

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Sean M. Donahue — PETITIONER
(Your Name)

vs.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Pennsylvania Superior Court
(Pennsylvania Supreme Court Refused to Hear the Case)

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sean M. Donahue

(Your Name)

625 Cleveland Street

(Address)

Hazleton, PA 18201

(City, State, Zip Code)

(570)-454-5367

(Phone Number)

QUESTIONS PRESENTED FOR CERTIORARI

1. Is the Bill of Rights **ABSOLUTE**? Yes
2. Did the PA Appellate Court Fail to conduct an Independent Review in a **BILL OF RIGHTS CASE**? Yes
3. Was there a **VIOLATION OF HABEAS CORPUS**? Yes
4. Did PA legislation create an **UNCONSTITUTIONAL** two tiered criminal speech standard, one for “true threats” and one for “[non-]true threats”? Yes
5. Was there a **SECOND AMENDMENT VIOLATION**? Yes
6. Were there **DUE PROCESS VIOLATIONS** including being tried for a “course of conduct” crime with which the Appellant was never formally charged? Yes
7. Was there **WILLFUL JUDICIAL BIAS AND MISCONDUCT BASED ON RACE AND US FEDERAL MILITARY BACKGROUND**, excessive bail, cruel and unusual punishment and did non-English speaking foreigners make it on to the jury? Yes
8. Was there **SELECTIVE PROSECUTION BASED ON RACE AND US FEDERAL MILITARY BACKGROUND**, failure to proffer exculpatory evidence, tampering with evidence that was proffered and false testimony by state officials (“employees”) ? Yes
9. Are the rulings regarding “true threats” in **State v. Wooden, Supreme Court of Missouri, En Banc., No. SC 92846 2013** and **State v. Drahota, Nebraska Supreme Court, 788 N.W.2d 796 (2010), 280 Neb. 627 contradictory**? Yes

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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ZE1: Letter from Public Defender, May 16, 2016, Explaining Appeal Process;

ZE2: Letter from Public Defender, May 19, 2016, Refusing to Request Complete Transcripts of Trial and Pre Trial Hearings;

ZE3: Letter from Public Defender, June 6, 2016, Copy of Trial Exhibits, First Time Defendant actually saw and examined the exhibits himself;

ZE4: Letter from Public Defender, June 6, 2016, Matters of Appeal, Failure of Pre-Trial Attorney to Preserve Appeal of Habeas and other matters;

ZE5: Letter from Public Defender, July 29, 2016, Status of Appeal and Double Jeopardy Issue;

ZE6: Letter from Public Defender, August 24, 2016, Regarding Post Sentencing Briefing;

- Copy of Post-sentencing Briefing Filed in Dauphin County Court of Common Pleas;

ZE7: Letter from Public Defender, September 30, 2016, Regarding Statement of Errors;

- Copy of Statement of Errors Filed in Dauphin County Court of Common Pleas;

ZE8: Letter from Public Defender, December 16, 2016, Regarding Appellate Briefing Filed in The Superior Court of Pennsylvania;

- Copy of the Appellate Briefing Filed in the Superior Court of Pennsylvania;

ZE9: Letter from Public Defender, June 19, 2017, Regarding Application for En Banc before the Superior Court of Pennsylvania;

- Copy of the Application for En Banc before the Superior Court of Pennsylvania;
- Copy of Superior Court Opinion Denying Appeal;
- Copy of the Order Denying En Banc, August 16, 2017;

ZE10: Letter from Public Defender, September 5, 2017, Regarding Petition for Allowance of Appeal to the Supreme Court of Pennsylvania;

- Copy of Petition for Allowance of Appeal to the Supreme Court of Pennsylvania;

APPENDIX ZF Communications from Clerk of Dauphin County Court

APPENDIX ZG **Pro Se Filings and Complaints about Due Process**

ZG1: Filed on January 29, 2016 with The Pennsylvania Judicial Conduct Board,
Complaint about Trial Judge

ZG2:

(1) Memorandum For Record, Starting at ZG2 Page 1, Filed on April 8, 2016 with The Dauphin County Court of Common Pleas, Sent through the prison counselor to the Clerk of the Court;

- I. Defendant Does Not Forfeit His Right to Representation by Defense Counsel
- II. Defendant Documents For The Official Court Record, His Experiences Thus Far With The Dauphin County [In]justice System.
- III. This Document is Printed By Hand Because the Dauphin County Prison Typewriter, Available For Prisoner Use, Is Out of Typewriter Ribbon
- IV. Defendant Informs All Courts of the State, Nation and World That Dauphin County Judge Deborah E. Curcillo Failed to Dismiss Dauphin County Case CR-3716-2015 on a Writ of Habeas Corpus, When The Case Clearly Should HAvE Been Dismissed, And She Clearly Demonstrated Overt Judicial Bias In Favor Of The Prosecution And Against The Defendant, As Did MDJ Stewart.

(2) Memorandum For Record, Starting at ZG 2, Page 35, Filed on April 10, 2016 with The Dauphin County Court of Common Pleas;

- Several Months Prior To Making The Arrest, PA State Capitol Police Officer Richard C. Schur Sent an Email To The Defendant Expressing the Officer's

Dissatisfaction with the Political Viewpoints that The Defendant Was Sharing With Talk Radio Media Hosts Regarding the Police Shooting of Michael Brown in Ferguson Missouri.

- Officer Schur let the Defendant know that he was out to arrest him on something.

ZG3:

(1) Notice To The Court of Intent To Appeal and Instructions to Representing Attorney, Starting at ZG3, page 1, Filed on April 21, 2016 with The Dauphin County Court of Common Pleas.

- Among Attachments to Filing in ZG3: Request For Transcripts of All Pre-Trial Hearings Before Judge Curcillo in Docket R-3716-2014, Starting at ZG3, page 5, Filed on April 8, 2016 with The Dauphin County Court of Common Pleas; Copy of Other Previous Filing Made From the County Prison, Copy of PA Commonwealth Court Ruling in 56 CD 2014.

ZG4: Letter to Bruce Boni of the ACLU, April 28, 2016, With Attachments

ZG5: Request For Transcripts of Trial and All Pre-Trial Hearings, April 28, 2016, Filed with Dauphin County Court of Common Pleas.

ZG6: Memorandum For The Official Court Record, Filed on April 30, 2016 with The Dauphin County Court of Common Pleas;

- To The Honorable Judge Curcillo And The Dauphin County Public Defender's Office;

Attachments: Proof of Probation Webpage Fees Paid in Full, Proof of In Forma Pauperis, Emails with UCLA Law Professor;

- A1. State Jobs that PA Department of Labor and Industry is Failing to Help Me Get, I have Veterans Preference For Those Jobs;
- A2. Private Sector and Government Jobs That I Have Applied For Since My Release From The Bogus and Wrongful Trial, In Which My Free Speech Was Violated;
- A3. My DD214, DD215, NCOERs and Letters of Recommendation;
- A4. Student Loans;
- A5. Complaint About Judge During Pre-Trial and Evidence That Shows That I was Mistreated and Discriminated Against by State Actors;
- A6. Some Relevant Case Law;
- A7. Email Showing That The Arresting Officer Was Discriminating Against Me for Engaging in Public Debate with Public Media.

ZG7: Memorandum For The Official Court Record, Notice to The Court, Filed May 9, 2016 with The Dauphin County Court of Common Pleas;

- Sentencing;
- Essential Elements;

- Witness Testimony Was Inaccurate;
- The Constitutions of The United States and Pennsylvania;
- Veterans Status;
- Eighth Amendment;
- Appeal on All Issues.

ZG8: Memorandum For The Official Court Record, Notice to Public Defender, Filed on May 10, 2016 with The Dauphin County Court of Common Pleas;

- Please DO Not Forfeit Issues.... Even If You Disagree.

ZG9: Request For Pre-Trial Transcripts TOO, Filed May 12, 2016 with The Dauphin County Court of Common Pleas.

ZG10: Omitted (Indexing Error)

ZG11: Memorandum For The Official Court Record: Internal Affairs Complaints to The Pennsylvania State Capitol Police, May 16, 2016;

- Attachment ZG11, Page 2, Internal Affairs Complaint 1: Corporal Schur
Knowingly Withheld The Whole Truth and also Lied When Testifying in The
Dauphin County Court of Common Pleas During My Trial;

- Attachment ZG11, Page 11, Internal Affairs Complaint 2: ...Schur Was Instructed by MDJ Marsha Stewart (A Black Woman Magistrate) to Hand Her a Copy of The Most Recent Email....He Intentionally Did Not..... Instead, He Knowingly and Willfully Handpicked a Different Email....Related to a Political Campaign....About Race and Politics;
- Attachment ZG11, Page 19, Internal Affairs Complaint 3: Witnesses Roth, McMillan and Sauder willfully gave Inaccurate Testimony at Trial on April 19, 2016 They Possessed Evidence Showing Discrimination and Mistreatment of Defendant by State Actors;
- Attachment ZG11, Page 23, Internal Affairs Complaint 4:Witnesses Roth and Sauder willfully gave inaccurate testimony at Preliminary Hearing on July 1, 2015...They Possessed Evidence Showing Discrimination and Mistreatment of Defendant by State Actors.... Denied that state Actors Repeatedly Accused me of having a Mental Illness as Justification to Deny me Veterans Preference Services;

ZG12: Memorandum For The Official Court Record, Notice to The Court and to The Public Defender;

- Essential Elements;
- Failure to Prove that Alleged Victimization Occurred Within the Dauphin County Jurisdiction;
- Failure to Prove that Defendant Drafted and Sent Alleged Criminal Emails - Failure to Introduce Evidence of Hacking;

- Failure to Prove that the Defendant Wasn't the Victim of Revenge by State Actors.

ZG13:

(1) Memorandum for the Official Court Record, Starting at ZG13, Page 1, Filed on May 23, 2016 with The Dauphin County Court of Common Pleas;

- (1) Disagreements with the PD's Office and The County Court;
- (2) Related: Commonwealth Court Ruled that State Employee's Mass Email that was Harassing and Damaging to the Defendant is Protected Free Speech and Granted The State Greater Speech Rights Than The Citizenry;
 - Transcripts;
 - Bail was excessive;
 - Pre-trial transcripts are essential;
 - Common pleas judge made false allegations of mental illness;
 - Prima Facie;
 - There was no probable cause;
 - Magisterial Court;
 - MDJ was unprofessional, biased and corrupt;
 - Prosecution Contradicted Itself;
 - Prosecution's story changed from hearing to hearing to trial;
 - Misuse of Speech Laws and Making Speech Law From the County Bench;

- Misuse of Speech Laws and Making Speech Law From the Magisterial Bench;
 - Defendant is The Victim;
 - Federalize The Appeal.
- (2) Memorandum For Record and Disagreements with PD II, Starting at ZG13, Page 9, Filed May 23, 2016 with The Dauphin County Court of Common Pleas;
- Email from UCLA Law Professor Who Felt There was a Legitimate Breadth of Statute Issue to be Raised in This Case;
- (3) Memorandum for Record and Disagreements with PD III, Starting at ZG13, Page 12, Filed on MArch 23, 2016 with The Dauphin County Court of Common Pleas;
- PD Avers that Trial Attorney Failed to Preserve Some Issues;
 - PD Initially Did Not Want Case, Ticking Deadline Cost My Father Money He Previously Refused to Spend on My Post Sentencing Legal Fees;
- (4) Memorandum for Record, Starting at ZG13, Page 21, Filed on May 23, 2016 with The Dauphin County Court of Common Pleas;
- Trend of Government Abuse of Harassment Charges is Sweeping the Nation;
 - - To The Public Defender;
 - - Bruce Boni Docket Sheet;
 - - 1202 WDA 2008 in Superior Court of PA;
 - - Court Opinion in New Jersey v. Burkert;

- - Court Opinion in Nebraska V. Drahota (Represented by the same UCLA Law Professor);
- - Court Opinion in Missouri v. Wooden.

ZG14: Memorandum For The Record Disagreement With PD IV, Filed on May 23, 2016 with the Dauphin County Court of Common Pleas;

NOTE: ZG14 Pages are mislabeled as ZG15 (ZG15 pages are also labeled as ZG15)

ZG15: Memorandum For The Official Court Record, Filed on May 29, 2016 with The Dauphin County Court of Common Pleas;

- Harassment Convictions Reversed Throughout The US;
- Law Enforcement Controlling People's Words and Thoughts Throughout the Democracy;
- Manifestations of Futile Prosecutorial & Judicial Tyranny;
- Convictions Can't Survive Democracy's Vetting Process;
- Prosecution Never Identified Specific Evidence for Two Counts;
- Fact-Finder Found No "True Threat";
- Elements of Harassment Conviction were Not Met;
- Misperceptions By The Jury;
- Unlawful Legislating From the Jury Box;
- The Woman In Connecticut Said "[she] could do that too";

- Evidence Here Alleges That The Dauphin County Defendant Said; I Didn't Do That Which You Said I Did or Alleged I Would Do;
- Commonwealth of Pennsylvania, NOT THE DEFENDANT, Analogized to Public Mass Shooting Incidents;
- Court Opinion in State V. Moulton, Connecticut;
- PA Harassment Statute.

ZG16: Complaint About Magistrate, Filed on May 29, 2016 with Pennsylvania Judicial Conduct Board;

ZG17: Memorandum For the Official Court Record, Filed on June 7, 2016 with The Dauphin County Court of Common Pleas;

I. State Double Standards

II. Intertemporal Conundrums

III. Untenable Sentencing Constraints

IV. Trial Exhibits that The Defendant Has YET TO SEE:

- Duplicate Evidence and Pathetic Failure of Due Process.

V. The Unrelenting Intent of The Defendant;

- Attachments:
 - Order from Commonwealth Court Regarding Employment Case;

- Petition to PA Supreme Court, on May 23, 2016, Regarding Unlawful Disclosure of Misperceived Medical Condition on the Part of PA Department of Labor and Industry Employees;
- US Statute Prohibiting Wrongful Disclosure of Medical Information, Application for Relief to PA Commonwealth Court on Mar 25, 2016;
- Request that state employees stop sending mass emails telling people that Defendant has mental health problems;
- Defendant Has No Mental Health Illness at all;
- False rumors of mental illness are very damaging;
- Copy of Court Ordered Mental Health Examination;
- Copy of Pennsylvania Constitution;
- Copy of Pennsylvania Harassment Statute;
- Systemic Problems with Stock Ownership Plan for Employees at AutoZone, a US Company, Request For University Research;
- Requests for USDOL assistance getting a professional job;
- Requests for Congressman's Assistance in Getting Veterans Job Placement Assistance from USDOL to get a Professional Job;

- Request to VA Secretary for Assistance in Getting Professional Job;

ZG18:

(1) Double Counts = Double Jeopardy, Starting at ZG 18, Page 1, Filed on June 9, 2016 with The Dauphin County Court of Common Pleas;

(2) Trial Exhibit 3 Was Not Included in Pretrial Discovery, Starting at ZG18, Page 3, Filed on June 9, 2016, Defendant Did Not See Trial Exhibit 3 Until June 8, 2016;

- Defendant DID NOT have a chance to review Exhibit 3 Prior to Trial;
- Commonwealth Intentionally Deceived Defense Attorney who had Lacking Technical Wearwithal regarding his knowledge of the idiosyncrasies of email;

(3) Pro Se filing on June 9, 2016 with the Dauphin County Court of Common Pleas;

- I. You Can't "Recklessly" Criminally Harass Someone;
- II. You Can't Harass The Government;
- III. There is No Victim In This Case;
- IV. No Victim - No Crime;

ZG19: Complaint with Judicial Conduct Board of Pennsylvania, Filed on June 17, 2016 against PA Superior Court Judges Jack A. Panella, Jacqueline O. Shogan, James, J. Fitzgerald III;

- Reversal of Habeas was a Political Decision, not a Judicial Decision;

ZG20:

(1) Pro Se Filing, June 20, 2016, Filed with The Dauphin County Court of Common Pleas;

- The Preliminary Hearing Evidence and Trial Evidence are Materially Different;
- Prosecution alleged one timeline of alleged events at Preliminary Hearing but alleged a Different timeline and Different Alleged Events at Trial;
- At Trial the Prosecution created a timeline that was manufactured through the presentation of trial argument, not one that was discovered through investigation of alleged evidence;
- Prosecution knowingly created an inaccurate interpretation of alleged timeline, alleged evidence and alleged events;
- Success in Prosecution's pulling the wool [over] Defense Counsel's eyes does not forfeit the Defendant's right to a fair and honest trial;
- Courtroom Gamesmanship is not Justice;

(2) Pro Se Filing, June 20, 2016 (Date reads as Jan 20, 2016 but it was clearly filed in June 2016. It appears to be a cursive typo. Jan was clearly on the Defendant's mind or written as a motor skill.), Filed with The Dauphin County Court of Common Pleas;

- Lisa Sauder repeatedly perjured herself in affidavits that were related to Right to Know Requests;

- Sauder dumped approximately 2,000 pages of documents in the Prosecution's Discovery that were responsive to previous RTK requests [,] in response to which [Sauder] signed affidavits claiming [that] her agency didn't have;
- Sauder misused state labor resources to launch a sort of near decade long undercover operation to get the Defendant on a criminal charge, when those resources should have been used to assist the defendant in getting a professional civil service job;
- One example of an affidavit attesting to the nonexistence of records that Sauder clearly was in knowing possession of at the time of signing is attached;
- Sauder's testimony was/is too wrapped up in emotional vendettas over other administrative and civil matters for it to be credible testimony in this trial;

(3) Pro Se Filing, June 20, 2016, Filed with the Dauphin County Court of Common Pleas (Date reads as Jan 20, 2016 but it was clearly filed in June 2016. It appears to be a cursive typo. Jan was clearly on the Defendant's mind or written as a motor skill.);

- The Defendant's Preliminary Hearing and Trial were Dominated by Female Chauvinism;
- [Defendant] was not judged by a jury of his peers;

ZG21: Pro Se Filing, June 24, 2016, Filed with The Dauphin County Court of Common Pleas, Memorandum for the Official Court Record;

- To Dauphin County Prison Warden;

- Defendant never received his Brooks Brothers Alligator Belt and Monogrammed Silver Belt Buckle Back;
- Replacement Value of Approximately \$1,200.00.

ZG22: Letter to Public Defender, June 28, 2016;

- Why isn't anything being done about Corporal Schur having perjured himself at the Preliminary Hearing?
- Why isn't anything being done about Corporal Schur having perjured himself AGAIN at trial?
- Why isn't anything being done about Commonwealth Witness Lisa Sauder having perjured herself at the Preliminary Hearing and at Trial?

ZG23:

(1) Pro Se Filing, July 12, 2016, Filed with The Dauphin County Court of Common Pleas;

- Jury became aware of other County Case Prior To Reaching Verdict;
- Which created Double Jeopardy Problem in Both Counties.

(2) Pro Se Filing, July 12, 2016, Filed in The Dauphin County Court of Common Pleas;

- Defense Attorney Failed to Bring in Evidence that Proved Witnesses were Discriminating Against the Defendant based on his Political Views and that they were Engaging in Institutional Retaliation.

ZG24: Complaint to PA Disciplinary Counsel, July 12, 2016, Complaint About Pennsylvania Labor Department General Counsel Lisa M. Sauder, Commonwealth Witness in the Instant Case;

Attachments 1: Pro Se Filings with the Dauphin County Court of Common Pleas on the same matter;

Attachments 2: More Pro Se Filings with the Dauphin County Court of Common Pleas on the same matter;

ZG25: Pro Se Filing, July 21, 2016, Filed with The Dauphin County Court of Common Pleas;

- Prosecution Witness Sauder's Testimony was filled with Inaccuracies and included Intentional Subliminal Suggestions to the Jury.

ZG26: Pro Se Filing, August 9, 2016, Filed with the Dauphin County Court of Common Pleas;

- The Prosecution and Defense Attorney both Failed to Bring The Court's Attention to Evidence that, if Presented, Would Have Discredited The Prosecution's Presentation of The Trial Evidence.

ZG27: Pro Se Filing, August 9, 2016, Files with The Dauphin County Court of Common Pleas;

- Conviction Must Be Reversed Because Judge Showed Bias;
- Tainted Jury;
- Judge Allowed Inaccurate Testimony and False Testimony to be Presented to Jury;

1. Judge Intentionally Instructed Jury to Reach Guilty Verdict (First Time She Did This);
2. Witnesses Gave Inaccurate and False Testimony (Judge Allowed It);
3. Judge Allowed The Witness to Give Testimony that Connected Two Cases that are From Two Separate Counties (Double Jeopardy);
4. Prosecutor Presented Inaccurate, False and Misleading Documents as Evidence;
5. Judge Intentionally Instructed Jury to Reach a Guilty Verdict (Second Time She Did This);
6. Judge Made the Jury Think About Violence Being Done to Them;
7. Judge Expressed Overt Bias Based on Evidence She Never Saw;
8. Judge Then Explicitly Stated Her Biassed Assumption of Guilt in the Luzerne County Case;
9. Judge Asserted Biased and Wrong Conclusions About 2,000 Page Discovery She Never Read;
10. Judge Allowed Non-English Speaking People to be Jurors;
11. Too Late For This Instruction, The Judge Should Have Given This Same Instruction At The Beginning Of Trial;
12. Too Late, Judge Already Told Jury At Beginning of Trial That The Commonwealth Would Prove Defendant Guilty Beyond Reasonable Doubt;

13. Yet Again, Judge's Lecture Against Reasonable Doubt Told Jury That
Reasonable Doubt is Rare and that Proof Beyond a Reasonable Doubt is
the Default Position;
14. And Yet Again, Too Late Because, Judge Already [Told The] Jury At The
Beginning of Trial That the Commonwealth Would Prove Beyond a
Reasonable Doubt;
15. Judge Allowed Jury to Consider How Verdict Will Affect Future
Consequences for The Commonwealth Agencies but not the Defendant's
Future;
16. Judge Told Each Individual Juror That it was OK to Surrender a Verdict of
Not Guilty Just to Reach a Unanimous Verdict;
17. The Jury Discovered the Existence of prior Criminal Charges. It was the
Judge's Fault that Double Jeopardy was Created;
18. Judge Stopped Deliberation Because Judge Feared Not Guilty Verdict;
19. After Terroristic Threats Charge was Dismissed, the Judge AGAIN
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional and Statutory Provisions Involved

US Constitution - The Bill of Rights

First Amendment.....Right to Free Speech
Second Amendment....Right to Bear Arms, Form and Join a Militia
Fourth Amendment.....Right to Protection from Malicious Prosecution
Fifth Amendment..... Right to Due Process
Sixth Amendment.....Right to Speedy Trial
Seventh Amendment...Right to bring claims greater than \$20 before a federal jury.
Eighth Amendment..... Right to Protection from Cruel and Unusual Punishment and
Excessive Bail
Ninth Amendment.....Right to Protection from government's application of the
constitution to deny other rights that are or are not explicitly
stated
Tenth Amendment.....Right to Protection from the State's revocation of rights not
granted it but are retained by the individual citizen and people

PA Statutes on Harassment and Terroristic Threats (Appendix Z)

§ 2709. Harassment.

(a) Offense defined.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

(3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;

(4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;

§ 2706. Terroristic threats.

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

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

Statement of The Case

This case is not about crime. It's about the Bill of Rights protecting the right of individual citizens to intentionally use "vehement, caustic, and ... unpleasantly sharp attacks on [Pennsylvania] officials" who are now "employees". Because the US Bill of Rights is ABSOLUTE, it is unconstitutional to regulate its use by individuals. The First US Congress passed the First Amendment to prevent itself from ever "mak[ing a] law [that] abridg[es] the freedom of speech", including threats. "[T]he Federal Government apparently did not get into the business of regulating threats until 1917 [under the pressures of The Great War, just as President Lincoln suspended Habeas Corpus under the pressures of the First US Civil War." Elonis V. US, U.S. Supreme Court Slip Opinion, 575 U. S. (2015) THOMAS, J., dissenting, p12. The only constitutionally sound path to reasonably regulating individual use of the Bill of Rights is the path of Constitutional Convention. District of Columbia v. Heller 554 U.S. 570 (2008), PragerU Video by Eugene Volokh on Gun Rights, <https://youtu.be/rEqGB0t32NM>. Absent a Constitutional Convention, neither the states, nor the US, can retain harassment and terroristic threats statutes. Gooding v. Willson, 92 S.Ct. 1103 (1972). PA and 33 of its sovereign peers failed to initiate an Article V Convention in the instant case. Therefore certiorari is warranted.

Nationwide, NON-PRECEDENTIAL and PRECEDENTIAL court decisions regarding harassment and terroristic threats statues are being used to "abridg[e] speech" and empower selective prosecution of threats charges [Appendices ZA, ZG 6,13,15,4];

Q: "Professor Volokh, Do you believe that both of my convictions are violations of my right to Free Speech?"

A: "... it's been a while since I looked close at the case; I'm inclined to say, from reviewing the recent opinion, that it was probably mistaken...[Appendix E]"

In 1791, the United States Ratified the Bill of Rights to affirm that these rights are **ABSOLUTE** and untouchable by statute. All post 1791 US Supreme Court rulings that allow constraint and regulation of the individual use of the Bill of Rights are wrong. The instant case exposes the rampant constitutional degradation caused by post 1791 constraints being imposed on individual use of the Bill of Rights by this Court.

The slippery slope of Elonis V. US, S.Ct., 575 U. S. (2015) tricks us into accepting the “true threat” doctrine of the judicial puppet masters who wield the power of selective prosecution US v Armstrong, 116 S.Ct. 1480 and contradictory findings, like State v. Wooden, Missouri (2013) and State v Drahota, Nebraska (2010)¹. Nationwide “conflict” and “confusion” regarding “true threats” led to selective prosecution in the instant case for speech that is neither a “true threat”, nor broaches the “general intent” threshold wished for by Thomas in Elonis V. US, THOMAS, J., dissenting, p2. The jury in the instant case deadlocked as to conviction on a “true threat” but did convict on a standard lower than “general intent”. State v. Baccala, Conn 2017, State v. Burkert, NJ 2013 & State v. Pappert, PA 2010.² The PA Superior Court then used a non-precedential decision to dance around the “conflict” and “confusion” cited by Thomas and Alito in Elonis V. US, p16; THOMAS, J., dissenting, p1; ALITO, J. concurring pp1-2 to enforce a two tiered standard; terroristic threats for “true threats” and harassment for non “true threats”.

At oral argument, the PA Superior Court asked Appellant Counsel if free speech is absolute. The Counsel acknowledged that the US Supreme Court does not hold that

¹ Find Wooden in Appendices ZG13 p48,ZG6 Part 3; Drahota in Appendices ZG 13 p34,ZG6 Part 3 p158

² Find Baccala in Appendix ZA Part 1 p1; Burkert in Appendices ZG 13 p27, ZG 6 Part 3 p173; Pappert in Appendix ZG 6 Part 3 p180

view. However, the Appellant, now pro se, does hold free speech to be **ABSOLUTE** [Appendix ZB] and calls upon the Court to uphold the standard of **Original Constitutional Intent** of 1791. Not all proposed constitutional rights made it through state ratification but free speech did. **Free Speech is Absolute**. If our nation wants speech laws, gun laws and reasonable suspicion standards, then our congress can “amend the [US] Constitution”. PragerU Video by Eugene Volokh on Gun Rights, <https://youtu.be/rEqGB0t32NM>. Otherwise, such laws are unconstitutional and the alleged speech in the instant case boldly stands in the face of conviction as **ABSOLUTE protected free speech** [Appendix ZA].

Despite pretrial citations of Elonis [Appendices K & U], the trial court still **FAILED** to instruct the jury on the “true threats” standard and Defense Counsel **FAILED** to correct the trial judge on this matter. After wrestling with “conflict” and “confusion”, the jury **itself** asked for clarification on the difference between a harassment threat and a terroristic threat. The jury was not instructed to differentiate the two charges based on whether or not there was also an intent to terrorize and to associate the two charges based on the “true threat” doctrine. The trial judge instead told the jury to believe that terroristic threats refers to threats of violence, while harassment threats refer to other kinds of threats [Trial Transcript, pp97-99, Appendix ZG 27]. The jury took this to mean that harassment threats include threats of unrelenting lawsuits against the government, unrelenting administrative complaints, unrelenting requests for veterans priority services at federally funded PA CareerLinks, political actions and simply not going away and not leaving important government bureaucrats alone when they don’t want to hear from you

(ie: The Game of Democracy) [Appendix X, pp118-121, pp152-154, p194 Appendix W, pp691-692, 338-339, 185-186, HOUSTON v. HILL, 107 S.Ct. 2502(1987).

The intent of PA's harassment and terroristic threats statutes is to criminalize protected speech and petition. These statutes are too broad. PA appellate courts have intentionally misinterpreted and misconstrued these statutes in the most liberal manner possible, thwarting Digital Democracy and petition. PA's test for determining a message sender's intent is whether or not a message receiver testifies that she was fearful and alarmed [Appendix A p2-3]. This flawed standard was struck down in Drahota because it erases the requirement of *mens rea*³ on the part of the sender. The intent of PA's harassment and terroristic threats statutes is to police and punish federally protected speech and petition. Thus, statutes must be struck from law on constitutional grounds.⁴ Lewis v New Orleans, US SCt. 1974.

You can't harass the government because the government can't be the victim of harassment. No institution can be the victim of harassment. Only an individual person can be the victim of harassment. PA circumvented this constraint by redefining senior non-elected government officials as "employees". Sauder, as General Counsel to the PA Department of Labor and Industry (PALI), testified that she is a mere employee, not an "official", and is not to be contacted on matters involving PALI [Appendix ZG 7].

"[Ms. Adam] Did it cause you fear?"

[Sauder] Yes.

[Ms. Adam] Are you an elected official?"

[Sauder] No.

³ This Petition, LaFave, p10, p22

⁴ Immediately upon release from prison, Appellant initiated contact with Eugene Volokh of UCLA Law School [Appendix E], who conversed with the Appellant's Public Defender (PD). PD stated that there is a legitimate "breadth of statute" issue but that Paddick did not explicitly use the words "breadth of statute" in his Habeas Petition. Paddick stated that he feels his Habeas Petition still raised that core issue.

[Ms. Adam] Are you an appointed official?

[Sauder] No.

[Ms. Adam] Do you have any control over what happens within the Department of Labor & Industry?

[Sauder] No. I don't make decisions; I advise.

[Ms. Adam] So even if Mr. Donahue was coming to you with a grievance, you could advise, but not make those decisions.

[Sauder] Correct.

[Ms. Adam] So the problems he had, they weren't with you.

[Sauder] Correct.

[Ms. Adam] But you're on these emails.

[Sauder] Yes. [Trial transcript p45, Appendix ZG 27]"

The flawed reasoning that PA argued to the jury was that while "vehement, caustic, and sometimes unpleasantly sharp attacks on [Pennsylvania] officials" may be protected, the same speech to government employees isn't, meaning that freedom of speech depends on who you're speaking to. PA claimed that even when those employees are actively personifying the state, they still receive communications as private individual human beings, not as personifications of the government. This interpretation stems from an email scandal involving PA state employees and officials, including PA Supreme Court judges. PA prosecutors and courts very successfully kept their own government email accounts out of public reach by having the PA Commonwealth Court self servingly rule that government email addresses and accounts are now private and beyond public reproach PA Attorney General v. Philadelphia Inquirer, PA Commonwealth Court Ruling, No. 2096 C.D. 2014, Nov 19, 2015, [Appendix F]. Through temporal proximity, PA misapprehended a civil ruling to criminalize emailing state officials without permission.

The Prosecutor and trial court propagated this reasoning to convince the jury that even if the defendant is not guilty of terroristic threats, he is guilty of harassment by default for not communicating via proper channels. The Prosecutor also slipped a third

level in, such that if the defendant wasn't guilty of one harassment charge, then he had to be guilty of the other. PA Superior Court Judge Shogan espoused this duplicitous logic by acknowledging there was no terroristic threats conviction and then asking if harassment is really just a "looser version" of a threats charge, affirming her belief in the "general intent" standard for harassment and enabling double jeopardy.

"The constitutional prohibition against double jeopardy is set forth in the Fifth Amendment to the United States Constitution, as made applicable to the states through the Fourteenth Amendment. There is a similar double jeopardy provision in the Pennsylvania Constitution at Article 1, Section 10.

There are several individual manifestations of the protection against double jeopardy, including the following: (1) the merger of lesser-included and greater-included offenses; (2) the merger of multiple convictions under a statutory scheme that sets forth subsections that describe alternate bases of culpability and not alternate crimes; and (3) the prohibition against "multiplicity," i.e., the charging of multiple counts for a single criminal offense.

As explained below, Defendant claims that his conviction for two counts of harassment violates the prohibition against "multiplicity."

The merger of lesser-included and greater-included offenses is a doctrine that has its root in the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution, as made applicable to the states by the Fourteenth Amendment. Commonwealth v. Williams, 980 A.2d 667, 672 (Pa.Super. 2009).

In 2002, the Pennsylvania legislature enacted a statutory merger provision, 42 Pa.C.S. §9765, which provides:

No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the other offense. Where crimes merge for sentencing purposes, the court may sentence the defendant only on the higher graded offense.

The question of whether criminal charges merge for sentencing purposes is one that implicates the legality of sentence, which cannot be waived. Commonwealth v. Williams, 980 A.2d 667, 672 (Pa.Super. 2009).

In the 1990's, the Pennsylvania appellate courts issued a series of decisions that recognized a "non-traditional" merger doctrine when the multiple subsections of criminal offense statute are deemed to set forth alternate bases of culpability and

not alternate crimes. Commonwealth v. Rhoads, 636 A.2d 1166 (Pa. Super. 1994) [simple assault at 18 Pa C.S. §2701 (a)]; Commonwealth v. Dobbs, 682 A.2d 388 (Pa. Super. 1996) [aggravated assault at 18 Pa.C.S. §2702(a)]; Commonwealth v. Shannon, 608 A.2d 1020 (Pa. 1992) [involuntary deviate sexual intercourse at 18 Pa.C.S. §3123(a)]; Commonwealth v. Owens 649 A.2d 129 (Pa. Super. 1994) [indecent assault at 18 Pa.C.S. 3126(a)]; and Commonwealth v. Lopez, 663 A.2d 746 (Pa. Super. 1995) [arson endangering persons at 18 Pa.C.S. §3301(a)].

It is illegal to assess multiple punishments in those contexts. Id.

Lastly, and apropos to the instant prosecution, there is a double jeopardy prohibition against charging a single offense in multiple counts:

Protecting the defendant against multiple jeopardy for the same offense was a pleading function given considerable attention at common law. Perhaps its most obvious influence is in the prohibition against multiplicity (i.e., charging a single offense in multiple counts, a practice which could lead to multiple punishments for a single offense in violation of the double jeopardy prohibition. Wayne R. LaFave, Jerold H. Israel, Nancy J. King, Orin S. Kerr, Criminal Procedure, West's Criminal Practice Series, §19.2(b) (Fourth Edition), citing United States v. Corona, 108 F.3d 565, 573-74 (5th Cir. 1997); United States v. Brandon, 17 F.3d 409, 422 (1st Cir. 1994); State v. Vontress, 970 P.2d 42 (Kan. 1998); State v. Anderson, 580 N.W.2d 329 (Wisc. 1998).

While a defendant can waive a complaint about multiplicity in the charging document, a complaint about multiplicity of sentences can be raised for the first time on appeal. United States v. Corona, id., at 572, citing United States v. Stovall 825 F.2d 817, 821 (5th Cir.), amended, 833 F.2d 526 (5th Cir. 1987).

Instantly, the charging document recites redundant language for the two counts of harassment with a recitation of a single statutory citation, 18 Pa.C.S. The Court in its jury instructions defined the elements of the harassment charge. It used language pertaining solely to 18 Pa.C.S. §2709(a)(4). The Court in its instructions did not include an explanation of the basis for two separate counts of harassment. Accordingly, the jury was presented with redundant counts of the very same criminal offense that were not distinguishable on the basis either of their involving separate statutory subsections, separate victims or separate dates of occurrence.

In its Rule 1925(b) opinion, the lower court suggests that the multiple punishments were justified because there were multiple communications and multiple victims. The lower court, however, is ignoring the fact that the Commonwealth chose to "charge generally" and not to delineate separate counts based on separate communications or separate victims. The fact that the Commonwealth might have delineated separate counts in that fashion is irrelevant. The Commonwealth did not do so.

As the matter was submitted to the jury, there was no stated distinction between the two counts of harassment based on date of offense or identity of victim.

The Superior Court in Commonwealth v. Owens *supra*, discussed the relevance of the Commonwealth's "charging generally." In Owens the defendant was charged under two subsections of the former indecent assault provision involving two distinct bases of liability. (1) no consent and mentally impaired complainant; and (2) complainant under the age of 14 years. The prosecution involved the same conduct and same complainant, the defendant's 13-year-old paperboy. Despite that fact that the minor complainant described ten different incidents, the Commonwealth did not set forth separate counts in the information. As described by the Superior Court: "Instead, the information generally charged Appellant with indecent assault between September and December of 1990." *Id.* 649 A.2d at 138. The Commonwealth instead charged three separate counts based on different subsections of the indecent assault statute. The Superior Court held that separate sentences under that scenario offends merger principles because statute set forth alternate bases of culpability and not alternate crimes. at 138-139).

Instantly, the multiple convictions for harassment violated the prohibition against multiplicity. The second conviction should be vacated [Appendix ZE 8, pp.31-35]."

PA Superior Court President Judge Emeritus Stevens refused to recuse himself from the appellate panel and asked if the instant case involved the Luzerne County District Attorney Stephanie Salavants⁵, who is publicly known to be his good friend and who is also the alleged victim in a related case in which the Appellant is also the defendant. The Appellant instructed counsel to request Judge Stevens' recusal both because of his public friendship with Salavantis and because of an email exchange that the Judge had with the Appellant when the judge was an Adjunct Professor at Penn State Hazleton⁶ [Appendix S]. Discovery materials and other documents related to the Salavantis case were

⁵ The Salavantis case was clearly related and clearly on his mind. That's why he asked about it.

⁶ Appellant's copy of the email was seized during the August 21, 2012 blacked out night time raid; US Middle District of PA Docket 3:14-cv-01351.

embedded within the 2,000 page discovery in the instant case⁷, which indicates another double jeopardy and reveals yet additional motivations for retaliatory selective prosecution. The instant case was initiated after the Salavantis case was dismissed on a Writ of Habeas Corpus [Appendix M], which made the Appellant a prosecutorial target.

Having already ruled elsewhere that it wanted to see the Appellant prosecuted [Appendix N], the PA Superior Court denied both an independent review and reargument in the instant case [Appendices A & A.1]. The PA Supreme Court refused to hear the matter entirely [Appendices C & D], leaving the Independent Review to this Court.

"Because Mr. Donahue's challenge is based on First Amendment rights, the appellate court must conduct an 'independent review.' The general deferential standard of review in sufficiency challenges is inapplicable to the instant appeal. In rejecting this issue, the panel in the first instance refused to perform an 'independent review,' finding that the authority cited by Defendant was 'unpersuasive.' ([Appendix A, pp. 3-4]). The necessity of [the] employing an 'independent review' in criminal cases involving First Amendment rights is based on decisions of the Supreme Court of the United States. See *Bose Corp. v. Consumer's Union of U.S., Inc.*, 466 U.S. 485 (1984); *Hess v. Indiana*, 414 U.S. 105 (1973) (per curiam); *Street v. New York*, 394 U.S. 576 (1969) *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

The panel was bound by those decisions, and it either overlooked them or misapprehended them in finding that there was no 'persuasive' authority for 'independent review' [Appendix ZE 8, pp10-11]".

" 1. The reviewing court must apply an independent review of the conduct in order to determine if it qualified as a "true threat" rather than deferring to the jury's verdict.

Defendant's challenge to the sufficiency of the evidence is based on the premise that his conduct was protected speech under the Federal and Pennsylvania Constitutions. Freedom of speech is set forth in the First Amendment to the United States Constitution, as made applicable to the states through the Fourteenth Amendment. Pennsylvania's Constitution sets forth a right to freedom of speech in Article I, Section 7. There is an additional right in the Pennsylvania Constitution at Article I, Section 20, for citizens to petition to 'those invested with the powers of government for redress Of grievances or other proper purposes, by petition, address, or remonstrance."

⁷ Appendix W, pp623-632, 118, 563-598, 242-303, 939-949, 555-558

A different standard of appellate review — independent review — applies in cases where the challenge is based on First Amendment rights.

When a defendant challenges the sufficiency of the evidence to sustain a jury's verdict, the general standard of review requires the reviewing court to defer to the jury's factual findings if they are supported by the evidence. See e.g. Commonwealth v. Diamond, 83 A.3d 119, 126 (Pa. 2013) (citations omitted); Commonwealth v. Gonzalez 109 A.3d 711, 716 (Pa.Super. 2015). Such review is conducted while viewing the evidence in the light most favorable to the verdict winner. Id.

That standard of review does not apply in cases where the appellant is basing the challenge on First Amendment rights. In such cases, "an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that the 'judgment does not constitute a forbidden intrusion on the field of free expression.'" Bose Corp. v. Consumer's Union of U.S., Inc., 466 U.S. 485, 499 (1984), quoting New York Times co. v. Sullivan, 376 U.S. 254, 284-285 (1964). Such "rule of independent review assigns to judges a constitutional responsibility that cannot be delegated to the trier of fact." Bose Corp. v. Consumer's Union of U.S., Inc., Id. 466 U.S. at 501

The rationale for the New York Times rule of independent review is the paramount role of free speech in our democracy:

When the standard governing the decision of a particular case is provided by the Constitution, this Court's role in marking out the limits of the standard through the process of case-by-case adjudication is of special importance. This process has been vitally important in cases involving restrictions on the freedom of speech protected by the First Amendment, particularly in those Cases in which it is contended that the communication in issue is within one of the few classes of "protected speech."

The First Amendment presupposes that the freedom to speak one's mind is not only an aspect of individual liberty — and thus a good unto itself— but also is essential to the common quest for truth and vitality of society as a whole. Under our Constitution, 'there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.'

Bose Corp. v. Consumer's Union of U.S., Inc., id., at 503-504 (citations omitted).

Although the New York Times and Bose Corp. cases involved libel actions, the Supreme Court of the United States has applied the New York Times standard of independent review in criminal contexts as well. See Street v. New York, 394 U.S. 576, 592 (1969) (whether remarks constituted "fighting words," thereby causing a

breach of the peace); Hess v. Indiana, 414 U.S. 105, 108-109 (1973 (per curiam) (whether advocacy was directed to inciting or producing "imminent lawless action)).

In the instant case, Defendant contends that he can be convicted of the harassment offense defined at 18 Pa.C.S. § 2709(a)(4) only if his conduct qualified as a 'true threat.' The Federal courts and the courts of sister states have applied the New York Times standard of independent review to criminal convictions requiring a finding that the defendant made a 'true threat.' See United States v. Bly, 510 F.3d 453, 457-458 (4th Cir. 2007); United States v. Hanna, 293 F.3d 1080, 1088 (9th Cir. 2002); In Re George T., 93 P.3d 1007, 1014-1015 (Cal. 2004); People v. Stanley, 170 P.3d 782, 790 (Colo. Ct. App. 2007); State v. DeLoreto 827 A.2d 671, 679 (Conn 2003); Brewington v. State, 7 N.E.3d 946, 955 (Ind. 2014); Galloway v. State, 781 A.2d 851, 888 (Md. Ct. App. 2001); State v. Barth, 702 N.W.2d 1, 4 (ND. 2005); State v. Johnston, 127 P.3d 707, 712 (Wash. 2006) [Appendix ZE 8, pp20 - 23].

The PA Superior Court accepted the trial judge's materially misleading and willfully misquoted excerpts and sentence fragments as fact. The trial judge took text from four separate trial exhibits [Appendices ZE 3, ZG 20], left the majority of the text behind and then strung the excerpts together, out of context, to create a new communication that did not exist before she created it. She then presented it to the Superior Court, which in turn wrongfully accepted it as having been a fact that was found by the jury, when it actually wasn't. The Superior Court then further selected sentence fragments from the trial court's excerpts, pieced those fragments together into another paragraph and ruled that it was the pieced together fragments that constituted the criminal threatening statement for which the jury convicted the Appellant. However, the Superior Court's statement didn't even exist until the Superior Court created it.

"As a factual matter, the panel performed its analysis by describing the purportedly threatening language in the briefest possible manner. The panel achieved such brevity by piecing together quoted fragments from the three emails. The end result is a misleading characterization of Mr. Donahue's actual communications. The panel has omitted the portions of the communications that provide a context establishing a non-threatening intent.

Accordingly, the panel either overlooked or misapprehended the complete

factual recitation of Mr. Donahue's communications [Appendix ZE 9, p8]."

(A) The trial judge deleted phrases that materially changed the meaning of the trial exhibits. For example, she wrote;

*"You **won't have to explain** to a judge how you rectify **my** having spent so much money on civil court actions instead of just buying a \$200 gun and \$20 box of ammunition and killing your employees, like they accuse me of having been accusing me of having a propensity towards for about a decade [Appendix B.1 p2]."*

This reads like; It will be easy to **"rectify"** because I will make it easy to **"rectify"**.

(B) The Superior Court then further misquoted the trial judge;

*" 'You **won't have to explain** to a judge how you rectify **me** having spent so much money on civil court actions instead of just buying a \$200 gun and \$20 box of ammunition and killing your employees [Appendix A, p2]' "*

This too reads like; It will be easy to **"rectify"** because I will make it easy to **"rectify"**.

(C) Yet, the actual trial evidence said;

*"You **won't have the balls to explain** to a judge how you rectify my having spent so much money on civil court actions instead of just buying a \$200 gun and \$20 box of ammunition and killing your employees, like they accuse me of having been accusing me of having a propensity towards for about a decade [Appendices ZE 3, ZG 20, Trial Exhibit 2 and Preliminary Hearing Exhibit Commonwealth 1]."*

This reads like; It will be hard for you to **"rectify"** because the facts contradict your allegations.

The Superior Court accepted the trial judge's presentation of a willfully misquoted sentence within an altered context resulting from her deletion of paragraphs. The PA Superior Court then selected even smaller sentence fragments from the trial judge's presentation and created an even smaller paragraph, which it then found to be a crime.

"Appellant used the following language in his communications to the e-mail recipients – "I will pursue punishment of you"; "[t]hat is a threat"; "You won't have

to explain to a judge how you rectify me having spent so much money on civil court actions instead of just buying a \$200 gun and \$20 box of ammunition and killing your employees, like they accuse me of having . . . a propensity towards"; and "I hope all of you suffer terrible tragedies." N.T., 4/19/16, at 22, 28, 36, 44; Commonwealth Exhibits 1–4 [See Appendix A, Superior Court Opinion p2 of 4]"

"I will pursue punishment of you" and "[t]hat is a threat" clearly referred to filing civil, administrative and criminal complaints⁸. What is more, there were entire pages and days between the different sentence fragments that were maliciously grouped together by the Superior Court to form a single fluid message that the Appellant never sent. By grouping them together as one single communication, the Superior Court ruled that the jury found a "course of conduct" harassment crime, in which separate emails contained fragments that added up to equal a single crime. However, the Appellant wasn't formally charged with "course of conduct" harassment. Even put together, as the fragments were, the paragraph created by the Superior Court still isn't a crime. What is more, the individual sentence fragments when taken alone also do not constitute crimes.

Telling government officials that "I hope all of you suffer terrible tragedies" isn't a crime. The Superior Court wrongfully concluded otherwise and further incorrectly ruled that having "referenced the formation of a militia of similarly frustrated citizens. N.T., 4/19/16, at 22, 28, 44; Commonwealth [Trial] Exhibits 1, 2, and 4"[Appendices A p5, ZE 3, ZG 20] constitutes a crime. Yet, the Right to form and/or join a militia for the express purpose of overthrowing the government is protected by the Second Amendment DC v. Heller⁹ and referencing doing so is protected by the First Amendment. Laws that infringe on this fundamental right, such as 18 Pa.C.S. §5515 Prohibiting of Paramilitary Training,

⁸ Appendix X pp152-154, AA1 -AA21, Appendix W, pp308-309, 659,757, 798-799, 1632

⁹ Guns are for Individual self defense in addition to forming a militia, not instead of forming a militia.

are examples of unconstitutional laws that the Court must strike from law. Id. How are the people supposed to bear arms effectively to stop tyranny if preparing one's self to do so is criminalized? How does one speak freely if what one has to say is criminalized? PA Superior Court Judge Moulton stated that the emails in question can be taken as not being threatening, which acknowledged a reasonable doubt that he later ignored.

Unlike the Superior Court and trial court, which altered context by deleting paragraphs, the Prosecutor altered context by altering exhibits between the Preliminary Hearing, pretrial discovery, the criminal information and Trial. Trial Exhibits 1, 3 and 4 were not included in the Preliminary Hearing, pretrial discovery or in the criminal information [Appendices ZE 3, ZG 20, J & W]. The Appellant was denied a chance to review these exhibits before and during trial. The timestamps, addressee lists and the placement of text within the Trial Exhibits were not accurate. Trial Exhibits 3 and 4 both purport to have been printed from Corporal Gregory L. Budman's email account. Yet, Budman's email address does not appear anywhere in the emails. How did those emails get into his account without a warrant? Clearly, Budman altered the emails by deleting header information showing that someone forwarded those emails to his account or he accessed them without a warrant. Where did he get the header information that he retained? Computer servers delete the header information in chain emails. It appears Budman deleted newer text to bring older text to the top and in so doing mismatched email text and header information. The Prosecutor relied on this header information at trial to create a false timeline, which was fundamental to her incorrect trial argument and storyline. Appellant informed defense counsels of this at trial, before postsenencing

motions and again before appeal. Appellant did not see the Trial Exhibits himself until weeks after trial ended[Appendix ZE 3]. Defense Counsel overlooked the header data.

Preliminary Hearing Exhibit, “Commonwealth 1”, allegedly printed from David Kozemchak’s¹⁰ Account contained header information that read “Sent: Friday, November 28, 2014 6:57 PM” and “Subject: You’ve one”. The third page of Trial Exhibit 4, printed from Budman’s account, contains the same text as “Subject: You’ve one” but has timestamp of “November 28, 2014 6:56 PM”. Trial Exhibit 3 also contains the text of “You’ve One” but has a timestamp of “November 28, 2014 6:56 PM”. The Prosecutor further alleges that “You’ve One” was sent again as “Re: You’ve One” with timestamp “November 29, 2014 6:30 AM”. The address list in Trial Exhibit 3 appears to be the same as that of Preliminary Hearing Exhibit “Commonwealth 2”, printed from Kozemchak’s account with a timestamp of “November 29, 2014 6:29 AM” but the texts of the emails are different. It appears that Trial Exhibit 3 likely contained additional text that was deleted by Budman to bring older text up to the top. The Appellant told his attorney during trial when Trial Exhibit 3 was presented to the court that there was something wrong with it. Exhibit 3 must be struck from the record and suppressed because it was intentionally altered for trial presentation to feign a “course of conduct” argument. Even if it was the result of a technical glitch, it must still be struck [Appendix ZE 8, p15, p15 fn2].

Likewise, Trial Exhibit 2, which purports to be the same as Preliminary Hearing “Commonwealth 1” contains the top of the letter “O” or the number “0” or a similar character just below the letter “Y” in the subject line. This too indicates that additional

¹⁰ Kozemchak is an employee with PA Human Relations Commission who took the Appellant’s complaint against the PALI. He suggested that state employees were discriminating against the Appellant because his darker complexion when he wore beard made him appear Middle Eastern [Appendix W, p1703].

text may have been in that location and that the printer caught the partial text prior to the screen having time to reload.

In Contrast, the timestamps associated with other emails that are alleged to have been part of the same email chain but were of no interest to the commonwealth show no signs of having been altered. Preliminary Hearing “Commonwealth 1” and Trial Exhibits 2, 3 & 4 all contain an email in their string with a timestamp “November 28, 2014 8:25 AM” that reads “Dear Mr. Smith, Please click on the below link...”.

In counter contrast, Trial Exhibit 1, which was of interest to the Commonwealth has a timestamp of “November 26, 2014 6:29 AM”. That same email appears in Preliminary Hearing “Commonwealth 1” and Trial Exhibits 2, 3, & 4 with a timestamp of “November 26, 2014 6:28 AM”. What is more, it is not at all likely that the Appellant intentionally sent emails on multiple mornings at exactly 6:29 AM [Trial Exhibit 1, Preliminary Hearing Commonwealth 2]. The prosecution side clearly prepared email exhibits for trial by cutting, pasting, deleting and modifying header data and subsequently mismatched email text and header data when they did so. For this reason all Trial Exhibits and all Preliminary Hearing Exhibits must be struck from the court record and suppressed. What is more, the Prosecutor never proved beyond a reasonable doubt that the Appellant was the person who actually sent the Trial Exhibit emails and the fact that the Appellant’s email account was hacked should have been introduced by the Defense Counsel to suggest reasonable doubt to the jury [Appendices H, ZG 7,12,].

In addition, the Appellant also wanted wanted to appeal the trial court’s ruling on probable cause but Defense Counsel advised that one must wait until after trials “finish”

to appeal denials of Writs of Habeas Corpus [Appendices K, ZE 4]. The Appellant now asks the US Supreme Court to grant the Writ of Habeas Corpus *ex post facto*.

"The Commonwealth never believed that the Defendant was presenting any sort of present threat, they knew he was ranting. The emails were nothing more than ranting complaints. The emails were not acted on until months later.

The subject emails were sent to over 60 people in November of 2014. The Commonwealth did nothing about the emails until filing complaints in January of 2015. If the Commonwealth believed there was a true threat, it would have acted accordingly and defused any situation.

The email in question does not threaten to engage in any crimes. The email was a public statement criticizing state actors for bad behavior. Such a public statement is not a "true threat" but is instead a public criticism of governmental actors. As such, it is speech protected by the First amendment.

As the Superior Court stated in Commonwealth v. Anneski, 362 Pa. Super. 580, 585-87, 525 A.2d 373, 376 (1987):

The statutory proscription "is directed against those who employ threats in circumstances more serious than would be covered by petty offenses like disorderly conduct or breach of the peace." Toll, Pennsylvania Crimes Code Annotated §2706 (1974), quoting Model Penal Code Comment: [T.D. No. 11, pp. 8-9]. In reviewing a statement alleged to be a terroristic threat, we do not look at the statement in a vacuum. Instead, we must look at it in light of the surrounding circumstances. ... The offense of terroristic threats, as we have observed, was intended to impose criminal liability on persons who make threats which seriously impair another's personal security. It is the making of the threat with intent to terrorize that constitutes the crime.

To disallow speech that is for the purpose of publicly airing a grievance against government officials, because the content is uncomfortable and includes violent imagery, is to rewrite the First Amendment. The purpose of guaranteeing the freedom of speech in the First Amendment is to protect against the regulation of uncomfortable speech. This is because no-one would seek to regulate non-offensive speech. The citizenry must be permitted to speak in passionate terms against government injustices.

Further, "(t)he First Amendment affords special protection to speech that may inform public debate about how our society is to be governed – regardless of whether it actually becomes the subject of a public controversy." Connick v. Myers, 461 U.S. 138, 160 (U.S. 1983).

The U.S. Supreme Court has held that government may not prohibit speech that advocates illegal or subversive activity unless "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action", See Brandenburg v. Ohio, 395 U.S. 444, 89 S. Ct. 1827, 23 L. Ed. 2d 430, 1969. Applying the Brandenburg test, the Court ruled that the government could not punish an anti-war protester who yelled, "[W]e'll take the fucking street later," because such speech "amounted to nothing more than advocacy of illegal action at some indefinite future time" See Hess v. Indiana, 414 U.S. 105, 94 S. Ct. 326, 38 L. Ed. 2d 303, 1973. Nor could the government punish someone who, in opposition to the draft during the Vietnam War, proclaimed, "[I]f they ever make me carry a rifle, the first man I want in my sights is [the president of the United States] L.B.J." See Watts v. United States, 394 U.S. 705, 89 S. Ct. 1399, 22 L. Ed. 2d 664, 1969. Such politically charged rhetoric, the Court held, was mere hyperbole and not a threat intended to be acted on at a definite point in time.

Speaking out against government corruption and mistreatment is clearly protected by the First Amendment. Even where the funerals of U.S. service members were protested in extremely hostile means, with little regard to the loss felt by the families affected, the U.S. Supreme Court in Snyder v. Phelps, 131 S.Ct. 1207 (2011), based its holding on the following :

Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate. Id. at 1220.

While the Defendant need not articulate which specific crime of violence is being threatened, there must be at least the inference of an articulable type of crime of violence. See Commonwealth v. Sinnott, 2009 PA Super 114, If 7, 976 A.2d 1184, 1188 (2009) aff'd in part, rev'd in part, 612 Pa. 321, 30A.3d 1105 (2011). Commonwealth v. Butcher, 434 Pa. Super. 463, 468, 644 A.2d 174, 176 (1994). Commonwealth v. Hudeens, 400 Pa. Super. 79, 90, 582 A.2d 1352, 1358 (1990), and Commonwealth v. Ferrer, 283 Pa. Super. 21, 25, 423 A.2d 423, 425 (1980).

Without the threat of a crime of violence, there cannot be a crime of terroristic threats. A couple of modern examples of charged speech that implied violence, and were not determined to be "true threats" are:

1. Ted Nugent's comments at a National Rifle Association convention in April of 2012, that "if Barack Obama becomes the president in November again, I will be either be dead or in jail by this time next year." While the Secret Service looked into the comments, Nugent was never charged with a crime. He was not charged because speech that is not a true threat is protected speech.

2. In June of 2008 at a fundraiser in Philadelphia, President Obama said regarding his opponents "If they bring a knife to the fight, we bring a gun,... Because from what I understand folks in Philly like a good brawl. I've seen Eagles fans." There was not a prosecution, because there was no true threat of violence.

3. Vincent Stone, a man similarly situated to Mr. Donahue, was charged with similar offenses, in the Court of Common Pleas of Blair County, Pennsylvania, for sending an email to Governor Ed Rendell stating that he prayed someone would shoot the Governor. In December 2009, that Court dismissed the charges as being without merit. Judge Daniel J. Milliron stated in his opinion "This court, as any reasonable person would, finds the conduct of [Stone] repulsive. However, that conduct, although abhorrent, is not criminal and is protected by the rights and liberties which remain the cornerstone of this great country."

[Plus people like Madonna, who wanted to "blow up the White House", Jonny Depp who wanted to know "when was the last time an actor assassinated a president", Kathy Griffin who simulated beheading President Trump and numerous protesters who held signs like; "Rape Melania". This was clearly Selective Prosecution US v Armstrong, 116 S.Ct. 1480 (1996); 2015 WL 4597583 (E.D.Pa.) (Trial Motion, Memorandum and Affidavit)
United States District Court, E.D. Pennsylvania. US. V. MARTINEZ, No. 14-564, February 2, 2015, Millions of uncensored anti-Trump Facebook posts].

Finally, the Commonwealth must demonstrate the intent of the Defendant and here that element is lacking. The United States Supreme Court in a similar case, although one interpreting a federal statute outlawing threats via interstate communication, 18 U.S.C. §875(c) determined that where the statute is silent as to intent, the government must prove the intent of the actor.

We have repeatedly held that "mere omission from a criminal enactment of any mention of criminal intent" should not be read "as dispensing with it." Morissette v. United States, 342 U. S. 246, 250 (1952). This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal." Id., at 252. As Justice Jackson explained, this principle is "as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." Id., at 250. The "central thought" is that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as mens rea, scienter, malice aforethought, guilty knowledge, and the like. Id., at 252; 1 W. LaFare, Substantive Criminal Law §5.1, pp. 332-333 (2d ed. 2003).

Although there are exceptions, the "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime." United States v. Balint, 258 U. S. 250, 251 (1922). We therefore generally "interpret[] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them." United States v. X-Citement Video, Inc., 513 U. S. 64, 70 (1994). Elonis V. United States, U.S. Supreme Court, Slip Opinion at p.9-10. Decided 6/1/2015.

VI. CONCLUSION

Mr. Donahue's speech must not be any less protected than that of a high profile celebrity, the President, or another common man in another part of Pennsylvania. To the extent the Commonwealth has failed to introduce evidence that there is a true threat, a threat to commit a crime of violence, or that the speech was not protected public speech the charges against Sean Donahue must be dismissed.

WHEREFORE, the Defendant requests a dismissal of the charges with prejudice [Appendix K, pp7-11]".

Even With Post 1791 Constraints Applied, the instant case still should have been dismissed because the speech in question does not rise to either the level of "true threats" repeatedly upheld by the Court, nor to the level of a "general intent", the standard wished for by Justice Thomas, Elonis V. US, THOMAS, J., dissenting.

"None of Defendant's communications qualified as a 'true threat.'

A person's right to freedom of speech does not extend to conduct that qualifies as a 'true threat.' Virginia v. Black, 538 U.S. 343 (2003); Watts v. United States 394 U.S. 705 (1969).

The Supreme Court of the United States has discussed the related concepts of inciting imminent violence and "true threats" in these terms:

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... And the First Amendment also permits [the government] to ban a true threat...

True threats encompass those statements [in which] the speaker means to communicate a serious expression of intent to commit an act of unlawful violence

to a particular individual or group of individuals... Virginia v. Black, id. at 359-360 (internal citations and quotation marks omitted).

In addressing a conviction for indirect criminal contempt of a protective order under the Protection from Abuse Act [PFA], the Pennsylvania Superior Court applied those same principles:

When engaged in a constitutionally protected activity of the fundamental nature of freedom of speech, we must exercise restraint in prohibiting the activity lest we destroy the right." Commonwealth v. Gowan 399 Pa.Super. 477, 582 A.2d 879, 882 (Pa.Super. 1990). However, the right to free speech is not absolute, and certain well-defined, limited classes of speech may be prevented and punished without raising constitutional problems. Commonwealth v. Duncan 239 Pa.Super. 539, 363 A.2d 803, 806 (Pa.Super.1975). Lewd, obscene, profane, libelous and insulting or "fighting words those which by their very utterance inflict injury or tend to incite an immediate breach of peace" are not constitutionally protected. (quoting Chaplinsky v. New Hampshire, 315 U.S. 568, 571-72, 62 S.Ct. 766, 769, 86 L.Ed. 1031 (1942)). only "true threats" fall within that group of expressions, such as fighting words, which are not constitutionally protected speech." U.S. v. Maxton, 940 F.2d 103, 105 (4 th Cir.1991). A true threat is one which "on its face and in the circumstances in which it is made is so unequivocal, unconditionally immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution." United States v. Kelner 534 F.2d 1020, 1027 (2d Cir.1976). Commonwealth v. Baker 722 A.2d 718, 721—22 (Pa. Super. Ct. 1998) (en banc) (vacating conviction of defendant who uttered words "I'm going to kill this bitch" to sheriff's deputies who were serving him with temporary PFA order), affd 564 Pa. 192, 766 A.2d 328 (2001).

Crude political hyperbole does not rise to [the] level of 'true treats.' Watts v. U.S. id. In Watts the defendant was participating in a protest against the draft during the Viet Nam War and the administration of Lyndon Baines Johnson. The defendant stated, "If they ever make me carry a rifle the first man I want in my sights is L.B.J." He was convicted of violating a Federal statute prohibiting threatening the life of the President of the United States. The Supreme Court of the United States overturned the conviction, finding that the comments did not qualify as 'true threats':

...the statute initially requires the Government to prove a true "threat." We do not believe that the kind of political hyperbole engaged in by petitioner fits within that statutory term. For we must interpret the language Congress chose against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide- open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. The language of the political arena, like the language used in labor disputes, is often vituperative, abusive, and inexact. We

agree with petitioner that his only offense her[e] was "a kind of very crude offensive method of stating a political opposition to the President."
Watts v. United States *id.* at 708 (internal citations and quotation marks omitted).

Furthermore, the government may not prohibit speech that advocates illegal or subversive activity unless "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Bradenburg v. Ohio, 395 U.S. 444 (1969). Applying that test, the Supreme Court Of the United States ruled that the government could not punish an anti-war protestor who yelled "[W]e'll take the fucking street later," because such language "amounted to nothing more than advocacy of illegal action at some indefinite future time." Hess v. Indiana, 414 U.S. 105 (1973).

Instantly, none of Mr. Donahue's emails can be characterized as containing a 'true threat.'

The subject matter of the [Trial] Exhibit 1 email is Mr. Donahue's belief that the Civil Service Commission wrongly believed that it retained jurisdiction over certain matters of controversy after Mr. Donahue had sought redress in the courts. Mr. Donahue explicitly uses the word "threat," but he is threatening to take "court actions." There is no reference to Mr. Donahue's threatening violence. There is no use of violent imagery whether or not tied to an explicit threat.

In the [Trial] Exhibit 2/Exhibit 3 email, there is no specific reference to Mr. Donahue's threatening violence. There are three instances in which Mr. Donahue uses terminology that refers to guns, ammunition, and explosives. Such language does not constitute an explicit threat. The references to guns, ammunition and explosives occur in two other rhetorical contexts: (1) to indicate that Mr. Donahue [did not purchase] those items with the money he expended instead on paper litigating claims against the Department [unlike Wooden]; and (2) to acknowledge that the Department's employees in the past made repeated false claims that Mr. Donahue was contemplating such violent action [,which warranted his response, like Drahota & Baccala].

In the [Trial] Exhibit 4 email, Mr. Donahue starts the letter by emphasizing that it is his intent to find a "legal way" to force the governmental entities to grant him benefits.

There are no specific references to Mr. Donahue's intent to commit individual acts of violence at the present time.

There is one instance in which Mr. Donahue expresses a wish that the addressees "suffer terrible tragedies" after they leave office, but he emphasizes that the tragedies will be "of your own doing."

Such language does not constitute an explicit threat.

Mr. Donahue also used terminology that refers to an armed insurrection of a militia at some unknown date in the future as a reaction to continuing governmental oppression. Such references have been found to constitute protected speech. Hess v. Indiana, *id.*

In its Rule 1925 opinion [Appendix B], the lower court relies on the Superior Court's recent decision in Commonwealth v. Walls 144 A.3d 926 (Pa.Super. 2016). Such reliance is misplaced.

The defendant in Walls was convicted of three offenses: retaliation against prosecutor or judicial official at 18 Pa.C.S. §4953.1; terroristic threats at 18 Pa.C.S. §2706; and the version of harassment at 18 Pa.C.S. § 2709(a)(4). The charges stemmed from a verbal confrontation with a Philadelphia assistant district attorney (ADA). It was a chance meeting at a store in the Liberty Place mall. The defendant actually confused this particular ADA with another ADA who was the prosecutor on a prior criminal case that resulted in the defendant's conviction and imprisonment. The defendant maintained his innocence. The defendant's grandmother died during the defendant's incarceration, and he blamed the death on the ADA. The defendant was loud and angry when he accosted the ADA. At one point, he was very close (one foot) to her. When store employees and customers were removing the defendant, he shouted at the ADA that she caused his grandmother's death and that she should be next.

The Superior Court reversed the convictions for retaliation against prosecutor or judicial official and terroristic threats. It sustained the conviction for harassment.

The version of harassment at issue [18 Pa.C.S. §2709(a)(4)] requires the actor to communicate, inter alia, "threatening" words to or about another person with the intent to harass, annoy, or alarm. In sustaining the sufficiency of the evidence, the Court focused on the element of intent to harass and not the element of "threatening" language. Walls, *id.*, at 938. That is apparently the manner in which the defendant formulated the issue. The defendant was not challenging the conviction on the basis of First Amendment rights. The Superior Court did not address the question of whether the defendant's conduct constituted "true threats." The Court's treatment of this issue was brief. The bulk of the opinion addressed the retaliation charge. In sustaining the conviction for harassment, the Court stated its conclusion in one sentence: "Unless you are attempting to harass or annoy an individual, there is no reason to scream at someone that she should die." Id.

Walls [is] inapplicable to the instant case. Walls did not involve a First Amendment challenge based on the claim that the defendant did not engage in "true threats." In addition, the defendant in Walls was physically proximate to the

ADA when he screamed that she should be the next to die. Mr. Donahue's communications were emails delivered to a long list of government employees, law enforcement officials, and journalists.

In view Of all the foregoing, Mr. Donahue did not threaten to commit a crime of violence. His words might be characterized as the obnoxious invective of an angry man. They do not rise to the level of a "true threat." Further, his reference to a citizen militia's insurrection at some uncertain future time has been found to constitute protected speech. Hess v. Indiana, id [Appendix ZE 8, pp 23-30]."

Walls Did Not commit a crime of harassment. His decision not to assert his Free Speech rights cannot be used by PA courts to constrain the rights of others State v. Moulton, SC 18632 (2013) [Appendix ZG 15]. Unlike Walls, the Appellant never forfeited his rights. The trial judge trampled on those rights. Walls must be reversed.

The trial judge told the jury candidates that their job was to *"render a verdict based on the evidence, and that's after the Commonwealth has proven to you beyond a reasonable doubt that the defendant is guilty [Trial Transcript, Pg 4, Lines 15 - 17, Appendix ZG 27]"*.

What about not guilty verdicts? Aren't they verdicts too? She later told the jury that;

"the Commonwealth has to prove the elements of each of these charges to you beyond a reasonable doubt. And whether the Commonwealth does so or -- does so is your decision when you go out to render the verdict [Trial Transcript, Pg 8, Lines 2 - 6, Appendix ZG 27]".

What about *"does so or -- does [not do] so"*? Why wasn't *"[not doing] so"* also an

allowable possibility? The Judge also openly stated her view of a related pending case, which she knew nothing about; *"So it's not a crime that they can use against him at this*

time....Although they may try to show that it's an ongoing course of conduct [Trial

Transcript, Pg 11, Line 6 - 10, Appendix ZG 27]". The trial judge emphasized that the trial was for a "course of conduct" crime. Yet, the Appellant was never formally charged with

"course of conduct" harassment. This alone warrants certiorari. Wooden

"The Pennsylvania Capital Police filed a criminal complaint charging Sean M. Donahue [Defendant] with harassment under 18 Pa.C.S. § 2709(a)(4). The complaint states that Mr. Donahue sent multiple emails over a certain date range, November 26-28, 2014. It states that Mr. Donahue sent the emails to multiple employees at the Pennsylvania Human Relations Commission and the Pennsylvania Department of Labor and Industry. The officer who prepared the complaint completed the "Counts" box by inserting the number "2." However, there is no explanation of the basis for assigning two counts.

At the preliminary hearing, the Commonwealth added a single, aggregated count of terroristic threats under 18 Pa.C.S. §2706.

In the criminal information, the Commonwealth again identified the date range as November 26-28, 2014. It again charged a single, aggregated count of terroristic threats at Count 1. It identified the Count 1 complainants as Lisa Sauder, Heather Roth, and Mary Jane McMillan.

The Commonwealth at Count 2 and Count 3 charged two counts of harassment. There is no reference to the identity of the complainants in Count 2 and Count 3.

The language used on the two counts of harassment is identical. It appears to be a hybrid Of the (a)(3) and the (a)(4) version of harassment:

"did, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, engage in a course of conduct to communicate to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures."

The phrase "course of conduct" does not appear in 18 Pa.C.S. § 2709(a)(4). It appears only in 18 Pa.C.S. § 2709(a)(3). The Commonwealth in the information, however, cites only to 18 Pa.C.S. § 2709(a)(4).

The two harassment counts are not based on separate occurrences or multiple victims. The language in the two counts is identical. Presumably, therefore, the two counts Of harassment, like the single count of terroristic threats, are stated in the aggregate [Appendix ZE 8, pp 6-7]."

At the time the instant case arose (January 2015), the other case had been dismissed on a Writ of Habeas Corpus [Appendix M]. The definition of what constitutes a "true threat" in PA changed between October 2013 and January 2015. The filing of charges in the instant case influenced the PA Superior Court to reinstate the lead charge in the

Salavantis case [Appendix N]. Until March 19, 2015¹¹, the language appearing in the Affidavit of Probable Cause in the Salavantis case was viewed by the PA courts to be protected speech. Therefore, any similar language in the instant case during that same historical time frame was not criminal. In both cases, the PA Superior Court used non-precedential decisions to punish protected speech that was not a “true threat”.¹²

The trial judge used the word “until” to tell the jury that she expected a guilty verdict.

“Furthermore, the defendant is presumed innocent throughout the trial and unless and until you conclude, based on careful and impartial consideration of the evidence, that the Commonwealth has proven him guilty beyond a reasonable doubt [Trial Transcript, Pg 88, Lines 16 - 21, Appendix ZG 27]”.

It wasn’t “until” long after the jury heard all the trial evidence through a biased ear that the trial judge first mentioned the possibility of a “not guilty” verdict but she was careful to instruct the jury that such a verdict can only arise in a unique circumstance.

“If the Commonwealth's evidence fails to meet its burden, then your verdict must be not guilty; on the other hand, if the Commonwealth's evidence does prove that the defendant is guilty beyond a reasonable doubt, then your verdict should be guilty [Trial Transcript, p89, Line 5 - 10, Appendix ZG 27]”.

“It will be your responsibility to consider the evidence, to find the facts and apply the law to the facts as you find them, and decide whether the defendant has been proven guilty beyond a reasonable doubt [Trial Transcript, p94, Lines 21 - 25, Appendix ZG 27]”.

The Judge instructed the Jury that the existence of reasonable doubt is a rare and anomalous occurrence.

“A reasonable doubt must fairly arise out of the evidence that was presented or out of the lack of evidence presented with respect to some element of the crime. A reasonable doubt must be a real doubt. It may not be an imagined one, nor may it be a doubt manufactured to avoid carrying out an unpleasant duty.

¹¹ The Superior Court sat on the state's appeal in the other case for two years, until the Appellant ran for public office on a White Nationalist platform promising to bring about the repeal of the Fair Housing Act as a means of policing illegal immigration. He robo called all of the expensive zip codes in the Harrisburg, PA area. PA Superior Court reinstated the other case on primary election morning [Appendix ZG 19].

¹² Appendix ZA

“A reasonable doubt is not merely an imagined or passing fancy that may come into the mind of a juror. It must be a doubt arising from the evidence that is substantial and well founded on reason, thinking, and common sense.

“A reasonable doubt is something different and much more serious than a possible doubt [Trial Transcript, p89, Line 20 - Pg 90, Line 8, Appendix ZG 27].”

The Jury was specifically instructed not to concern itself with how a “guilty” verdict will affect the Appellant but it was not instructed to not concern itself with how a “not guilty” verdict would affect the Commonwealth.

“In arriving at a verdict, you should not concern yourselves with any future possible consequences of your verdict, including what the penalty might be if you should find the defendant guilty. The question of guilt and the question of penalty are decided separately [Trial Transcript, Pg 95, Lines 15 - 20].”

The judge told the jurors that they were not to compromise an individual guilty verdict just to reach a unanimous not guilty verdict but failed to tell them that they were not to compromise an individual not guilty verdict just to reach a unanimous guilty verdict.

“ [N]o juror should surrender an honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict [Trial Transcript, Pg 96, Lines 11 - 15, Appendix ZG 27].”

Witness Sauder, an attorney by trade, manipulated and tainted the jury when she said from the stand, ***“I became particularly alarmed a few years ago when— [Trial Transcript, Pg 20, Line 25 - Pg 21, Line 1, Appendix ZG 27]”***, which alerted the jury to the existence of the then pending Salavantis case. Defense Counsel ***“move[d] to strike”*** but the trial judge wrongfully overruled the objection ***[Trial Transcript, Pg 20, Line 5 - Pg 21, Line 8, Appendix ZG 27]***. The Jury later asked;

“ Their last question: Were there any prior related incidents? Obviously, that's not being answered. All right. Let's bring the jury. Thank you, Sara [Trial Transcript, Pg 97, Lines 13 - 17, Appendix ZG 27].”

Sauder again tainted the jury by intentionally lying when she testified that the Appellant had been to the Hummelstown, PA CareerLink [Trial Transcript, pp52-55, Appendices ZG 25,27]. The reason she did this was because right around the same time frame of the Appellant's trial, there was another very high profile trial centered on a Hummelstown police officer's shooting of a different man who was also from Hazleton and who had a drug related criminal past [Appendix O]. Sauder willfully connected the Appellant's being from Hazleton to the man who relocated from Hazleton to Hummelstown to actively engage in criminal drug related activity. The judge¹³, jury and officers of the court, all being from the Hummelstown area, convicted the Appellant because they feared that he too relocated from Hazleton to Hummelstown to commit crimes. By that point in the trial, the jury had already been told that the Appellant was from Hazleton[Trial Transcript, p23, p49, p82, Appendix ZG 27] but the Appellant has never been to Hummelstown in his life. Sauder lied.

The Prosecutor's Discovery, provided by Sauder, clearly documented every time the Appellant had been to a PA CareerLink in his life. The record clearly showed that the Appellant had never been to the Hummelstown CareerLink [Appendix W¹⁴, pp342-368]. What is more, a zip code search of the online PA CareerLink system reveals that there is no CareerLink in Hummelstown [Appendix O]. The nearest CareerLink to Hummelstown is in Harrisburg, PA. Sauder's willful deception was empowered by prosecutorial malfeasance and warmly embraced by a judicial ambivalence that warrants certiorari.

¹³ The same trial judge presided over the Hummelstown murder trial. The cop was acquitted.

¹⁴ The Prosecutor redacted parts of her discovery with post-it notes. The Appellant/Defendant was never provided a copy that did not have the post-it notes covering some of the text.

Witness Schur, the arresting officer, also intentionally deceived the court when explaining how he identified the Appellant. Schur stumbled on the question ***“How did you determine the man sitting in the courtroom to day is the man that sent those emails[Trial Transcript, p81-83, Appendices ZG 2 p35,7,27]?”*** The reason Schur stumbled is because he was covering up the facts around how he knew who the Appellant was. Schur consciously chose not to tell the whole truth when he left out the fact that he had initiated email contact with the Appellant in the past. On August 21, 2014¹⁵, Schur illegally policed the Appellant’s comments in a public radio debate with Luzerne County, PA talk radio hosts. The Talk Show subject was the wrongful police shooting of a man in Ferguson, Missouri. Schur was “90 - 100 miles[Appendix P,trial judge’s opinion]” away, in Dauphin County, PA, at the time. Schur’s email conveyed his intent to get the Appellant on something; ***“I almost forgot about Donahue he has been quiet for a while [Appendices Q, ZG 7, 10, 11]”***. Schur’s prosecutor enabled willful deception justifies certiorari.

Witnesses McMillan and Roth both had a conflict of interest in testifying and Roth wasn’t a recipient of the emails at all [Trial Transcript, McMillan pp68-77, Roth pp78-80, Appendices U p30, ZG 27]. McMillan and Roth needed the Appellant to be convicted on a threats charge because they had already reached an investigatory conclusion in a civil matter that the Appellant should not be hired for a Civil Service job because they decided he is a threat and would be bad for illegal aliens, who he would report for collecting US disability checks [Appendix R]. Their conflict of interest justifies certiorari.

¹⁵ This was the same date that the Hazleton, PA police raided the Appellant’s parent’s home in 2012. PA Law enforcement agencies were still resentful because the case had been dismissed on a Writ of Habeas Corpus and the Appellant sued the Hazleton Police over the raid. See US Middle District of PA Docket No. 3:14-cv-01351. A Former Hazleton Police officer is the Internal Affairs Officer in the PA State Capitol Police and likely knows Schur. The complaint in Appendix Q wasn’t investigated.

Throughout the trial, the Prosecutor argued that the three separate counts were based on one individual set of facts that came together to constitute ***"Course of Conduct"*** harassment, a singular crime with which the Appellant was never formally charged. Wooden.

"To prove a course of conduct for harassment, I have to show a course of conduct, and that can be shown outside the specific dates of the Alleged incident. So I'm asking to limit it to those two months [Trial Transcript pp12-13, Appendix ZG 27]"

The trial judge never read the 2,000 page single sided copy of the discovery that the Prosecutor paraded through every pretrial hearing as a stage prop but she still drew wrongful conclusions from it. Throughout the Appellant's ten months of incarceration, the Prosecutor told the court that the 2,000 pages proved a decade long crime spree. Knowing nothing else, the Judge expressed certainty that the 2,000 pages would bolster the prosecutor's argument.

"[Ms Adam:] I have no problem limiting the emails. Discovery is extensive. But if we could limit it to November and December of 2014, I believe that would be appropriate, because in proving a course of conduct for - -

THE COURT: So you're just saying November 2014 and December of 2014.

MS. ADAM: 2014.

THE COURT: Those two months. That's it.

MS. ADAM: Those two months. That's it.

THE COURT: You're not going back all the way 2009.

MS. ADAM: No. No. [Trial Transcript, Pg 12, Lines 11 - 23, Appendix ZG 27]"

The Judge expressed dismay at the Prosecutor's decision not to present all of her discovery; ***"THE COURT: I didn't even anticipate that [Trial Transcript, Pg 13, Appendix ZG 27]"***. Defense Counsel led the Appellant to believe that he would still introduce that additional evidence on cross examination but then he didn't do so.

While the trial judge was focused on prosecution, a non-English speaking individual slipped into the jury¹⁶. None of the other jurors reported the non-English speaking juror. She inadvertently gave herself away when she went to the wrong room.

THE COURT: *Right up here, ma'am. Obviously, communication isn't one of our major skills here in the courthouse. How did you get directed to the courtroom this morning?*

THE JUROR: *Excuse me?*

THE COURT: *Why didn't you go to the jury room or –*

THE JUROR: *Here?*

THE COURT: *Why did you come right to the courtroom?*

THE JUROR: *Oh, like, 9 – 9 something. Like -- like, five minutes.*

THE COURT: *So you just thought, when I said yesterday –*

THE JUROR: *Yes.*

THE COURT: *-- to come to the courtroom –*

THE JUROR: *Um-hmm, today.*

THE COURT: *Did you say anything to the rest of the jury that you were sitting in –*

THE JUROR: *No.*

THE COURT: *Nothing?*

THE JUROR: *No.*

THE COURT: *All right. Thank you .*

THE JUROR: *Just --*

THE COURT: *Perfect.*

THE JUROR: *Yeah.*

THE COURT: *Thank you.*

THE JUROR: *Okay. You're welcome.*

THE COURT: *Mr. Marsico, we're going to take her back down to the jury assembly room, and we're going put the other alternate in.*

THE CLERK: *I'll take her down.*

THE COURT: *Yes. Sara, explain to them–*

THE COURT CLERK: *Yes, Judge [Trial Transcript, Pg 14 - 15, Appendix ZG 27]."*

It is uncertain that the entire jury that remained was fluent in English. Jurors may have sat quietly throughout deliberations to conceal their inability to understand. The juror who struggled with English may also have just been another American citizen intoxicated with recreational narcotics¹⁷. The uncertainty warrants certiorari.

¹⁶ The Appellant first discovered the details when he read the trial transcript. He wasn't informed at trial.

¹⁷ The jury was not anonymous but the court is denying the Appellant the right to research the jurors, whose households, families and acquaintanceships may have problems with substance abuse and immigration status.

The trial judge displayed overt judicial bias against the Defendant throughout numerous pretrial hearings and at trial [Appendices S, ZG 1-3, 27]. Appellant twice requested pretrial hearing transcripts but those requests were refused [Appendix ZG 3, 5,9]. The trial judge repeatedly brought the Appellant to the courtroom to coerce him into pleading guilty. She refused to release the Appellant on nominal bail, falsely claiming that he was mentally ill and ordering unnecessary mental evaluations [Appendix p, ZG2 p15], while simultaneously offering immediate release if he plead guilty. She refused to accept findings of the prison psychologist and psychiatrist that the Appellant showed no signs of mental illness. She ordered an outside examination, which also found no signs of mental illness and noted in their medical findings that the state was retaliating against the Defendant for his political views [Appendix P]. She then denied nominal bail because the Appellant is not mentally ill, cannot be medicated to change his behavior and because he served in military intelligence [Appendix P].

The Judge repeatedly intimidated¹⁸ and explicitly told the jury that she expected a guilty verdict. She was unwilling to accept a hung jury until she feared a not guilty verdict.

“ THE COURT: And I'm not so sure that you're dead locked after the short period of time, that you can't go back and continue to discuss and deliberate [Trial Transcript, Pg 100, Line 3 - 6].”

As the Judge kept talking the jury began asking about “**not guilty**” verdicts. The Judge responded by stuttering and then immediately ended jury deliberations.

***“ [D]o we have to have a unanimous vote of not guilty as well?
THE COURT: Well, if it's – okay. Yes. It has to be unanimous both ways. It works both ways.
THE FOREPERSON: Okay. That's one of the questions we have. We didn't know.
THE COURT: Otherwise, you're hung.***

¹⁸ Trial Judge emphasized “violence” eight times. Prosecution did not mention “violence” at all.

THE FOREPERSON: *Correct.*

THE COURT: *So on the count that you can not make a decision, that you cannot all agree, that would be, you are hung.*

THE FOREPERSON: *That's correct, on Count 1.*

THE COURT: *So you're indicating to me, on Count 1, you're hung.*

THE FOREPERSON: *That's correct.*

THE COURT: *All right. Then I will accept the verdict slip [Trial Transcript, Pg 102, Lines 1 - 19, Appendix ZG 27].*

After the Prosecutor withdrew the terroristic threats charge, the trial judge expressed personal bias in the matter. “*[I]t would be double jeopardy regardless, because you're basing the same harassment on the facts that arise from the terroristic threats [Trial Transcript, p105, Appendix ZG 27].*” Yet, she knew that it was the other way around. The terroristic threats charge was WITHDRAWN and DISMISSED. A retrial on the terroristic threats charge would be double jeopardy because the prosecution would be basing the terroristic threats charge on the same alleged facts as the already redundant false harassment charges. Count 3 is double jeopardy because it was based on the same facts as Count 1 and Count 2. Because the trial judge acknowledged that using the same facts for two charges is double jeopardy, Count 3 must be vacated.

“THE COURT: *Do you want to bring the defendant forward. I'm not sure if you intend to go forward again on Count 1.*

MS. ADAM: *No, Your Honor. I have – I have the permission of the District Attorney to nolle pros Count 1 at this time.*

THE COURT: *That was quick.*

MS. ADAM: *I texted Jack. He took care of it.*

THE COURT: *No wonder there was no objection. Because the problem was, it would be double jeopardy regardless, because you're basing the same harassment on the facts that arise from the terroristic threats [Trial Transcript p.104-105, Appendix ZG 27].*

Selective Prosecution and Judicial Bias defined the instant case. The preliminary hearing room was inside the secure perimeter of the Dauphin County Prison and staffed by prison guards. This created bias towards incarceration and bounding the case over

for trial [Appendix ZG 2]. A prima facia case was not truly established for either charge. The magistrate explicitly acted on her personal resentment for the Appellant's White Nationalist political views and his being White. She wrongfully bound the case over for trial and imposed a cruel and unusually harsh and unattainable bail. The magistrate said;

"[W]hen was the last time you received one of those notes, emails?...America will be white again[!]' It will be a long time before that happens[!]. There's so many different races of people. Here....He can see it too....Place him under bail, 500,000. Bail is 500,000 straight. Take him back[!]' [Appendix U, pp47-48]."¹⁹

This was clearly Selective Prosecution US v Armstrong, 116 S.Ct. 1480 (1996). Schur, Sauder and the Prosecutor willfully handed up the wrong email to cause aggravation. They had later dated emails in their immediate possession [Appendix W pp1-2 & pp68-71].

In 2008, the Appellant began using PA Right to Know requests to uncover PA's misuse of US Block Grants [Appendix W, pp989-999]. Appellant interacted with the Luzerne County Solicitor, the PA Auditor General's office [Appendix V, 1] and the local FBI. One county official plead guilty to federal corruption charges[Appendix V, 2] and a county agency was eliminated, which caused fifty PA CareerLink workers to lose their jobs[Appendix V 3-5]. This made the Appellant a political target for Selective and REtaliatory Prosecution by officials.

In December 2010, witness Sauder implemented a scheme to mislead the Appellant into believing he would receive USDOL veterans priority services. She had Elaine Stalfa invite the Appellant to the Hazleton CareerLink. The plan was to intentionally antagonizing the Appellant into an argument in front of the security guard, holler for

¹⁹ Schur, intentionally filed charges through this magistrate because she is a black woman. Media reported the magistrate was under investigation for fixing her own traffic citations.

help, have the security guard intervene with force and get the Appellant arrested. The plan failed because Stalfa did not follow specific instructions [Appendix V 6].

Immediately upon leaving the CareerLink, the Appellant went to the Hazleton Police. Acting on their instructions, he filed a private Summary Criminal Harassment charge against Stalfa [Appendix W, pp149 -177]. Sauder attempted to get Salavantis to intervene on the agency's side but her office instead chose to abstain from the matter [Appendix W, pp1811-1812]. PA paid \$5,000 for a private defense counsel to represent Stalfa[Appendix W, 1809 - 1810]. Because Salavantis abstained from Stalfa's trial, the Appellant prosecuted the case himself but lost. PA then issued a de facto Declaration of Attainder against the Appellant [Appendix ZG3 p32].

PA continued to spread false rumors through government email circles that the Appellant was a mentally ill mass killer. They repeatedly linked him to the shooting of Congresswoman Gabbie Giffords in Arizona [Appendix W, p560, 609, 1068, 186, 1052, 1117], unlike Wooden who linked himself. Sauder and Stalfa implemented a "grass roots" effort to recruit state employees to file false threats complaints against the Appellant [Appendix W p773, 663-664], guided employees as to which police officers to speak to and cautioned them not to "tick off" police[Appendix W, p729]. PA gave guns to security guards, with instructions to shoot the Appellant if he entered a PA CareerLink and trained employees to attack the Appellant if they saw him enter a CareerLink [Appendix X, pp36-38]. Sauder then had the Appellant's name removed from the top of a Civil Service list because his Veterans Preference blocked her agency from hiring of 90 non-veterans²⁰

²⁰ See Appendix Y for explanation of veterans "blocking the list". How does PA define "more acceptable candidates below them on the list [for entry level trainee positions]?" The Appellant has two Masters Degrees from Columbia University, even without veterans preference, he was among the best qualified.

[Appendix X, pp88-90]. Then Sauder, Stalfa and Schur attempted to use a State Civil Service Commission administrative tribunal hearing to compel the Appellant to testify without benefit of defense counsel in response to her blatant criminal allegations. The Appellant boycotted the hearing because PA refused to provide him with a Defense Counsel [Appendix X, p55]. The Appellant then filed a civil appeal in the PA Commonwealth Court [Appendix X] and another discrimination complaint with Roth and McMillian. In January 2015, Sauder, McMillian and Roth filed false criminal charges that became the instant case to justify (1) having wrongfully denied the Appellant USDOL funded veteran priority services at CareerLinks, (2) having denied him jobs [Appendix W, p782, p530] and (3) to defend employees who used mass emails to accuse the Appellant of being a mental ill mass killer. Sauder falsely testified in the instant case that the Appellant was not eligible for services, when he is actually entitled by US Law to priority veterans services [Appendices U,ZG 27,ZC]. The witnesses concealed these facts from the magistrate, trial judge and jury. This material difference warrants certiorari.

Reasons for Granting Certiorari

Certiorari should be granted because the First US Congress intended for free speech to be **ABSOLUTE**. With post 1791 constraints added, there is **no "true threat"** in the instant case and therefore neither crime nor probable cause existed. PA's used NON-PRECEDENTIAL decisions to create a **two tiered standard** for criminalizing speech. **Witnesses deceived the court** and **the prosecution tampered with evidence**. The **prosecution was malicious and selective**, with **multiple acts of double jeopardy**. The **Prosecutor argued** and **the court tried** a charge of **"course of conduct" harassment, with**

which the Appellant wasn't actually charged Wooden. That is why the trial court refused to transcribe trial arguments. PA implemented a de facto Declaration of Attainder against the appellant and spread false allegations via email to set the Appellant up for a false threats conviction. PA's Superior Court never conducted an independent review. The trial judge willfully misquoted evidence to change its meaning, used incarceration as coercion, exercised bias throughout pretrial hearings and then refused to transcribe the pretrial hearings. The magistrate explicitly exercised bias when she expressed her political views disapproving of the Appellant's White Nationalist political campaign platform for Hazleton Mayor and then bound the instant case over for trial and incarcerated him with an unattainable bail amount. **These people aren't so important that the Appellant can't say anything to them.** This case is not about crime. It's about respect and whether or not namby-pamby senior Pennsylvania officials (now "employees") feel the Appellant has shown them enough of it. PA misappropriated ten years of US funded labor resources intended to get the Appellant a professional job using his US taxpayer financed education to instead get him arrested. PA must now pay the additional cost for seven years punishment in two related cases. Friends and family of the Appellant know he is innocent and that the state selectively prosecuted the wrong side [Appendix ZD].

Conclusion

The Petition for Certiorari should be granted.

April 2, 2018
Date

Respectfully Submitted,

Sean M. Donahue
Sean M. Donahue