No. _____

In The
Supreme Court of the United States

JOSEPH CECIL VANDEVERE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Andrew B. Banzhoff
Counsel of Record
DEVEREUX BANZHOFF, PLLC
22 South Pack Square, Suite 1100
Asheville, North Carolina 28801
(828) 253-8857
abanzhoff@dblawoffices.com

Counsel for Petitioner ***Dated: November 1, 2021***

THE LEX GROUP[DC] ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

QUESTIONS PRESENTED

1) WHETHER THE SPEECH AT ISSUE HEREIN IS ENTITLED TO SPECIAL PROTECTION BECAUSE IT INVOLVES A MATTER OF PUBLIC CONCERN?

2) WHETHER THE SPEECH AT ISSUE HEREIN IS A "TRUE THREAT"?

3) WHETHER THE CONDITIONAL NATURE OF THE SPEECH AT ISSUE HEREIN RENDERS IT PROTECTED SPEECH?

4) WHETHER THE SPEECH AT ISSUE HEREIN IS PROTECTED "POLITICAL HYBERPOLE"?

LIST OF PARTIES TO THE PROCEEDING

All the parties are listed out in the caption on the cover.

STATEMENT OF RELATED CASES

There are no related cases.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISION

STATUTE

RULE

PETITION FOR WRIT OF CERTIORARI

NOW COMES JOSEPH VANDEVERE, Petitioner herein, and requests that this Court issue a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit to review its decision filed on June 4, 2021 affirming the petitioner's conviction and sentence.

OPINION BELOW

The United States Court of Appeals for the Fourth Circuit filed an unpublished opinion on June 4, 2021 affirming the petitioner's conviction and sentence. (1a) *United States v. Vandevere*, 2021 U.S. App Lexis 16742, 2021 WL 2287447 (4th Cir. 2021).

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 and Rule 10 of the Supreme Court Rules for Certiorari to review the unpublished opinion of the Fourth Circuit Court of Appeals issued on June 4, 2021. (1a)

CONSTITUTIONAL AUTHORITY INVOLVED

United States Constitution, Amendment I:

> 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 to peaceably to assemble, and

> to petition the Government
> for a redress of grievances.

STATEMENT OF THE CASE

On or about August 21, 2019, the United States obtained a single-count Superseding Bill of Indictment in the United States District Court for the Western District of North Carolina charging the petitioner Joseph Vandevere with transmitting a threatening communication in interstate commerce via the Twitter social media platform. The Superseding Bill of Indictment alleged that on or about March 13, 2018, Mr. Vandevere posted a "tweet" via the social media platform Twitter on the page of a user with the name @MuslimIQ (JA at 26-7). The "tweet" read:

> "HI PEDOPHILE PROPHET MUHAMAD CUBE WORSHIPPING INBRED MUSLIM SCUM LETS MEET SO YOU CAN RUN THAT COWARD MOUTH TO MY FACE…PLEASE…VIEW YOUR DESTINY"

The "tweet" was accompanied by a photo of the notorious 1915 lynching of Leo Frank.

On August 13, 2019, the petitioner filed a motion to dismiss the indictment arguing that the prosecution violated his First Amendment rights. The trial court denied the motion.

The case was called for trial on or about December 5, 2019.

Rabbi Andrew Jacobs testified that his synagogue is located a few miles from Parkland High School in Florida. He testified that following the shootings at Parkland High School, he posted a message of support for the victims from his professional Facebook page. While most of the responses to his post were positive, a response from user "Bob Smith" was not. Rabbi Jacobs testified that he was "terrified" and "frightened" by the post. He contacted the local police and was eventually put in contact with the FBI.

Detective Adam Granit of the Davie Police Department testified that he received a report regarding the "Bob Smith" Facebook post. He was able to determine the website address associated with the "Bob Smith" account. He submitted an exigent request to Facebook to get data on Mr. Smith. Based upon the data that he received, he utilized the IP address to determine that Charter Communications was the internet provider. He did an exigent information request from Charter Communications and found out that the IP address belonged to the defendant. In addition, he contacted the Black Mountain, North Carolina, Police Department to request a check of the residence. He received information that the defendant was still occupying the residence. He forwarded the information to the FBI in North Carolina via a "Guardian" report.

Special Agent Corey Zachman testified that he received that Mr. Vandevere first came to his attention when he received the "Guardian" report in March of 2018. During the course of his investigation, he discovered that Mr. Vandevere

utilized a Twitter account with the account name @DaDutchman5.

SA Zachman testified that he did a Google search for this account and found a "tweet" from @DaDutchman5 to the Twitter page of @MuslimIQ. The @MuslimIQ account belonged to Mr. Qasim Rashid. SA Zachman made a screenshot of the "tweet." SA Zachman later obtained a search warrant for the "Bob Smith" Facebook account.

SA Zachman identified several comments posted to the "Bob Smith" Facebook page, including the post to Rabbi Jacobs Facebook page. He identified posts on the Facebook account which included the Leo Frank lynching photograph. He further identified a variety of posts on the "Bob Smith" account, including a message to another user advising that the "Bob Smith" account is his "attack-dog account." Based upon his review of the Facebook account, he testified that the Leo Frank photograph was posted approximately 19 times.

SA Zachman testified that he obtained a search warrant for the @DaDutchman5 Twitter account. Agent Zachman identified a "tweet" sent from @DaDutchman5 on or about March 21, 2018 to @MuslimIQ.

The "tweet" read:

> "ATTENTION ALL PEDOPHILE PROPHET MUHAMMAD CUBE WORSHIPPING CHILD RAPING INBRED MUSLIMS: SHARIA LAW IS TREASON…AND THE PENALTY FOR TREASON IS DEATH BY

> EXECUTION. AS PER US LAW..GET OUT OR FACE THE PENALTY." (JA at t 97).

He identified some other "tweets" sent to the @MuslimIQ account. One read: "GO EAST SOME PORK…SCUM." Another said: "REPORT YOUR LIPS UPON MI DOGS ASSSSS!!" Lastly, he identified a "tweet" which read:

> "I WAITING FOR YOU TO NAME THE TIME AND PLACE YOU CUBE WORSHIPPING PEOPHILE PROPHET MUHAMMAD MOTHERLESS SON OF A SACK OF RAT SHIT BASTARD."

Special Agent Zachman testified that he obtained a search warrant to search and seize electronic devices at Mr. Vandevere's apartment. During the course of the search, Mr. Vandevere agreed to an interview. A video and accompanying transcript was played for the jury.

Victor Gibson Grose testified that he works for the FBI in the field of computer forensics. He was present during the execution of the search warrant and took possession of a Hewlett Packard All-In-One computer. He testified that he made a forensic image of the hard drive.

Lee Weingarten was called as a senior digital investigator with the FBI. He identified various items that had been flagged for him to review by SA Zachman. Over a defense objection, he identified a Word document which contained the responses to the @DaDutchman5 post.

Qasim Rashid testified that on or about March 13, 2018, he received a "tweet" which he characterized as a "death threat." He testified that he did not know or recognize the Twitter handle @DaDutchman5. He testified that he felt frightened and concerned for the safety of his family.

Mr. Rashid testified that he reported the "tweet" to Twitter. He blocked the @DaDutchman5 account from his Twitter feed. He spoke extensively about how the "tweet" had negatively impacted his life. Mr. Rashid testified that if the "tweet" did not contain the phrase "meet your destiny" followed by the Leo Frank photograph that the situation would be different and he "would not be sitting here."

The petitioner's Rule 29 Motion was denied by the Court.

Both the Government and the petitioner submitted proposed jury instruction. The petitioner objected to the Court's proposed instructions. The jury requested further definitions and the Court reinstructed. The jury returned a verdict of guilty.

The parties appeared at a sentencing hearing on or about June 2, 2020 (JA at 320). The petitioner was sentenced to a term of 10 months in the Bureau of Prisons.

The petitioner filed a written Notice of Appeal on June 22, 2020.

On June 4, 2021, the United States Circuit Court for the 4th Circuit issued an unpublished opinion affirming the trial court's judgment.

United States v. Vandevere, 2021 U.S. App Lexis 16742, 2021 WL 2287447 (4th Cir. 2021).

The Court determined that the communication was not made in jest, the statement was directed to one person although in a public forum, the communication was not made in a manner to engage anyone in public discourse and that the communication would indicate to a reasonable person that the petitioner had serious intent to do harm. (Slip op. pp. 3-4).

REASONS WHY THE WRIT SHOULD ISSUE

THE PROSECUTION OF THIS CASE VIOLATED THE PETITIONER'S FIRST AMENDMENT RIGHTS

1. The Speech in this Case Involves a Matter of Public Concern and is Entitled to "Special Protection"

In assessing whether speech is improperly regulated in violation of the First Amendment, the nature and circumstances surrounding the communication are important. This Court has articulated that matters of public, as opposed to private, concerns are afforded greater protection. *Snyder v. Phelps*, 562 U.S. 443, 451, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011). Stated another way: "Speech on 'matters of public concern'…is 'at the heart of the first amendment's protection.'" 562 U.S. 451-2, quoting *Dun & Bradstreet, Inc., v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758-9, 105 S. Ct 2939, 86 L. Ed. 2d 593 (1985).

The "public concern" test can "be fairly considered as relating to any matter of political, social or other concern to the community." *Connick v. Myers*, 461 U.S. 138, 145, 103 S. Ct. 1684, 75 L. Ed 2d 708 (1983). In further determining whether the matter is a "public concern," the Court has examined the "content, form and context" of the speech. 472 U.S. at 761. While no factor is dispositive the Court has indicated it will evaluate "all the circumstances of the speech, including what was said, where it was said and how it was said." 562 U.S. at 453.

The communication at issue herein addressed, albeit crudely, matters of public concern. Much like the placards involved in the *Snyder* case, the petitioner's communication involved a matter public concern, namely the integration of Muslim religious and political beliefs into American culture and politics. The "tweet" herein clearly articulated Mr. Vandevere's strenuous objection to the integration of Muslim religious and political views and his own beliefs that these views are contrary to traditional American values and constitute treason against the United States. The petitioner further expressed his belief that treason required a "destiny" of public execution.

Moreover, much like the placards in *Snyder*, the speech herein was carried out on a public, albeit virtual platform. It is readily apparent that the forum for the speech was designed to "reach as broad a public audience as possible." 562 U.S. at 454.

Also like *Snyder*, there was no-pre-existing relationship or conflict between Mr. Vandevere and Mr. Rashim to suggest that the speech on the public

matter "was intended to mask an attack on [Mr. Rashim] over a private matter." *Id* at. 455.

Because the "tweet" herein was sent: 1) addressing social, religious and political issues; 2) was done in a way to express the defendant's view on those matters; 3) was done in a public forum and did not relate to any private matter, the speech is fairly characterized as of a "public concern." As a consequence, the speech was entitled to "special protection" under the First Amendment. *Id*. at 458.

Just as in *Snyder*, the "special protection" of the First Amendment prohibits the Government from prosecuting the defendant herein for his "tweet." Despite the fact that some might believe that the speech herein as "insulting and even outrageous" it must nevertheless be protected as necessary to provide the "breathing space" to the freedoms protected by the First Amendment." *Boos v. Barry*, 485 U.S. 312, 322, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988).

2. The Communication Herein does not Constitute a "True Threat."

This Court's jurisprudence has identified certain categories of "unprotected speech" that may be regulated. Those categories include: obscenity, defamation, fraud, incitement or speech integral to criminal conduct. *United States v. Stevens*, 559 U.S. 460, 468, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010). In addition to these categories of "unprotected speech," the Court has also determined it is permissible for the government to prohibit speech that constitutes a "true threat." *Virginia v. Black*,

538 U.S 343, 359, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003).

In order for a communication to be a "true threat" it must: "…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.

The communication herein cannot be understood as "a serious expression of an intent to commit an act of unlawful violence" and thus is not a "true threat."

The admonition to "view your destiny" is not an expression of an intent to take any action against the recipient. The photo of the Leo Frank lynching also cannot be understood as an expression of an intent by the petitioner to commit any act. The combination of the statement and the photo provides a context for the whole of the communication as a metaphor.

It would be absurd to understand the communication as a threat that the petitioner would actually conduct a lynching of Mr. Rashid. But this type of literal conception of the photograph is the only way in which the communication would constitute a "serious expression of an intent to commit an act of unlawful violence."

As the decision in *Virginia v. Black*, *supra*, illustrates, a constitutionally prohibited communication must encompass "the intent of placing the victim in fear of bodily harm or death." *Id*. at 360. Similarly, in *United States v. White*, 810

F.3d 212, 219 (4th Cir. 2016), the Fourth Circuit articulated that for guilt to attach the defendant must "transmit a communication for the purpose of issuing a threat or with knowledge that the communication will be viewed as a threat…" 810 F.3d at 220.

The "tweet" herein can hardly be understood as an intended threat by the petitioner. The language at the beginning of the "tweet" expresses a strong objection to the recipient's religious beliefs. This language provides the context for the "view your destiny" line and the picture. Taken as a whole, the communication suggests a metaphorical, not literal, consequence of the recipient's religious beliefs.

A metaphorical expression of the petitioner's belief regarding the consequences of the recipient's religious views cannot rationally place the recipient "in fear of bodily harm or death" or constitute a communication issued with "the purpose of issuing a threat." The metaphorical expression imbodied in the "tweet" herein necessarily precludes a literal interpretation of the content.

This conclusion is further supported by the inclusion of the well-known Leo Frank lynching photo. Depending on the perspective of the viewer, the photograph is both emblematic and metaphorical. It is metaphorical for people on both ends of the political spectrum. For some folks embracing extreme views, images of a noose or a lynching is "the ultimate symbol for not only

deterring crime but in eliciting fear in law abiding people not to step out of line."[1]

Conversely, for other folks, the Leo Frank lynching event is understood as the event marking the rebirth of the Ku Klux Klan. In either context, the photo is heavily laden with metaphorical significance. The metaphorical significance of the photo substantially undercuts any reasonable interpretation of the photo as being a literal suggestion of an actual lynching.

The content of the "tweet" herein was metaphorical and not intended to be taken literally. The metaphorical communication by the petitioner is not a threat or a "true threat" to injure the recipient. Accordingly, the prosecution herein of the petitioner violated his rights under the First Amendment.

3. The Communication was Expressly Conditional

The federal Courts have recognized that a "true threat" does not include communications which are expressly conditional in nature. *United States v. Lockhart*, 382 F.3d 447, 452 (4th Cir. 2004). The court in *Lockhart* noted that one of the aspects of the alleged threat in *Watts v. United States*, 394 U.S. 705, 707-8, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969), was that the threat was "expressly conditional." 382 F.3d 452.

Notably, a panel of the Fourth Circuit focused on the fact that the statement in *Watts* about shooting L.B.J. was preceded by "if they ever make

[1] https://www.leofrank.org/image-gallery/lynchers/.

me carry a rifle…" *Id*. at 451. Thus, the threat to kill the President was expressly conditioned upon being drafted into the armed forces. *Id*. at 452.

The defendant in *Lockhart* made a threat to kill President Bush but argued that it was conditional in nature. *Id*. at 451. However, the Court pointed out that the purported condition "if George Bush refuses to see the truth and uphold the Constitution" fails to "indicate what events or circumstances would prevent the threat from being carried out." *Id*. at 452.

Unlike the statement in *Lockhart*, the "tweet" at issue herein expressly conditions any "destiny" that might be visited on the recipient by first entertaining a meeting with the petitioner. The conditional invitation "Lets meet" precedes any of the purportedly threatening portions of the message. Thus, it is apparent from the content of the message that any possibility of injury or death to the recipient first required the recipient to agree to a meeting with the petitioner and then to actually attend said meeting.

Mr. Rashid, of course, made it perfectly clear at the trial of this matter that he understood the conditional nature of the statement. He testified that:

> "Second, he wants to meet, indicating that he wants to move forward with whatever he is saying. And then third, he says when we meet socially, here's your destiny, being killed." (JA at t-2 45).

The recipient reasonably understood that any "destiny" that might befall him first required him to meet with the petitioner. As a consequence, any "destiny" was expressly conditioned upon meeting with the petitioner.

No evidence was presented in any fashion that either the petitioner or Mr. Rashid took any action to actually arrange a meeting. While the Government is not required to make any showing of an intention to carry out a threat, the fact that there were no steps taken to undertake a meeting underscores the understanding by both sender and recipient that any purported threat was necessarily conditional in nature.

It is also important to note that the "tweet" here does not contain a vague condition or a condition which failed to set out the ways in which it could not be fulfilled. 382 F.3d 442. The "express" characteristic of the condition was that the sender and recipient meet. Absent a meeting, there is no circumstance set out in the communication from which the recipient could reasonably conclude that a "destiny" or a lynching could result.[2]

4. The Communication was Protected "Political Hyperbole."

Even if the "tweet" could be understood to be threatening in character, it is still entitled to First Amendment protection if the statement is "political hyperbole." In *Watts v. United States*, *supra*, this

[2] As was previously discussed, *infra*, the metaphorical nature of the Leo Frank photograph does not support a reasonable belief of a literal lynching of the recipient.

Court recognized that a statement threatening to shoot the President which was made during a political rally was "political hyperbole" and not a "true threat." *Id.* at 708.

As noted above, the "tweet" was made in a public forum where many persons make political statements and express their political views. The "tweet" can well be understood as the defendant objecting to Mr. Rashid's political and religious points of view.

As the Court acknowledged in *Watts*, statements in the political arena can be "vituperative, abusive and inexact." *Id.* at 708. Arguably, the statement in *Watts* regarding shooting L.B.J. was a much more direct, and menacing statement than the communication at issue herein. The Court's characterization of the statement in *Watts* certain holds true here: "a kind of very crude offensive method of stating a political opposition [to a political opponent]." *Id*. at 708.

The importance of considering the forum is further supported by the decision in *Virginia v. Black, supra*. While this Court determined that cross-burning performed in an effort to intimidate would not be protected speech, the Court also noted that "burning a cross at a political rally would almost certainly be protected expression." 538 U.S. at 366. This realization regarding context makes plain that speech with the same content will be entitled to greater First Amendment protection if the speech is rendered in the political arena. In 2018 and continuing until today, the political arena necessarily includes the public exchange of political

views that occurs daily on Twitter and other social media sites.

The importance of analyzing the context and the forum of the statement is further recognized in *Lockhart, supra*. The *Lockhart* Court noted:

> "[a]lthough the letter contains political statements, the manner in which Miss Lockhart gave the letter to is its recipients is different from a speech at a political rally. Nothing in Miss Lockhart's actions suggest she intended to engage in political discourse with the Food Lion management." 382 F. 3d at 452.

By contrast, posting a "tweet" on someone's public Twitter page in 2018, is much more like engaging a crowd at a political rally then it is delivering a private letter to folks who are not the subject of the threat. Twitter contains literally thousands of political messages and ideas on a daily basis. There is no more modern way to engage in political discourse than to post on a social media site.

The "tweet" at issue is much more like the speech at a political rally in *Watts*, or the placards that were at issue in *Snyder*. The nature of the communication is readily distinguishable from the private letter in *Lockhart* or the private emails that were sent in *United States v. White*, 810 F.3d at 216-219.

The "tweet" at issue herein constitutes "political hyperbole" expressing a crude and offensive opposition to the recipient's religious views

and thus the recipient's political views. Accordingly, it is not properly understood as a "true threat" and the prosecution of the same violates the petitioner's First Amendment rights.

CONCLUSION

The Court should grant the petition herein and reverse the petitioner's conviction and sentence consistent with the arguments presented.

Respectfully submitted this the 1st day of November, 2021.

JOSEPH CECIL VANDEVERE by counsel

/s/ Andrew B. Banzhoff
Andrew B. Banzhoff
Counsel of Record
DEVEREUX BANZHOFF, PLLC
22 South Pack Square, Suite 1100
Asheville, North Carolina 28801
(828) 253-8857
abanzhoff@dblawoffices.com
Counsel for Petitioner

APPENDIX

TABLE OF CONTENTS

Page

ENTERED JUNE 4, 2021

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4326

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEPH CECIL VANDEVERE, a/k/a DaDUTCHMAN5, a/k/a Da Dutchman, a/k/a Bob Smith,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Max O. Cogburn, Jr., District Judge. (1:19-cr-00063-MOC-WCM-1)

Submitted: May 13, 2021 Decided: June 4, 2021

Before NIEMEYER, KEENAN, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Andrew B. Banzhoff, DEVEREUX BANZHOFF, PLLC, Asheville, North Carolina, for Appellant. R. Andrew Murray, United States Attorney, Anthony J. Enright, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A jury convicted Joseph Cecil Vandevere of transmitting a threatening communication in interstate commerce, in violation of 18 U.S.C. § 875(c). On appeal, Vandevere maintains that the communication contained constitutionally protected speech and not an unprotected "true threat," and that the district court thus erred in denying his motions to dismiss the indictment and for a judgment of acquittal. Finding no reversible error, we affirm.

We review de novo the district court's denial of a Fed. R. Crim. P. 29 motion for a judgment of acquittal, *United States v. Tillmon*, 954 F.3d 628, 637 (4th Cir.), *cert. denied*, 140 S. Ct. 91 (2019), and whether a written communication is constitutionally protected speech or "an unprotected 'true threat,'" *United States v. Bly*, 510 F.3d 453, 457 (4th Cir. 2007). The transmission of threats in interstate

commerce is prohibited by 18 U.S.C. § 875(c). To convict a defendant of violating § 875(c), the government must establish "(1) that the defendant knowingly transmitted a communication in interstate or foreign commerce; (2) that the defendant subjectively intended the communication as a threat; and (3) that the content of the communication contained a 'true threat' to kidnap or injure." *United States v. White*, 810 F.3d 212, 220-21 (4th Cir. 2016). "To prove the second element, the [g]overnment . . . must establish that the defendant transmitted the communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat, or, perhaps, with reckless disregard for the likelihood that the communication will be viewed as a threat." *Id.* at 221 (internal quotation marks omitted).

"[A] true threat in the constitutional sense is one that a reasonable recipient who is familiar with the circumstances would interpret as a serious expression of an intent to do harm." *Id.* at 219 (internal quotation marks omitted). "The speaker need not actually intend to carry out the threat," because "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." *Virginia v. Black*, 538 U.S. 343, 359-60 (2003) (brackets and internal quotation marks omitted).

In analyzing the parameters of the First Amendment's protection of threatening language in *Watts v. United States*, 394 U.S. 705 (1969), the Supreme Court identified four factors in determining

that the statement at issue in that case was not a true threat. The Court noted that Watts' communication was: (1) made in jest; (2) to a public audience; (3) in political opposition to the President; and (4) conditioned upon an event the speaker himself vowed would never occur. *Id.* at 707-08; *see also United States v. Lockhart*, 382 F.3d 447, 451-52 (4th Cir. 2004) (applying these four factors and finding that statement contained a true threat).

In applying these four factors to Vandevere's case, we conclude that his statement, directed to a private party on Twitter, contained a true threat. We note first that a reasonable recipient familiar with the context would have felt threatened by the message and would not have construed it as a joke. Second, unlike the statement made to the public in *Watts*, the tweet here was specifically directed at one person, albeit in a public forum. Third, the tweet was not communicated in a manner to engage anyone in public discourse regarding his political beliefs. Finally, viewing the tweet in the context in which it was received, Vandevere's statement would indicate to a reasonable recipient that Vandevere had a serious intent to do harm.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

ENTERED JUNE 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4326
(1:19-cr-00063-MOC-WCM-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOSEPH CECIL VANDEVERE,
a/k/a DaDUTCHMAN5, a/k/a Da Dutchman,
a/k/a Bob Smith

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

[ENTERED: November 24, 2014]

UNITED STATES DISTRICT COURT

Western District of North Carolina

UNITED STATES OF AMERICA	)	**JUDGMENT IN A CRIMINAL CASE**
	)	(For Offenses Committed
V.	)	On or After November 1,
	)	1987)
Warren F. Tonsing Jr.	)	
	)	Case Number:
	)	DNCW312CR00259-002
	)	USM Number:
	)	16627-041
	)	
	)	Lawrence W. Hewitt
	)	Defendant's Attorney

THE DEFENDANT:

☐ Pleaded guilty to count(s).

☐ Pleaded nolo contendere to count(s) which was accepted by the court.

☒ Was found guilty on count(s) 1 - 14 after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title and Section	Nature of Offense	Date Offense Concluded	Counts
18:1349	Conspiracy to commit wire and mail fraud (18:2326(2)(a)&(B))	6/30/12	1
18:1343	Wire fraud and aiding and abetting same (18:2326(2)(A)&(B); 2)	7/6/10	2
18:1343	Wire fraud and aiding and abetting same (18:2326(2)(A)&(B);2)	7/12/10	3 & 4
18:1343	Wire fraud and aiding and abetting same (18:2326(2)(A)&(B);2)	7/13/10	5
18:1343	Wire fraud and aiding and abetting same (18:2326(2)(A)&(B);2)	7/22/10	6
18:1343	Wire fraud and aiding and abetting same (18:2326(2)(A)&(B);2)	7/26/14	7
18:1343	Wire fraud and aiding and abetting same (18:2326(2)(A)&(B);2)	8/5/10	8
18:1343	Wire fraud and aiding and abetting same (18:2326(2)(A)&(B);2)	8/6/10	9
18:1956(h)	Conspiracy to commit money laundering	June 2012	10

18:1956 (a)(20)(A)	International money laundering and aid and abet same (18:2)	7/9/10	11
18:1956 (a)(20)(A)	International money laundering and aid and abet same (18:2)	7/27/10	12
18:1956 (a)(20)(A)	International money laundering and aid and abet same (18:2)	8/6/10	13
18:1956 (a)(20)(A)	International money laundering and aid and abet same (18:2)	9/15/10	14

The Defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U.S.C. § 3553(a).

☐ The defendant has been found not guilty on count(s).

☐ Count(s) (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the Defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: 10/30/2014

Signed: November 24, 2014

/s/

Robert J. Conrad, Jr.
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Counts 1 – 14: ONE HUNDRED FORTY-FOUR (144) MONTHS each count to run concurrently.

☒ The Court makes the following recommendations to the Bureau of Prisons:

- Participation in the Federal Inmate Financial Responsibility Program.
- Placed in a facility as close to Minnesota as possible, consistent with the needs of BOP.

☐ The Defendant is remanded to the custody of the United States Marshal.

☐ The Defendant shall surrender to the United States Marshal for this District:

☐ As notified by the United States Marshal.

☐ At on .

☒ The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ As notified by the United States Marshal.

☐ Before 2 p.m. on .

☐ As notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By: _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Counts 1 – 14: TWO (2) YEARS each count to run concurrently.

☐ The condition for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court and any additional conditions ordered.

1. The defendant shall not commit another federal, state, or local crime.

2. The defendant shall refrain from possessing a firearm, destructive device, or other dangerous weapon.

3. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release on a schedule to be established by the Court.

4. The defendant shall provide access to any personal or business financial information as requested by the probation officer.

5. The defendant shall not acquire any new lines of credit unless authorized to do so in advance by the probation officer.

6. The defendant shall not leave the Western District of North Carolina without the permission of the Court or probation officer.

7. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.

8. A defendant on supervised release shall report in person to the probation officer in the district

to which he or she is released within 72 hours of release from custody of the Bureau of Prisons.

9. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

10. The defendant shall support his or her dependents and meet other family responsibilities.

11. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other activities authorized by the probation officer.

12. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.

13. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as duly prescribed by a licensed physician.

14. The defendant shall participate in a program of testing and treatment or both for substance abuse if directed to do so by the probation officer, until such time as the defendant is released from the program by the probation officer; provided, however, that defendant shall submit to a drug test within 15 days of release

on probation or supervised release and at least two periodic drug tests thereafter for use of any controlled substance, subject to the provisions of 18:3563(a)(5) or 18:3583(d), respectively; The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or monitoring which is (are) required as a condition of supervision.

15. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

16. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

17. The defendant shall submit his person, residence, office, vehicle and/or any computer system including computer data storage media, or any electronic device capable of storing, retrieving, and/or accessing data to which they have access or control, to a search, from time to time, conducted by any U.S. Probation Officer and such other law enforcement personnel as the probation officer may deem advisable, without a warrant. The defendant shall warn other residents or occupants that such premises or vehicle may be subject to searches pursuant to this condition.

18. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed by the probation officer.

19. The defendant shall notify the probation officer within 72 hours of defendant's being arrested or questioned by a law enforcement officer.

20. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.

21. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

22. If the instant offense was committed on or after 4/24/96, the defendant shall notify the probation officer of any material changes in defendant's economic circumstances which may affect the defendant's ability to pay any monetary penalty.

23. If home confinement (home detention, home incarceration or curfew) is included you may be required to pay all or part of the cost of the electronic monitoring or other location verification system program based upon your

ability to pay as determined by the probation officer.

24. The defendant shall cooperate in the collection of DNA as directed by the probation officer.

25. The defendant shall participate in transitional support services under the guidance and supervision of the U.S. Probation Officer. The defendant shall remain in the services until satisfactorily discharged by the service provider and/or with the approval of the U.S. Probation Officer.

ADDITIONAL CONDITIONS:

26. The defendant is prohibited from working in a call center. *OTHER*

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	FINE	RESTITUTION
$1,400.00	$0.00	$2,419,706.68

☐ The determination of restitution is deferred until. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

FINE

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or

restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☒ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ The interest requirement is waived.

☐ The interest requirement is modified as follows:

COURT APPOINTED COUNSEL FEES

☐ The defendant shall pay court appointed counsel fees.

☐ The defendant shall pay $0.00 towards court appointed fees.

RESTITUTION PAYEES

The defendant shall make restitution to the following payees in the amounts listed below:

NAME OF PAYEE AMOUNT OF RESTITUTION ORDERED

NAME OF PAYEE	**AMOUNT OF RESTITUTION ORDERED**
See attached Restitution List	

☒ Joint and Several

☒ Defendant and Co-Defendant Names and Case Numbers *(including defendant number)* if appropriate:

Glen Adkins, Jr. 3:12cr259-01

☒ Court gives notice that this case may involve other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future.

☒ The victims' recovery is limited to the amount of their loss and the defendant's liability for restitution ceases if and when the victim(s) receive full restitution.

☒ Any payment not in full shall be divided proportionately among victims.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $0.00 due immediately, balance due

☐ Not later than

☐ In accordance ☐ (C), ☐ (D) below; or

B ☒ Payment to begin immediately (may be combined with ☐ (C), ☒ (D) below); or

C ☐ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of $50.00 to commence 60 (E.g. 30 or 60) days after the date of this judgment; or

D ☒ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of $ 50.00 to commence 60 (E.g. 30 or 60) days after release from imprisonment to a term of supervision. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. Probation Officer shall pursue collection of the amount due, and may request the court to establish or modify a payment schedule if appropriate 18 U.S.C. § 3572.

Special instructions regarding the payment of criminal monetary penalties:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court costs:

☐ The defendant shall forfeit the defendant's interest in the following property to the United States

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, 401 West Trade Street, Room 210, Charlotte, NC 28202, except those payments

made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of _____ months, commencing on _____.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date: _____
Defendant

(Signed) _____ Date: _____
U.S. Probation Office/Designated Witness