilette*, 2006 WL 3375200, at *6 (Mich. 2006) (per curiam).

a position in this case, it relied on the Connecticut Supreme Court's decision in *State v. Taupier*, 330 Conn. 149 (2018), which adopted the reckless disregard interpretation. The *Taupier* decision and the Fourth and Sixth Circuits' decisions in *White* and *Jeffries* respectively provide the clearest and most comprehensive reasoning for the reckless disregard interpretation.

In *United States v. White*, 670 F.3d 498, 508 (4th Cir. 2012), the Fourth Circuit rejected a claim that *Black* imposed a specific intent element on all true threats prosecutions in the context of a criminal prosecution under 18 U.S.C. § 875(c). Relying on its statutory interpretation precedents, the Fourth Circuit held that § 875(c) was presumed to be a general intent crime, or a crime where the United States only needed to show that the defendant intentionally engaged in the crime's *actus reus* – the transmission of a communication. *White*, 670 F.3d at 508. It then turned to this Court's language in *Black*, focusing on the operative clause "means to communicate." *Id.* at 508-09. The *White* court read this language very narrowly to reconcile it with its statutory interpretation precedents, interpreting it to mean "intends to communicate." *Id.* at 509. Thus, the *White* court conclude that the only burden that the government bore in terms of intent was to show that the defendant intended to communicate a statement. *Id.* at 509.

The *White* court then addressed the dissent's arguments and the arguments of the Ninth Circuit that *Black* mandates proof of an intent to intimidate or threaten, thus creating a specific intent element. *Id.* at 510. First, the *White* court argued that *Black* did not establish a requirement of specific intent in all true threats

prosecutions, but rather was specifically addressing the elements of the Virginia statute at issue. *Id.* at 510. It pointed to *Black*'s lack of specific examples of other statutes where this Court thought that a specific intent element might be required as supporting its conclusion that *Black*'s specific intent language was context-specific. Second, the *White* majority argued that First Amendment law has always been objective and that a speaker's *mens rea* has never played a role in whether speech is constitutionally protected or not. *Id.* at 511 (citing *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 468 (2007)). In response to the dissent's rejoinder that this Court's defamation of public officials precedent required heightened, subjective *mens rea* elements in certain contexts, the *White* court argued that this Court's precedents only required reckless disregard, not specific intent. *Id.* at 511-12.

The Sixth Circuit took a similar approach in *United States v. Jeffries*, 692 F.3d 473, 480-81 (6th Cir. 2012). First, adopting the Fourth Circuit's reasoning in *White*, it held that *Black*'s use of the phrase "means to communicate" only requires the government to show that the defendant intended to make a communication. *Id.* at 480. Second, the Sixth Circuit also pointed out that *Black* specifically indicated that it was only addressing one type of true threat – intimidation. *Id.* at 480. Thus, the Sixth Circuit concluded that, while specific intent might be required for intimidation at best, *Black* does not require it for all types of true threats. *Id.* at 480.

In 2018, the Connecticut Supreme Court adopted the reasoning of the Fourth and Sixth Circuits. *See State v. Taupier*, 330 Conn. 149, 170-173 (2018). In addition to adopting the identical reasoning of the Fourth and Sixth Circuits, the Connecticut

Supreme Court also pointed out that adopting a specific intent requirement would undermine the purpose behind the true threats exception – "protecting the targets of threats from the fear of violence." *Id.* at 173. The Connecticut Supreme Court did not elaborate in detail on this principle, but it clearly emphasized the state's interest in proscribing any speech that might engender the fear of violence. *Id.* at 173. Thus, the Connecticut Supreme Court affirmed Mr. Taupier's convictions under the reckless disregard standard mandated by Conn. Gen. Stat. § 53a-61aa(a)(3).

On Mr. Taupier's second prosecution for speech critical of the Connecticut judiciary, the Connecticut Appellate Court relied wholly on the Connecticut Supreme Court's 2018 decision in affirming his five felony convictions. App.6 n.1. The Connecticut Supreme Court denied Mr. Taupier's subsequent effort to appeal, thus affirming its 2018 decision and the appellate court's application of it and solidifying its position in the split of authority. App.5-6.

B. The Specific Intent Interpretation.

The Ninth and Tenth Circuits[7] and six state courts[8] have held that *Black* requires the government to prove, in a true-threat prosecution, that the speaker intended to threaten. The Ninth and Tenth Circuits' decisions in *Cassel* and

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[7] *United States v. Cassel*, 408 F.3d 622, 633 (9th Cir. 2005); *United States v. Heineman*, 767 F.3d 970, 975 (10th Cir. 2014).

[8] *State v. Boettger*, 310 Kan. 800, 813-15 (2019); *Commonwealth v. Knox*, 647 Pa. 593, 613 (2018); *O'Brien v. Borowski*, 461 Mass. 415, 425-27 (2012) *abrogated on other grounds by Seney v. Morhy*, 467 Mass. 58 (2014); *State v. Miles*, 15 A.3d 596, 599 (Vt. 2011); *State v. Grayhurst*, 852 A.2d 491, 515 (R.I. 2004); *State v. Taylor*, 841 S.E.2d 776, 813 (N.C. Ct. of Appeals, Mar 17, 2020) *pending review in* 847 S.E.2d 412 (N.C. Sept. 23, 2020).

Heineman respectively provide the clearest and most comprehensive reasoning for the specific intent interpretation of *Black*.[9]

In *United States v. Cassel*, 408 F.3d 622, 631 (9th Cir. 2005), the Ninth Circuit held that *Black* clearly established that specific intent to threaten is an element of a true threat. The *Cassel* court focused on the natural reading of *Black*'s definition of a true threat: "the speaker means to communicate... an intent to commit an act of unlawful violence." *Cassel*, 408 F.3d at 631 (quoting *Black*, 538 U.S. at 539-60). "A natural reading of this language embraces not only the requirement that the communication itself be intentional, but also the requirement that the speaker intend for his language to *threaten* the victim." *Id.* at 631.

Having reached an interpretation of the language, the *Cassel* court turned to *Black*'s context and this Court's application of its definition of true threats. It first focused on the fact that *Black* ultimately held that the Virginia cross burning statute was unconstitutional "precisely because the element of intent was effectively eliminated by the statute's provision rendering *any* burning of a cross on the property of another 'prima facie evidence of an intent to intimidate.'" *Id.* at 631. Thus, the Ninth Circuit concluded that the element of the speaker's intent was the determinative factor in a true threats inquiry. *Id.* at 632. Returning to *Black*'s plain language, the *Cassel* court then concluded that the intent described by this Court was the specific intent to threaten. *Id.* at 632-33.

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[9] *State v. Boettger*, 310 Kan. 800 (2019) is equally helpful, but it merely echoes the reasoning of the Ninth and Tenth Circuits. Therefore, it will not be discussed at length herein.

Likewise, the Tenth Circuit reached the same conclusion by paying particular attention to *Black*'s description of a true threat and this Court's application of its rule. *United States v. Heineman*, 767 F.3d 970, 976-77 (10th Cir. 2014). In addition to the language that the Ninth Circuit relied on in *Cassel*, the Tenth Circuit also relied on *Black*'s language describing intimidation: "*Intimidation* in the constitutional 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*." *Heineman*, 767 F.3d at 976-77 (quoting *Black*, 538 U.S. at 359-60). The Tenth Circuit read this definition, especially the modifying clause, as being applicable to all true threats. *Id.* at 976, 978. The *Heineman* court then turned to *Black*'s application. It pointed out that this Court clearly stated in *Black* that the inquiry should be into whether a particular cross burning was "intended to intimidate." *Id.* at 978 (quoting *Black*, 538 U.S. at 367) (internal quotation marks omitted).

The *Hieneman* court then discussed the Sixth Circuit's decision in *Jeffries*. First, in response to its treatment of *Black* as solely an overbreadth opinion where the speaker's intent was irrelevant, the *Heineman* court pointed out that this Court invalidated the Virginia statute in *Black* on the grounds that it was unconstitutional to allow a jury to infer subjective intent solely on the *actus reus* of a crime. *Id.* at 980. Thus, it concluded that *Black* clearly indicated that a speaker's specific intent was a critical point of any true threats analysis. *Id.* at 980. Second, the *Hieneman* court acknowledged *Jeffries*' concern that there was some ambiguity in *Black*'s language,

but highlighted the fact that *Black* clearly established that a jury needed to be informed that the defendant does not need to intend to carry out the threat to return a guilty verdict on a true threat. *Id.* at 980. The only purpose such an instruction serves is to focus the jury on the speaker's specific intent: whether he intended to threaten or not. *Id.* at 980-81. Thus, the Tenth Circuit concluded that the government must prove specific intent in a true threats prosecution. *Id.* at 981.

C. The Nature Of The Split And The Importance Of Resolving It.

The importance of resolving this split of authority cannot be overstated. Not only is there a traditional split of authority involving federal circuits and state courts of last resort, but there are also unique jurisdictional splits that may render speech constitutionally protected in state court and not protected in federal court even though it is uttered in the same state.

Consider two examples. First, if Mr. Taupier spoke in California, California state law follows the reckless disregard standard, and, if he was charged in state court, it would not extend First Amendment protection to his speech. *See People v. Lowery*, 257 P.3d 72, 77 (Cal. 2011). The Ninth Circuit, however, follows the specific intent standard. *See United States v. Cassel*, 408 F.3d 622, 633 (9th Cir. 2005) Thus, if Mr. Taupier was charged in California federal court, his speech would likely be protected because he did not have the specific intent to threaten anyone. Second, if Mr. Taupier spoke in Pennsylvania, Pennsylvania state law follows the specific intent standard, and, if he was charged in state court, his speech would likely be protected. *See Commonwealth v. Knox*, 647 Pa. 593, 613 (2018). The Fourth Circuit, however,

follows the reckless disregard standard. *See United States v. White*, 670 F.3d 498, 508 (4th Cir. 2012). Thus, if Mr. Taupier was charged in Pennsylvania federal court, his speech would likely not be protected.

Similarly, in this case, Mr. Taupier had uttered his speech in Massachusetts or Rhode Island, his speech would have been protected as both states follow the specific intent standard. *See O'Brien v. Borowski*, 461 Mass. 415, 425-27 (2012); *State v. Grayhurst*, 852 A.2d 491, 515 (R.I. 2004).

The First Amendment's protections for speech should not vary based on locality or whether the federal government or a state is prosecuting the speaker. Nonetheless, they currently do. The current variance confuses lawyers and judges and makes it hopelessly impossible for an average person like Mr. Taupier to determine what speech he may or may not be able to utter. Thus, the importance of resolving the split of authority and establishing one uniform standard is absolutely necessary and will provide clear guidance both to the average person and the lawyers who must advise them on what speech is constitutionally protected. Only this Court can resolve the split of authority, and Mr. Taupier urges the Court to grant his petition to do so.

II. The Connecticut Appellate Court Erred by Assuming That The First Amendment Only Requires A Reckless Disregard For The Effect That Speech Will Have On Others.

"If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). When a statute proscribes and punishes speech without considering the speaker's

intended meaning, it may punish protected First Amendment expression simply because it is expressed with crude passion. The Connecticut Appellate Court, however, went out of its way to avoid any consideration of what Mr. Taupier intended by his Facebook posts. App.13 n.9. The Connecticut Appellate Court's avoidance of Mr. Taupier's intent, however, contradicts this Court's decision in *Virginia v. Black* where the Court held that "'[t]rue 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." 538 U.S. at 359 (plurality opinion).

There is no ambiguity in *Black*'s language. A speaker must "mean" to communicate a serious expression of an intent to commit violence. "Mean" is commonly defined as "To have as a purpose or an intention; intent; To design, intend, or destine for a certain purpose or end." American Heritage Dictionary of the English Language 1088-89 (5th ed. 2011); *see also* Webster's Third New Int'l Dictionary 1398 (1993) ("to have in the mind [especially] as a purpose or intention"; "to have an intended purpose"). Thus, *Black*'s language clearly indicates that only speech made with the specific intent to threaten a victim can be criminally punishable in a manner consistent with the First Amendment. The Court drove this point with its definition of "intimidation," which it described as a "type of a true 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." *Black*, 538 at 359 (plurality opinion).

Even more illustrative of *Black*'s rule is how this Court applied it. *Black* held that a statute that eliminated Virginia's burden to prove intent by declaring that any burning of a cross on another's property was prima facie evidence of an intent to intimidate was unconstitutional. *Id.* at 365. The reason for the Court's holding? "[T]he prima facie provision strips away the very reason why a State may ban cross burning with the intent to intimidate." *Id.* at 365. In other words, the Court clearly established that the element of intent determines whether speech is protected or criminally punishable. *Id.* at 365 ("The act of burning a cross may mean that a person is engaging in constitutionally proscribable intimidation. But that same act may mean only that the person is engaged in core political speech. The prima facie evidence provision in this statute blurs the line between these two meanings of a burning cross").

The Court then made it clear that a state must show specific intent. It began by discussing the history of cross burning and the various non-threatening intents behind the act. *Id.* at 365-66. It then noted that "a burning cross is not always intended to intimidate" and held that burning a cross could not be punished as a threat when it is not specifically intended to intimidate. *Id.* at 366-67.

While the Court only issued a plurality opinion in *Black*, eight justices agreed with the specific intent formulation. Justice Scalia concurred with the plurality opinion on the portions discussed above, dissenting only because he thought that the Court was facially invalidating the entire statute. *Id.* at 368 (Scalia, J., concurring in part, concurring in the judgment in part, and dissenting in part). Justice Souter, joined by Justices Kennedy and Ginsburg, concurred in the plurality opinion on the

portions discussed above, dissenting only because they thought the Court should strike down the entire statute as facially unconstitutional. *Id.* at 385, 387 (Souter, J., concurring in the judgment in part and dissenting in part). Thus, *Black* clearly established a specific intent to threaten or intimidate element in the Court's true threat analysis.[10]

The Connecticut Appellate Court's complete disregard for Mr. Taupier's intent in its First Amendment analysis strays far afield from the Court's decision in *Black*, but, even assuming that it relied on the Connecticut Supreme Court's decision in *State v. Taupier*, 330 Conn. 149 (2018) to justify its decision, it still erred. The 2018 *Taupier* decision erred by only requiring a reckless disregard for the effect that speech will have on others. *Taupier*, 330 Conn. at 173-74.

The 2018 *Taupier* decision construes *Black* in two ways. First, it reads *Black* as not limiting constitutionally permissible punishment to only instances where a speaker has a specific intent to intimidate or threaten. *Id.* at 171. Second, it concludes that *Black*'s nature as an overbreadth decision meant that the Court did not address any specific mens rea standard but rather the complete lack of one. *Id.* at 172.

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[10] Frederick Schauer, *Intentions, Conventions, and the First Amendment*, 55 Sup.Ct. Rev. 197, 217 (2003) ("[I]t is plain that ... the *Black* majority ... believed that the First Amendment imposed upon Virginia a requirement that the threatener have specifically intended to intimidate."); Roger C. Hartley, *Cross Burning—Hate Speech as Free Speech*, 54 Cath. U.L.Rev. 1, 33 (2004) ("*Black* now confirms that proof of specific intent (aim) must be proved also in threat cases."); Lauren Gilbert, *Mocking George: Political Satire as "True Threat" in the Age of Global Terrorism*, 58 U. Miami L.Rev. 843, 883–84 (2004).

The first construction fails for the reasons articulated previously as well as for the same reasons that the second conclusion fails. The second conclusion fails because, although *Black* was an overbreadth decision, *Black* did not limit its discussion to the overbreadth context. Specifically, *Black*'s plurality opinion applies a general First Amendment rule rather than an overbreadth analysis. *See, e.g., Black*, 538 U.S. at 367 ("The prima facie evidence provision in this case ignores all of the contextual factors that are necessary to decide whether a particular cross burning is intended to intimidate. The First Amendment does not permit such a shortcut"); *id.* at 366 (stating that the prima facie evidence provision "does not distinguish between with the purpose of creating anger or resentment and a cross burning done with the purpose of threatening or intimidating a victim"). Thus, *Black*'s analysis clearly demonstrates that specific intent was the touchstone.

If the specific intent standard required by *Black* had been applied to Mr. Taupier's speech, the charges against him should have been dismissed because nothing in his Facebook comments indicated a specific intent to threaten anyone and Connecticut alleged no other facts to support an intent to threaten on his part. For that reason, the Connecticut Appellate Court wholly avoided any discussion of whether Mr. Taupier intended to threaten anyone. It is also reasonable to conclude that the Connecticut Appellate Court relied entirely on the Connecticut Supreme Court's 2018 *Taupier* decision for its decision to disregard Mr. Taupier's argument that the First Amendment required the state to prove that he specifically intended to threaten, and it is also reasonable to conclude that the Connecticut Supreme Court

relied on it in denying Mr. Taupier's petition for review. For the reasons discussed above, the 2018 *Taupier* decision is erroneous, and its controlling effect on the proceedings in this matter have created the error that Mr. Taupier now petitions this Court to remedy. Thus, the Court's intervention is necessary to correct the Connecticut Supreme Court's and the Connecticut Appellate Court's erroneous reading of *Black*.

III. This Question Has Recurred Consistently Since The Court's Decision In *Black* And It Will Continue To Recur Until The Court Establishes A Uniform Standard.

Since the Court decided *Elonis v. United States* in 2015, three members of this Court have recognized the recurring nature of the question that this petition presents.[11] In the five years since the *Elonis* decision, the Court has entertained at least four petitions for certiorari seeking review on the precise question that Mr. Taupier presents for its consideration now.[12] This petition represents the second time that Mr. Taupier has petitioned the Court for review of this question. *See Taupier v. Connecticut*, 139 S.Ct. 1188 (2019). These petitions come from states and defendants alike, underscoring the mutual interest from both sides of the bar in the Court's resolution of this question.

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[11] *See Kansas v. Boettger*, 140 S.Ct. 1956(Mem) (Jun. 22, 2020) (Thomas, J., dissenting from denial of certiorari); *Perez v. Florida*, 137 S.Ct. 853(Mem), 855 (2017) (Sotomayor, J., dissenting from denial of certiorari); *Elonis v. United States*, 135 S.Ct. 2001, 2013-14 (2015) (Alito, J., concurring in part, dissenting in part); *id.* at 2018 (Thomas, J., dissenting).

[12] *Boettger*, 140 S.Ct. 1956(Mem) (Jun. 22, 2020); *Knox v. Pennsylvania*, 139 S.Ct. 1546 (2019); *Taupier v. Connecticut*, 139 S.Ct. 1188 (2019); *Perez v. Florida*, 137 S.Ct. 853(Mem) (2017).

Further underscoring the recurring nature of this question is the number of courts – federal and state alike – that have confronted it since the Court decided *Virginia v. Black*. The number of decisions go beyond the undersigned's ability to fully calculate, but at least four federal circuits[13] and countless state courts[14] have considered the issue with some considering the question multiple times.[15] The number of times that the question has arisen is not surprising. The majority of the states and the federal government criminalize threats in various forms.[16] Thus, the question will arise in every threats prosecution until this Court definitively decides it. The number of lower court decisions on this question and its certain recurrence favor the Court granting certiorari in this case to resolve this important question.

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[13] *United States v. White*, 810 F.3d 212 (4th Cir. 2016); *United States v. Heineman*, 767 F.3d 970 (10th Cir. 2014); *United States v. Stewart*, 411 F.3d 825 (7th Cir. 2005); *United States v. Cassel*, 408 F.3d 622 (9th Cir. 2005); *Porter v. Ascension Parish Sch. Bd.*, 393 F.3d 608 (5th Cir. 2004).

[14] *See, e.g.*, *People v. Ashley*, 2020 IL 123989 (Jan. 24, 2020); *Commonwealth v. Knox*, 647 Pa. 593 (2018); *Major v. State*, 301 Ga. 147 (2017); *State v. Moulton*, 310 Conn. 337 (2013); *State v. Soboroff*, 798 N.W.2d 1 (Iowa 2011); *State v. Miles*, 15 A.3d 596 (Vt. 2011); *People v. Lowery*, 257 P.3d 72 (Cal. 2011); *Hearn v. State*, 3 So.3d 722 (Miss. 2008); *State v. Curtis*, 748 N.W.2d 709 (N.D. 2008); *State v. Johnston*, 127 P.3d 707 (Wash. 2006).

[15] For examples of state courts that have considered the question multiple times, please consider *State v. Lindemuth*, 470 P.3d 1279 (Kan., Aug. 28, 2020); *State v. Johnson*, 310 Kan. 835 (2019); *State v. Boettger*, 310 Kan. 800 (2019); *Haughwout v. Tordenti*, 332 Conn. 559 (2019); *State v. Taupier*, 330 Conn. 149 (2018); *State v. Moulton*, 310 Conn. 337 (2013).

[16] *See, e.g.*, Ala. Code § 13A-10-15 (West 2013); Ark. Code Ann. § 5-13-301 (West 2013); Cal. Penal Code § 140 (West 2014); D.C. Code § 22- 407 (West 2013); Fla. Stat. Ann. § 836.10 (West 2013); Haw. Rev. Stat. § 707-716 (West 2013); Iowa Code Ann. § 712.8 (West 2013); Mich. Comp. Laws Ann. § 750.411i (West 2013); Okla. Stat. Ann. tit. 21, § 1378 (West 2013); Va. Code Ann. § 18.2-60 (West 2013); Wash. Rev. Code Ann. § 9.61.160 (West 2013); Wis. Stat. Ann. § 940.203 (West 2013).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted

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December 4, 2020

APPENDIX

APPENDIX A

Opinion of the Connecticut Appellate Court, *State v. Taupier*, 197 Conn.App. 784 (Jun. 9, 2020).

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The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

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STATE OF CONNECTICUT *v.* EDWARD F. TAUPIER
(AC 42115)

Keller, Prescott and Harper, Js.

Syllabus

Convicted, on a conditional plea of nolo contendere, of five counts of threatening in the second degree in connection with posts he made on Facebook that contained several threatening statements directed toward Superior Court judges and court employees, the defendant appealed. The defendant had been convicted of similar charges in 2014 in connection with sending a threatening e-mail to a Superior Court judge during his contentious divorce proceedings. In 2017, while on house arrest and while his appeal from his prior conviction was pending in our Supreme Court, the defendant posted several statements on Facebook that threatened the Cromwell Police Department and called for the killing of judges and court employees and the arson of courthouses. The trial court denied the defendant's motion to dismiss, concluding that a jury reasonably could find that the defendant's statements, in light of the context in which they were made, were not protected by the first amendment because they were advocacy directed at inciting or producing imminent lawless action and were likely to do so and because the statements constituted true threats. On appeal to this court, the defendant claimed that the trial court improperly denied his motion to dismiss because the statements were not true threats and, thus, were constitutionally protected free speech. *Held* that the trial court properly denied the defendant's motion to dismiss, as there was probable cause to support continuing a constitutional prosecution against the defendant under each count for threatening to commit a crime of violence in reckless disregard of the risk of causing such terror; the uncontested facts in the record, viewed in the light most favorable to the state, would allow a person of reasonable caution to believe that at least five of the defendant's statements were highly likely to be perceived by a reasonable person as serious threats of physical harm, the defendant's history of having a contentious relationship with certain judges and judicial employees, his prior conviction for similar threats, the details contained in the defendant's statements that illustrated how seriously he considered exacting revenge against those affiliated with the court system, the reactions to the defendant's statements, especially that of a court employee identified in one of the statements, who immediately reported the post to the authorities on the same day he discovered the posts, and the defendant's failure to express contrition for his statements thereafter and his additional statements of hostility toward Superior Court judges and court employees supported a determination that the statements reasonably could be interpreted as serious expressions of intent to inflict harm against judges and court employees.

Argued October 15, 2019—officially released June 9, 2020

Procedural History

Information charging the defendant with five counts each of the crimes of inciting injury to person or property and threatening in the second degree, brought to the Superior Court in the judicial district of New London, geographical area number ten, where the court, *Green, J.*, denied the defendant's motion to dismiss; thereafter, the state entered a nolle prosequi as to the charges of five counts of inciting injury to person or property; subsequently, the defendant was presented to the court, *Carrasquilla, J.*, on a conditional plea of nolo contendere to five counts of threatening in the second degree; judgment of guilty in accordance with

the plea, from which the defendant appealed to this court. *Affirmed.*

Norman A. Pattis, for the appellant (defendant).

Mitchell S. Brody, senior assistant state's attorney, with whom, on the brief, were *Michael L. Regan*, state's attorney, and *David J. Smith*, supervisory assistant state's attorney, for the appellee (state).

Opinion

PRESCOTT, J. This case asks us to apply the "true threats" doctrine to assess whether the first amendment protects from criminal prosecution a person who posted on Facebook a series of statements that, among other things, advocated the killing of judges and the arson of courthouses. We conclude that, under the circumstances of this case, such statements constituted true threats for which an individual may be convicted without violating his right to free speech.

The defendant, Edward F. Taupier, appeals from the judgment of conviction, rendered after a conditional plea of nolo contendere, of five counts of threatening in the second degree in violation of General Statutes § 53a-62. On appeal, the defendant claims that the trial court improperly denied his motion to dismiss the charges because his statements were protected speech under the first amendment to the United States constitution and article first, § 4, of the Connecticut constitution. Because we determine that at least five of the defendant's statements constituted "true threats" as a matter of law and, thus, were not protected speech, we conclude that the court properly declined to dismiss the charges to which the defendant pleaded nolo contendere and that the defendant's conviction must be affirmed.

The following procedural history and facts are relevant to the defendant's claim. The defendant has been involved for some time in a highly contentious marital dissolution proceeding in the family court involving, among other things, a custody dispute relating to the defendant's minor children. In the course of that proceeding, the defendant sent, in 2014, a threatening e-mail to other individuals regarding Judge Bozzuto, the presiding judge in his case. That e-mail contained the following statements: "(1) [t]hey can steal my kids from my cold dead bleeding cordite filled fists . . . as my [sixty] round [magazine] falls to the floor and [I'm] dying as I change out to the next [thirty rounds]; (2) [Bo]zzuto lives in [W]atertown with her boys and [n]anny . . . there [are] 245 [yards] between her master bedroom and a cemetery that provides cover and concealment; and (3) a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition . . . ." (Internal quotation marks omitted.) *State* v. *Taupier*, 330 Conn. 149, 156–57, 193 A.3d 1 (2018), cert. denied, U.S. , 139 S. Ct. 1188, 203 L. Ed. 2d 202 (2019).

As a result of this e-mail, the defendant, after a trial to the court, was convicted of threatening in the first degree 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 the second degree in violation of General Statutes § 53a-181 (a) (3). Id., 154. Our Supreme Court subsequently affirmed the defendant's conviction after rejecting his claims that the statements contained in his e-mail were constitutionally protected free speech. Id., 155.

While he was on house arrest and his appeal from his prior conviction was pending in our Supreme Court, the defendant, in January, 2017, posted on Facebook the statements for which he ultimately was convicted in the present case. Those statements will be described in detail later in this opinion.

With respect to those statements, on August 10, 2017, the state obtained a warrant charging the defendant with five counts of inciting injury to person or property in violation of General Statutes § 53a-179a and five counts of threatening in the second degree in violation of § 53a-62. Following the defendant's arrest and arraignment on these charges, the defendant filed, pursuant to Practice Book § 41-8 (5), (8) and (9), a motion to dismiss the charges against him. See also General Statutes § 54-56. In his motion, the defendant asserted that the statements he posted on Facebook were constitutionally protected speech, pursuant to the first and fourteenth amendments to the United States constitution and article first, § 4, of the Connecticut constitution.[1] Specifically, he contended that, as a matter of law, his statements did not rise to the level of advocacy of imminent lawless action as defined in *Brandenburg* v. *Ohio*, 395 U.S. 444, 447–48, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969), or "true threats" as defined in *Virginia* v. *Black*, 538 U.S. 343, 359–60, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003).

On February 8, 2018, the court conducted a hearing on the defendant's motion to dismiss. At that hearing, no witnesses testified. The defendant represented that, for purposes of adjudicating his motion to dismiss, he did not contest the facts that were contained in the affidavit accompanying the arrest warrant (affidavit). Accordingly, the court relied solely on the averments contained in the affidavit to assess whether the defendant's statements on Facebook were constitutionally protected.

In a memorandum of decision dated May 23, 2018, the court denied the motion to dismiss. In doing so, the court construed the facts in the light most favorable to the state. The court also separately analyzed the factual averments contained in the affidavit as they related to the five counts of inciting and as they related to the five counts of threatening in the second degree. The court ultimately concluded that a jury reasonably could find that the defendant's statements, in light of the context in which they were made, were not protected by the first amendment because they (1) were advocacy

action and were likely to do so, and (2) they constituted true threats.

The defendant and the state subsequently entered into a plea agreement that was accepted by the court on September 5, 2018. Pursuant to that agreement, the state entered a nolle prosequi on each of the five counts of inciting and the defendant pleaded nolo contendere to five counts of threatening in the second degree, conditioned on the defendant retaining his right to appeal the court's denial of his motion to dismiss the charges. See Practice Book § 61-6 (a) (2) (A). The court accepted the defendant's conditional plea of nolo contendere after concluding that the prior ruling on the defendant's motion to dismiss would be dispositive of the case. The court, in accordance with the plea agreement, then imposed on the defendant a total effective sentence of five years of incarceration, execution suspended after four months, and three years of probation. This appeal followed.

I

The defendant's principal claim[2] on appeal is that the court improperly denied his motion to dismiss because the statements contained in the affidavit were not true threats and, thus, were constitutionally protected free speech. We disagree.

The affidavit sets forth the following relevant facts: "2. That on Wednesday, January 25, 2017, Superior Court Chief Judicial Marshal Relford Ward of the [j]udicial [d]istrict of [Middlesex] contacted the Connecticut State Police Troop F in Westbrook to request an [i]nvestigation into communications received by court staff that they believed to be threatening in nature.

"3. That on Wednesday, January 25, 2017 . . . Trooper First Class Reid . . . met with and interviewed Chief Clerk Jonathan Field of the [j]udicial [d]istrict of [Middlesex]. Field reported that on Wednesday, January 25, 2017, at approximately [12 p.m.] he received a phone call from a concerned citizen regarding Facebook posts [he or she] had viewed and found to cause concern for Field and others at the court and [the] Cromwell Police Department. Field said the concerned citizen identified the posts [to be] from the Facebook profile of Edward Taupier. . . . Field reported that upon reading the posts, he found them to be very disturbing and he stated he considered the posts to be a threat to his own safety and possibly to others at Middlesex Judicial District Court. . . .

"4. . . . Detective Dunham searched the name 'Edward Taupier' on Facebook and was able to locate and view the profile page that contained the posts . . . of concern to Field: 'I JUST GOT NOTICE OF CONTEMPT FROM THE STATE [WEBSITE] WITHOUT GETTING OFFICIAL SERVICE . . . . I GUESS THE

OFFICE (JOE BLACK - JONATHAN FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING. THIS IS WHY WE NEED TO START KILLING WITH LOVE THOSE THAT VIOLATE THE CIVIL RIGHTS OF SOCIETY THAT ARE JUDGES WHO HAPPEN TO PRACTICE THE JEWISH FAITH' (posted [on January 9, 2017]) 'CROMWELL POLICE DUPED BY MENTALLY ILL EX TO THINK CHILDREN ARE ENDANGERED. . . . THEY SAY THEY DON'T NEED WARRANTS TO COME IN HOME. . . . POLICE DON'T NEED WARRANTS, THEY WILL NEED BODY BAGS NEXT TIME.' (posted [on January 8, 2017]) KILL COURT EMPLOYEES AND SAVE THE COUNTRY. . . . Stop driving the SUV and save a planet . . . this is what a liberal would say . . . .' (posted [on January 9, 2017]). This post also included a reply from 'Edward Taupier' that was a repost of an 'internet meme' (photograph with words or phrases) that referenced Judge Elizabeth Bozzuto. The content of the 'internet meme' includes the text 'JUDGE BOZZUTO FOR LIBERTY TREE CHALLENGE' 'The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. Thomas Jefferson' The comment, added above the picture [of] 'Edward Taupier,' is 'Nominate Judge Bozzuto to Liberty Tree Refreshment Challenge. Spill some blood, save a tree!'

"5. . . . 'Edward Taupier's' post on [January 9, 2017, states], 'I JUST GOT NOTICE OF CONTEMPT FROM THE STATE [WEBSITE] WITHOUT GETTING OFFICIAL SERVICE . . . I GUESS THE JEWS THAT RUN THE MIDDLETOWN [CLERK'S] OFFICE (JOE BLACK - JONATHAN FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING. THIS IS WHY WE NEED TO START KILLING JUDGES. . . .' [This post] suggests [inflicting] violence against judges and a follower ('Jennifer Mariano') of 'Edward Taupier' agreed to join him by responding 'I had someone else in mind, but we can start with the judges.'

"6. That Detective Dunham viewed numerous posts and comments on 'Edward Taupier's' Facebook profile page from the present going back as far as December 15, 2016, that call for 'killing judges,' 'burning courts' and advocating violence against court employees'. . . .

* * *

"13. That Facebook records showed several concerning posts, some threatening in nature that this affiant observed by reviewing the Facebook records under the screen name of Edward Taupier. The posts observed on January [8] and January [9], 2017 were previously identified by Detective Dunham and Trooper First Class Reid. The posts on January [6], [11], [12], [13] and [14] were newly identified.

"14. That on January [6], 2017, at [12:34:59 a.m.], the following message was posted on Taupier's Facebook.

'856 days [as a] political prisoner by Dan Fucktard Malloy – with [J]udge Gold and Brenda Hans.' . . .

"16. That also on January [8], 2017, at [9:43:29 p.m.], Edward Taupier added [seven] new photographs onto his Facebook account with the following message 'Cromwell Police duped by mentally ill ex to think children are endangered . . . . They say they don't need warrants to come in home. . . . Police don't need warrants, they will need body bags next time.' These photographs were added to the timeline photos and contained an upload IP address . . . . These photographs appeared to be of Edward Taupier, his two kids and their dog.

"17. That on January [9], 2017 at [5:04:28 p.m.] the user 'Edward Taupier' . . . posted the following text on his Facebook account. 'I just got notice of contempt from the state [website] without getting official service, I guess the [J]ews that run the Middletown [clerk's] office (Joe Black – Jonathan Field) don't need to get official service to schedule a hearing . . . . This is why we need to start killing judges . . . .' This post received a response at [5:07:21 p.m.] from user Jennifer Mariano . . . who stated, 'I had someone else in mind, but we can start with the judges.' This post followed with a posted status at [5:06:08 p.m.] that stated the following: 'I just got notice of contempt from the state [website] getting official service . . . . I guess the [J]ews that run the Middletown [clerk's] office (Joe Black – Jonathan Field) don't need to get official service to schedule a hearing . . . this is why we need to start killing with love those that violate the civil rights of society that are judges who happened to practice the [J]ewish faith. . . .' This post followed a response at [5:06:46 p.m.] from user Edward Taupier . . . stating 'kill court employees and save the country. . . . stop driving the SUV and save a planet. . . . this is what a liberal would say . . . .' This post received a response from user Adrienne Baumgartner . . . at [5:07:29 p.m.] stating 'for that comment [E]d you no doubt could get arrested [and] also [have it] use[d] against you in [your] custody case.' User Adrienne Baumgartner continued with another response that stated, 'you really should either edit or delete that.' User Edward Taupier . . . responded at [5:13:56 p.m.] by posting Free Speech containing the Internet meme of Judge Bozzuto for liberty tree challenge.

"18. That on January [11], 2017, at [8:07:45 p.m.] user Edward Taupier . . . posted the following text: 'I was given [five years] for disturbing [the] peace . . . no judicial retaliation in [Connecticut] with [j]udges . . . [by the way, Judge] Devlin said he felt sorry for the cop . . . and wanted to make it right despite the girl and her family wanting the maximum . . . [I'm] on $1.3 [million] bond for disturbing the peace . . . kill every one of these judges.'

"19. That on January [12], 2017 at [3:28:17 p.m.] user Edward Taupier . . . posted the following text 'we the public have no trust in the [Connecticut] judiciary . . . time to burn the courts down!!'

"20. That on January [13], 2017, at [1:27:57 a.m.] the following posted status appeared on Taupier's Facebook page 'News flash I am incarcerated-house arrest for 860+ days, like DT-Rip.' This was followed by a response from user Edward Taupier . . . stating 'for disturbing peace on 1.3 million dollar bond.' User Edward Taupier continued and stated '[J]udge David [P.] Gold lives in Middlefield . . . if you want to ask him why at his house.'

"21. That on January [14], 2017, at [1:57:35 p.m.] the following memory was shared from two years ago on Taupier's Facebook page. '[Connecticut] courts destroy this every sec of every day! . . . The family courts in [Connecticut] are run by Beth Bozzuto, the mother [of] destroying families across the state! Time to burn down the courts.'

"22. That according to the State of [Connecticut] Judicial [Branch] website Edward Taupier was found guilty by a [j]ury on October [2], 2015, for threatening [in the first] [d]egree, [two counts of] [d]isorderly [c]onduct . . . and [b]reach of [the] [p]eace [in the second] [d]egree.

"23. . . . Vanessa Valentin, who is Edward Taupier's [p]robation [o]fficer . . . confirmed that the Facebook posting on Taupier's Facebook page on January [13], 2017, was correct regarding the days mentioned in his posted status for the house arrest. Valentin also confirmed that Judge Gold was the sentencing judge in Taupier's criminal case. . . .

* * *

"27. That an inquiry into the protection order registry indicated an active protection order against Edward Taupier. The order was effective as of [January 15, 2016] and listed Judge Elizabeth Bozzuto as the protected person. The protection order did not have a set expiration date. The conditions of the protective order were [the following]: Do not assault, threaten, abuse, harass, follow, interfere with, or stalk the protected person (CT01). Stay away from the home of the protected person and wherever the protected person shall reside (CT03). Do not contact the protected person in any matter, including by written, electronic or telephone contact, and do not contact the protected person's home, workplace or others with whom the contact would be likely to cause annoyance or alarm to the protected person (CTO5). . . .

* * *

"35. *That this affiant believes Facebook posts on Jan-*

January [14], 2017 were threatening in nature. These posts threaten the Cromwell Police Department, call for the killing of judges, court employees and [the] burning of . . . courts. This affiant also believes that these posts advocate, encourage and incite violence against persons and property. In addition, Edward Taupier has been previously arrested for similar crimes, [including] [t]hreatening [in the first] [d]egree, [d]isorderly [c]onduct and [b]reach of [the] [p]eace [in the second] [d]egree by the [s]tate [p]olice.

"36. That a State Police Record Check (SPRC) showed the following arrest and convictions for Edward Taupier . . . [t]hreatening [in the first] [d]egree, [two counts of] [d]isorderly [c]onduct . . . and [b]reach of [the] [p]eace [in the second] [d]egree.

"37. That based on the aforementioned facts and circumstances, the affiant believes that probable cause [exists] and requests that an arrest warrant be issued for Edward Taupier . . . charging him with inciting [i]njury to [p]ersons [in] violation of [§] 53a-179a (5 counts) and [t]hreatening [in the second degree in] violation of [§] 53a-62 (5 counts)."[3] (Emphasis added.)

A

We begin our analysis with the standard of review applicable to the defendant's claim. The defendant's "motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the [state] cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . Accordingly, [o]ur review of the trial court's ultimate legal conclusion and resulting [decision to deny] . . . the motion to dismiss [is] de novo." (Citations omitted; internal quotation marks omitted.) *State* v. *Cyr*, 291 Conn. 49, 56, 967 A.2d 32 (2009); see also *State* v. *Pelella*, 327 Conn. 1, 9 n.9, 170 A.3d 647 (2017) (affording plenary review to trial court's decision to grant defendant's motion to dismiss). With respect to a motion to dismiss in a criminal case on the ground that the conduct alleged by the state is protected as free speech, our Supreme Court also has stated: "The standard to be applied in determining whether the state can satisfy this burden in the context of a pretrial motion to dismiss under General Statutes § 54-56 and Practice Book § 41-8 (5) is no different from the standard applied to other claims of evidentiary sufficiency. General Statutes § 54-56 provides that [a]ll courts having jurisdiction of criminal cases . . . may, at any time, upon motion by the defendant, dismiss any information and order such defendant discharged if, in the opinion of the court, there is not sufficient evidence or cause to justify the bringing or continuing of such information or the placing of the person accused therein on trial. When assessing whether the state has sufficient evidence to show probable cause to support continuing prosecution [following

the proffered [evidence], and draw reasonable inferences from that [evidence], in the light most favorable to the state. . . . The quantum of evidence necessary to [overcome a motion to dismiss] . . . is less than the quantum necessary to establish proof beyond a reasonable doubt at trial . . . . In [ruling on the defendant's motion to dismiss], the court [must] determine whether the [state's] evidence would warrant a person of reasonable caution to believe that the [defendant had] committed the crime. . . . Thus, the trial court must ask whether the evidence would allow a person of reasonable caution, viewing the evidence presented in the light most favorable to the state, to believe that the statement at issue was highly likely to be perceived by a reasonable person as a serious threat of physical harm. If that evidence would support such a finding—regardless of whether it might also support a different conclusion—then the motion to dismiss must be denied." (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Pelella*, supra, 327 Conn. 18–19.

Although the state agrees that this court should engage in plenary review of the trial court's ultimate conclusion that the defendant's speech constituted true threats that were not protected by the first amendment, it asserts that the trial court's "factual findings" in this case are subject to the "clearly erroneous" standard of review that is typically employed to review a trial court's findings of fact. We are not persuaded by the state's assertion.

In this case, the trial court did not make any findings of fact. The court did not hear any testimony at the hearing on the motion to dismiss and did not make any credibility determinations. Instead, the court engaged in a legal review of the uncontested factual averments contained in the affidavit, viewed in the light most favorable to the state, in order to determine whether a person of reasonable caution could view the defendant's statements as true threats. In these circumstances, the clearly erroneous standard simply does not apply and no deference to the trial court's recitation of the facts is required.[4] See *State* v. *Lewis*, 273 Conn. 509, 516–17, 871 A.2d 986 (2005) ("[a]lthough we generally review a trial court's factual findings under the 'clearly erroneous' standard, when a trial court makes a decision based on pleadings and other documents, rather than on the live testimony of witnesses, we review its conclusions as questions of law"); see also *State* v. *Pelella*, supra, 327 Conn. 9 n.9 (engaging in de novo review of facts where trial court not required to make any credibility or other factual findings).

We also highlight two issues regarding the record in this case that make our review of the defendant's conviction more difficult. First, the affidavit in the record recites approximately ten statements that the

defendant made on Facebook. The record is unclear, however, regarding which five statements recited in the affidavit constitute the statements on which the defendant was convicted of five counts of threatening in the first degree.[5] Accordingly, in our view, as long as we are able to conclude that the affidavit recites five statements made by the defendant that can be characterized as true threats, it is of no moment that other of the defendant's statements recited in the affidavit do not rise to the level of a true threat. Counsel for the defendant conceded as much during oral argument to this court.[6]

Second, the record also is unclear as to the statutory subsection and subdivision of § 53a-62 under which the defendant was charged and convicted.[7] When the court put the defendant to plea and conducted its plea canvass of him, neither the court nor the defendant specified that he was pleading nolo contendere to a particular statutory subsection or subdivision of § 53a-62.[8] In addition, the information did not specify the subsection or subdivision of § 53a-62 under which the state charged the defendant. Accordingly, in light of the defendant's failure to clarify with the trial court the subsection or subdivision of § 53a-62 to which he was pleading nolo contendere, this court must affirm his conviction if we determine that at least five of the statements described in the affidavit can be characterized as unprotected true threats prohibited by *any* subsection or subdivision of § 53a-62.

For purposes of our analysis, we assess whether the defendant's five statements constituted unprotected true threats under § 53a-62 (a) (2) (B).[9] This means that we must assess whether there was probable cause to support continuing a constitutional prosecution against the defendant under each count for "threaten[ing] to commit [a] crime of violence in reckless disregard of the risk of causing such terror . . . ." General Statutes § 53a-62 (a) (2) (B).

B

Having established this court's standard of review and having addressed other issues germane to our review of the defendant's claim on appeal, we now consider the merits of the defendant's claim that the trial court improperly denied his motion to dismiss because his statements were not true threats as a matter of law and were, indeed, protected speech under the first amendment to the United States constitution. In essence, the defendant argues that none of the statements that he made that are set forth in the affidavit constitute true threats because an objective listener would not readily interpret these statements to be true threats.[10] Moreover, the defendant asserts that the court improperly denied his motion to dismiss because the affidavit, even when viewed in the light most favorable

caution to believe that at least five of his statements were highly likely to be perceived by a reasonable person as a serious threat of physical harm. We are not persuaded.

We begin with a review of the first amendment principles applicable to statutes that criminalize threatening speech. "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 [of] 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." (Internal quotation marks omitted.) *Haughwout* v. *Tordenti*, 332 Conn. 559, 570, 211 A.3d 1 (2019).

"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 [when] such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. . . . [T]he [f]irst [a]mendment also permits a [s]tate to ban a true threat." *State* v. *Krijger*, 313 Conn. 434, 449, 97 A.3d 946 (2014).

"[T]rue 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. . . .

"[W]e 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 to communicate a belief or idea, such as political hyperbole or a mere joke, which are protected.

. . . 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. . . . [A]lleged threats should be considered in light of their entire factual context, including the surrounding events and reaction of the listeners. . . .

"[T]o ensure that only *serious* expressions of an intention to commit an act of unlawful violence are punished, as the first amendment requires, the state [actor] must do more than demonstrate that a statement *could* be interpreted as a threat. When . . . a statement is susceptible of varying interpretations, at least one of which is nonthreatening, *the proper standard to apply is whether an objective listener would readily interpret the statement as a real or true threat; nothing less is sufficient to safeguard the constitutional guarantee of freedom of expression.* To meet this standard [the state actor is] required to present evidence demonstrating that a reasonable listener, familiar with the entire factual context of the defendant's statements, would be highly likely to interpret them as communicating a genuine threat of violence rather than protected expression, however offensive or repugnant." (Citations omitted; emphasis added; internal quotation marks omitted.) *Haughwout* v. *Tordenti*, supra, 332 Conn. 571–72. In determining whether an objective listener or reader would consider a statement to be a true threat, our inquiry is more dependent on whether the statement reasonably could be interpreted as a *serious expression* of intent to inflict harm rather than whether the statement conveys an intent to *imminently* inflict harm. See *State* v. *Pelella*, supra, 327 Conn. 11–17.

In analyzing whether the trial court properly denied the defendant's motion to dismiss, we consider the following five statements that the defendant made in January, 2017, and that are described in the affidavit: (1) his January 9, 2017 Facebook post, in which he, in part, stated, "THIS IS WHY WE NEED TO START KILLING WITH LOVE THOSE THAT VIOLATE THE CIVIL RIGHTS OF SOCIETY THAT ARE JUDGES WHO HAPPEN TO PRACTICE THE JEWISH FAITH"; (2) his January 9, 2017, Facebook post, in which he, in part, stated, "KILL COURT EMPLOYEES AND SAVE THE COUNTRY"; (3) his January 11, 2017 Facebook post, in which he, in part, stated "kill every one of these judges"; (4) his January 12, 2017 Facebook post, in which he, in part, stated, "time to burn the courts down!!"; and (5) his January 14, 2017 Facebook post, in which he, in part, stated, "[t]ime to burn down the courts."[11] In sum, these five statements consist of alleged threats to kill judges and court employees and to burn courthouses.

statements, viewed in the light most favorable to the state, reasonably could be interpreted by themselves as serious expressions of the defendant's intent to inflict harm against judges and court employees.

We are mindful, however, that "a determination of what a defendant actually said is just the beginning of a threats analysis. Even when words are threatening on their face, careful attention must be paid to the context in which those statements are made to determine if the words may be objectively perceived as threatening." *State* v. *Krijger*, supra, 313 Conn. 453. Thus, our Supreme Court has stated that "[a]lleged threats should be considered in light of their entire factual context . . . ." (Internal quotation marks omitted.) *State* v. *Pelella*, supra, 327 Conn. 12. Moreover, our Supreme Court has identified several factors that a court may use to assess the factual context in which an alleged threat is made, including (1) the history of the relationship between the person who made the alleged threat and the person or group to whom it was addressed, (2) the reaction of the statement's recipients, and (3) whether the person who made the statement showed contrition immediately after the statement was made. Id., 12, 20–22 (in determining whether statement is true threat, reviewing court should consider history of relationship between defendant and threatened person and reaction of statement's listener or reader); *State* v. *Krijger*, supra, 457–59 (whether defendant was immediately contrite after making alleged threat is a factor in determining whether objective listener would interpret statement as true threat); *State* v. *Cook*, 287 Conn. 237, 256, 947 A.2d 307 (considering relationship between defendant and threatened person to determine whether "the evidence necessarily was insufficient to support a finding that the defendant's statements and conduct amounted to a true threat"), cert. denied, 555 U.S. 970, 129 S. Ct. 464, 172 L. Ed. 2d 328 (2008); *State* v. *DeLoreto*, 265 Conn. 145, 156–57, 827 A.2d 671 (2003) (in determining whether statement is true threat, surrounding events and reaction of listeners should be considered). Having assessed the entire factual context in which these five statements were made, we conclude for the following reasons that these statements reasonably could be interpreted as serious expressions of intent to inflict harm, and thus, an objective listener could interpret them as true threats.

1

Parties' Prior Relationship

In determining whether the defendant's five statements about killing judges and court employees and burning courthouses are serious expressions of intent to inflict harm on these groups, we first consider the relationship between the defendant and the judges and court employees, which are the groups of individuals

supra, 327 Conn. 20–21. We conclude that the history of this relationship supports a determination that these statements constituted serious expressions of intent to inflict harm on judges and court employees.

Significant to our assessment of this factor is that the defendant had *previously been convicted for sending a threatening e-mail about a judge*. See *State* v. *Taupier*, supra, 330 Conn. 156–57, 164. Indeed, the defendant had undergone a contentious divorce proceeding and had made threatening remarks about Judge Bozzuto, the judge presiding over the proceeding. In that case, our Supreme Court observed that there was a "contentious history between the defendant and Judge Bozzuto . . . ." Id., 184. Moreover, in that case, the court stated that the trial court could "reasonably . . . [infer] . . . that the defendant harbored [animosity and frustration] toward the family court system, which Judge Bozzuto represented." Id., 192. Thus, prior to making the five statements in which he allegedly threatened to kill judges and court employees and to burn courthouses, the defendant already had a contentious relationship with at least one judge.

Furthermore, the defendant's other statements described in the affidavit add context to the threatening nature of the five statements under review and support a conclusion that the defendant had a contentious relationship with the court system that was colored by the defendant's frustration with the manner in which his family matter was being adjudicated. Indeed, even while on house arrest for making threatening statements about Judge Bozzuto in 2014, he *continued* to express hostility toward her in his January, 2017 Facebook posts. In one post, the defendant stated that "the family courts in [Connecticut] are run by Beth Bozzuto," and then he referred to Judge Bozzuto as "the mother [of] destroying families across the state . . . ." In another post, the defendant "[n]ominate[d] Judge Bozzuto [for] the Liberty Tree Refreshment Challenge." He stated that "[t]he tree of liberty must be refreshed from time to time with the blood of patriots and tyrants" and then called for "[s]pill[ing] some blood [to] save a tree . . . ."

His disdain for judges, however, was not limited to Judge Bozzuto. Indeed, the defendant also expressed contempt and hostility toward two other judges with whom he had prior dealings. In one post, the defendant wrote disapprovingly of Judge Devlin, stating, "I was given [five years] for disturbing [the] peace . . . no judicial retaliation in [Connecticut] with [j]udges . . . [by the way, Judge] Devlin said he felt sorry for the cop . . . and wanted to make it right despite the girl and her family wanting the maximum . . . [I'm] on $1.3 [million] bond for disturbing the peace." The defendant also made a statement about Judge Gold, who presided over his sentencing following his first conviction. In

one post, he wrote, "News flash I am incarcerated-house arrest for 860+ days, like DT-Rip . . . for disturbing peace on 1.3 million dollar bond." He then continued, "[J]udge David [P.] Gold lives in Middlefield . . . if you want to ask him why at his house."

The defendant's hostility toward the court system manifested in statements that he made about others affiliated with the court system. Indeed, in one post, he alluded to receiving notice of a hearing in an improper manner, which he blamed on two judicial employees. In this post, the defendant stated, "JUST GOT NOTICE OF CONTEMPT FROM THE STATE [WEBSITE] WITHOUT GETTING OFFICIAL SERVICE, I GUESS THE JEWS THAT RUN THE MIDDLETOWN [CLERK'S] OFFICE (JOE BLACK - JONATHAN FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING."

Moreover, the details contained in the other statements in the affidavit and those statements for which he had been previously convicted weigh in favor of concluding that the five statements under review were, indeed, serious expressions of intent to inflict harm on judges and court employees. In particular, the detail laden statements that the defendant made about Judges Bozzuto and Gold support this conclusion.

With respect to Judge Bozzuto, the defendant investigated where she lived and described, in detail, a plan to fire bullets into the window of her master bedroom. See *State* v. *Taupier*, supra, 330 Conn. 156–57. Specifically, he stated, " '[Bo]zzuto lives in [W]atertown with her boys and [n]anny . . . there [are] 245 [yards] between her master bedroom and a cemetery that provides cover and concealment'; and . . . 'a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition . . . .' " Id. Similarly, the defendant researched where Judge Gold lived and, on Facebook, the defendant posted the town in which Judge Gold resided so that readers could go to his home to ask him why he sentenced the defendant in the way that he did.

The details contained in these statements, which included the towns in which these judges reside and a well calculated plan to fire into Judge Bozzuto's master bedroom, weigh against concluding that the five statements under review were merely "spontaneous outburst[s], rooted in the defendant's anger and frustration, [which, by themselves, are] insufficient to establish that [the statement] constituted a true threat." *State* v. *Krijger*, supra, 313 Conn. 459. Rather, these details reflected a degree of planning or research and, thus, support an interpretation of the statements under review as serious expressions of the defendant's intent

In sum, the defendant's 2017 Facebook posts indicate that his disdain for the court system had not abated since he sent a threatening e-mail about Judge Bozzuto in 2014. Indeed, despite being convicted for statements that he made in 2014 about Judge Bozzuto, the defendant *continued* making statements in which he expressed his hostility toward her. In addition to what he stated about Judge Bozzuto, he made statements about others affiliated with the court system, including Judge Devlin, Judge Gold, Black and Field, as well as Jewish judges and court employees, generally. Moreover, the details contained in some of the defendant's statements illustrate how seriously he considered exacting revenge against those affiliated with the court system. Viewing the uncontested facts in the affidavit in the light most favorable to the state, we conclude that the defendant's history of having a contentious relationship with certain judges and judicial employees, as well as his detail laden statements about them, support a determination that the five allegedly threatening statements under review reasonably could be interpreted as serious expressions of intent to inflict harm against judges and court employees.

2

Reaction of the Statement's Recipient

Next, we consider the reaction of those subjected to the defendant's remarks. This consideration, too, weighs in favor of concluding that the defendant's five statements about killing judges and court employees and burning down courthouses reasonably could be interpreted as serious expressions of intent to inflict harm.

In determining whether a statement is a true threat, although we ask whether an *objective* listener or reader would interpret it as such, the subjective reaction of the statement's listener or reader is a factor that this court may consider in determining what an objective listener's or reader's interpretation might be. See *State* v. *Krijger*, supra, 313 Conn. 459–60. In weighing this factor, we are mindful that "the listener's reaction of concern or fear need not be dramatic or immediate, and the apparently mixed emotions of the listeners are not dispositive." *Haughwout* v. *Tordenti*, supra, 332 Conn. 581. A court, however, may conclude that this factor weighs against determining that an objective listener would not interpret a statement as a true threat if, after listening to or reading the statement, the listener or reader delays in reporting it to authorities, responds to the statement's maker in an antagonistic manner, or states that he or she did not believe that the statement's maker had threatened to harm him or her. See *State* v. *Krijger*, supra, 313 Conn. 459 n.12 (defendant's remarks not true threat, in part, because person at whom alleged threat was directed waited two days to report threat

to police); cf. *State* v. *Moulton*, 310 Conn. 337, 369 n.26, 78 A.3d 55 (2013) ("the fact that [the listener] took no immediate action following the defendant's [alleged threat] and waited [two days] . . . to [report] the matter [is] . . . relevant evidence as to whether the [defendant's statement] was perceived as a real or true threat"). But see *State* v. *Taupier*, supra, 330 Conn. 158–59, 191–92 (defendant's statement in e-mail is true threat, even though reader of e-mail waited several days to report it).

Moreover, assessing the reactions of those who hear or read the statement is instructive in determining the extent to which the alleged threat has generated "the social costs of . . . apprehension and disruption directly caused by the threat . . . ." *State* v. *Pelella*, supra, 327 Conn. 17. Indeed, speech with significant social costs is more likely to fall under a category of content that may be restricted because it is "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." *Virginia* v. *Black*, supra, 538 U.S. 358–59; *State* v. *Pelella*, supra, 10.

The reactions to the defendant's Facebook posts are the sorts of feelings of fear and the disruptions that courts have sought to prevent by not providing shelter to statements that are true threats under the umbrella of the first amendment. See *Haughwout* v. *Tordenti*, supra, 332 Conn. 571. Indeed, the defendant's January 9, 2017 post, in which he called for court employees to be killed, drew swift condemnation. One Facebook user replied, "for that comment [E]d, you no doubt could get arrested [and] also [have that] use[d] against you in [your] custody case." She continued, "you really should either edit or delete that."[12]

On January 25, 2017, a concerned individual, who wished to remain anonymous, contacted Field about statements posted on Facebook by the defendant that this individual "found to cause concern for Field and others at the court and the Cromwell Police Department."[13] After reading copies of the posts that the concerned individual sent to him, Field, who was named in one of the defendant's posts, "found them to be very disturbing and . . . stated [that] he considered the posts to be a threat to his own safety and possibly to others at [the] Middlesex Judicial District Court." Indeed, Field was so concerned by the post containing his name, that he reported it to the authorities on the same day that the concerned individual had contacted him.

Viewing the uncontested facts in the affidavit in the light most favorable to the state, we conclude that the reactions to the defendant's statements, especially that of Field, who worked for the court system and was named in one of the posts, weigh in favor of concluding

be interpreted as serious expressions of intent to inflict harm against judges and court employees.

3

The Defendant's Contrition

Finally, we assess the extent to which the defendant expressed contrition for making the alleged threat and the temporal proximity of the contrition to when the threat was made. Our Supreme Court has stated that a "defendant's contrition immediately following [an alleged threat being made] is decidedly at odds with the view that, just moments beforehand, [the defendant] had communicated a serious threat to inflict grave bodily injury or death on [the allegedly threatened person]." *State* v. *Krijger*, supra, 313 Conn. 458. If the defendant was contrite immediately after making the alleged threat, this may indicate that the defendant's statement was merely "a spontaneous outburst, rooted in the defendant's anger and frustration, [which, by itself, is] insufficient to establish that [the statement] constituted a true threat." Id., 459. Indeed, in *Krijger*, our Supreme Court determined that the fact that the defendant in that case "immediately . . . apologized for his behavior" weighed against concluding that his statement was a true threat. See id., 457–59.

In the present case, however, the defendant not only expressed no contrition immediately after January 9, 2017,[14] but he made *many more* threatening statements on and after that date. In this case, the defendant's conduct after making his first allegedly threatening statement in January, 2017, is, indeed, a far cry from the defendant's immediate contrition in *Krijger*. See id., 457–58. Viewing the uncontested facts in the affidavit in the light most favorable to the state, we conclude that the third factor weighs in favor of concluding that the defendant's five statements reasonably could be interpreted as serious expressions of intent to inflict harm against judges and court employees. Having reviewed the factual context of the defendant's five statements, we conclude that they reasonably could be interpreted as serious expressions of intent to inflict harm against judges and court employees and that an objective listener or reader could interpret these statements as true threats.

Because the uncontested facts in the affidavit before the court, viewed in the light most favorable to the state, would allow a person of reasonable caution to believe that at least five of the defendant's statements in the affidavit were highly likely to be perceived by a reasonable person as serious threats of physical harm, we conclude that there was probable cause to support continuing a constitutional prosecution against the defendant under each count for "threaten[ing] to commit [a] crime of violence in reckless disregard of the risk of causing such terror." General Statutes § 53a-62

(a) (2) (B). Thus, the trial court properly denied the defendant's motion to dismiss.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Although the defendant referenced the state constitution in his motion to dismiss, he did not independently brief a state constitutional claim or argue that the state constitution provides greater protection of speech than that provided by our federal constitution. The defendant's motion to dismiss also appears to contain a scrivener's error by referring to article first, § 7, of the state constitution. The defendant represents in his brief on appeal that he had intended to refer to article first, § 4. In any event, presumably because the defendant did not independently brief a state constitutional claim, the trial court did not address whether the defendant's statements were protected by our state constitution.

The defendant, on appeal, claims that his statements that are described in the affidavit are protected speech under article first, §§ 4, 5, and 14, of the Connecticut constitution because those provisions require that, in order for a statement to be classified as an unprotected true threat, the statement's maker must have made the statement with a specific intent to terrorize the target of the threat. Our Supreme Court, however, rejected this same claim. See *State* v. *Taupier*, supra, 330 Conn. 174–75. In *Taupier*, our Supreme Court stated that "the Connecticut constitution does not require the state to prove that a defendant had the specific intent to terrorize the target of the threat before that person may be punished for threatening speech directed at a[n] . . . individual." Id. Thus, we reject this claim on its merits in light of *Taupier*; see id.; and need not address it in further detail.

[2] At oral argument before this court, the defendant conceded that the only claim that he makes on appeal is that the trial court improperly denied his motion to dismiss because the statements contained in the affidavit were not *true threats* and, thus, constituted speech that was constitutionally protected. Accordingly, we address only the five counts charging the defendant with threatening in the second degree in violation of § 53a-62 and do not address the five counts charging him with inciting injury to person or property in violation of § 53a-179a.

[3] In the information that it filed, the state reiterated that the defendant's statements that resulted in him being charged with five counts of threatening in the second degree were made on January 8, 9, 11, 12, and 14, 2017.

[4] In support of its assertion that this court must accept the trial court's subsidiary factual findings unless they are clearly erroneous, the state relies on *State* v. *Krijger*, 313 Conn. 434, 447, 97 A.3d 946 (2014). That reliance is misplaced. The defendant in *Krijger* appealed from a judgment of conviction rendered after a jury trial, in which the jury heard witnesses, made credibility determinations, and found facts. Thus, *Krijger* involves a different procedural posture from the present case.

[5] When the court conducted the plea canvass of the defendant, the state recited the factual basis underlying the defendant's written plea of nolo contendere as follows: "[I]n early January . . . 2017, court personnel in the Middletown courthouse were alerted to some information that had been posted online . . . that they considered very threatening to various employees of the courthouse there.

"During the course of the investigation, it was learned that approximately from January 8, 2017, going on to approximately January 14, 2017, the defendant posted and allowed to continue to be posted various threats to various employees of the state.

"Specifically, there were comments that police would be in body bags the next time they came without a warrant. There were threats directed specifically to kill the court employees at these courts. There were threats to kill the judges of the court, and with some identifying features. I don't want to put the names of them, but of specific judges that were listed on that.

"There was also threats to . . . burn down the courthouse. And in fact, he did that twice, a specific threat to burn down the courthouse, threatened the court employees, including judges, with bodily harm. And at one point, I would note, gave out the town where one of the judges resided.

"Taken together, Your Honor, the threats to specifically harm specific employees, a specific place to do damage, and obviously, cause fear to the people that work there, the state would say that those charges would satisfy the requirements, at this point anyway, for the charges of threatening."

[6] See footnote 11 of this opinion for the text of the court's canvass.

the five statements that we assess for purposes of our true threats analysis.

[7] General Statutes § 53a-62 provides in relevant part: "(a) A person is guilty of threatening in the second degree when: (1) By physical threat, such person intentionally places or attempts to place another person in fear of imminent serious physical injury, (2) (A) such person threatens to commit any crime of violence with the intent to terrorize another person, or (B) such person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror . . . ."

[8] "The Court: All right. And the state's recitation regarding the plea agreement, is that your understanding of the plea agreement that you are submitting today?

"[The Defendant]: Yes. And I can appeal. That's correct, right?

"[Defense Counsel]: Yes.

"The Court: Okay. So, Mr. Taupier, you have filed your plea under nolo contendere. And by doing so, you're saying that you don't contest the case, and believe that it's in your best interest to enter a plea of nolo contendere and accept the proposed disposition, rather than risk going to trial and potentially face a greater sentence if convicted, is that correct, sir?

"[The Defendant]: Yes.

"The Court: All right. And you understand that I will still be making a finding of guilty though?

"[The Defendant]: Yes.

* * *

"The Court: All right. And did your attorney explain to you what you're pleading guilty to, sir? *You're pleading guilty to five counts of threatening in the second degree.*

"[The Defendant]: *Yes.*

"The Court: All right. Did your attorney explain to you the elements of each crime that you're pleading guilty to?

"[The Defendant]: Yes.

"The Court: And did he go over with you the evidence which would prove each element beyond a reasonable doubt?

"[The Defendant]: Yes.

* * *

"The Court: Okay. And did he go over with you the terms of the plea agreement, sir?

"[The Defendant]: Yes." (Emphasis added.)

[9] We select this particular subdivision because it requires proof of recklessness rather than specific intent and, therefore, is most easily satisfied. Under this subdivision, the defendant's five statements are clearly unprotected true threats for which there is probable cause to believe that he threatened to commit a crime of violence (i.e., murder and arson) with reckless disregard of the risk of causing terror.

[10] The defendant argues that, in order to criminalize speech, the speech must meet *both* the standard of advocacy of imminent lawless action, as set forth in *Brandenburg* v. *Ohio*, supra, 395 U.S. 447–48, *and* that of true threats, as set forth in *Virginia* v. *Black*, supra, 538 U.S. 359–60. We disagree.

Our Supreme Court has stated that advocacy of imminent lawless action and true threats theories of criminal liability are distinct. See *State* v. *Parnoff*, 329 Conn. 386, 394–95, 405, 186 A.3d 640 (2018). In *Parnoff*, the court declined to consider whether the defendant's words constituted true threats because the state pursued the case under an advocacy of imminent lawless action theory of criminal liability and not a true threats theory. See id. Indeed, to consider whether a statement is a true threat by using the same analysis used to determine whether a statement constitutes advocacy of imminent lawless action is the equivalent of forcing a " 'square peg [into a] round hole' . . . ." Id., 405. Thus, for the reasons articulated by our Supreme Court, we disagree with the defendant and conclude that a person's statement may, indeed, be a true threat as a matter of law while not constituting advocacy of imminent lawless action.

[11] Although the record is unclear regarding which five statements recited in the affidavit constitute the statements on which the defendant was convicted of five counts of threatening in the second degree; see part I A of this opinion; the affidavit states that Facebook posts made by the defendant on January 8, 9, 11, 12, and 14, 2017, were "threatening in nature." There are seven Facebook posts made by the defendant on these dates that are described in the affidavit. At oral argument before this court, the defendant conceded that, when reviewing his claim, this court could analyze the statements he made on these dates for purposes of determining whether the court properly denied his motion to dismiss the charges.

In the foregoing analysis, we conclude that at least five of these statements could be characterized as true threats. We take no position on whether the remaining statements in the affidavit constitute true threats as a matter of law.

[12] We note that, in addition to the user who condemned the defendant's call to kill court employees, another user appeared encouraged by the defendant's call to kill judges. Indeed, in response to the defendant's post, this other user wrote, "I had someone else in mind, but we can start with the judges."

[13] The affidavit does not specify the amount of time that lapsed between the concerned individual reading the defendant's statements and his or her reporting them to Field on January 25, 2017.

[14] The defendant published one Facebook post on January 6, 2017, and one on January 8, 2017. Of the five statements we analyze in this opinion, the earliest was made on January 9, 2017. Thus, for purposes of our analysis, we assess the manner in which the defendant behaved (i.e., subsequent Facebook posts he made) from January 9 to 14, 2017, which is the date of the last of the defendant's Facebook posts described in the affidavit.

APPENDIX B

Denial of Request For Certification By The Connecticut Supreme Court, *State v. Taupier*, PSC-190486 (Jul. 7, 2020).

SUPREME COURT

STATE OF CONNECTICUT

PSC-190486

STATE OF CONNECTICUT

v.

EDWARD F TAUPIER

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

The defendant's petition for certification to appeal from the Appellate Court, 197 Conn. App. 784 (AC 42115), is denied.

MULLINS, J., did not participate in the consideration of or the decision on this petition.

Norman A. Pattis, in support of the petition.
Mitchell S. Brody, senior assistant state's attorney, in opposition.

Decided July 7, 2020

By the Court,

/s/
Cory M. Daige
Assistant Clerk - Appellate

Notice Sent: July 8, 2020
Petition Filed: June 22, 2020
Hon. Karyl L. Carrasquilla
Clerk, Superior Court, K10K-CR17-0338626-S
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record

APPENDIX C

Memorandum of Decision On Defendant's Motion To Dismiss, *State v. Taupier*, K10K-CR-17-0338626-S (CT Super. Ct. May 23, 2018).

K10K-CR17-0338626-S	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	GEOGRAPHICAL AREA 10
V.	:	AT NEW LONDON
EDWARD TAUPIER	:	23 MAY 2018

MEMORANDUM OF DECISION RE: DEFENDANT'S MOTION TO DISMISS

The Defendant in the above-captioned case, Edward Taupier, has moved, pursuant to §§ 41-8 (5), (8) and (9) of the Practice Book, to dismiss the charges against him. The Defendant asserts that the instant prosecution can and must be resolved without trial as the facts as alleged in the warrant are insufficient, as a matter of law, to support any claim that a crime or crimes has/have been committed. The Defendant contends specifically that certain statements that were made on his Facebook page that resulted in his arrest by warrant were protected speech pursuant to the First and Fourteenth Amendments to the United States Constitution and Articles First, § 7 of the Constitution of the State of Connecticut. The Defendant further asserts that his posted comments were neither illegal advocacy of imminent lawless action as required by *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969), nor true threats pursuant to *Virginia* v. *Black*, 538 U.S. 343 (2003). The State of Connecticut contends that Defendant Taupier's posted statements were not constitutionally protected speech and that his prosecution for making those statements should, therefore, be allowed to continue.

I. FACTUAL BASIS

"In determining whether evidence proffered by the state is adequate to avoid dismissal, such proof must be viewed in the light most favorable to the state. *State* v. *Kinchen*, 243 Conn. 690,

702 (1998). For the purposes of his Motion to Dismiss, the Defendant is not contesting the facts as alleged in the warrant affidavit that led to his arrest. See, e.g, *State* v. *Colon*, 230 Conn. 24, 34 (1994).

The Court finds the following facts are relevant to the Defendant's claim that his statements were protected speech and that the instant charges should be dismissed: On January 25, 2017, Superior Court Chief Judicial Marshall Relford Ward of the Judicial District of [Middlesex] contacted the Connecticut State Police Troop F in Westbrook to request the investigation of communications that had been received by the court staff of the Judicial District that the staff members believed to be of a threatening nature (Arrest Warrant Application Affidavit ¶ 2).

On that same day, The State Police met with and interviewed Middlesex Chief Clerk Jonathan Field who reported that he had received a phone call from a concerned citizen who had viewed certain Facebook posts that had caused that individual sufficient alarm to fear for the safety of Field and others at the Middlesex Courthouse. As a result of having read the posts, the concerned citizen also reported that he was worried for the safety of the officers of the Cromwell Police Department. Field stated that the concerned citizen told him that the posts that had so disturbed him / her were from the Facebook profile of Defendant Taupier. Field asked that the concerned citizen fax copies of the posts to him at the Middlesex Courthouse and the concerned citizen did so. Field reported that upon reading the posts he considered the posts to be a threat to his own safety and possibly to others at the Middlesex Courthouse. Field reported the Facebook posts to Chief Judicial Marshal Ward. Field provided copies of the faxed posts to the State Police.

The State Police were able to locate and review the Facebook profile page of Defendant Taupier and were able to compare the faxed posts with the posts on Defendant Taupier's profile page. The faxed pages and viewed Profile pages were consistent and included the following dates and statements:

1) (Posted January 6, 2017): "856 days political prisoner by Dan Fucktard Malloy- with judge Gold and Brenda Hans." Warrant, ¶ 4, Defendant's Brief at 2.
2) (Posted January 8, 2017) "CROMWELL POLICE DUPED BY MENTALLY ILL EX TO THINK CHILDREN ARE ENDANGERED. THEY SAY THEY DON'T NEED WARRANTS TO COME IN HOME . . . POLICE DON'T NEED WARRANTS, THEY WILL NEED BODY BAGS NEXT TIME." Warrant, ¶ 4, Defendant's Brief at 2.
3) (Posted January 9, 2017): "I JUST GOT NOTICE OF CONTEMPT FROM THE STATE WEB SITE WITHOUT GETTING OFFICIAL SERVICE, I GUESS THE JEWS THAT RUN THE MIDDLETOWN CLERKS OFFICE (JOE BLACK – JONATHAN FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING. . . THIS IS WHY WE NEED TO START KILLING WITH LOVE THOSE THAT VIOLATE THE CIVIL RIGHTS OF SOCIETY THAT ARE JUDGES WHO HAPPEN TO PRACTICE THE JEWISH FAITH." A response from another individual on Facebook stated "I had someone else in mind, but we can start with the judges." A different party stated in response: " . . . for that comment, ed, you no doubt could get arrested & also used against you in custody case . . . " followed by " . . . you really should either edit or delete that." Warrant, ¶ 4, Defendant's Brief at 2.

4) (Posted January 9, 2017) "KILL COURT EMPLOYEES AND SAVE THE COUNTRY . . . . Stop driving the SUV and save a planet . . . this is what a liberal would say . . ." Warrant ¶ 4, Defendant's Brief at 3.

5) (Date not included) "JUDGE BOZZUTO FOR LIBERTY TREE CHALLENGE"; "– the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. –Thomas Jefferson" – "Nominate Judge Bozzuto to Liberty Tree Refreshment Challenge, Spill some blood, save a tree!" Warrant ¶ 4, Defendant's Brief at 3.

6) (Posted January 11, 2017) "I was given 5 yrs for disturbing peace hmm no judicial retaliation with Judges ... btw Devlin said he felt sorry for the cop . . . and wanted to make it right despite the girl and her family wanting the maximum . . . im on $1.3m bond for disturbing the peace . . . kill everyone of these judges." Warrant ¶ 18, Defendant's Brief at 3.

7) (Posted January 12, 2017) "we the public have no trust in the CT judiciary . . . . time to burn the courts down!" Warrant ¶ 19, Defendant's Brief at 3.

8) (Posted January 13, 2017) "News flash I am incarcerated – house arrest for 860+ days, like DT-Rip" followed by "for disturbing peace on 1.3 million dollar bond." Then "Judge David p Gold lives in Middlefield, CT if you want to ask him why at his house." Warrant ¶ 20.

9) (Posted January 14, 2017) – "CT courts destroy this every sec of every day!> The family courts are run by Beth Bozzuto, the mother destroying families across the state! Time to burn down the courts." Warrant, ¶ 21, Defendant's Brief at 3.

In his Brief, the Defendant presents each successive statement in tabular form and the Defendant concedes for the purposes of his Motion to Dismiss that he both wrote and caused to be published the statements on Facebook that were "candidly shocking" displays of "public disaffection with the administration of justice in our courts" (Defendant's Brief at 1). The Defendant further concedes the factual context in which those statements were alleged to have been made: " . . . the defendant is engaged in [. . .] highly contentious family litigation in the Middletown Superior Court. He has also been tried, and convicted, of making threatening Statements about a Superior Court Judge presiding over early stages of the family litigation. That conviction is [currently on appeal]." Defendant's Brief at 2.

For the statements that were posted on January 8th, 9th, 11th, and the 12th, the defendant was arrested and charged with five counts of Inciting Injury to Persons or Property in violation of § 53a-179a[1] of the General Statutes and five counts of Threatening in the Second Degree in violation of § 53a 62[2]. The defendant filed the current Motion to Dismiss asserting that the facts as alleged are insufficient to support a prosecution and that Defendant Taupier's statements were protected, political speech. The State disagrees with the Defendant's assertions that his statements were protected, political speech.

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[1] Section 53a-179a provides as follows: "A person is guilty of inciting injury to persons or property when, in public or private, orally, in writing, in printing or in any other manner, he advocates, encourages, justifies, praises, incites or solicits the unlawful burning, injury to or destruction of any public or private property or advocates, encourages, justifies, praises, incites or solicits any assault upon any organization of the armed forces of the United States, as defined by section 27-103, or of this state, as defined by section 27-2, or the police force of this or any other state or upon any officer or member thereof or the organized police or fire departments of any municipality or any officer or member thereof, or the killing or injuring of any class or body of persons, or of any individual."

[2] Section 53a-62 of the General Statutes provides in pertinent part: " (a) A person is guilty of threatening in the second degree when: (1) By physical threat, such person intentionally places or attempts to place another person in fear of imminent serious physical injury, (2) (A) such person threatens to commit any crime of violence with the intent to terrorize another person, or (B) such person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror . . . ."

II. The Applicability of *Brandenburg* v. *Ohio*

The Defendant is charged with five counts of Inciting Injury to Persons or Property and relies upon the rule of law announced in *Brandenburg* v. *Ohio*, supra, 395 U.S. 444, as definitively barring his prosecution. The defendant asserts that his statements were not advocacy "directed to inciting or producing imminent lawless action and [were not] likely to produce such action" (Defendant's Brief at 6, citing *Brandenburg* v. *Ohio*, supra, 447). The State disagrees.

In *Brandenburg*, a leader of the Ku Klux Klan was prosecuted under Ohio's Anti-Syndicalism statute for his role in a rally and the statements that he made there. Local reports attended the rally and the footage shot for television news were used in the Klan leader's prosecution:

> Most of the words uttered during the scene were incomprehensible when the film was projected, but scattered phrases could be understood that were derogatory of Negroes and, in one instance, of Jews. Another scene on the same film showed the appellant, in Klan regalia, making a speech. The speech, in full, was as follows: "This is an organizers' meeting. We have had quite a few members here today which are—we have hundreds, hundreds of members throughout the State of Ohio. I can quote from a newspaper clipping from the Columbus, Ohio Dispatch, five weeks ago Sunday morning. The Klan has more members in the State of Ohio than does any other organization. We're not a revengent organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance taken. We are marching on Congress July the Fourth, four hundred thousand strong. From there we are dividing into two groups, one group to march on St. Augustine, Florida, the other group to march into Mississippi. Thank you."

Id., at 446. In its *Per Curiam* opinion, the *Brandenburg* Court stated 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 *except* where such advocacy is directed to inciting or producing

imminent lawless action and is likely to incite or produce such action." (Emphasis added, citations omitted .) Id., at 447, and stated further that " . . . the mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action" Id.

Prior to *Brandenburg*, the rule of law regarding the attempted criminalization of advocacy alone came to us from *Whitney* v. *California*, 274 U.S. 357 (1927). The *Brandenburg* court notes the evolution and refinement of the rule articulated by the *Whitney* Court that allowed for a clear and present danger test for evaluating the constitutionality of the attempted criminalization of advocacy. The revisiting of this rule in successive cases leading up to Brandenburg resulted in the Court's decision to overrule expressly *Whitney*, holding that a statute that criminalizes mere advocacy, even if that advocacy endorses disruption through violence and lawlessness, is impermissible under the First and Fourteenth Amendments of the United States Constitution.

The *Brandenburg* Court invalidated the Ohio statute but one can certainly infer from the reasoning of the Court and the fact that the statute was found to be unconstitutional that Petitioner Brandenburg's actions and statements that day did not rise to the level of directing or inciting imminent lawless action and were, therefore, likely not to produce such action. Because the advocacy and activities of the Klan were not sufficient to ignite imminent, lawless action, they could not be criminalized. Indeed, any statute that would lead to the arrest of a person just for the mere advocacy of potentially violent resistance (with or without the overlay of racism and anti-government sentiment) that the Klan leader had been involved in would henceforth be found to be unconstitutional.

The State asserts that the Defendant cannot rely upon *Brandenburg* or its progeny as a

bar to his prosecution (See, e.g., *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982), *Hess* v. *Indiana*, 414 U.S. 105 (1973), *Watts* v. U.S. 705 (1969) and *Noto* v. *U.S.*, 367 U.S. 290 (1961) (precedes *Brandenburg* and is cited as one more case leading to the *Brandenburg* Court's overruling of *Whitney* v. *California*, supra.) In all of the cases that the defense cites (including *Brandenburg*) the words subject to analysis by each Court evince a future, conditional, or hypothetical action that may result in some harm. "'Sometime I will see the time we can stand a person like this S.O.B. up against the wall and shoot him.'" *NOTO*, 3677 U.S., supra, at 296. "'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.'" *Watts*, 394 U.S., supra, at 706. " 'We'll take the fucking streets later,' or "We'll take the fucking street again.'" *Hess*, 414 U.S. 105, *supra*, at 107; "'If we catch any of you going in any of them racist stores, we're gonna to break your damn neck.'" NAACP, 458 U.S., supra, at 902. The State asserts that the juxtaposition of the words used in the cases cited with the words used by Defendant Taupier make it clear that the cases are distinguishable: "'Start with the Judges.' 'Kill everyone of these judges,' 'Kill Court Employees,' 'time to burn down the courts!', 'time to bum the courts down!'" States's Brief at 5.

The *Brandenburg* Court announces a bright-line rule that mere advocacy cannot be criminalized but does not offer an easily applicable bright-line test for what would actually constitute advocacy of imminent lawlessness that might lead to actual violence. Although the stated aims of the Ku Klux Klan are certainly disfavored among non-racists, the Klan is apparently free to advocate violence and race hatred, generally or specifically, and make vague statements about retribution or "revengeance" that may or may not be coming and may or may not be directed at the Federal Government or particular groups or sub-groups. In *Brandenburg*, such statements were made and while the viewpoints are, arguably, offensive (depending on

whether one is a Klan supporter or detractor) and potentially alarming (depending upon the sympathies of the listeners), they clearly do not rise to a call for imminent lawlessness and, accordingly, were not likely to result in the same.

A review of cases that cite *Brandenburg*, including those cases cited by the Defendant in support of his Motion to Dismiss, make it clear that the Courts have continued to grapple with where the line is. (See e.g., *Rice* v. *Paladin Enterprises Incorporated*, 128 F. 3d 233, 263-265 (1997) (an extensive analysis of the language of the "short . . . elliptical" opinion in *Brandenburg* including, inter alia, a discussion of the lexical and philosophical distinction between "teaching" and " mere abstract teaching.") Basically, case by case, we have learned what does not constitute advocacy to imminent, lawless action but we do not know what the *Brandenburg* Court would have considered to be statements / language / actions that would be eligible for legal sanction.

"The standard to be applied in determining whether the state can satisfy [its] burden in the context of a pretrial motion to dismiss under General Statutes § 54–56 and Practice Book § 41–8(5) is no different from the standard applied to other claims of evidentiary sufficiency. General Statutes § 54–56 provides that "[a]ll courts having jurisdiction of criminal cases shall at all times have jurisdiction and control over informations and criminal cases pending therein and may, at any time, upon motion by the defendant, dismiss any information and order such defendant discharged if, in the opinion of the court, there is not sufficient evidence or cause to justify the bringing or continuing of such information or the placing of the person accused therein on trial. When assessing whether the state has sufficient evidence to show probable cause to support continuing prosecution [following a motion to dismiss under § 54–56], the court must view the proffered proof, and draw reasonable inferences from that proof, in the light most favorable to the state. The quantum of evidence necessary to [overcome a motion to dismiss] ...

is less than the quantum necessary to establish proof beyond a reasonable doubt at trial .... In [ruling on the defendant's motion to dismiss], the court [must] determine whether the [state's] evidence would warrant a person of reasonable caution to believe that the [defendant had] committed the crime...." (Internal quotation marks omitted, citations omitted.)." *State* v. *Pellela*, 327 Conn. 1, 18-19 (2017)

In the present case, the Court sees few similarities between the Facebook statements of Defendant Taupier and the vaguely menacing statements of Petitioner Brandenburg or the forceful political speech of Charles Evers as cited in *NAACP* v. *Claiborne Hardware Co.*, supra, 458 U.S. In a fact bound analysis, the Court observes that other statements that other courts have evaluated within the context in which those remarks have been made that have NOT been found to violate the bright line of Brandenburg have typically been, as the state urges " . . . a future, conditional, or hypothetical action that may result in some harm." Defendant Taupier's statements are, therefore, distinguishable from other, apparently, constitutionally protected expressions of disaffection.

Construed in a light most favorable to the State, Taupier's statements were not mere advocacy but rather provocation to precisely the sort of imminent lawlessness that Petitioner Brandenburg, NAACP Boycott Organizer Charles Evers, and antiwar protestors Watt and Hess had been found not to have engaged in. It is unclear whether a post on Facebook is legally equivalent to a statement made by a speaker at a Klan or NAACP political rally or more akin to standing on a box with a megaphone in one's own front yard or, perhaps, speaking loudly (or softly) to a group of likeminded individuals within one's own home while under the mistaken impression that one is not going to be overheard, misconstrued or disagreed with. The Court cannot accept the Defendant's assertions that the angry, spontaneous, specific, affirmative,

violent and imperative exhortations posted to his Facebook page were protected political speech *as a matter of law*. Defendant Taupier's statements were published to Facebook, public, heard, responded to with eager approval by at least one person and were alarming to another who warned against possible repercussions for such utterances and suggested to Defendant Taupier that the posts be taken down. Defendant Taupier's angry statements led one concerned citizen to contact the Middlesex Courthouse.

The Court concludes that a reasonable jury could find that the Defendant's statements concerning the staff at the Middlesex Courthouse and Cromwell Police Department were not mere advocacy for lawlessness but rather the sort of provocative, public statements that could lead to imminent lawlessness. When directed at specific individuals as the statements were in the present case, such conduct falls squarely into the ambit of the Inciting Injury statute and, accordingly, as to the Inciting Injury counts, the Defendant's Motion to Dismiss is denied.

III. True Threat Discussion

Having determined that the defendant's Facebook posts were not protected as a matter of law under *Brandenburg* v. *Ohio*, supra, the Court next addresses whether the content of the posts constituted "true threats" pursuant to *Virginia* v. *Black*, 538 U.S. 343 (1969). The most recent case concerning this evolving area of law in Connecticut is *State* v. *Pellela*, 327 Conn., supra, 1 (2017). The opinion in *Pellela* specifically addresses the state's appeal from the grant of a Motion to Dismiss in a threatening case.

The *Pellela* Court undertakes a comprehensive review of true threats and discusses the evolution of the doctrine that had last been addressed by our Supreme Court in *State* v. *Krijger*, 313 Conn. 434, 450, 97 A.3d 946 (2014) (Reversing a *conviction* for Threatening in the Second

Degree). " In order to demonstrate the existence of a true threat at trial, 'the state must do more than demonstrate that a statement *could* be interpreted as a threat. When ... a statement is susceptible of varying interpretations, at least one of which is nonthreatening, the proper standard to apply is whether an objective listener would readily interpret the statement as a real or true threat; nothing less is sufficient to safeguard the constitutional guarantee of freedom of expression. To meet this standard ... the state [is] required to present evidence demonstrating that a reasonable listener, familiar with the entire factual context of the defendant's statements, would be highly likely to interpret them as communicating a genuine threat of violence rather than protected expression, however offensive or repugnant." (Emphasis in original.) [*State* v. *Krijger*, supra, 313 Conn. at 449] " *State* v. *Pellella*, supra, 327 Conn. at 18.

In *Krijger*, the Court found, in light of the entire record, that the defendant had not made a true threat. That conclusion was fact driven and based, among other things, on the nature of the allegedly threatening statement, the context of that statement, the reaction of those who heard it, and also the relationship history between the defendant and the person that was allegedly threatened.

In *Pellela*, the Court reiterated its objective standard for evaluating true threats, that is, whether statements alleged to be true threats " . . . reasonably would be interpreted as a serious expression of intent to harm, noting that [a]lleged threats should be considered in light of their entire factual context, including the surrounding events and reaction of the listeners."(Internal quotation marks omitted.) Id., at 12. The *Pellela* Court further stated, that "[p]rosecution under a statute prohibiting threatening statements is constitutionally permissible [as] long as the threat on its face and in the circumstances in which it is made is *so unequivocal, unconditional, immediate and specific* as to the person threatened, *as to convey a gravity of purpose and imminent prospect*

of execution .... (Emphasis in the original, citations omitted, internal quotation marks omitted.) Id.

The *Pellela* Court then, having included "imminence" among the factors to be determinative, discusses whether "imminence" per se is required for a statement to be a true threat and determines that immediacy is not essential to the applicability of the threatening statute:

> Indeed, logic and reason dictate that a threat—for example, "if you report me to the police, I'll kill your family"—need not be imminent to be outside the protections of the first amendment. Imminence is not a requirement because "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." (Internal quotation marks omitted.) *Virginia* v. *Black*, supra, 538 U.S. at 360, 123 S.Ct. 1536. Indeed, "[t]hreatening speech ... works directly the harms of apprehension and disruption, whether the apparent resolve proves bluster or not and whether the injury is threatened to be immediate or delayed. Further, the social costs of a threat can be heightened rather than dissipated if the threatened injury is promised for some fairly ascertainable time in the future ... for then the apprehension and disruption directly caused by the threat will continue for a longer rather than a shorter period." *Planned Parenthood of Columbia/Willamette, Inc.* v. *American Coalition of Life Activists*, 290 F.3d 1058, 1107 (9th Cir. 2002) (Berzon, J., dissenting), cert. denied, 539 U.S. 958, 123 S.Ct. 2637, 156 L.Ed.2d 655 (2003).

Id. at 16-17. Whether a statement is or is not a true threat is a complex and fact and context-driven analysis and while immediacy is a factor, it is not the only factor.

The *Pellela* Court also describes the standard of review to be applied: "The standard to be applied in determining whether the state can satisfy this burden in the context of a pretrial motion to dismiss under General Statutes § 54–56 and Practice Book § 41–8(5) is no different from the standard applied to other claims of evidentiary sufficiency. General Statutes § 54–56 provides that "[a]ll courts having jurisdiction of criminal cases shall at all times have jurisdiction and control over informations and criminal cases pending therein and may, at any time, upon motion

by the defendant, dismiss any information and order such defendant discharged if, in the opinion of the court, there is not sufficient evidence or cause to justify the bringing or continuing of such information or the placing of the person accused therein on trial." "When assessing whether the state has sufficient evidence to show probable cause to support continuing prosecution [following a motion to dismiss under § 54–56], the court must view the proffered proof, and draw reasonable inferences from that proof, in the light most favorable to the state. The quantum of evidence necessary to [overcome a motion to dismiss] ... is less than the quantum necessary to establish proof beyond a reasonable doubt at trial .... In [ruling on the defendant's motion to dismiss], the court [must] determine whether the [state's] evidence would warrant a person of reasonable caution to believe that the [defendant had] committed the crime.... Thus, the trial court must ask whether the evidence would allow a person of reasonable caution, *viewing the evidence presented in the light most favorable to the state*, to believe that the statement at issue was highly likely to be perceived by a reasonable person as a serious threat of physical harm. If that evidence would support such a finding—regardless of whether it might also support a different conclusion—then the motion to dismiss must be denied." (Emphasis in original, Citations omitted, internal quotation marks omitted." Id. at 18-19.

With these principles in mind, the Court considers the merits of the defendant's claim, turning first to the language of the defendant's allegedly unlawful statements: "Police don't need warrants, they will need body bags next time"; "This is why we need to start killing with love those that violate the civil rights of society that are judges who happen to practice the Jewish faith"; "Kill Court employees and save the country"; "Judge Bozzuto for Liberty Tree Challenge- 'The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants'- Thomas Jefferson' – Nominate Judge Bozzuto to Liberty Tree Refreshment Challenge.

Spill some blood, save a tree!"; "[Kill] everyone of these judges!"; "[We] the public have no trust in the CT judiciarty . . . time to burn the Courts down!"; "The family courts in CT are run by Beth Bozzuto, the mother destroying families across the state! Time to burn down the courts." The *Pellela* Court found that the defendant's statement to his brother: "'if you go into the attic I will hurt you'," was in light of the whole record a true threat. This statement between brothers stands in sharp contrast to the exhortations to kill judges and other court employees, to burn the courts and to feed the roots of the Liberty Tree with the blood of Judge Bozzuto. The words, themselves, certainly could engender the sort of fear for personal safety that the threatening statute was designed to address. Construed in a light most favorable to the state, the Defendant's words are certainly capable of being seen as true threats.

The Court next considers the nature of the parties' prior relationship. See *Pellela*, supra, 327 Conn. at 21. The defendant had been a involved in a highly contentious family court matter and had been previously convicted for the threatening of Connecticut Superior Court Judges. Defendant Taupier was on house arrest and was clearly outraged by his confinement. Certainly, the Court Staff was familiar with Defendant Taupier and his level of antipathy towards the judicial branch and its employees Construed in a light most favorable to the state, these background details also support that the defendant's statements were not mere political rhetoric but true threats intended to place others in fear for their safety.

The Court next turns to the immediate circumstances surrounding the defendant's statements including the reactions of the allegedly threatened. See *State* v. *Pellela*, supra, 327 Conn. at 21. The Statements were made on Facebook and those posts made their way to the State Police via the Clerk's Office and Chief Marshall of the Middlesex Judicial District. At least one person who responded to the defendant's remarks expressed alarm and stated that the

posts would result in arrest and needed to be edited or taken down in order to avoid that consequence. A citizen found the posts concerning enough to contact the Middlesex Courthouse and when copies of the posts were faxed to one of the specified individuals, that person was concerned enough for his own safety and the safety of his colleagues that he brought the posts to the attention of the Chief Marshall. Upon reviewing the posts, the Chief Marshall then alerted the State Police who were able to access the defendant's Facebook page without any extraordinary effort only to find that the content of the Facebook page was consistent with the faxed copies. When construed in a light most favorable to the state, the Court is of the opinion that the context in which the defendant's remarks were made support a conclusion that the defendant's posts were something other than frustrated, hyperbolic political rantings and could be construed as true threats.

The Court emphasizes that at trial the jury is not required to construe the facts as alleged in a light most favorable to the state. Because the standard of review requires this Court to construe all facts in a light most favorable to sustaining the prosecution, this Court determines based on the record before it that a reasonable jury could find that the defendant made true threats.

Accordingly, the Defendant's Motion to Dismiss with regard to the five counts of Threatening in the Second Degree is denied.

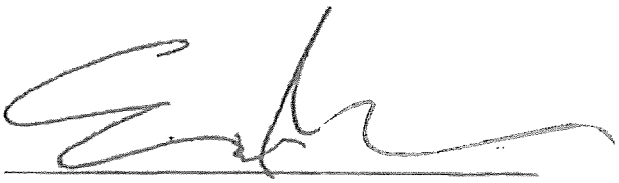
IV. Conclusion

In the present case, the Court supports the defendant's right to express unpopular views. It is well-settled, however, that there is a line between the free expression of ideas and advocacy for violence that may be eligible for criminal sanction. The question before the Court is not

whether Defendant Taupier crossed that line beyond a reasonable doubt but whether when the statements and their context are viewed in a light most favorable to the state that a reasonable jury could find that his several Facebook statements constituted Incitement to Injury or Threatening in the Second Degree. This Court concludes that a reasonable jury could find that the statements that the defendant made and now claims as "candidly shocking" but constitutionally permissible expressions of disaffection and dissension were not constitutionally protected calls for insurrection, generally, but rather a combination of criminal advocacy and true threats.

ORDER

The foregoing motion having been heard, it is hereby ordered: DENIED.

BY: 

GREEN, J.

APPENDIX D

Brief of Petitioner, Edward Taupier, In *State v. Taupier*, 197 Conn.App. 784 (Jan. 3, 2019).

STATE OF CONNECTICUT
APPELLATE COURT

A.C. 42115

STATE OF CONNECTICUT
Appellee,
v.
EDWARD TAUPIER
Appellant.

JUDICIAL DISTRICT OF NEW LONDON
at NEW LONDON
(Hon., GREEN, J.)

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

I. WHETHER THE VARIOUS STATEMENTS MADE BY THE DEFENDANT-APPELLANT REGARDING DESTRUCTION OF COURTHOUSES AND PURPORTED THREATS TO COURT STAFF WERE PROTECTED SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION?

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Cases

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NATURE OF THE PROCEEDINGS

Mr. Taupier was arrested by way of a warrant and charged with five counts of inciting injury to persons arising under Connecticut General Statutes Section 53a-179a[1] and five counts of threatening in the second degree arising under Section 53a-62.[2] Although the defendant filed a request for a statement of essential facts on which the prosecution was based, the State did not respond to the request. The defendant moved, pursuant to Practice Book Sections 41-8(5),

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[1] Connecticut General Statutes Section 53a-179a reads as follows: "Inciting injury to persons or property: Class C felony. (a) A person is guilty of inciting injury to persons or property when, in public or private, orally, in writing, in printing or in any other manner, he advocates, encourages, justifies, praises, incites or solicits the unlawful burning, injury to or destruction of any public or private property or advocates, encourages, justifies, praises, incites or solicits any assault upon any organization of the armed forces of the United States, as defined by section 27-103, or of this state, as defined by section 27-2, or the police force of this or any other state or upon any officer or member thereof or the organized police or fire departments of any municipality or any officer or member thereof, or the killing or injuring of any class or body of persons, or of any individual."

[2] Connecticut General Statutes Section 53a-62 reads as follows: "Threatening in the second degree: Class A misdemeanor. (a) A person is guilty of threatening in the second degree when: (1) By physical threat, such person intentionally places or attempts to place another person in fear of imminent serious physical injury, (2) such person threatens to commit any crime of violence with the intent to terrorize another person, or (3) such person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror.

(8) and (9)[3] to dismiss the charges against him, contending that his speech was protected by both the First Amendment to the United States Constitution and Article First, § 7 of the Constitution of the State of Connecticut.[4] After briefing and argument, the Court, Green, J., denied the motion to dismiss in its entirety. Thereafter, Mr. Taupier entered a conditional nolo contendere plea, reserving the right to appeal the trial court's denial of his motion to dismiss. He was sentenced to four months of incarceration, and is scheduled to be released before the end of 2018.

Mr. Taupier filed a timely notice of appeal. This brief has been perfected in accordance with the rules of this Court.[5]

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[3] Those sections of the Practice Book read as follows: "The following defenses or objections, if capable of determination without a trial of the general issue, shall, if made prior prior to trial, be raised by a motion to dismiss the information: ... (5) Insufficiency of evidence or cause to justify the bringing or continuing of such information or the placing of the defendant on trial; ... (8) Claim that the law defining the offense charged is unconstitutional or otherwise invalid; or (9) Any other grounds.

[4] There was a scrivener's error in the underlying motion to dismiss. The correct section of the Connecticut Constitution is Article First, Section 4, not Section 7. Section 4 reads: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

[5] Mr. Taupier's speech in a related context has already been the subject of review by our Supreme Court. See, *State v. Taupier*, 330 Conn. 149 (2018). At the time this brief was submitted, Mr. Taupier

NATURE OF THE PROCEEDINGS

The warrant at issue charged five counts of inciting injury to persons arising under Connecticut General Statutes Section 53a-179a and five counts of threatening in the second degree arising under Section 53a-62. All the charges are arise from the defendant's vocal, public and vitriolic disaffection with the administration of justice in our family courts.

The defendant challenges the sufficiency of the facts alleged in the warrant. *See e.g. State v. Colon*, 230 Conn. 24, 34 (1994)("the information to establish probable cause must be found within the [warrant] affidavit's four corners"). The speech for which he was prosecuted was published Facebook.

Post Date/Time	Comment
January 6,	"856 days political prisoner by Dan Fucktard Malloy-with judge Gold and Brenda Hans." *Warrant*, ¶14, Appendix, hereinafter "App.," p. 4.

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has a Petition for a Writ of Certiorari pending before the United States Supreme Court seeking to overturn to the Connecticut Supreme Court's ruling against him. *Taupier v. Connecticut,* Supreme Court of the United States, Docket No. 18-72. The writ is posted on the Supreme Court's website at: https://www.supremecourt.gov/DocketPDF/18/18-752/74609/20181210111410005_Petition%2012-10-18.pdf (last viewed December 21, 2016)

2017	
January 8, 2017	"CROMWELL POLICE DUPED BY MENTALLY ILL EX TO THINK CHILDREN ARE ENDANGERED..THEY SAY THEY DON'T NEED WARRANTS TO COME IN HOME....POLICE DON'T NEED WARRANTS, THEY WILL NEED BODY BAGS NEXT TIME" *Warrant,* ¶4, App., p. 2. Posted with or contemporaneous to pictures of children and family dog. *Warrant*, ¶16, App., p. 4.
January 9, 2017 Time not clear	"I JUST GOT NOTICE OF CONTEMPT FROM THE STATE WEBSITE WITHOUT GETTING OFFICIAL SERVICE, I GUESS THE JEWS THAT RUN THE MIDDLETOWN CLERKS OFFICE (JOE BLACK – JONATHON FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING..THIS IS WHY WE NEED TO START KILLING WITH LOVE THOSE THAT VIOLATE THE CIVIL RIGHTS OF SOCIETY THAT ARE JUDGES WHO HAPPEN TO PRACTICE THE JEWISH FAITH." *Warrant*, ¶4, App., p. 3. A response from a Jennifer Mariano stated "I had someone else in mind, but we can start with the judges." *Warrant*, ¶5, App., p. 3. A response from Adrienne Baumgartner saying "for that comment, ed, you no doubt could get arrested & also used against you in custody case." Followed by, "you really should either edit or delete that." Mr. Taupier allegedly responded with "meme" set forth below and "Free Speech." *Warrant*, ¶17, App., p. 4.
January 9, 2017	"KILL COURT EMPLOYEES AND SAVE THE COUNTRY....Stop driving the SUV and save a planet...this is what a liberal would say..." *Warrant*, ¶4, App., p. 2.

Date not included	"Meme"stating: -"JUDGE BOZZUTO FOR LIBERTY TREE CHALLENGE" -"The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.-Thomas Jefferson" -"Nominate Judge Bozzuto to Liberty Tree Refreshment Challenge. Spill some blood, save a tree!" *Warrant*, ¶4, App., pp. 2-3.
January 11, 2017	"I was given 5 yrs for disturbing peace hmm no judicial retaliation in CT with Judges...btw Devlin said he felt sorry for the cop...and wanted to make it right despite the girl and her family wanting the maximum...im on $1.3m bond for disturbing the peace...kill everyone of these judges." App,, p. 5.
January 12, 2017	"we the public have no trust in the CT judiciary...time to burn the courts down!" *Warrant*, ¶19, App., p. 5.
January 13, 2017	"News flash I am incarcerated-house arrest for 860+days, like DT-Rip" Followed by "for disturbing peace on 1.3 million dollar bond." Then "Judge David p Gold lives in Middlefield, CT if you want to ask him why at his house." *Warrant*, ¶20, App., p. 5.
January 14, 2017	"CT courts destroy this every sec of every day!>The family courts in CT are run by Beth Bozzuto, the mother destroying families across the state! Time to burn down the courts." *Warrant*, ¶21, App., pp. 5-6.

App., pp. 1-9.

ARGUMENT

I. The Statements At Issue Were All Made In A Public Forum, And Do Not Amount To Either "Fighting Words" Or "True Threats"

A. Standard of Review

"Because a motion to dismiss effectively challenges the jurisdiction of the court, asserting that the state, as a matter of law and fact, cannot state a proper cause of action against the defendant, our review of the court's legal conclusions and resulting denial of the defendant's motion to dismiss is de novo. Factual findings underlying the court's decision, however, will not be disturbed unless they are clearly erroneous." (Internal quotation marks omitted.) *State v. Kallberg*, 326 Conn. 1, 12, 160 A.3d 1034 (2017); see also *State v. Rivers*, 283 Conn. 713, 723–24, 931 A.2d 185 (2007).

The defendant made legal, political statements in a quintessential public forum. Each of his comments is protected under the imminent lawless action test of the "fighting words" doctrine; each fails to constitute a "true threat." None of the statements rise beyond abstract advocacy of lawlessness, a form of speech the United States Supreme Court has unequivocably declared to be protected speech. *Brandenburg v. Ohio*, 395 U.S. 444 (1969). None are true threats,

whether evaluated under an intent/subjective standard or a recklessness/objective standard. *Virginia v. Black*, 538 U.S. 343 (2003).

B. Facebook Is A Quintessential Public Forum.

The defendant's comments were made in a public forum: they deserve the full protections of the First Amendment and corresponding provisions of the state constitution.

The United States Supreme recently noted that, in the digital age, Facebook and other social media platform are the public square for First Amendment purposes:

> A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. The Court has sought to protect the right to speak in this spatial context. A basic rule, for example, is that a street or a park is a quintessential forum for the exercise of First Amendment rights. See *Ward* v. *Rock Against Racism*, 491 U. S. 781, 796, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). Even in the modern era, these places are still essential venues for public gatherings to celebrate some views, to protest others, or simply to learn and inquire.
>
> While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the "vast democratic forums of the Internet" in general, *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 868, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997), and social media in particular. Seven in ten American adults use at least one Internet social networking service. Brief for Electronic Frontier Foundation et al. as *Amici*

Curiae 5-6. One of the most popular of these sites is Facebook, the site used by petitioner leading to his conviction in this case. According to sources cited to the Court in this case, Facebook has 1.79 billion active users. *Id.,* at 6. This is about three times the population of North America.

Social media offers "relatively unlimited, low-cost capacity for communication of all kinds." *Reno, supra,* at 870, 117 S. Ct. 2329, 138 L. Ed. 2d 874. On Facebook, for example, users can debate religion and politics with their friends and neighbors or share vacation photos. On LinkedIn, users can look for work, advertise for employees, or review tips on entrepreneurship. And on Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. See Brief for Electronic Frontier Foundation 15-16. In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics "as diverse as human thought." *Reno, supra*, at 870, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (internal quotation marks omitted).

Packingham v. North Carolina, 137 U.S. 1735, 1735-1736 (2017).

Our state Supreme Court reached a similar conclusion as recently as 2016:

The prevalence of Facebook use in American society cannot be reasonably questioned. Indeed, a 2015 survey performed by the Pew Research Center reveals that 72 percent of American adults that use the Internet also use Facebook. Pew Research Center, "The Demographics of Social Media Users," (2015) available at http://www.pewinternet.org/2015/08/19/the-demographics-of-social-media-users (last visited May 25, 2016); see also *Vincent v. Story County*, United States District Court, Docket No. 4:12CV00157 (RAW), 2014 U.S. Dist. LEXIS 184287 (S.D. Iowa January 14, 2014) ("[t]he use of . . . social media like Facebook is an ever [***23] increasing way people speak to each other in the twenty-first century"); *State v. Craig*,

167 N.H. 361, 369, 112 A.3d 559 (2015) ("Facebook and other social media sites are becoming the dominant mode of communicating directly with others, exceeding e-mail usage in 2009"); *Forman v. Henkin*, 134 App. Div. 3d 529, 543, 22 N.Y.S.3d 178 (2015) ("Facebook and other similar social networking sites are so popular that it will soon be uncommon to find a . . . [person] who does not maintain such an on-line presence"). Nor were they "technically complex issue[s]" requiring expert testimony. *River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 78, 848 A.2d 395 (2004); see also *Graziosi v. Greenville*, 985 F. Supp. 2d 808, 810 (N.D. Miss. 2013) ("Facebook claims to enable 'fast, easy, and rich communication'"), aff'd, 775 F.3d 731 (5th Cir. 2015); *United States v. Amaya*, 949 F. Supp. 2d 895, 912 (N.D. Iowa 2013) ("Facebook offers . . . an affordable, easy, and extremely viable option to seek information"); *Olson v. LaBrie*, Docket No. A11-558, 2012 Minn. App. Unpub. LEXIS 126, 2012 WL 426585, *1 (Minn. App. February 13, 2012) (process for finding users on Facebook "simple"), review denied (Minn. April 17, 2012); *Smith v. State*, 136 So. 3d 424, 432 (Miss. 2014) (creating Facebook account "easy").

State v. Buhl, 321 Conn. 688, 700-02 (2016)(holding that expert witness on basic Facebook concepts was not necessary).

Mr. Taupier was atop his digital soap box preaching to the world at the time he spoke.

C. The Defendant's Comments Do Not Constitute Incitement Under *Brandenburg v. Ohio*, 395 U.S. 444 (1969) Or Under *State v. Parnoff*, 329 Conn. 386 (2018)

The incitement counts are governed by the test set forth in *Brandenburg v. Ohio*, 395 U.S. 444 (1969): "[T]he constitutional guarantees of free press and free speech 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." *Brandenburg v. Ohio*, 395 U.S. at 447. In subsequent cases, the courts have shed additional light on the "imminence" and "likely to incite" requirements.

> In the seminal case of *Brandenburg*...the Supreme Court held that abstract advocacy of lawlessness is protected speech under the First Amendment. Although the Court provided little explanation for this holding in its brief *per curiam* opinion, it is evident that Court recognized from our own history that such a right to advocate lawlessness is, almost paradoxically, one of the ultimate safeguards of liberty. Even in a society of laws, one of the most indispensable freedoms is that to express in the most impassioned terms the most passionate disagreement with the laws themselves, the institutions of, and created by, law, and the individual officials with whom the laws and institutions are entrusted. Without the freedom to criticize that which constrains, there is no freedom at all.

Rice v. Paladin Enter., 128 F.3d 233, 243 (4th Cir., 1997).

Accordingly, the *Brandenburg* court held that speech that "'advocates [a] law violation [is protected by the first amendment] except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.'" *State v. Ryan*, 48 Conn.App. 148, 159 (1998) citing *Brandenburg*, supra, 395 U.S. at 447. Put more simply, to lose first amendment protection, comments

at issue must (1) be directed to inciting or producing imminent lawless action and (2) likely to incite or produce the action advocated. The comments in the warrant fail on both counts.

Our Supreme Court, in *State v. Parnoff*, 329 Conn. 386 (2018) concluded that mere speech, "unaccompanied by any effectuating conduct" is unlikely to provoke and "imminent and violent. Id., pp. 397-398. The In *Parnoff*, the defendant, a lawyer, was on his own property when he confronted water company employees inspecting a water hydrant on an easement running through his land. Suspecting that the water company employees had trespassed on his property, Mr. Parnoff told the men, after angrily confronting them, saying either that "if [they] didn't get off his property, he was going to get a gun or something like that ... [t]o shoot them" or "if you go into my shed [located nearby], I'm going to go into my house, get my gun and [fucking] kill you." Id., p. 391. Neither version of his outburst was sufficient to support a "fighting words" prosecution, which the theory the State pursued in this disorderly conduct prosecution.[6] The Court

[6] The disorderly conduct statute reads, in pertinent part, as follows: "(a) A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous

held that the words, though ugly and uncivil, lacked a "serious expression of intent to harm." Id., p. 398. As the Court noted *State v. Baccala*, 236 Conn. 232, 238 (2017), cert. denied, 138 S.Ct. 510 (2017): "there are no per se fighting words."

The *Parnoff* decision had not been published when the trial court denied the motion to dismiss in the instant case. It is difficult to see how a trial court could avoid dismissal if it were armed with the holding in *Parnoff*.[7]

Speech, even menacing speech, is protected unless it directly tends to violence. Thus, "the mere abstract teaching of Communist theory, including the teaching of the moral propriety or even the moral necessity of a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." *Noto v. United States*, 367 U.S. 290 (1961)(overturning a Smith Act

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or threatening behavior;...." Connecticut General Statutes Section 53a-182(a)(1).

[7] Then Justice Robinson dissented. *Parnoff*, 329 Conn. at 427. As Chief Justice, he wrote for a unanimous Court later in 2018 upholding the conviction Edward Taupier in a "true threats" case, suggesting that it is easier for the state to prove that speech is a "true threat" than it is to prove that speech constitutes "fighting words." *State v. Taupier*, 330 Conn. 149 (2018). As the appellant argues below, the speech at issue in the instant case fails even to meet the requirements of the "true threat" doctrine.

prosecution against a Communist Party member). To be an imminent threat, "[t]here must be some substantial or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive to lend color to otherwise ambiguous theoretical material ..." Id., pp. 297-98.

An expression of a desire to see another person dead, even to wish in some hypothetical future to be the executioner of a foe, is not enough to transform an abstract hope into an imminent threat. "Sometime I will see the time we can stand a person like this S.O.B. against the wall ... and shoot him," the defendant said in *Noto.* Id., 296. The Supreme Court was unmoved: "Surely the offhand remarks that certain individuals hostile to the Party would one day be shot cannot demonstrate more than the venomous or spiteful attitude of the Party toward its enemies, and might be expected from the Party if it should ever succeed to power." Id., 298. "It is present advocacy, and not an intent to advocate in the future or a conspiracy to advocate in the future once groundwork has been laid, which is an element of the crime...." Id, 298.

"Political hyperbole" is distinguishable from a true or imminent threat. Thus, a speaker convicted of violating a federal law against

threatening to take the life of the president had his conviction vacated when the Supreme Court concluded the following utterance was protected speech when uttered by a draft resister: "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." *Watts v. United States*, 394 U.S. 705 (1969).

A menacing utterance spoken directly to another person is also protected. The Supreme Court considered both the context in which an utterance was made and the emotionally charged nature of the speech itself in concluding that the following was protected speech: An NAACP organizer told a group of African-Americans attending a rally in support of the boycott of white-owned business: "If we catch any of you going in any of those racist stores, we're gonna break your damn neck." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 902 (1982). "[M]ere advocacy of the use of force or violence does not remove speech from the protection of the First Amendment." Id. 927.

> In the passionate atmosphere in which the speeches were delivered, they might have been understood as inviting an unlawful form of discipline or, at least, intending to create a fear of violence whether or not improper discipline was specifically intended.... The emotionally charged rhetoric of ... [the language] did not transcend the bounds of protected speech...

Id., 927-928.

Finally, in *Hess v. Indiana*, 414 U.S. 105 (1973) the Court overturned the conviction of a Vietnam antiwar protestor who uttered to a crowd of activists who had just been removed from a public street by local law enforcement agents: "[W]e'll take the fucking street later (or again)." The Court determined this utterance was, "at worst, ... nothing more than advocacy of illegal action at some indefinite future time." Id., 108.

Each and every one of the comments from the warrant in the instant case, taken either individually, or as a whole, fits easily within the framework of protected speech adumbrated by *Brandenburg* and its progeny: they are either political hyperbole, as in *Watts*; mere advocacy of the use of force, as in *Noto* and *Claiborne Hardware Co.*; advocacy of illegal action at some future time, as in *Noto*; or a wish in some hypothetical future to see others dead or see courthouses burn, as in *Noto*. None of the utterances, taken individually, or as a whole, was made in a context supporting *any*, let alone "some substantial or circumstantial evidence of a call to violence now or in the future which is sufficiently strong and sufficiently persuasive" to rise to the level of inciting violence. *Noto*, 298.

First and foremost, the comments were posted on Facebook, and were not directed toward anyone in particular. There is no indication that the messages were sent to confederates bent on mayhem. The comments do not come close to the declaration that protestors would "take the streets" after police had cleared them, a declaration made to fellow protestors who had just been moved by police, by a man facing a crowd of fellow protestors. The Court held the protestor's comments, in this context, did not constitute incitement. "[A]t worst, ... [the comments] were nothing more than advocacy of illegal action at some indefinite future time." *Hess*, 414 U.S. at 108. Facebook, a new social media public forum, lacks the immediacy of face-to-face communication. A call to arms on Facebook is neither an imminent threat nor a reasonable likely threat of danger, absent other circumstances altogether lacking in this case.

While the defendant concedes that a fellow travel (Jennifer Mariano) – another person disaffected with the judicial system – did reply to at least one of his messages and appeared to draw some perverse form of encouragement from it, it cannot be said that their exchange represents anything like a conspiracy or agreement to join

in unlawful conduct. The exchange represents two cranks cackling at the digital water cooler.

Consider the comments and their analogues in the reported cases. (The defendant does not see the need to argue that reference to the governor as a "fucktard" is lawful; the presence of the remark in the warrant gives new meaning to the term "surplusage." Neither does the defendant see the need to address the warrant's reference to the defendant's hostility toward the judge presiding over, and the prosecutor handling, his case. Presumably the town in which the judge lives is a matter of public record.)

1. "Police don't need warrants, they will need body bags next time."

This is far removed from civil discourse in support of the "castle doctrine," supporting the ancient Anglo-American doctrine that a man's home is his castle. But merely being impolitic does not make the utterance criminal. Is this not the equivalent of the "teaching of the moral propriety or even the moral necessity of a resort to force and violence," the sort of speech found protected in *Noto* because it did not "prepar[e] a group for violent action and steel[] it so such action"? *Noto*, 367 U.S. 297.

2 **"[W]e need to start killing with love those that violate the civil rights of society that are judges who happen to practice the Jewish faith."**

Even if this not an inartful way of referring to "killing with kindness," it is far from incitement. It is indistinguishable from the words found protected in *Noto*: "Sometime I will see the time we can stand a person like this S.O.B. against a wall ... and shoot him." Id., 296.

3. **"Kill court employees and save the country.... Stop driving the SUV and save a planet ... this is what a liberal would say..."**

A court employee reading this would no doubt feel apprehensive. But would they feel any more apprehensive than a capitalist or industrialist listening to the protected teaching of a member of the Communist Party last century? The call to class war, and the teaching of the need for violent revolution is protected speech. Again, *Noto* is instructive: "surely the offhand remarks that certain individuals hostile to the Party would one day be shot cannot demonstrate more than the venomous or spiteful attitude of the Party toward its enemies,..." Id., 298. This is not present advocacy.

4. **"Judge Bozzuto for liberty tree challenge... "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.... Nominate Judge Bozzuto to Liberty Tree Challenge."**

Again, there is no doubt these words are highly disturbing to Judge Bozzuto. But it bears noting she is a public figure who chose to don a robe and preside over the disputes of others as a jurist, a certain level of transactional angst it to be expected among the professionals in our often contentious and adversarial system. Jefferson expected violent opposition to constituted authority from time to time, and thought it a necessary tonic. Mr. Taupier's speech is simply "the teaching of the moral propriety or even the moral necessity of a resort to force and violence." *Noto.*

5. **"...[I'm] on $1.3 million bond for disturbing the peace...kill everyone of these judges."**

This is no doubt ugly, and in the imperative voice. It does differ in degree from the comments of a NAACP organizer who threatened to "break ... [the] damn neck" of anyone who crossed a picket line. The *Claiborne* Court noted in ruling this speech protected that "mere advocacy of the use of force does not remove speech from the protection of the First Amendment." The solitary ranting of a disaffected litigant on Facebook is not the sort of "passionate

atmosphere" in which speech "create[s] a fear of violence." Atmospherics matter. Facebook represents the collective Id; if it is a public square, it is nonetheless a square composed of solitary individuals. Nothing in Mr. Taupier's speech created an imminent risk that anyone would actually heed his words and act. *Clairborne Hardware Co.*, 927-928.

6. "The family courts in CT are run by Beth Bozzuto, the mother destroying families across the state! Time to burn down the courts."

The defendant sounds like a simple-minded pamphleteer in this instance, writing the divorced dads' version of The Communist Manifesto. But rather than asking workers of the world to unite so as to throw off the chains of industrial bondage by means of violent revolution, the defendant wants a different form of violence – burning down the courts. "It's time," he says. This simple declaration is imminent only in form.

As a matter of law, "[t]here must be some substantial or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive..." *Noto*, 298. This call to arms, if it can be so characterized, is not a call for future action, the time is now, the defendant writes. But what supports the

conclusion that this call is "sufficiently and sufficiently pervasive" to transform it from political hyperbole into a crime? Nothing distinguishes this utterance from garden variety social media vitriol.

In sum, the comments were not directed at producing *imminent* lawless action. There is no doubt the comments at issue were directed at lawlessness: clearly, killing anyone—including judges—is illegal. But there is no evidence that the murder of judges, court staff, or arson of courthouses was imminent as a result of this speech. The defendant had every right to advocate those actions in support of his political cause. There is no evidence in the warrant that a mob was forming to act on this invocation. Nor was there evidence that a bona fide conspiracy was forming.

Second, the comments at issue were not likely to produce any of the violent acts contemplated. It is not hyperbolic to suggest that the Internet is an ocean of human bitterness and represents our collective id. There is little evidence to suggest that *public* Facebook posts are effective exhortations to violence. These comments were little more than all-caps whispers in the winds of grievance and not likely to produce any meaningful real-world action. There is a widespread public debate on whether social media is an effective or

meaningful form of political mobilization. *See* L. Seay, "*Does Slacktivism Work?*" Washington Post, March 12, 2014, available at https://www.washingtonpost.com/news/monkey-cage/wp/2014/03/12/does-slacktivism-work/?utm_term=.3c99bdd2782f. There is some evidence that it does work in the form of inflammatory but truthful viral videos, cultivated messaging, and calculated presentation of issues of mass appeal. But it is difficult to think the barely coherent ramblings of irate individuals will coalesce into a wave of political violence. These are the type of hyperbolic ramblings that are frequently seen and quickly dismissed by the internet's marketplace of ideas. They are not likely to lead to violence under the second prong of *Brandenburg*.

D. The Defendant's Alleged Statements Do Not Constitute "True Threats" As Defined By *Virginia v. Black*, 538 U.S. 343 (2003).

The true threat doctrine is close cousin of the *Brandenburg* test. The Supreme Court most recently addressed this in *Virginia v. Black*:

> '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. Rather, a prohibition on true threats 'protects 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.'

> 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.

Id. 360-59. (Internal cites omitted). *Black* turned on a Virginia cross-burning statute: the statute outlawed cross burning with the intent to intimidate and stated that the burning of a cross was *prima facie* evidence of an intent to intimidate. *Id.* 348. It relied on two fact patterns, consolidated into one appeal: in the first, a leader of the Klu Klux Klan burned a cross at a Klan rally; in the second, a man burned a cross in his black neighbors' yard in retaliation for those neighbors complaining about his use of his backyard as a firing range. The Supreme Court held that there was no doubt that a state could lawfully proscribe cross burning *with the intent to intimidate a person*—hence burning a cross in a black neighbor's yard was illegal. *Id.* 362-63 (majority)(emphasis added). However, a plurality of the Court held that the *prima facie* evidence provision of the statute was unconstitutional because cross burning in the context of a political rally could constitute protected expression. *Id.* 363-68. The question of intent was critical to the *Black* court's analysis.

Connecticut's most recent consideration of the true threat doctrine was *State v. Taupier*, 330 Conn. 149 (2018), the Supreme

Court drew a distinction between reckless and intentional threats, only then to try to erase that distinction by declaring that recklessness and intent amount to the same thing when a declarant is aware of a consciouslly disregards a threat. *Taupier*. The Court noted a split in the federal Circuits and among state courts on whether recklenssess or intent was required to support a "true threat" prosecution, Connecticut held recklessness was sufficient.[8] The appellant

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[8] The federal Circuits are split on whether a true threat requires subjective intention to threaten the victim, a fact that has not gone unnoticed among scholars. Jennifer E. Rothman, *Freedom of Speech and True Threats*, 25 Harv. J.L. & Pub. Pol'y 283, 302 (2001) (noting that the "Supreme Court's minimal guidance has left each circuit to fashion its own test," and courts have applied either a subjective or objective intent standard); Jing Xun Quek, *Elonis v. United States: The Next Twelve Years*, 31 Berkeley Tech. L.J. 1109 (2016)(noting a "sharp divide" among lower courts considering the mens rea requirement in true threats prosecutions); Georgette Geha, *Think Twice Before Posting Online: Criminalizing Threats Under 18 U.S.C. § 875(c) After Elonis*, 50 J. Marshall L. Rev. 167 (2016)(urging adoption of a specific intent standard).

The Ninth Circuit has concluded such a subjective intent is required to prove that an utterance is a "true threat." *United States v. Cassel*, 408 F.3d 622, 631 (9th Cir. 2005)(under *Black*, "true threats" require "not only ... that the communication be intentional, but also the requirement that the speaker intend for his language to threaten the victim"). See also, *United States v. Twine*, 853 F.2d 676,681 (9th Cir. 1988). The Seventh and Tenth Circuits have signaled in dicta a similar requirement of subjective intent to threaten the victim. *United States v. Parr*, 545 F.3d 491, 500 (7th Cir. 2008)(the objective test "no longer tenable" after *Black)*, cert. denied, 556 U.S.1181 (2009);

disagrees and sides with the Circuits holding that intent is required. He filed a petition for a writ of certiorari in the United States Supreme Court on December 10, 2018, to seek review of the Connecticut ruling. The appellant here argues that Mr. Taupier's speech in the instant case meets neither an intent nor a recklessness standard.

In *State v. Krijger*, 313 Conn. 343 (2013). There, the state Supreme Court held that:

> Prosecution under a statute prohibiting threatening statements is constitutionally permissible 'as long as the threat on its face and in the circumstances in which it is made is so unequivocal,

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United States v. Bagdasarian, 652 F.3d 1113, 117-18(9th Cir. 2011)(*Black* requires specific intent); *United States v. Magleby*, 420 F.3d 1136, 1139(10th Cir. 2005)(subjective test supported by *Black*, but issue not reached on procedural grounds), cert. denied, 547 U.S. 1097; *United States v. Heineman*, 767 F.3d 970, 980 (10th Cir.)(speech unprotected if the speaker intended to instill fear in the recipient).[8]

Five Circuits, the Eleventh, Eighth, Sixth, Fourth, and Third Circuits, have concluded an objective standard is sufficient. *United States v. Martinez*, 736 F.3d 981, 986 (11th Cir. 2013), vacated on other grounds, 135 S.Ct. 2798 (2015); *United States v. Mabie*, 663 F.3d 322, 332 (8th Cir. 2011); 508-509 *United States v. Niklas*, 713 F.3d 435, 440 (8th Cir. 2013); *United States v. Jeffries*, 692 F.3d 473, 479-81 (6th Cir. 2013), cert. denied, 571 U.S. 817 (2013); *United States v. White*, 670 F.3d 498, 508 (4th Cir. 2012); and, *United States v. Elonis*, 730 F.3d 321, 329-30 (3d Cir. 2013), rev'd on other grounds, 135 S.Ct. 2001(2015).

The state of Indiana also requires subjective intent to intimidate under the true threats doctrine. *Brewington v. State*, 7 N.E.3d 946, 964 (Ind. 2014).

> unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution.

Krijger, supra, 313 Conn. at 450 quoting *United States v. Malik*, 16 F.3d 45, 51 (2d. Cir.) cert. denied, 513 U.S. 968, 115 S.Ct. 435, 130 L.Ed.2d 347 (1994). It is unclear as of this writing whether the Supreme Court's adoption of an objective standard for gauging "true threats" undermines the Court's holding in *State v. Pelella*, 327 Conn. 1, 10 (2017)("True threats encompass those statements [in 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.") It is difficult, if not impossible, to meld the "objective" standard embraced by the Court in *Taupier*, with the subjective standard announced in *Pelella*.[9]

The United States Supreme Court recently opined on the question of intent in *Elonis v. United States*, _ U.S. _, 135 S.Ct. 2001 (2015). It did not, however, reach the First Amendment question. *Id.* 2013. In interpreting 18 U.S.C. §875(c)—"mak[ing] it a crime to transmit in interstate commerce 'any communication containing any

[9] Indeed, one of the reasons Mr. Taupier states in his petition for a writ of certiorari to the United States Supreme Court is that Connecticut attempt to meld subjective and objective standards in its "true threats" jurisprudence renders the law a hopeless muddle.

threat....to injure the person of another"—the court held that the negligence standard, used by the Third Circuit, was insufficient. The reason was that "[f]ederal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state. That understanding 'took deep and early root in American soil' and Congress left it intact here:..." *Elonis*, 135 S.Ct. at 2012. The Court did not address what mental state should be required under the statute or the First Amendment. *Id.* 2013; see also *id.* 2013-2028, *Alito J.*, dissenting in part, *Thomas, J.*, dissenting in part. Specific intent should be required as an element of the offense of threatening, to hold otherwise is to yield to the tender-hearted and faint the ability to criminalize vigorous speech merely because it makes them uncomfortable.

Posting generalized menacing comments on Facebook is not a true threat.

This case poses a novel question of law to both *Brandenburg* and true-threat jurisprudence: can speech that is lawful advocacy of political violence under *Brandenburg* be, nonetheless, unlawful as a true threat on the grounds that it makes potential subjects of abstract violence feel, actually, uncomfortable? The answer to this must,

categorically, be "no." This would undermine the protections so carefully drawn in each line of cases.

The line distinguishing a true threat from protected speech requires, among other things, an evaluation of a speaker's intent. "'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." *Virginia v. Black*, 538 U.S. 343, 359 (2003). "Intimidation in the constitutionally proscribable sense of the word is a 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." *Id.,* at 360. Thus, in *Black*, cross-burning with the intent to intimidate a person is prohibited, while cross-burning as a matter of expressive speech is not. "The act of burning a cross may mean that a person is engaged in constitutionally proscribable intimidation. But that same act may mean only that the person is engaged in core political speech." *Id.*, at 365. Mere hyperbole is not prohibited, *Watts v. United States*, 394 U.S. 705, 708 (1969)(hyperbole not necessarily a "true threat"); neither is mere abstract advocacy of the use of force of violence proscribed, *Brandenburg v. Ohio*, 395 U.S. 444,

447(1969)(advocacy of the use of force of violence proscribed when imminent and likely to cause harm).

Mr. Taupier's speech can discomfit without threatening.

E. State Constitutional Considerations.

It is well settled that the federal constitution sets a floor, rather than a ceiling, on fundamental constitutional rights. *See e.g. Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 155 (2008)("[I]t is beyond debate that federal constitutional and statutory law establishes a *minimum* national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights"). In the event the Court concludes that the First Amendment does not encompass the defendant's comments, Article First, § 4, 5, and 14[10] of the state constitution do.[11]

In *State v. Geisler*, 222 Conn. 672, 685, 610 A.2d 1225 (1992), the state Supreme Court identified six factors that, "to the extent applicable are to be considered in construing the contours of our state constitution." *Kerrigan*, supra, 289 Conn. at 157.

[10] The state Supreme Court referred to these provisions collectively as protecting free expression in *Leydon v. Greenwich*, 257 Conn. 318, 347 (2001).

> Theses factors are: (1) the text of the operative constitutional provision; (2) holdings and dicta of [the state Supreme Court] and the Appellate Court; (3) persuasive and relevant federal precedent; (4) persuasive sister state decisions; (5) the history of the operative constitutional provision, including the historical constitutional setting and the debates of the framers; and (6) contemporary economic and sociological considerations including relevant public policies.

Id. The defendant addresses each of these factors *seriatim*.

The text of the operative provisions marginally supports the defendant's position—particularly in the digital age. The Supreme Court noted the textual distinctions in *State v. Linares*, 232 Conn. 345, 380-81 (1995). Specifically, §14 includes a right of remonstrance in addition to a right of petition: the missive in this case fits a liberal definition of "remonstrance."

The holdings and dicta of the state's appellate courts support the defendant. The Supreme Court "explicitly...stated that the Connecticut constitution, under article first, §§ 4, 5 and 14, provides greater protection for expressive activity than that provided by the first amendment to the federal constitution." *Leydon v. Town of Greenwich*, 257 Conn. 318, 347 (2001) citing *Linares*, supra, 232 Conn. at 380-81. While *Leydon* was a public forum case, the court specifically used the phrase "expressive activity" not "expanded public forums." The email at issue here was expressive activity and,

therefore, falls within *Leydon's* ambit. While the *Krijger* noted that that it traditionally applied an objective test, that tradition is neither binding nor articulated as holding or dicta of this court. *See* 313 Conn. 451 n.10.

Persuasive, relevant federal precedent is split. The Second Circuit observed that the Federal Courts of Appeals are divided on this issue in *United States v. Turner*, 720 F.3d 411, 420 n.4 (2013)(noting divide but that the relevant statute in that case imposed a subjective intent element, the issue was not briefed, and subjective intent was clear from evidence). The Ninth Circuit, after analyzing the *Black* plurality and concurrences, concluded "eight Justices agreed that intent to intimidate is necessary and that the government must prove it in order to secure a conviction." *United States v. Cassel*, 408 F.3d 622, 632 (2005). It was "therefore bound to conclude that speech may be deemed unprotected by the First Amendment as a 'true threat' only upon proof that the speaker subjectively intended the speech as a threat." *Id.* 633. The Sixth Circuit claimed that *Cassel* "read too much into *Black*." *United States v. Jeffries*, 693 F.3d 473, 479 (2012). The Fourth Circuit agreed with this approach in *United State v. White*, 670 F.3d 498, 508-09 (4th Cir. 2009) when it

interpreted 18 U.S.C. § 875(c)—the *Elonis* statute. But *Elonis* has since been decided and the Ninth Circuit's subjective—if not specific—intent standard is ascendant and the Ninth Circuit was prescient.[12]

Sister state precedent is sparse and unremarkable. A Washington Court of Appeals recently reversed a stalking conviction based on off-colored Tweets on the grounds that the Tweets did not even meet the negligence standard: though that defendant raised the specific intent issue, the court did not reach it. *State v. Kohonen*, 192 Wn.App. 567, 583 n.9 (2016). The Colorado Court of Appeals, Fifth Division rejected the contention that, following *Black*, the First Amendment required a subjective intent requirement. *State v. Stanley*, 170 P.3d 782, 789 (2007). It preceded *Elonis* and neglected the state constitution.

The history and policy considerations require few remarks. The bulk of the sections' history concerns issues of libel, slander, commercial speech, and assembly. *See W. Horton*, "*The*

[12] The Connecticut Supreme Court compiled these cases in their entirety in *Krijger*, 313 Conn. at 451 n.10. Notably, the majority of circuits that still continued to the apply the objective standard following *Black* included the Third Circuit in *Elonis* lending further support to the defendant's contention that this issue is decided on the quality, rather than quantity, of precedent.

Connecticut State Constitution: A Reference Guide," 44-48, 72-73 (1st Ed., 1993). Contemporary concerns include the increasingly acrimonious nature of our—perhaps oxymoronic—civil discourse and its symbiotic relationship with the digital age. Incendiary speech, however, may be pernicious to policy but remains a perquisite of liberty. *But see Baccala*, supra, 326 Conn. at 276-78, *Eveleigh, J.*, dissenting.

The text of §14, the *Leydon* holding, *Elonis*—in the form of a relevant federal precedent, and the Ninth Circuit rationale suggest a state constitutional requirement of specific intent under the true threat doctrine.

CONCLUSION

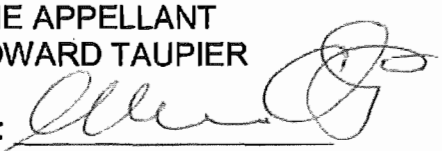
The First Amendment and its corresponding state constitutional provisions protect the market place of ideas. *See e.g. Carl v. Children's Hospital*, 702 A.2d 159, 183 (D.C. Court of Appeals, 1998)("It is the purpose of the First Amendment to preserve an uninhibited market-place of ideas in which truth will ultimately prevail . . . ."). Not all of those ideas are polite, and the law does not require civility. Speech can disturb; it can disrupt settled expectations. It is supposed to do so.

Mr. Taupier wins no award for civility with the speech at issue here. But his conviction cannot stand if the First Amendment is to retain its vigor.

Mr. Taupier requests that this Court vacate the judgment of conviction and dismiss the action as there is insufficient evidence to support a conviction under either a "true threats" or a "fighting words" theory of proscribed speech.

Respectfully Submitted,

THE APPELLANT
EDWARD TAUPIER

By: 
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CERTIFICATION OF SERVICE AND COMPLIANCE

The undersigned hereby certifies the following:

That 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, pursuant to PB § 67-2(g)(1); and

That the electronically submitted brief an appendix has been redacted or does not contain any names or personal identifying information that is prohibited from disclosure by rule, statute, court order or case law, pursuant to PB § 67-2(g)(2).

That 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, pursuant to PB § 67-2(i)(1);

That the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically, pursuant to PB § 67-2(i)(2);

That the 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, pursuant to PB § 67-2(i)(3); and

That the brief complies with all provisions of this rule, PB § 67-2.

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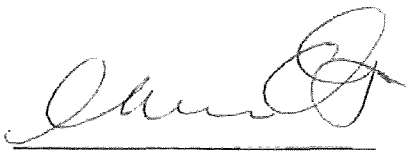

NORMAN A. PATTIS

APPENDIX E

Motion To Dismiss By Defendant Edward Taupier In *State v. Taupier*, K10K-CR-17-0338626-S (Sept. 6, 2017).

K10K-CR17-0338626-S	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	
v.	:	
EDWARD TAUPIER	:	September 6, 2017

DEFENDANT'S MOTION TO DISMISS

The defendant in the above-captioned matter moves, pursuant to Practice Book Sections 41-8(5), (8) and (9) to dismiss the charges against him. He contends the instant prosecution can be, and must be, resolved without trial as the warrant plainly, and on its face, criminalizes speech in violation of the First and Fourth Amendments to the United States Constitution and Article First, §§ 7 of the Constitution of the State of Connecticut, to the dismiss the charges against him. In sum, the defendant has been charged with crimes arising from his utterance of protected speech on social media, to wit: Facebook. His comments are neither illegal advocacy of imminent lawless action pursuant to *Brandenburg v. Ohio*, 395 U.S. 444 (1969) nor true threats pursuant to *Virginia v. Black*, 538 U.S. 343 (2003).

I. FACTUAL BASIS

The warrant at issue charged five counts of Inciting Injury arising under Connecticut General Statutes Section 53a-179a and five counts of threatening in the second degree arising under Section 53a-62. All the charges are apparently related to the defendant's vocal, and, candidly shocking, public disaffection with the administration of justice in our courts. Under any conceivable reading of the allegations recited in the warrant, the defendant engaged in protected speech. The prosecution is unsustainable

as a matter of law and is deeply offensive to the core values protected by the guarantees of freedom of expression at both the state and federal levels.

The defendant sets forth only facts alleged in the warrant. *See e.g. State v. Colon*, 230 Conn. 24, 34 (1994)("the information to establish probable cause must be found within the [warrant] affidavit's four corners"). He primarily catalogues the arguably inciting and threatening statements. The comments, set forth in as near chronological order as the warrant permits, are recited in the tabular form. All were published on Facebook. For purposes of this motion only, the defendant concedes that he both wrote them and caused them to be published. To place the matter in context, it bears noting that the defendant is engaged in highly contentious family litigation in the Middletown Superior Court. He has also been tried, and convicted, of making threatening statements about a Superior Court judge presiding over early stages of the family litigation. That conviction is on appeal and is awaiting argument before the state Supreme Court. *State v. Taupier*, S.C. 19950.

Post Date/Time	Comment
January 6, 2017	"856 days political prisoner by Dan Fucktard Malloy-with judge Gold and Brenda Hans." *Warrant*, ¶14.
January 8, 2017	"CROMWELL POLICE DUPED BY MENTALLY ILL EX TO THINK CHILDREN ARE ENDANGERED..THEY SAY THEY DON'T NEED WARRANTS TO COME IN HOME....POLICE DON'T NEED WARRANTS, THEY WILL NEED BODY BAGS NEXT TIME" *Warrant,* ¶4. Posted with or contemporaneous to pictures of children and family dog. *Warrant*, ¶16.
January 9, 2017	"I JUST GOT NOTICE OF CONTEMPT FROM THE STATE WEBSITE WITHOUT GETTING OFFICIAL SERVICE, I GUESS THE JEWS THAT RUN THE MIDDLETOWN CLERKS OFFICE (JOE BLACK – JONATHON FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING..THIS IS WHY WE NEED TO START KILLING WITH LOVE THOSE THAT

Time not clear	VIOLATE THE CIVIL RIGHTS OF SOCIETY THAT ARE JUDGES WHO HAPPEN TO PRACTICE THE JEWISH FAITH." *Warrant*, ¶4. A response from a Jennifer Mariano stated "I had someone else in mind, but we can start with the judges." *Warrant*, ¶5. A response from Adrienne Baumgartner saying "for that comment, ed, you no doubt could get arrested & also used against you in custody case." Followed by, "you really should either edit or delete that." Mr. Taupier allegedly responded with "meme" set forth below and "Free Speech." *Warrant*, ¶17.
January 9, 2017	"KILL COURT EMPLOYEES AND SAVE THE COUNTRY....Stop driving the SUV and save a planet...this is what a liberal would say..." *Warrant*, ¶4.
Date not included	"Meme"stating: -"JUDGE BOZZUTO FOR LIBERTY TREE CHALLENGE" -"The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.-Thomas Jefferson" -"Nominate Judge Bozzuto to Liberty Tree Refreshment Challenge. Spill some blood, save a tree!" *Warrant*, ¶4.
January 11, 2017	"I was given 5 yrs for disturbing peace hmm no judicial retialiation in CT with Judges...btw Devlin said he felt sorry for the cop...and wanted to make it right despite the girl and her family wanting the maximum...im on $1.3m bond for disturbing the peace...kill everyone of these judges."
January 12, 2017	"we the public have no trust in the CT judiciary...time to burn the courts down!" *Warrant*, ¶19.
January 13, 2017	"News flash I am incarcerated-house arrest for 860+days, like DT-Rip" Followed by "for disturbing peace on 1.3 million dollar bond." Then "Judge David p Gold lives in Middlefield, CT if you want to ask him why at his house." *Warrant*, ¶20.
January 14, 2017	"CT courts destroy this every sec of every day!>The family courts in CT are run by Beth Bozzuto, the mother destroying families across the state! Time to burn down the courts." *Warrant*, ¶21.

II. LAW AND ARGUMENT

The defendant made legal, political statements in a quintessential public forum. Each of his comments is protected under the imminent lawless action test and the true threat doctrine. None of the statements rise beyond abstract advocacy of lawlessness, a form of speech the United States Supreme Court has unequivocably declared to be protected speech. *Brandenburg v. Ohio*, 395 U.S. 444 (1969.

A. Facebook Is A Quintessential Public Forum.

The defendant's comments were made in a public forum: they deserve the full protections of the First Amendment and corresponding provisions of the state constitution. The state Supreme Court observed last summer that:

> The prevalence of Facebook use in American society cannot be reasonably questioned. Indeed, a 2015 survey performed by the Pew Research Center reveals that 72 percent of American adults that use the Internet also use Facebook. Pew Research Center, "The Demographics of Social Media Users," (2015) available at http://www.pewinternet.org/2015/08/19/the-demographics-of-social-media-users (last visited May 25, 2016); see also *Vincent v. Story County*, United States District Court, Docket No. 4:12CV00157 (RAW), 2014 U.S. Dist. LEXIS 184287 (S.D. Iowa January 14, 2014) ("[t]he use of . . . social media like Facebook is an ever [***23] increasing way people speak to each other in the twenty-first century"); *State v. Craig*, 167 N.H. 361, 369, 112 A.3d 559 (2015) ("Facebook and other social media sites are becoming the dominant mode of communicating directly with others, exceeding e-mail usage in 2009"); *Forman v. Henkin*, 134 App. Div. 3d 529, 543, 22 N.Y.S.3d 178 (2015) ("Facebook and other similar social networking sites are so popular that it will soon be uncommon to find a . . . [person] who does not maintain such an on-line presence"). Nor were they "technically complex issue[s]" requiring expert testimony. *River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 78, 848 A.2d 395 (2004); see also *Graziosi v. Greenville*, 985 F. Supp. 2d 808, 810 (N.D. Miss. 2013) ("Facebook claims to enable 'fast, easy, and rich communication'"), aff'd, 775 F.3d 731 (5th Cir. 2015); *United States v. Amaya*, 949 F. Supp. 2d 895, 912 (N.D. Iowa 2013) ("Facebook offers . . . an affordable, easy, and extremely viable option to

seek information"); *Olson v. LaBrie*, Docket No. A11-558, 2012 Minn. App. Unpub. LEXIS 126, 2012 WL 426585, *1 (Minn. App. February 13, 2012) (process for finding users on Facebook "simple"), review denied (Minn. April 17, 2012); *Smith v. State*, 136 So. 3d 424, 432 (Miss. 2014) (creating Facebook account "easy").

State v. Buhl, 321 Conn. 688, 700-02 (2016)(holding that expert witness on basic Facebook concepts was not necessary). More importantly, the United States Supreme recently noted that, in the digital age, Facebook and other social media platform are—essentially—the public square for First Amendment purposes:

> A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. The Court has sought to protect the right to speak in this spatial context. A basic rule, for example, is that a street or a park is a quintessential forum for the exercise of First Amendment rights. See *Ward* v. *Rock Against Racism*, 491 U. S. 781, 796, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). Even in the modern era, these places are still essential venues for public gatherings to celebrate some views, to protest others, or simply to learn and inquire.
>
> While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the "vast democratic forums of the Internet" in general, *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 868, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997), and social media in particular. Seven in ten American adults use at least one Internet social networking service. Brief for Electronic Frontier Foundation et al. as *Amici Curiae* 5-6. One of the most popular of these sites is Facebook, the site used by petitioner leading to his conviction in this case. According to sources cited to the Court in this case, Facebook has 1.79 billion active users. *Id.,* at 6. This is about three times the population of North America.
>
> Social media offers "relatively unlimited, low-cost capacity for communication of all kinds." *Reno*, *supra,* at 870, 117 S. Ct. 2329, 138 L. Ed. 2d 874. On Facebook, for example, users can debate religion and politics with their friends and neighbors or share vacation photos. On LinkedIn, users can look for work, advertise for employees, or review tips on entrepreneurship. And on Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. See Brief for Electronic Frontier Foundation 15-16. In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics "as

> diverse as human thought." *Reno*, *supra*, at 870, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (internal quotation marks omitted).

Packingham v. North Carolina, _ U.S. _, 2017 LEXIS 3871, 10 (2017). There can be no doubt that the defendant was acting as cyber town-crier for purpose of his constitutional rights.

B. The Defendant's Comments Do Not Constitute Incitement Under *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

The incitement counts are governed by the test set forth in *Brandenburg v. Ohio*, supra, 395 U.S. 444 (The "*Brandenburg* test"): "[T]he constitutional guarantees of free press and free speech 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." *Brandenburg v. Ohio*, 395 U.S. at 447. In subsequent cases, the courts have shed additional light on the "imminence" and "likely to incite" requirements.

> In the seminal case of *Brandenburg*...the Supreme Court held that abstract advocacy of lawlessness is protected speech under the First Amendment. Although the Court provided little explanation for this holding in its brief *per curiam* opinion, it is evident that Court recognized from our own history that such a right to advocate lawlessness is, almost paradoxically, one of the ultimate safeguards of liberty. Even in a society of laws, one of the most indispensable freedoms is that to express in the most impassioned terms the most passionate disagreement with the laws themselves, the institutions of, and created by, law, and the individual officials with whom the laws and institutions are entrusted. Without the freedom to criticize that which constrains, there is no freedom at all.

Rice v. Paladin Enter., 128 F.3d 233, 243 (4th Cir., 1997). Accordingly, the *Brandenburg* court held that speech that "'advocates [a] law violation [is protected by the first amendment] except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.'" *State v. Ryan*, 48 Conn.App. 148, 159 (1998) citing *Brandenburg*, supra, 395 U.S. at 447. Put more

simply, the comments at issue must (1) be directed to inciting or producing imminent lawless action and (2) likely to incite or produce the action advocated. The comments in the warrant fail on both counts.

Speech, even menacing speech, is protected unless it directly tends to violence. Thus, "the mere abstract teaching of Communist theory, including the teaching of the moral propriety or even the moral necessity of a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." *Noto v. United States*, 367 U.S. 290 (1961)(overturning a Smith Act prosecution against a Communist Party member). To be an imminent threat, "[t]here must be some substantial or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive to lend color to otherwise ambiguous theoretical material ..." Id., pp. 297-98.

Even expression of a desire to see another person dead, even to wish in some hypothetical future to be the executioner of a foe, is not enough to transform an abstract hope into an imminent threat. "Sometime I will see the time we can stand a person like this S.O.B. against the wall ... and shoot him," the defendant said in *Noto*. Id., 296. The Supreme Court was unmoved: "Surely the offhand remarks that certain individuals hostile to the Party would one day be shot cannot demonstrate more than the venomous or spiteful attitude of the Party toward its enemies, and might be expected from the Party if it should ever succeed to power." Id., 298. "It is present advocacy, and not an intent to advocate in the future or a conspiracy to advocate in the future once groundwork has been laid, which is an element of the crime...." Id, 298.

"Political hyperbole" is distinguishable from a true or imminent threat. Thus, a speaker convicted of violating a federal law against threatening to take the life of the president had his conviction vacated when the Supreme Court concluded the following utterance was protected speech when uttered by a draft resister: "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." *Watts v. United States*, 394 U.S. 705 (1969).

A menacing utterance spoke directly to another person is also protected. The Court considered both the context in which an utterance was made and the emotionally charged nature of the speech itself in concluding that the following was protected speech: An NAACP organizer told a group of African-Americans attending a rally in support of the boycott of white-owned business: "If we catch any of you going in any of those racist stores, we're gonna break your damn neck." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 902 (1982). "[M]ere advocacy of the use of force or violence does not remove speech from the protection of the First Amendment." Id. 927.

> In the passionate atmosphere in which the speeches were delivered, they might have been understood as inviting an unlawful form of discipline or, at least, intending to create a fear of violence whether or not improper discipline was specifically intended.... The emotionally charged rhetoric of ... [the language] did not transcend the bounds of protected speech...

Id., 927-928.

Finally, in *Hess v. Indiana*, 414 U.S. 105 (1973) the Court overturned the conviction of a Vietnam antiwar protestor who uttered to a crowd of activists who had just been removed from a public street by local law enforcement agents: "[W]e'll take the fucking street later (or again)." The Court determined this utterance was, "at worst, ... nothing more than advocacy of illegal action at some indefinite future time." Id., 108.

Each and every one of the comments from the warrant in the instant case, taken either individually, or as a whole, fits easily within the framework of protected speech adumbrated by *Brandenburg* and its progeny: they are either political hyperbole, as in *Watts*; mere advocacy of the use of force, as in *Noto* and *Claiborne Hardware Co.*; advocacy of illegal action at some future time, as in *Noto*; or a wish in some hypothetical future to see others dead or see courthouses burn, as in *Noto*. None of the utterances, taken individually, or as a whole, was made in a context supporting *any*, let alone "some substantial or circumstantial evidence of a call to violence now or in the future which is sufficiently strong and sufficiently persuasive" to rise to the level of inciting violence. *Noto*, 298.

First and foremost, the comments were posted on Facebook, and were not directed toward anyone in particular. There is no indication that the messages were sent to confederates bent on mayhem. The comments do not come close to the declaration that protestors would "take the streets" after police had cleared them, a declaration made to fellow protestors who had just been moved by police, by a man facing a crowd of fellow protestors. The Court held the protestor's comments, in this context, did not constitute incitement. "[A]t worst, … [the comments] were nothing more than advocacy of illegal action at some indefinite future time." *Hess*, 414 U.S. at 108. Facebook, a new social media public forum, lacks the immediacy of face-to-face communication; it favors the crank, and its commentary, often vitriolic and ugly in the extreme, is made possible largely by the very lack of immediate contact with another. A call to arms on Facebook is neither an imminent nor likely threat of danger, absent other circumstances altogether lacking in this case.

While the defendant concedes that a fellow travel (Jennifer Mariano) – another person disaffected with the judicial system – did reply to at least one of his messages and appeared to draw some perverse form of encouragement from it, it cannot be said that their exchange represents anything like a conspiracy or agreement to join in unlawful conduct. The exchange represents two cranks cackling at the digital water cooler.

Consider the comments and their analogues in the reported cases. (The defendant does not see the need to argue that reference to the governor as a "fucktard" is lawful; the presence of the remark in the warrant gives new meaning to the term "surplusage." Neither does the defendant see the need to address the warrant's reference to the defendant's hostility toward the judge presiding over, and the prosecutor handling, his case. Presumably the town in which the judge lives is a matter of public record.)

1. **"Police don't need warrants, they will need body bags next time."**

This is far removed from civil discourse in support of the "castle doctrine," supporting the ancient Anglo-American doctrine that a man's home is his castle. But merely being impolitic does not make the utterance criminal. Is this not the equivalent of the "teaching of the moral propriety or even the moral necessity of a resort to force and violence," the sort of speech found protected in *Noto* because it did not "prepar[e] a group for violent action and steel[] it so such action"? *Noto*, 367 U.S. 297.

2. **"[W]e need to start killing with love those that violate the civil rights of society that are judges who happen to practice the Jewish faith."**

Even if this not an inartful way of referring to "killing with kindness," it is far from incitement. It is exhortation, to be sure, but of the sort indistinguishable from the words

found protected in *Noto*: "Sometime I will see the time we can stand a person like this S.O.B. against a wall … and shoot him." Id., 296.

3. **"Kill court employees and save the country…. Stop driving the SUV and save a planet … this is what a liberal would say…"**

A court employee reading this would no doubt feel apprehensive. But would they feel any more apprehensive than a capitalist or industrialist listening to the protected teaching of a member of the Communist Party last century? The call to class war, and the teaching of the need for violent revolution is protected speech. Again, *Noto* is instructive: "surely the offhand remarks that certain individuals hostile to the Party would one day be shot cannot demonstrate more than the venomous or spiteful attitude of the Party toward its enemies,…" Id., 298. This is not present advocacy.

4. **"Judge Bozzuto for liberty tree challenge… "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants…. Nominate Judge Bozzuto to Liberty Tree Challenge."**

Again, there is no doubt these words are highly disturbing to Judge Bozzuto. But it bears noting she is a public figure who chose to don a robe and preside over the disputes of others as a jurist. Jefferson expected violent opposition to constituted authority from time to time, and thought it a necessary tonic. This is simply "the teaching of the moral propriety or even the moral necessity of a resort to force and violence." *Noto*. The defendant, like anyone of us, has a right to express that point of view, or are we now prepared to ban Thomas Jefferson's works as too incendiary for our tender sensibilities?

5. **"...[I'm] on $1.3 million bond for disturbing the peace...kill everyone of these judges."**

This is no doubt chilling, and in the imperative voice. It does differ in degree from the comments of a NAACP organizer who threatened to "break ... [the] damn neck" of anyone who crossed a picket line. The *Claiborne* Court noted in ruling this speech protected that "mere advocacy of the use of force does not remove speech from the protection of the First Amendment." The solitary ranting of a disaffected litigant on Facebook is not the sort of "passionate atmosphere" in which speech "create[s] a fear of violence." Atmospherics matter. Facebook represents the collective Id; if it is a public square, it is nonetheless a square composed of solitary individuals. Nothing in Mr. Taupier's speech created an imminent risk that anyone would actually heed his words and act. *Clairborne Hardware Co.*, 927-928.

6. **"The family courts in CT are run by Beth Bozzuto, the mother destroying families across the state! Time to burn down the courts."**

The defendant sounds like a simple-minded pamphleteer in this instance, writing the divorced dads' version of The Communist Manifesto. But rather than asking workers of the world to unite so as to throw off the chains, by means of violent revolution, of industrial bondage, the defendant wants a different form of violence – burning down the courts. "It's time," he says. This simple declaration is imminent only in form.

As a matter of law, "[t]here must be some substantial or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive..." *Noto*, 298. This call to arms, if it can be so characterized, is not a call for future action, the time is now, the defendant writes. But what supports the conclusion

that this call is "sufficiently and sufficiently pervasive" to transform it from political hyperbole into a crime? Nothing distinguishes from garden variety social media vitriol.

In sum, the comments were not directed at producing *imminent* lawless action. There is no doubt the comments at issue were directed at lawlessness: clearly, killing anyone—including judges—is illegal. But there is no evidence that the murder of judges, court staff, or arson of courthouses was imminent as a result of this speech. The defendant had every right to advocate those actions in support of his political cause. There is no evidence in the warrant that a mob was forming to act on this invocation. Nor was there evidence that a bona fide conspiracy was forming. In fact, the defendant's use of Facebook makes the threat of violence *less* imminent: he clearly believed in the power of persuasion insofar as he made these arguments in a public forum, seeking acolytes. These comments would be far closer to imminent lawless action were they made in a less public forum or in a furtive way: that would be closer to imminent lawlessness because it would be creating a mob for the purposes of ambush.

Second, the comments at issue were not likely to produce any of the violent acts contemplated. It is not hyperbolic to suggest that the Internet is an ocean of human bitterness and represents our collective id. There is little evidence to suggest that *public* Facebook posts are effective exhortations to violence. These comments were little more than all-caps whispers in the winds of grievance and not likely to produce any meaningful real-world action. There is a widespread public debate on whether social media is an effective or meaningful form of political mobilization. *See* L. Seay, "*Does Slacktivism Work?*" Washington Post, March 12, 2014, available at https://www.washingtonpost.com/news/monkey-cage/wp/2014/03/12/does-slacktivism-

work/?utm_term=.3c99bdd2782f. There is some evidence that it does work in the form of inflammatory but truthful viral videos, cultivated messaging, and calculated presentation of issues of mass appeal. But it is difficult to think the barely coherent ramblings of irate individuals will coalesce into a wave of political violence. These are the type of hyperbolic ramblings that are frequently seen and quickly dismissed by the internet's marketplace of ideas. They are not likely to lead to violence under the second prong of *Brandenburg*.

C. The Defendant's Alleged Statements Did Not Constitute "True Threats" As Defined By *Virginia v. Black*, 538 U.S. 343 (2003).

The true threat doctrine is close cousin of the *Brandenburg* test. The Supreme Court most recently addressed this in *Virginia v. Black*:

> '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. Rather, a prohibition on true threats 'protects 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.' 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.

Id. 360-59. (Internal cites omitted). *Black* turned on a Virginia cross-burning statute: the statute outlawed cross burning with the intent to intimidate and stated that the burning of a cross was *prima facie* evidence of an intent to intimidate. *Id.* 348. It relied on two fact patterns, consolidated into one appeal: in the first, a leader of the Klu Klux Klan burned a cross at a Klan rally; in the second, a man burned a cross in his black neighbors' yard in retaliation for those neighbors complaining about his use of his backyard as a firing range. The Supreme Court held that there was no doubt that a state could lawfully

proscribe cross burning *with the intent to intimidate a person*—hence burning a cross in a black neighbor's yard was illegal. *Id.* 362-63 (majority)(emphasis added). However, a plurality of the Court held that the *prima facie* evidence provision of the statute was unconstitutional because cross burning in the context of a political rally could constitute protected expression. *Id.* 363-68. The question of intent was critical to the *Black* court's analysis.

Connecticut's most recent consideration of the true threat doctrine was *State v. Krijger*, 313 Conn. 343 (2013). There, the state Supreme Court held that:

> Prosecution under a statute prohibiting threatening statements is constitutionally permissible 'as long as the threat on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution.

Krijger, supra, 313 Conn. at 450 quoting *United States v. Malik*, 16 F.3d 45, 51 (2d. Cir.) cert. denied, 513 U.S. 968, 115 S.Ct. 435, 130 L.Ed.2d 347 (1994). Critically, the state Supreme Court has "traditionally applied" this test as an objective one and declined to "decide whether *Black* requires a subjective test." *Id.* 451 n.10. Under *Krijger*, whether the First Amendment requires a subjective intent element is an open question. 313 Conn. at 451 n.10. The comments at issue in *Krijger* were insufficient to prove a true threat even under the negligence standard the court applied.

The United States Supreme Court recently opined on the question of intent in *Elonis v. United States*, _ U.S. _, 135 S.Ct. 2001 (2015). It did not, however, reach the First Amendment question. *Id.* 2013. In interpreting 18 U.S.C. §875(c)—"mak[ing] it a crime to transmit in interstate commerce 'any communication containing any threat....to injure the person of another"—the court held that the negligence standard, used by the

Third Circuit, was insufficient. The reason was that "[f]ederal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state. That understanding 'took deep and early root in American soil' and Congress left it intact here:..." *Elonis*, 134 S.Ct. at 2012. The Court did not address what mental state should be required under the statute or the First Amendment. *Id.* 2013; see also *id.* 2013-2028, *Alito J.*, dissenting in part, *Thomas, J.*, dissenting in part. Specific intent should be required as an element of the offense of threatening, to hold otherwise is to yield to the tender-hearted and faint the ability to criminalize vigorous speech merely because it makes them uncomfortable.

D. The State Cannot Circumvent *Brandenburg* Doctrine With The True Threat Doctrine.

This case poses a novel question of law to both *Brandenburg* and true-threat jurisprudence: can speech that is lawful advocacy of political violence under *Brandenburg* be, nonetheless, unlawful as a true threat on the grounds that it makes the real subjects of abstract violence feel, actually, uncomfortable? The answer to this must, categorically, be "no." This would undermine the protections so carefully drawn in each line of cases. A hypothetical illustrates the point.

Imagine a political leader, elected to office and controlling the powers of the executive, so sensitive to any expression of disapproval in the free press that he or she could do little other than respond to petty grievances. Imagine another political or cultural leader who publicly stated something that called for violence against the elected leader but was squarely legal under *Brandenburg*. Were the elected leader able to claim that the statement was a true threat a prosecute his political opposition, then *Brandenburg* would be meaningless. This a not a workable or permissible interpretation

of the first amendment. Accordingly, both *Brandenburg* and true threat doctrines must be drawn in a way that one does not proscribe the freedoms granted by the other.

E. State Constitutional Considerations.

It is well settled that the federal constitution sets a floor, rather than a ceiling, on fundamental constitutional rights. *See e.g. Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 155 (2008)("[I]t is beyond debate that federal constitutional and statutory law establishes a *minimum* national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights"). In the event the Court concludes that the First Amendment does not encompass the defendant's comments, Article First, § 4, 5, and 14[1] of the state constitution do.[2]

In *State v. Geisler*, 222 Conn. 672, 685, 610 A.2d 1225 (1992), the state Supreme Court identified six factors that, "to the extent applicable are to be considered in construing the contours of our state constitution." *Kerrigan*, supra, 289 Conn. at 157.

> Theses factors are: (1) the text of the operative constitutional provision; (2) holdings and dicta of [the state Supreme Court] and the Appellate Court; (3) persuasive and relevant federal precedent; (4) persuasive sister state decisions; (5) the history of the operative constitutional provision, including the historical constitutional setting and the debates of the framers; and (6) contemporary economic and sociological considerations including relevant public policies.

Id. The defendant addresses each of these factors *seriatim*.

The text of the operative provisions marginally supports the defendant's position—particularly in the digital age. The Supreme Court noted the textual

[1] The state Supreme Court referred to these provisions collectively as protecting free expression in *Leydon v. Greenwich*, 257 Conn. 318, 347 (2001).
[2] The defendant has raised this issue in *State v. Taupier* SC 19950 which is now pending in the Connecticut Supreme Court.

distinctions in *State v. Linares*, 232 Conn. 345, 380-81 (1995). Specifically, §14 includes a right of remonstrance in addition to a right of petition: the missive in this case fits a liberal definition of "remonstrance."

The holdings and dicta of the state's appellate courts support the defendant. The Supreme Court "explicitly…stated that the Connecticut constitution, under article first, §§ 4, 5 and 14, provides greater protection for expressive activity than that provided by the first amendment to the federal constitution." *Leydon v. Town of Greenwich*, 257 Conn. 318, 347 (2001) citing *Linares*, supra, 232 Conn. at 380-81. While *Leydon* was a public forum case, the court specifically used the phrase "expressive activity" not "expanded public forums." The email at issue here was expressive activity and, therefore, falls within *Leydon's* ambit. While the *Krijger* noted that that it traditionally applied an objective test, that tradition is neither binding nor articulated as holding or dicta of this court. *See* 313 Conn. 451 n.10.

Persuasive, relevant federal precedent is split. The Second Circuit observed that the Federal Courts of Appeals are divided on this issue in *United States v. Turner*, 720 F.3d 411, 420 n.4 (2013)(noting divide but that the relevant statute in that case imposed a subjective intent element, the issue was not briefed, and subjective intent was clear from evidence). The Ninth Circuit, after analyzing the *Black* plurality and concurrences, concluded "eight Justices agreed that intent to intimidate is necessary and that the government must prove it in order to secure a conviction." *United States v. Cassel*, 408 F.3d 622, 632 (2005). It was "therefore bound to conclude that speech may be deemed unprotected by the First Amendment as a 'true threat' only upon proof that the speaker subjectively intended the speech as a threat." *Id.* 633. The Sixth Circuit claimed that

Cassel "read too much into *Black*." *United States v. Jeffries*, 693 F.3d 473, 479 (2012). The Fourth Circuit agreed with this approach in *United State v. White*, 670 F.3d 498, 508-09 (4th Cir. 2009) when it interpreted 18 U.S.C. § 875(c)—the *Elonis* statute. But *Elonis* has since been decided and the Ninth Circuit's subjective—if not specific—intent standard is ascendant and the Ninth Circuit was prescient.[3]

Sister state precedent is sparse and unremarkable. A Washington Court of Appeals recently reversed a stalking conviction based on off-colored Tweets on the grounds that the Tweets did not even meet the negligence standard: though that defendant raised the specific intent issue, the court did not reach it. *State v. Kohonen*, 192 Wn.App. 567, 583 n.9 (2016). The Colorado Court of Appeals, Fifth Division rejected the contention that, following *Black*, the First Amendment required a subjective intent requirement. *State v. Stanley*, 170 P.3d 782, 789 (2007). It preceded *Elonis* and neglected the state constitution.

The history and policy considerations require few remarks. The bulk of the sections' history concerns issues of libel, slander, commercial speech, and assembly. *See W. Horton*, "*The Connecticut State Constitution: A Reference Guide*," 44-48, 72-73 (1st Ed., 1993). Contemporary concerns include the increasingly acrimonious nature of our—perhaps oxymoronic—civil discourse and its symbiotic relationship with the digital age. Incendiary speech, however, may be pernicious to policy but remains a perquisite of liberty. *But see Baccala*, supra, 326 Conn. at 276-78, *Eveleigh, J.*, dissenting.

[3] The Connecticut Supreme Court compiled these cases in their entirety in *Krijger*, 313 Conn. at 451 n.10. Notably, the majority of circuits that still continued to the apply the objective standard following *Black* included the Third Circuit in *Elonis* lending further support to the defendant's contention that this issue is decided on the quality, rather than quantity, of precedent.

The text of §14, the *Leydon* holding, *Elonis*—in the form of a relevant federal precedent, and the Ninth Circuit rationale suggest a state constitutional requirement of specific intent under the true threat doctrine.

III. CONCLUSION

The First Amendment and its corresponding state constitutional provisions protect the market place of ideas. *See e.g. Carl v. Children's Hospital*, 702 A.2d 159, 183 (D.C. Court of Appeals, 1998)("It is the purpose of the First Amendment to preserve an uninhibited market-place of ideas in which truth will ultimately prevail . . . ."). It is a duty of citizenship—and certainly of the courts—to understand when an individual is acting a as a market maker and when an individual is acting as a market participant. Every citizen and courtroom has a duty to defendant the integrity of the market place. Our economic markets long-ago issued their verdicts on the horse-and-buggy, the rotary phone, and the typewriter: they are inferior to the automobile, the smartphone, and the personal computer. But no one contends an individual lacks the liberty to peddle those goods in the marketplace and let the market decided. So too here. There can be no doubt that the defendant was peddling the horse-and-buggy of political theories—at best. But the state and federal constitutions give him every right to do so. We cannot let our role as market participants cloud our judgment as guardians of the market's integrity. But that is precisely what the state asks the Court to do when it arrests Mr. Taupier for his deeply held political beliefs and hauls him before this to account for them. His comments were entirely legal under prevailing law, there is no probable cause to believe a crime was committed, and this case, respectfully, should be dismissed.

THE DEFENDANT-APPELLANT
EDWARD TAUPIER

By:_____/s/_____
NORMAN A. PATTIS

By:_____/s/_____
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CERTIFICATION

This is to certify that a copy of the foregoing has been served on counsel, the Office of the Chief State's Attorney for the Judicial District of New London at Geograhical Area 10 at 860-443-8444, by facsimile, this 6th day of September 2017.

_____/s/_____
NORMAN A. PATTIS

APPENDIX F

Arrest Warrant Application In *State v. Taupier*, K10K-CR-17-0338626-S (Aug. 8, 2017).

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
1700045805	CSP - CDMC	N620

Name (Last, First, Middle Initial)	Residence (Town) of accused	Court to be held at (Town)	Geographical Area number
Taupier, Edward, F.	Cromwell	NEW LONDON	10

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: [X] Affidavit Below, [ ] Affidavit(s) Attached.

Date	Signed (Prosecuting authority)	Typed/print name of prosecuting authority
8.10.17		David Smith

Affidavit

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

1. That the Affiant, Detective Jack Kulig #927 is a regular sworn member of the Department of Emergency Services and Public Protection, Division of State Police and has been a member of said department since October of 2004. This Affiant is presently assigned to the Central District Major Crime Squad and this Affiant's primary function is to investigate major crime cases. This Affiant has received formalized training regarding the investigation of criminal matters, the laws of arrest, and the laws of search and seizure. This Affiant has investigated or participated in the investigation of numerous cases involving a variety of crimes. At all times mentioned herein after, this Affiant was acting in his official capacity as a Detective with the Connecticut State Police. That the facts and circumstances contained herein are related from personal knowledge and/or observations related to this Affiant by other persons with personal knowledge of the facts and circumstances contained herein, and/or information learned by this Affiant from reading reports or writings furnished or made available to this Affiant by fellow police officers, other state agencies, state employees or citizens.

2. That on Wednesday January 25, 2017, Superior Court Chief Judicial Marshal Relford Ward of the Judicial District of Middletown contacted the Connecticut State Police Troop F in Westbrook to request an investigation into communications received by court staff that they believed to be threatening in nature.

Date	8-8-17	Signed (Affiant)	DET Jack Kulig #927
Jurat	Subscribed and sworn to before me on (Date): 08-08-17	Signed (Judge/Clerk-Commissioner of Superior Court, Notary Public)	Sign

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
	New London, CT	8.10.17		James Abrams J.

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

CFS #: 1700045805

CSP - CDMC

Name (Last, First, Middle Initial)	Residence (Town) of accused	Court to be held at (Town)	Geographical
Taupler, Edward, F.	Cromwell	NEW LONDON	10

Affidavit - Continued

3. That on Wednesday, January 25, 2017 at approximately 1420 hours, Trooper First Class Reid #829 met with and interviewed Chief Clerk Jonathan Field of the Judicial District of Middletown. Field reported that on Wednesday, January 25, 2017 at approximately 1200 PM he received a phone call from a concerned citizen regarding Facebook posts they had viewed and found to cause concern for Field and others at the court and Cromwell Police Department. Field said the concerned citizen identified the posts from the Facebook profile of Edward Taupler. Field said he requested the concerned citizen fax copies of the posts to him at the Middlesex Judicial District Court Clerk's office. Field reported that upon reading the posts, he found them to be very disturbing and he stated he considered the posts to be a threat to his own safety and possibly to others at Middlesex Judicial District Court. Field said he reported the Facebook posts to Superior Court Chief Judicial Marshal Relford Ward. Field provided TFC. Reid with the faxed Facebook posts that he received from the concerned citizen. Field also provided a written statement. The concerned citizen was not identified and wished to remain anonymous.

4. That the investigation was assigned to Detective Dunham of the CSP-Central District Major Crime Squad at Troop F. Detective Dunham searched the name "Edward Taupler" on Facebook and was able to locate and view the profile page that contained the posts that were faxed to Field. The profile identification is https://m.facebook.com/ted.taupler?tsid=0.13923798760857775&source=typeahead. Detective Dunham was able to compare the posts faxed to Field and the posts on this Facebook profile and determine this profile page is consistent with the posts faxed to Field. The following is the text of the posts of concern to Field: "I JUST GOT NOTICE OF CONTEMPT FROM THE STATE WEB SITE WITHOUT GETTING OFFICIAL SERVICE, I GUESS THE JEWS THAT RUN THE MIDDLETOWN CLERKS OFFICE (JOE BLACK - JONATHAN FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING..THIS IS WHY WE NEED TO START KILLING WITH LOVE THOSE THAT VIOLATE THE CIVIL RIGHTS OF SOCIETY THAT ARE JUDGES WHO HAPPEN TO PRACTICE THE JEWISH FAITH" (posted 01/09/17) "CROMWELL POLICE DUPED BY MENTALLY ILL EX TO THINK CHILDREN ARE ENDANGERED...THEY SAY THEY DON'T NEED WARRANTS TO COME IN HOME.....POLICE DON'T NEED WARRANTS, THEY WILL NEED BODY BAGS NEXT TIME" (posted 01/08/17) "KILL COURT EMPLOYEES AND SAVE THE COUNTRY.... Stop driving the SUV and save a planet....this is what a liberal would say..." (posted 01/09/17). This post also included a reply from "Edward Taupler" that was a repost of an "Internet meme" (photograph with words or phrases) that referenced Judge Elizabeth Bozzuto. The content of the "Internet meme" includes the text "JUDGE BOZZUTO FOR LIBERTY TREE CHALLENGE" "The

(This is page 2 of a 9 page Affidavit)

Date	8-8-17		Signed (Affiant)	DET Jack Ky #829	
Jurat	Subscribed and sworn before me on (Date) 08-08-17		Signed (Judge, Clerk, Commissioner of Superior Court, Notary Public)		
Reviewed	(Prosecutorial Official)	Date 8.10.17	Reviewed (Judge / Judge Trial Referee)		Date 8 10 17

ARREST WARRANT APPLICATION

JD-CR-64a Rev. 3-11
C.G.S § 54-2a
Pr. Bk. Sec. 36-1, 36-2, 36-3
CFS #: 1700045805

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

GSP - CDMC

Name (Last, First, Middle Initial)	Residence (Town) of accused	Court to be held at (Town)	Geographical Area number
Taupier, Edward, F.	Cromwell	NEW LONDON	10

Affidavit - Continued

tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. Thomas Jefferson" The comment added above the picture by "Edward Taupier" is "Nominate Judge Bozzuto to Liberty Tree Refreshment Challenge. Spill some blood, save a tree!"

5. That "Edward Taupier's" post on 01/09/17, "I JUST GOT NOTICE OF CONTEMPT FROM THE STATE WEB SITE WITHOUT GETTING OFFICIAL SERVICE, I GUESS THE JEWS THAT RUN THE MIDDLETOWN CLERKS OFFICE (JOE BLACK - JONATHAN FIELD) DON'T NEED TO GET OFFICIAL SERVICE TO SCHEDULE A HEARING..THIS IS WHY WE NEED TO START KILLING JUDGES....." suggests violence against judges and a follower ("Jennifer Mariano") of "Edward Taupier" agreed to join him by responding "I had someone else in mind, but we can start with the judges."

6. That Detective Dunham viewed numerous posts and comments on "Edward Taupier's" Facebook profile page from the present going back as far as December 15, 2016 that call for "killing judges" "burning courts" and advocating violence against court employees. These allegations are included in this investigation.

7. That on March 20, 2017 at approximately 1201 hours, Judge Hillary Strackbein from New London Superior signed and approved a search and seizure warrant for Facebook account under the screen name of Edward Taupier.

8. That on May 3rd, 2017, this investigation was reassigned to this affiant.

9. That on May 9, 2017 at approximately 1315 hours, this affiant received a PDF version of Facebook records received from the execution of the search and seizure warrant under the screen name of "Edward Taupier". These Facebook records were associated with Edward Taupier's Facebook account for the dates of December 15, 2016 to January 27, 2017.

10. That all the Facebook records received were displayed in Coordinated Universal Time (UTC) and reflected the one hour forward time change that occurred on March 12th, 2017.

11. That on May 10, 2017 this affiant reviewed the Facebook records under the screen name of "Edward Taupier". The target number listed for the account was 606573444. The target number is

Date: 8-8-17		Signed (Affiant): Det Tech Kvj #092	
Jurat	Subscribed and sworn before me on (Date): 08-08-17	Signed (Judge / Clerk, Commissioner of Superior Court, Notary Public): [signature]	
Reviewed (Prosecutorial Official): [signature]	Date: 8.10.17	Reviewed (Judge / Judge Trial Referee): [signature]	Date: 8.10.17

Affidavit - Continued

user specific and appears in parentheses next to the user name. The registered email address listed for the Facebook account was ed.taupler @ phoenixsalvum.com. The vanity name listed on the account was ted taupler with the current city listed in Cromwell, CT. The vanity name is user created and allows the user to make their own URL address.

12. That a COLLECT inquiry on Edward Taupler showed an address of 6 Douglas Drive in the town of Cromwell, CT.

13. That Facebook records showed several concerning posts, some threatening in nature that this affiant observed by reviewing the Facebook records under the screen name of Edward Taupler. The posts observed on January 8th and January 9th, 2017 were previously identified by Detective Dunham and Trooper First Class Reid. The posts on January 6th, 11th, 12th, 13th and 14th were newly identified.

14. That on January 6th, 2017 at 00:34:59 UTC the following message was posted on Taupler's Facebook. "866 days political prisoner by Dan Fucktard Malloy-with judge Gold and Brenda Hans."

15. That on January 8th, 2017 between 20:10 and 20:11 UTC, several photographs were added to Edward Taupler's Facebook page. These photographs appeared to contain photos of Taupler's kids, family members and their dog. These photographs were added under the album name "Cromwell Police try to arrest me for hurting my" and were uploaded to the following IP address of 2601:181:4102:4e30:614c:9b09:882b:5464.

16. That also on January 8th, 2017 at 21:43:29 UTC, Edward Taupler added 7 new photographs onto his Facebook account with the following message "Cromwell Police duped by mentally ill ex to think children are endangered...They say they don't need warrants to come in home.....Police don't need warrants, they will need body bags next time." These photographs were added to the timeline photos and contained upload IP address of 50.136.123.18. These photographs appeared to be of Edward Taupler, his two kids and their dog.

17. That on January 9th, 2017 at 17:04:28 UTC the user Edward Taupler (606573444) posted the following text on his Facebook account. "I just got notice of contempt from the state web site without getting official service, I guess the jews that run the Middletown clerks office (Joe Black-Jonathan

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Reviewed	(Prosecutor/Official)	Date 8.10.17	Reviewed (Judge, Judge Trial Referee)		Date 8.10.17

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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CFS #: 1700045805

CSP - CDMC

Name (Last, First, Middle Initial)	Residence (Town) of accused	Court to be held at (Town)	Geographical Area number
Taupler, Edward, F.	Cromwell	NEW LONDON	10

Affidavit - Continued

Field) don't need to get official service to schedule a hearing...This is why we need to start killing judges....." This post received a response at 17:07:21 UTC from user Jennifer Mariano (100001154717105) who stated "I had someone else in mind, but we can start with the judges." This post followed with a posted status at 17:06:08 UTC that stated the following "I just got notice of contempt from the state web site getting official service, I guess the jews that run the Middletown clerks office (Joe Black-Jonathan Field) don't need to get official service to schedule a hearing...this is why we need to start killing with love those that violate the civil rights of society that are judges who happened to practice the jewish faith..." This post followed a response at 17:06:46 UTC from user Edward Taupler (606573444) stating "kill court employees and save the country....stop driving the SUV and save a planet....this is what a liberal would say..." This post received a response from user Adrienne Baumgartner (1169371730) at 17:07:29 UTC stating "for that comment, ed you no doubt could get arrested & also use against you in custody case." User Adrienne Baumgartner continued with another response that stated "you really should either edit or delete that." User Edward Taupler (606573444) responded at 17:13:56 UTC by posting Free Speech containing the Internet meme of Judge Bozzuto for liberty tree challenge.

18. That on January 11th, 2017 at 20:07:45 UTC user Edward Taupler (606573444) posted the following text "I was given 5 yrs for disturbing peace hmm no judicial retaliation in CT with Judges...btw Devlin said he felt sorry for the cop...and wanted to make it right despite the girl and her family wanting the maximum...im on $1.3m bond for disturbing the peace....kill every one of theses judges."

19. That on January 12th, 2017 at 15:28:17 UTC user Edward Taupler (606573444) posted the following text "we the public have no trust in the CT judiciary...time to burn the courts down!!"

20. That on January 13th, 2017 at 01:27:57 UTC the following posted status appeared on Taupler's Facebook page "News flash I am incarcerated-house arrest for 860+days, like DT-Rip." This was followed by a response from user Edward Taupler (606573444) stating "for disturbing peace on 1.3 million dollar bond." User Edward Taupler continued and stated "Judge David p Gold lives in Middlefield CT if you want to ask him why at his house."

21. That on January 14th, 2017 at 13:57:35 UTC the following memory was shared from two years ago on Taupler's Facebook page. "CT courts destroy this every sec of every day! > The family

(This is page 5 of a 9 page Affidavit)

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ARREST WARRANT APPLICATION

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STATE OF CONNECTICUT
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Name (Last, First, Middle Initial)	Residence (Town) of accused	Court to be held at (Town)	Geographical Area number
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Affidavit - Continued

courts in CT are run by Beth Bozzuto, the mother destroying families across the state! Time to burn down the courts."

22. That according to the State of Judicial website Edward Taupler was found guilty by a jury on October 02, 2015 for Threatening 1st Degree, Disorderly Conduct (2) counts and Breach of Peace 2nd Degree.

23. That on May 11th, 2017 at approximately 0932 hours, this affiant spoke with adult Probation Officer Vanessa Valentin who is Edward Taupler's Probation Officer. Valentin confirmed that the Facebook posting on Taupler's Facebook page on January 13th, 2017 was correct regarding the days mentioned in his posted status for the house arrest. Valentin also confirmed that Judge Gold was the sentencing judge in Taupler's criminal case. This affiant also inquired about the electronic monitoring company being used to monitor Mr. Taupler's location.

24. That on May 11th, 2017 at 1004 hours, this affiant received an e-mail from Probation Officer Vanessa Valentin explaining the monitoring used to track the whereabouts of Edward Taupler. Probation Officer Valentin stated the name of the electronic monitoring company is Sentinel. She further stated Sentinel branches out different forms of supervision. Sentrack controls the Electronic Monitoring/RF unit, which is used on house arrest and curfews. This unit monitors when the offender leaves and enters the home. The GPS unit is through Omnilink Focal Point. Valentin stated that Mr. Taupler is on both bracelets and is not required to charge his GPS unless he leaves his residence.

25. That on May 11th, 2017 at 1311 hours, this affiant requested Edward Taupler's location for the following dates and times. The times requested were in Eastern Time Zone. January 8th at 1643 hours, January 9th at 1204, 1206, 1213 hours, January 11th at 1507 hours, January 12th at 1028 hours and January 14 at 0857 hours for the year of 2017. These requests were e-mailed to Probation Officer Vanessa Valentin. These records were available to Probation Officer Vanessa Valentin without the requirements of a search and seizure warrant.

26. That on May 17th, 2017 at 1628 hours, this affiant received a response through e-mail from Probation Officer Valentin. The response indicated the GPS unit was only charged on January 12th. On January 12th at 1028 hours, Mr. Taupler was home and did not leave his residence until 1229 hours. Valentin stated in the email that Matt Kennedy, who works for Sentinel showed her the log for

(This is page 6 of a 9 page Affidavit)

Date 8-8-17		Signed (Affiant) DET Tpk Kwy #0927	
Jurat	Subscribed and sworn before me on (Date) 08-08-17	Signed (Judge, Clerk, Commissioner of Superior Court, Notary Public)	
Reviewed (Prosecutor/Official)	Date 8.10.17	Reviewed (Judge / Judge Trial Referee)	Date 8.10.17

ARREST WARRANT APPLICATION

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Affidavit - Continued

Mr. Taupler's house arrest that simply monitored his leaves and enters on all of the other dates that this affiant requested. Based on the log, Mr. Taupler was home and had not left his residence. Based on the stated information, this affiant was able to conclude that Mr. Taupler was at his residence on January 8th at 1643 hours, January 9th at 1204, 1206, 1213 hours, January 11th at 1507 hours, January 12th at 1028 hours and January 14 at 0857 hours for the year of 2017. These are the times of the alleged postings by Taupler.

27. That an inquiry into the protection order registry indicated an active protection order against Edward Taupler. The order was effective as of 1/15/2016 and listed Judge Elizabeth Bozzuto as the protected person. The protection order did not have a set expiration date. The conditions of the protective order were as follows: Do not assault, threaten, abuse, harass, follow, interfere with, or stalk the protected person (CT01). Stay away from the home of the protected person and wherever the protected person shall reside (CT03). Do not contact the protected person in any matter, including by written, electronic or telephone contact, and do not contact the protected person's home, workplace or others with whom the contact would be likely to cause annoyance or alarm to the protected person (CT05).

28. That on May 24, 2017 at 0945 hours, Judge Kevin McMahon from GA#10 New London Superior Court signed and approved a search and seizure warrant for Comcast Cable Communications for the following IP addresses: 2601:181:4102:4e30:614c:9b09:882b:5464 and 50.136.123.18.

29. That on June 19th, 2017 at 0845 hours, this affiant received a UPS next day air saver package from Comcast Legal Response Center. The package contained a two page confidential Comcast Legal Response Center letter and a CD containing email content for email user ttaupler21. The confidential letter listed the following subscriber information for IP addresses of 2601:181:4102:4e30:614c:9b09:882b:5464 and 50.136.123.18. Edward Perute was listed as a subscriber name. The service address was listed at 6 Douglas Drive, Cromwell, CT. The telephone number listed was 860-978-5455. The type of service listed was high speed Internet service with an account number of 8773403730161506. The account was listed as active. The email address was listed as ttaupler21@comcast.

30. That on June 20, 2017 at approximately 1235 hours, I contacted the cell phone number of (860)978-5455, which was obtained from the Comcast confidential letter. The phone number was

(This is page 7 of a 9 page Affidavit)

Date 8-8-17		Signed (Affiant) D/T Jack Kuj #0927	
Jurat	Subscribed and sworn before me on (Date) 8-10-17	Signed (Judge/Clerk-Commissioner of Superior Court, Notary Public)	
Reviewed (Prosecutorial Official)	Date 8.10.17	Reviewed (Judge / Judge Trial Referee)	Date 8.10.17

ARREST WARRANT APPLICATION

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C.G.S § 54-2a
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STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

CFS #: 1700045805

CSP - CDMC

Name (Last, First, Middle Initial)	Residence (Town) of accused	Court to be held at (Town)	Geographical Area number
Taupier, Edward, F.	Cromwell	NEW LONDON	10

Affidavit - Continued

listed for a subscriber name of Edward Peruta. The address for the internet service was listed at 6 Douglas Drive, Cromwell, CT. The address at 6 Douglas Drive in Cromwell, CT is a primary residence of Mr. Edward Taupier.

31. That after a brief conversation with a male on the phone, he identified himself as Edward Peruta. Mr. Peruta stated he worked as a legal investigator for Attorney Rachel Baird. He further stated he assisted Attorney Baird, when she was representing Mr. Edward Taupier in his criminal case. Mr. Peruta stated he was a friend of Mr. Taupier and helped Taupier by setting up an internet account at Taupier's residence in his name. Mr. Peruta stated he wanted to help Taupier because Taupier had no funds. Peruta also stated because of his credit rating, he wasn't required to pay a deposit on the internet service. Peruta further stated he approved for this account to be in his name prior to January. Peruta stated Taupier pays the bill for the internet service. Peruta also stated he has received promotional offers and phone calls about unpaid bills for the internet service, since setting up the internet service account for Taupier. Peruta stated when he was contacted about the unpaid bills for the internet service; he would contact Taupier on the phone and tell him to pay the bill.

32. That on June 20th, 2017 at approximately 1430 hours, Edward Peruta voluntarily came into Troop I. He was subsequently brought into the interview room and provided the following sworn written statement: "I am a legal investigator and I work for Attorney Rachel Baird. Rachel Baird has previously represented Ted Taupier during a criminal trial. After the jury trial on or about January 12, 2016 Attorney Baird and I were present at Ted Taupier residence in Cromwell, when a search and seizure warrant was executed by State Police Major Crime. During the search warrant service, the State Police took Ted's electronics. Sometime after January 12, 2016, I arranged for an internet account to be installed at Mr. Taupier Cromwell residence located at 6 Douglas Rd or Drive. The reason for the account was to provide internet entertainment for Mr. Taupier's children and permit Mr. Taupier to communicate with an outside world and our law firm. To the best of my knowledge the account is still in my name and paid by someone other than me. I do not post as Ted Taupier on Facebook." This sworn written statement was reviewed by Attorney Rachel Baird and signed in her presence by Mr. Edward Peruta.

33. That on June 22th, 2017 at approximately 0955 hours, I contacted Edward Taupier on his cell phone. Mr. Taupier stated to this affiant that this affiant would have to contact his lawyer Norm Pattis to speak with him. Mr. Taupier also stated he was on strict house arrest. This affiant subsequently

Date 8-8-17		Signed (Affiant) Det Jack Kulj #0927	
Jurat	Subscribed and sworn before me on(Date) 08-08-17	Signed (Judge, Clerk, Commissioner of Superior Court, Notary Public)	
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ARREST WARRANT APPLICATION

JD-CR-64a Rev. 3-11
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STATE OF CONNECTICUT
SUPERIOR COURT
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CSP - CDMC

Name (Last, First, Middle Initial)	Residence (Town) of accused	Court to be held at (Town)	Geographical Area number
Taupler, Edward, F.	Cromwell	NEW LONDON	10

Affidavit - Continued

contacted Attorney Pattis' law firm and left a message with the secretary.

34. That on June 22th, 2017 at approximately 1738 hours, Attorney Norman Pattis left this affiant a voicemail. In the voice mail, Attorney Pattis stated that they were not going to cooperate with any part of this affiant's investigation. Attorney Norman Pattis also instructed this affiant to have no contact with his client Ted Taupler.

35. That this affiant believes that Facebook posts on January 8th, January 9th, January 11th, January 12th and January 14th of 2017 were threatening in nature. These posts threaten the Cromwell Police Department, call for the killing of judges, court employees and burning of the courts. This affiant also believes that these posts advocate, encourage and incite violence against persons and property. In addition, Edward Taupler has been previously arrested for similar crimes to include Threatening 1st Degree, Disorderly Conduct and Breach of Peace 2nd Degree by the State Police.

36. That a State Police Record Check (SPRC) showed the following arrests and convictions for Edward Taupler (DOB 05/04/1965). Threatening 1st Degree, Disorderly Conduct (2) counts, and Breach of Peace 2nd Degree.

37. That based on the aforementioned facts and circumstances, the affiant believes that probable cause exits and requests that an arrest warrant be issued for Edward Taupler (DOB 05/04/1965) charging him with Inciting Injury to Persons, violation of CGS 53a-179a (5 counts) and Threatening 2nd, violation of CGS 53a-62 (5 counts).

38. That this affidavit has not been presented before any other judge or court.

(This is page 8 of a 9 page Affidavit)

Date 8-8-17		Signed (Affiant) Det Ted Kuj #0927	
Jurat	Subscribed and sworn before me on (Date) 8-08-17	Signed (Judge / Clerk, Commissioner of Superior Court, Notary Public)	
Reviewed (Prosecutorial Official)	Date 8.10.17	Reviewed (Judge / Judge Trial Referee)	Date 8.10.17

CR-7-65

STATE OF CONNECTICUT
SUPERIOR COURT

DOB: 05/04/1965

ORIGINAL INFORMATION: YES | COURT DATE: 08/14/2017 | AT: GA10 - NEW LONDON

DISPOSITION DATE:

DOCKET NO.: K10K-CR17-0338626-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

TAUPIER EDWARD F

6 DOUGLAS DRIVE, CROMWELL, CT 06416

Did commit the offenses recited below:

Count: 1 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/08/2017 In Violation Of CGS/PA No: 53a-179a

Count: 2 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL
On or About: 01/08/2017 In Violation Of CGS/PA No: 53a-62

Count: 3 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/09/2017 In Violation Of CGS/PA No: 53a-179a

SEE OTHER SHEETS FOR ADDITIONAL COUNTS X

DATE: SEP 05 2018

SIGNED (PROSECUTING AUTHORITY)

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE) (DATE)

BOND: SURETY WPA; CASH

ELECTION: COURT JURY

ATTY. PUB. DEFENDER

GUARDIAN

REDUCTION

B.O. $200 + 15

APPEAL

ELECTION WITHDRAWN DATE

SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	PLEA WITHDRAWN NEW PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION 100146SW
1	09/11/17	NG						Nolle
2	09/11/17	NG	SEP 05 2018	Nolle Prosequi				1 year susp. after 4 months, 3 years probation
3	09/11/17	NG						Nolle

DATE	OTHER COURT ACTION	JUDGE
SEP 05 2018	Factual Basis for Plea Pleas Found to be Voluntary	Cavanaugh
	Immigration Warning Given	
	Pardon Notice Given	
	See attached probation conditions	

CONTINUANCES

	DATE	PURPOSE	REASON
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

FINE PAID | RECEIPT NO. | MITTIMUS DATE | TRIAL TOWN | SEE REVERSE SIDE

PROSECUTOR ON ORIGINAL DISPOSITION: D Smith

REPORTER ON ORIGINAL DISPOSITION: A Albertini

SIGNED CLERK: A-10

SIGNED JUDGE

Ann 121

JD-CR-71 LP REV. 7-05

STATE OF CONNECTICUT
SUPERIOR COURT

DOB: 08/04/1965

ORIGINAL INFORMATION: YES | COURT DATE: 08/14/2017 | AT: GA10 - NEW LONDON

DISPOSITION DATE:

DOCKET NO.: K10K-CR17-0338626-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

TAUPIER EDWARD F

6 DOUGLAS DRIVE, CROMWELL, CT 06416

Did commit the offenses recited below:

Count: 4 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL ✓
On or About: 01/09/2017 In Violation Of CGS/PA No: 53a-62

Count: 5 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/11/2017 In Violation Of CGS/PA No: 53a-179a

Count: 6 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL ✓
On or About: 01/11/2017 In Violation Of CGS/PA No: 53a-62

SEE OTHER SHEETS FOR ADDITIONAL COUNTS X	DATE	SIGNED (PROSECUTING AUTHORITY)

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE) (DATE)		BOND	SURETY WPA	☐ CASH	ELECTION ☐ COURT ☐ JURY
☐ ATTY. ☐ PUB. DEFENDER	GUARDIAN	REDUCTION	B.O.	APPEAL	ELECTION WITHDRAWN DATE ☐ ☒ SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	PLEA WITHDRAWN PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION 100146SW
4	09/11/17	NG	SEP 05	Nolo contendre	G			1 year, Exec. Susp. 3 years probation Consecutive to cts: 2, 6, 8, 10
5	09/11/17	NG			G			Nolle
6	09/11/17	NG	SEP 05 2018	Nolo contendre	G			1 year, Exec Susp. 3 years probation, Consecutive to cts: 2, 4, 8, 10

DATE	OTHER COURT ACTION	JUDGE

CONTINUANCES	DATE	PURPOSE	REASON
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

FINE PAID	RECEIPT NO.	MITTIMUS DATE	TRIAL TOWN	☐ SEE REVERSE SIDE

PROSECUTOR ON ORIGINAL DISPOSITION	REPORTER ON ORIGINAL DISPOSITION	SIGNED CLERK	SIGNED JUDGE

CR-71 (P REV. 7-85

STATE OF CONNECTICUT
SUPERIOR COURT

DOB: 05/04/1965

ORIGINAL INFORMATION: YES | COURT DATE: 08/14/2017 | AT: GA10 - NEW LONDON

DISPOSITION DATE:

DOCKET NO.: K10K-CR17-0338626-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

TAUPIER EDWARD F

[redacted]

[redacted]

6 DOUGLAS DRIVE, CROMWELL, CT 06416

Did commit the offenses recited below:

Count: 7 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/12/2017 In Violation Of CGS/PA No: 53a-179a

Count: 8 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL ✓
On or About: 01/12/2017 In Violation Of CGS/PA No: 53a-62

Count: 9 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/14/2017 In Violation Of CGS/PA No: 53a-179a

SEE OTHER SHEETS FOR ADDITIONAL COUNTS X	DATE	SIGNED (PROSECUTING AUTHORITY)

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE) (DATE)

BOND | SURETY WPA | ☐ CASH | ELECTION ☐ COURT ☐ JURY

☐ ATTY. ☐ PUB. DEFENDER | GUARDIAN | REDUCTION | B.O. | APPEAL | ELECTION WITHDRAWN DATE ☐ | ☒ SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	PLEA WITHDRAWN NEW PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION 100146SW
7	09/11/17	NG						Nolle
8	09/11/17	NG	SEP 05 2018	Nolle on under 9				1 year susp. - 3 years probation, concurrent to CTS. 2, 4, 6, 10
9	09/11/17	NG						Nolle

DATE	OTHER COURT ACTION	JUDGE

CONTINUANCES

	DATE	PURPOSE	REASON
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FINE PAID	RECEIPT NO.	MITTIMUS DATE	TRIAL TOWN	☐ SEE REVERSE SIDE

PROSECUTOR ON ORIGINAL DISPOSITION	REPORTER ON ORIGINAL DISPOSITION	SIGNED CLERK	SIGNED JUDGE

CR-7 REV. 7-85

STATE OF CONNECTICUT
SUPERIOR COURT

DOB: 05/04/1965

ORIGINAL INFORMATION: YES | COURT DATE: 08/14/2017 | AT: GA10 - NEW LONDON | DISPOSITION DATE: | DOCKET NO.: K10K-CR17-0338626-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

TAUPIER EDWARD F [redacted] [redacted]

6 DOUGLAS DRIVE, CROMWELL, CT 06416

Did commit the offenses recited below:

Count: 10 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL ✓
On or About: 01/14/2017 In Violation Of CGS/PA No: 53a-62

SEE OTHER SHEETS FOR ADDITIONAL COUNTS	DATE	SIGNED (PROSECUTING AUTHORITY)

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA		BOND	SURETY		ELECTION
JUDGE)	(DATE)		WPA	☐ CASH	☐ COURT ☐ JURY
☐ ATTY. ☐ PUB. DEFENDER	GUARDIAN	REDUCTION	B.O.	APPEAL	ELECTION WITHDRAWN DATE ☐ ☒ SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	PLEA WITHDRAWN PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION 100146SW
10	09/11/17	NG	SEP 05 2019	No to contendere	gf			1 year, susp. 3 years probation, Consecutive to cts 2, 4, 6, 8

DATE	OTHER COURT ACTION	JUDGE

CONTINUANCES

	DATE	PURPOSE	REASON
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E PAID	RECEIPT NO.	MITTIMUS DATE	TRIAL TOWN	☐ SEE REVERSE SIDE

OSECUTOR ON ORIGINAL DISPOSITION	REPORTER ON ORIGINAL DISPOSITION	SIGNED CLERK	SIGNED JUDGE

STATE OF CONNECTICUT
SUPERIOR COURT

SCR: [redacted]

ORIGINAL: YES | COURT DATE: 08/14/2017 | AT: GA10 - NEW LONDON | DISPOSITION DATE: | DOCKET NO.: KI0K-CR17-0338676-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

TAUPIER EDWARD F [redacted]

6 DOUGLAS DRIVE, CROMWELL, CT 06416

Did commit the offenses recited below:

Count: 1 INCITE INJURY-PERSON/PROPERTY-- Type/Class: F/C At: CROMWELL
On or About: 01/08/2017 In Violation Of CGS/PA No: 53a-179a

Count: 2 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL
On or About: 01/08/2017 In Violation Of CGS/PA No: 53a-62

Count: 3 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/09/2017 In Violation Of CGS/PA No: 53a-179a

SEE OTHER SHEETS FOR ADDITIONAL COUNTS X | DATE | SIGNED (PROSECUTING AUTHORITY)

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE) GRUEN DATE AUG 2017 | BOND $200000 | SURETY | CASH | ELECTION SEP 11 2017 COURT JURY

ATTY 408681 PUB. DEFENDER | GUARDIAN | REDUCTION | B.O. | APPEAL | ELECTION WITHDRAWN DATE SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	PLEA WITHDRAWN NEW PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION
1	SEP 11 2017	NG						10:01 4001W 10:02 401W
2	SEP 11 2017	NG						
3	SEP 11 2017	NG						

DATE	OTHER COURT ACTION	JUDGE
AUG 14 2017	Bond set @ $90,000 - cls	
	To be posted @ court only	GRUEN
	Electronic monitoring ordered	
	Middletown Probation office to	
	be notified if bond is posted	
	No contact w/ victims.	
	Refrain from social media	
	use.	
9-11-17	Def. Motion to Dismiss Filed	
11-1-17	Motion for continuance filed	
2-5-18	Speedy Trial Motion filed	

CONTINUANCES

	DATE	PURPOSE	REASON
1.	9-11-17	X	5-30-18 X
2.	10/4/17	X	6-7-18 X
3.	11/8/17	X	6-28-18 X
4.	12-7-17	X	7-26-18 X
5.	12-20-17	X	8-9-18 X
6.	1/16/18	X	9-4-18 X
7.	2/8/18	X	
8.	4/6/18	X	
9.	4.5.18	X	
10.	4-30-18	X	

FINE PAID | RECEIPT NO. | MITTIMUS DATE | TRIAL TOWN | SEE REVERSE SIDE

PROSECUTOR ON ORIGINAL DISPOSITION | REPORTER ON ORIGINAL DISPOSITION | SIGNED CLERK | SIGNED JUDGE

FEB - 6 2018

Speedy Trial Motion Withdrawn - Green
w/Prejudice
Oral Request for Bond Reduction Requested
Bond set w/PA
No contact w/all Rodleo
(Joe Black / Johnathan Held)
Def Motions to Dismiss - Moved Not
Acted on Ready by Judge
(Awaiting papers) Green

-13-18 Motion for cont. filed
-5-18 State's Response to Def motion to dismiss filed
2318 Memorandum of Decision filed - Green
1/18 Motion for Disclosure and Examination

AUG 20 2018 - Motion for Speedy Trial Correspondence
granted

Motion - request for essential facts
not ruled on

STATE OF CONNECTICUT
SUPERIOR COURT

DOB: [redacted]

ORIGINAL INFORMATION: YES | COURT DATE: 08/14/2017 | AT: GA10 - NEW LONDON | DISPOSITION DATE: | DOCKET NO.: K10K-CR17-0338626-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

TAUPIER EDWARD F [redacted]

6 DOUGLAS DRIVE, CROMWELL, CT 06416

Did commit the offenses recited below:

Count: 4 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL
On or About: 01/09/2017 In Violation Of CGS/PA No: 53a-62

Count: 5 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/11/2017 In Violation Of CGS/PA No: 53a-179a

Count: 6 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL
On or About: 01/11/2017 In Violation Of CGS/PA No: 53a-62

SEE OTHER SHEETS FOR ADDITIONAL COUNTS X	DATE	SIGNED (PROSECUTING AUTHORITY)

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE) (DATE)	BOND $200000	SURETY	☐ CASH	ELECTION ☐ COURT ☐ JURY
☐ ATTY. ☐ PUB. DEFENDER	GUARDIAN	REDUCTION	B.O.	APPEAL	ELECTION WITHDRAWN DATE ☐ ☐ SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	PLEA WITHDRAWN NEW PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION
4	SEP 11 2017	NG						
5	SEP 11 2017	NG						
6	SEP 11 2017	NG						

DATE	OTHER COURT ACTION	JUDGE

CONTINUANCES

	DATE	PURPOSE	REASON
1.			
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FINE PAID	RECEIPT NO.	MITTIMUS DATE	TRIAL TOWN	☐ SEE REVERSE SIDE

PROSECUTOR ON ORIGINAL DISPOSITION	REPORTER ON ORIGINAL DISPOSITION	SIGNED CLERK	SIGNED JUDGE

JD-CR-1 Rev. 7-05

STATE OF CONNECTICUT
SUPERIOR COURT

BOND: $200000

ORIGINAL APPREHENSION: YES | COURT DATE: 09/14/2017 | AT: GA10 - NEW LONDON | DISPOSITION DATE:

DOCKET NO: K10K-CR17-0338626-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

TAUPIER EDWARD F [redacted] [redacted]

6 DOUGLAS DRIVE, CROMWELL, CT 06416

Did commit the offenses recited below:

Count: 7 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/12/2017 In Violation Of CGS/PA No: 53a-179a

Count: 8 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL
On or About: 01/12/2017 In Violation Of CGS/PA No: 53a-62

Count: 9 INCITE INJURY-PERSON/PROPERTY Type/Class: F/C At: CROMWELL
On or About: 01/14/2017 In Violation Of CGS/PA No: 53a-179a

SEE OTHER SHEETS FOR ADDITIONAL COUNTS X | DATE | SIGNED (PROSECUTING AUTHORITY)

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE) (DATE) | BOND $200000 | SURETY | ☐ CASH | ELECTION ☐ COURT ☐ JURY

☐ ATTY. ☐ PUB. DEFENDER | GUARDIAN | REDUCTION | B.O. | APPEAL | ELECTION WITHDRAWN DATE ☐ ☐ SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	PLEA WITHDRAWN NEW PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION
7	SEP 11 2017	PE NG						
8	SEP 11 2017	PE NG						
9	SEP 11 2017	PE NG						

DATE	OTHER COURT ACTION	JUDGE

CONTINUANCES

	DATE	PURPOSE	REASON
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VE PAID	RECEIPT NO.	MITTIMUS DATE	TRIAL TOWN	☐ SEE REVERSE SIDE

PROSECUTOR ON ORIGINAL DISPOSITION	REPORTER ON ORIGINAL DISPOSITION	SIGNED CLERK	SIGNED JUDGE

CR-71 Rev. 5-82

STATE OF CONNECTICUT
SUPERIOR COURT

BOR: [redacted]

ORIGINAL INFORMATION: YES | COURT DATE: 08/14/2017 | AT: GA10 - NEW LONDON | DISPOSITION DATE: | DOCKET NO.: K10K-CR17-[redacted]-S

The undersigned Prosecuting Authority of the Superior Court of the State of Connecticut charges that

TAUPIER EDWARD F [redacted]

6 DOUGLAS DRIVE, CROMWELL, CT 06416

Did commit the offenses recited below:

Count: 10 THREATENING 2ND DEG Type/Class: M/A At: CROMWELL
On or About: 01/14/2017 In Violation Of CGS/PA No: 53a-62

SEE OTHER SHEETS FOR ADDITIONAL COUNTS | DATE | SIGNED (PROSECUTING AUTHORITY)

COURT ACTION

DEFENDANT ADVISED OF RIGHTS BEFORE PLEA (JUDGE) (DATE) | BOND $200000 | SURETY | ☐ CASH | ELECTION ☐ COURT ☐ JURY

☐ ATTY. ☐ PUB. DEFENDER | GUARDIAN | REDUCTION | B.O. | APPEAL | ELECTION WITHDRAWN DATE ☐ ☐ SEIZED PROPERTY

COUNT NO.	PLEA DATE	PLEA	PLEA WITHDRAWN DATE	PLEA WITHDRAWN NEW PLEA	VERDICT FINDING	FINE	JAIL	ADDITIONAL DISPOSITION
10 SEP	11 2017	NG						

DATE	OTHER COURT ACTION	JUDGE

CONTINUANCES

	DATE	PURPOSE	REASON
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FINE PAID | RECEIPT NO. | MITTIMUS DATE | TRIAL TOWN | ☐ SEE REVERSE SIDE

PROSECUTOR ON ORIGINAL DISPOSITION | REPORTER ON ORIGINAL DISPOSITION | SIGNED CLERK | SIGNED JUDGE

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