State v. Taupier

Supreme Court of Connecticut

January 25, 2018, Argued;
September 11, 2018, Officially released

SC 19950

Counsel: Norman A. Pattis, with whom, on the brief, was Daniel Erwin, for the appellant (defendant).

Mitchell S. Brody, senior assistant state's attorney, with whom, on the brief, was Peter A. McShane, state's attorney, and Brenda L. Hans, assistant state's attorney, for the appellee (state).

Judges: Palmer, McDonald, Robinson, D'Auria, Mullins, Kahn and Vertefeuille, Js.*

In this opinion the other justices concurred.

Opinion by: ROBINSON

Opinion

ROBINSON, J. The principal issue in this appeal is whether the free speech provisions of the first amendment to the United States constitution[1] and

---

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] The ***first amendment to the United States constitution*** provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

article first, §§ 4, 5 and 14, of the Connecticut constitution[2] require the state to prove that a defendant has a specific intent to terrorize another person in order to sustain a conviction of threatening in the first degree under General Statutes § 53a-61aa(a)(3),[3]

---

[2] Article first, § 4, of the Connecticut constitution provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

Article first, § 5, of the Connecticut constitution provides: "No law shall ever be passed to curtail or restrain the liberty of speech or of the press."

Article first, § 14, of the Connecticut constitution provides: "The citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance."

[3] General Statutes § 53a-61aa(a) provides in relevant part: "A person is guilty of threatening in the first degree when such person . . . (3) commits threatening in the second degree as provided in section 53a-62, and in the commission of such offense such person uses or is armed with and threatens the use of or displays or represents by such person's words or conduct that such person possesses a pistol, revolver, shotgun, rifle, machine gun or other firearm. . . ." We note that the legislature has amended § 53a-61aa since the events underlying the present appeal. *See*, e.g., Public Acts 2016, No. 16-67, § 6. Those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

General Statutes (Rev. to 2013) § 53a-62(a), in turn, provides: "A person is guilty of threatening in the second degree when . . . (3) such person threatens to commit [any] crime of violence in reckless disregard of the risk of causing . . . terror. . . ." We note that the legislature has also made certain amendments to § 53a-62 that are not relevant to the present appeal. *See*, e.g., Public Acts 2016, No. 16-67, § 7 (changing internal designations). For the sake of consistency with the record in the present case, all references to § 53a-62 in this opinion are to the 2013 revision of the statute.

which criminalizes threatening speech. The defendant, Edward Taupier, sent an e-mail containing threats of violence against a judge of the Superior Court, Elizabeth A. Bozzuto, to a group of acquaintances. The defendant now appeals[4] from the judgment, rendered after a trial to the court, convicting him of threatening in the first degree in violation of § 53a-61aa(a)(3), two counts of disorderly conduct in violation of General Statutes § 53a-182(a)(2),[5] and breach of the peace in the second degree in violation of General Statutes § 53a-181(a)(3). On appeal, the defendant claims that (1) the trial court improperly denied his motion to dismiss the charge of threatening in the first degree under § 53a-61aa(a)(3) on the ground that the statute is unconstitutional because it did not require the state to prove that he had the specific intent to terrorize Judge Bozzuto,[6] (2) the trial court improperly considered

---

[4] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199(c) and Practice Book § 65-1.

[5] General Statutes § 53a-182(a) provides: "A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person . . . (2) by offensive or disorderly conduct, annoys or interferes with another person. . . ."

[6] To the extent that the defendant contends that none of the statutes under which he was convicted is constitutional as applied to threatening speech, he effectively concedes on appeal that, if this court concludes that his conduct in sending the e-mail constitutionally may be subject to punishment pursuant to § 53a-61aa(a)(3), the other criminal statutes under which he was charged are also constitutional as applied to him. Accordingly, we limit our analysis to the constitutionality of § 53a-61aa(a)(3).

evidence of events that occurred after he sent the threatening e-mail to support its conclusion that he violated that statute, and (3) the evidence was insufficient to establish beyond a reasonable doubt that he violated §§ 53a-61aa(a)(3) and 53a-182(a)(2). We disagree with the defendant's claims and, accordingly, affirm the judgment of the trial court.

The record reveals the following procedural history and facts that the trial court found or that are undisputed. In 2012, the defendant's wife, Tanya Taupier, initiated an action to dissolve their marriage. Among the contested issues was the custodial status of the couple's two minor children. In August, 2013, the trial court, *Carbonneau, J.*, ordered that the children reside with Tanya Taupier and attend school in Ellington, where she resided.

In the spring of 2014, Judge Bozzuto, who was responsible for managing the docket of the family court in Hartford, became involved in the defendant's dissolution proceeding. Judge Bozzuto assumed sole responsibility for the management of the case in order to ensure that it would be adjudicated in a timely manner.

On May 23, 2014, Judge Bozzuto ordered the Family Services Unit of the Court Support Services Division (family services unit) to conduct a comprehensive custody evaluation. Shortly thereafter, the family services unit informed Judge Bozzuto that the defendant was interfering with the evaluation by injecting his personal views and opinions concerning the family

court system into the process. In response, on June 18, 2014, Judge Bozzuto conducted an in-court proceeding attended by the parties. Judge Bozzuto told the defendant that he was free to express his political beliefs and views of the family court system, but ordered him to refrain from doing so during interviews conducted by the family services unit.

On August 20, 2014, the defendant informed his wife that he had enrolled their children in school in Cromwell, where he resided, in violation of the court order that they attend school in Ellington. On August 22, 2014, counsel for Tanya Taupier sent the defendant drafts of a contempt motion and an application for an emergency ex parte order of custody that she planned to file in court. The defendant, who was representing himself in the divorce proceeding, then sought the advice of several acquaintances who had experience in family court, including Anne Stevenson and Michael Nowacki. At 11:24 p.m. that night, in response to e-mails that he had received from Stevenson, Nowacki, and Jennifer Verraneault regarding the court motions, the defendant sent an e-mail containing threatening statements toward Judge Bozzuto to Stevenson, Nowacki, Susan Skipp, Sunny Kelley, Paul Boyne, and Verraneault, all of whom had been engaged with the defendant for some time in efforts to reform the family court system. Specifically, the defendant's e-mail contained the following statements: (1) "[t]hey can steal my kids from my cold dead bleeding cordite filled fists . . . as my [sixty] round [magazine] falls to the floor and [I'm] dying as I change out to the next [thirty rounds]";

(2) “[Bo]zzuto lives in [W]atertown with her boys and [n]anny . . . there [are] 245 [yards] between her master bedroom and a cemetery that provides cover and concealment”; and (3) “a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition. . . .”[7]

---

[7] This e-mail reads as follows: “Facts: JUST an FYI. . . .

“[1] [I’m] still married to that POS . . . we own our children, there is no decision . . . its 50/50 or whatever we decide. The court is dog shit and has no right to shit they don’t have a rule on.

“[2] They can steal my kids from my cold dead bleeding cordite filled fists . . . as my [sixty] round [magazine] falls to the floor and [I’m] dying as I change out to the next [thirty rounds]. . . .

“[3] [Bo]zzuto lives in [W]atertown with her boys and [n]anny . . . there [are] 245 [yards] between her master bedroom and a cemetery that provides cover and concealment.

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

“[5] Someone wants to take my kids better have an [F-35 fighter jet] and smart bombs . . . otherwise they will be found and adjusted . . . they should seek shelter on the ISS ([international] space station). . . .

“[6] BTW a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition. . . .

“[7] Mike may be right . . . unless you sleep with level [three] body armor or live on the ISS you should be careful of actions.

“[8] Fathers do not cause cavities, this is complete bullshit.

“[9] Photos of children are not illegal. . . .

“[10] Fucking [n]annies is not against the law, especially when there is no fucking going on, just ask [Bo]zzuto . . . she is the ultimate [n]anny fucker.”

In response to the defendant's e-mail, on the morning of August 23, 2014, Nowacki sent an e-mail to the defendant stating: "Ted, [t]here are disturbing comments made in this [e-mail]. You will be well served to NOT send such communications to anyone." The defendant then sent another e-mail to Nowacki and Boyne in which he again suggested that he was contemplating violence against Judge Bozzuto and her family.[8] In turn, Nowacki sent the defendant an e-mail

---

[8] The defendant's second e-mail reads as follows: "Hi Mike . . . the thoughts that the courts want to take my civil rights away is equally disturbing, I did not have children, to have them abused by an illegal court system.

"My civil rights and those of my children and family will always be protected by my breath and hands.

"I know where she lives and I know what I need to bring about change. . . .

"These evil court assholes and self appointed devils will only bring about an escalation that will impact their personal lives and families.

"When they figure out they are not protected from bad things and their families are taken from them in the same way they took yours then the system will change.

"This past week in [Ferguson] there was a lot of hurt caused by an illegal act, if it were my son, shot, there would be an old testament response.

"[Second] amendment rights are around to keep a police state from violating my [family's] rights.

"If they—courts . . . need sheeple they will have to look elsewhere. If they feel it's disturbing that I will fiercely protect my family with all my life . . . they would be correct, I will gladly accept my death and theirs protecting my civil rights under my uniform code of justice.

"They do not want me to escalate . . . and they know I will gladly. . . .

stating the following: "Violence is not a rational response to injustice. Please refrain from communicating with me if you are going to allude to violence as a response."

After reading the defendant's first e-mail on August 23, 2014, Verraneault immediately communicated her concern about it to several people. On the afternoon of August 27, 2014, Verraneault learned of an incident earlier in the day during which Tanya Taupier had gone with a police escort to the school in Cromwell in which the defendant had enrolled their children and removed them from the school. The defendant was present and recorded a video of the removal, while making

---

"I've seen years of fighting go [unnoticed], people are still suffering. . . . Judges still fucking sheeple over. Time to change the game.

"I don't make threats, I present facts and arguments. The argument today is what has all the energy that has expended done to really effect change, the bottom line is—insanity is defined as doing the [same thing] over and over and expecting a different outcome . . . we should all be done . . . and change the game to get results . . . that's what Thomas Jefferson wrote about constantly.

"Don't be disturbed . . . be happy there are new minds taking up a fight to change a system.

"Here is my daily prayer:

"I will never quit. I persevere and thrive on adversity.

"My [n]ation and [f]amily expects me to be physically harder and mentally stronger than my enemies.

"If knocked down, I will get back up, every time.

"I will draw on every remaining ounce of strength to protect my [family and] teammates and to accomplish our mission.

"I am never out of the fight. . . . " (Internal quotation marks omitted.)

a series of mocking comments to the police and Tanya Taupier. After learning of this incident, Verraneault feared that it might put the defendant "over the edge." Accordingly, despite fears that she harbored about her own safety if the defendant were to learn that she had disclosed his e-mail concerning Judge Bozzuto, on August 28, 2014, Verraneault sent a screenshot of the contents of the e-mail to an acquaintance who was an attorney, Linda Allard. After discussing the matter with Verraneault, Allard informed Judicial Branch officials and the state police about the e-mail and they, in turn, informed Judge Bozzuto.

Judge Bozzuto testified at trial that, after she learned about the e-mail, "every night when I [got] home . . . as soon as . . . I pull[ed] up to the driveway and pull[ed] in . . . every time I [got] out of that car I look[ed] up on the hill in the back where all the brush and trees are and [thought] of only [the defendant]. . . . [T]hose bumps in the night, it's when the dogs start[ed] barking in the middle of the night and the first thing that [came] to my mind [was the defendant]." As a result of the e-mail, she "did a massive upgrade of security at the house, installing cameras and lights." Judge Bozzuto also provided her children's school with a mug shot of the defendant and put school officials on alert. State police surveilled her house for a week or two after Judge Bozzuto learned about the e-mail, and judicial marshals escorted her from her office to her car in the evening. Judge Bozzuto also contacted a sister whose daughter was taking care of Judge Bozzuto's dogs, and told her not to let her daughter go to Judge Bozzuto's residence without a police escort.

The defendant was arrested in connection with his first e-mail and ultimately was charged with threatening in the first degree in violation of § 53a-61aa(a)(3); threatening in the second degree in violation of General Statutes (Rev. to 2013) § 53a-62(a)(3); two counts of disorderly conduct in violation of § 53a-182(a)(2), one of which alleged that he caused inconvenience, annoyance and alarm to Judge Bozzuto, and one of which alleged that he caused inconvenience, annoyance and alarm to Verraneault; and breach of the peace in violation of § 53a-181(a)(3).[9]

Before trial, the defendant moved to dismiss all of the charges. With respect to the threatening charges, the defendant contended that the e-mail did not contain speech that was punishable under the first amendment because the threat was not "so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution. . . ." (Internal quotation marks omitted.) *State v. Krijger*, 313 Conn. 434, 450, 97 A.3d 946 (2014). In addition, the defendant argued that the threatening charges "fail because the [d]efendant did not communicate the threat to the intended victim." In support of this claim, the defendant cited *State v. Kenney*, 53 Conn. App. 305, 323, 730 A.2d 119, cert. denied, 249 Conn. 930, 733 A.2d 851 (1999),

[9] All of the charges against the defendant arose from his conduct in sending the first e-mail, which, according to the trial court's factual findings, was the only e-mail that had been provided to law enforcement before the defendant's arrest and the only e-mail that came to the attention of Judge Bozzuto.

for the proposition that "[a] threat imports the expectation of bodily harm, thereby inducing fear and apprehension *in the person threatened*." (Emphasis added; internal quotation marks omitted.) The trial court, *Gold, J.*,[10] summarily denied the motion to dismiss, and the case was tried to the court.

After the trial, the defendant filed another motion to dismiss the charges, claiming that the threatening statutes under which he had been charged were unconstitutional because they required the state to prove only that his conduct in sending the e-mail was in reckless disregard of causing terror to another person; *see* General Statutes § 53a-61aa(a)(3) and General Statutes (Rev. to 2013) § 53a-62(a)(3); when, according to the defendant, the first amendment requires proof of specific intent to terrorize another person. The defendant pointed out that, although this court in *State v. Krijger*, *supra*, 313 Conn. at 450, had applied an objective foreseeability standard to determine whether the defendant had made a "true threat" that may be subject to punishment under the first amendment, we had expressly declined to consider whether the first amendment required proof of a specific intent because the defendant in *Krijger* had raised no such claim and, in any event, he could prevail even under the objective standard.

---

[10] All subsequent references to the trial court are to Judge Gold.

Relying on Justice Alito's concurring opinion in *Elonis v. United States*, ___ U.S. ___, 135 S. Ct. 2001, 2016-17, 192 L. Ed. 2d 1 (2015), the trial court concluded that the state was constitutionally required to prove that the defendant acted recklessly, that is, that the defendant subjectively knew that there was a substantial and unjustifiable risk that his threatening speech would terrorize the target of the threat, and that he acted in conscious disregard of that risk. *See* General Statutes § 53a-3(13).[11]

Accordingly, the trial court concluded that § 53a-61aa(a)(3), which requires proof of recklessness, was not unconstitutional and denied the defendant's motion to dismiss.

Thereafter, the trial court found the defendant guilty of threatening in the first degree, two counts of disorderly conduct, and breach of the peace in the second degree. In its memorandum of decision, the trial court considered separately the questions of whether (1) the language of the defendant's e-mail constituted a true threat that constitutionally could be punished, and (2) the defendant had knowingly disregarded the risk that the e-mail would cause Judge Bozzuto to be

---

[11] General Statutes § 53a-3(13) provides: "A person acts 'recklessly' with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. . . ."

terrorized. With respect to the first issue, the trial court observed that, under *State v. Krijger*, *supra*, 313 Conn. at 450, threatening speech constitutionally may be punished when "a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." (Internal quotation marks omitted.) The trial court ultimately concluded that "a reasonable person not only *could* foresee, but readily *would* foresee, that the language in the [defendant's] e-mail would be interpreted by those to whom it was communicated as a serious expression of an intent to commit an act of violence [against] Judge Bozzuto. . . ." In support of this conclusion, the trial court relied on the e-mail's extremely detailed and specific description of the threatened assault on Judge Bozzuto, the prior relationship between the parties, the circumstances immediately preceding the e-mail, and the fact that firearms that could enable the defendant to carry out his threat were seized from the defendant's residence approximately one week after he sent the e-mail.

The trial court then addressed the question of whether the state had proved the elements of threatening in the second degree in violation of § 53a-62(a)(3). The trial court disagreed with the defendant's claims that the state had failed to prove that he acted recklessly because "(1) he did not send the e-mail directly to Judge Bozzuto, and (2) those to whom he did send it were seen by him as 'like-minded individuals' who understood and shared his frustration with the

family court system." The trial court found that, to the contrary, the evidence "fully support[ed] the reasonable inference that the defendant knew that his e-mail would be seen as a serious expression of his intentions, and was aware of and consciously disregarded the substantial and unjustifiable risk that, as a result, it would be disclosed to others and cause terror to Judge Bozzuto." To support this conclusion, the trial court again relied on the words used in the e-mail, the history between the parties, and the reactions of Nowacki and Verraneault. In addition, the trial court relied on the fact that, upon being admonished by Nowacki for sending the e-mail, the defendant expressed no surprise that Nowacki had interpreted the e-mail as a serious threat of violence and made no attempt to clarify his intent or retract the threat. Rather, the defendant validated Nowacki's interpretation by sending another e-mail reasserting the threat to Judge Bozzuto and, for the first time, threatening her children. Accordingly, the trial court found that the state had established the elements of threatening in the second degree.

The trial court then noted that, with regard to the charge of threatening in the first degree in violation of § 53a-61aa(a)(3), the state was required to prove that the defendant had committed threatening in the second degree and, in committing that offense, had represented by his words that he possessed a firearm. The trial court concluded that the defendant's reference in the e-mail to the .308 caliber rifle satisfied that element. Accordingly, the trial court found the defendant guilty of threatening in the first degree.

Turning to the other charges, the trial court concluded that the state had established the elements of disorderly conduct toward Judge Bozzuto and Verraneault. With respect to the count involving disorderly conduct toward Verraneault, the trial court concluded that the defendant "was aware that she would view [the e-mail] as a serious expression of [the defendant's] intent to shoot Judge Bozzuto, and that . . . Verraneault would be disturbed and filled with anxiety as a result of that threatened harm." Finally, the trial court concluded that the state had proven the elements of breach of the peace in the second degree. Accordingly, the trial court found the defendant guilty on both counts of disorderly conduct and of breach of the peace in the second degree. The trial court then rendered a judgment of conviction in accordance with its findings and sentenced the defendant to a total effective sentence of five years imprisonment, execution suspended after eighteen months, and five years probation with special conditions on the charge of threatening in the first degree. This appeal followed. *See* footnote 4 of this opinion.

On appeal, the defendant first challenges the constitutionality of § 53a-61aa(a)(3) under the free speech provisions of the first amendment to the federal constitution and article first, §§ 4, 5 and 14, of the Connecticut constitution on the grounds that (1) the statute does not require the state to prove that an individual who engaged in threatening speech had the specific intent to terrorize the target of the threat, and (2) even if the statute is constitutional as applied to

threatening speech directed at a private individual, proof of specific intent is required when the speech is directed at a public official. He next claims that the trial court improperly considered evidence of certain events, namely, the seizure of firearms from his residence one week after he sent the e-mail concerning Judge Bozzuto, and his second e-mail to Nowacki, in which he again threatened Judge Bozzuto and her family, to support its conclusion that his e-mail was a punishable true threat. Finally, the defendant contends that the evidence was insufficient to establish that he violated § 53a-61aa(a)(3) by sending the e-mail or that he violated § 53a-182(a)(2) by engaging in disorderly conduct toward Verraneault. We address each of these claims in turn.

I

FREE SPEECH CLAIMS

We first address the defendant's claims that § 53a-61aa(a)(3) is unconstitutional under the free speech provisions of the first amendment to the United States constitution, and article first, §§ 4, 5 and 14, of the Connecticut constitution because the statute does not require the state to prove that the person who engaged in the threatening speech had the specific intent to terrorize the target of the threat.[12] We conclude in part

---

[12] In his brief, the defendant contends that the trial court improperly applied *Krijger*'s objective foreseeability standard and that the court "altogether neglect[ed] the issue of scienter." The trial court did not neglect the issue of scienter, however, but applied the statutory recklessness standard, which it previously had

I A of this opinion that the statutory recklessness standard is constitutional under the first amendment when threatening speech is directed at a private individual. In part I B of this opinion, we conclude that the statutory recklessness standard is also constitutional under the free speech provisions of the state constitution. In part I C of this opinion, we consider and reject the defendant's suggestion that a higher mens rea standard is required under both the federal and state constitutions when threatening speech is directed at a public official.[13]

---

concluded was constitutional. Nevertheless, because the defendant contends that the state and federal constitutions require the state to prove that he had the specific intent to terrorize Judge Bozzuto, that contention necessarily includes the position that the statutory recklessness standard is also unconstitutional.

[13] We note that the defendant did not preserve before the trial court his state constitutional claim or his claim suggesting that proof of specific intent is required when the threatening speech is directed at a public official. Accordingly, we review those claims pursuant to *State v. Golding*, 213 Conn. 233, 239-40, 567 A.2d 823 (1989), under which "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail." (Emphasis in original; internal quotation marks omitted.) *State v. Holley*, 327 Conn. 576, 590 n.8, 175 A.3d 514 (2018); *see also In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015) (modifying *Golding*'s third prong).

We begin by noting the well established principle that determining the constitutionality of a statute presents a question of law subject to plenary review. *See*, e.g., *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 155, 957 A.2d 407 (2008).

A

We first address the defendant's claim that the first amendment required the state to prove that he had the specific intent to terrorize Judge Bozzuto before he could be punished for the threatening speech in his e-mail.[14] As we have explained, in this part of our opinion, we limit our consideration to the federal constitutional standard for threatening speech directed at a private individual. We disagree with the defendant's claim.

We begin with a review of the first amendment principles applicable to statutes that criminalize threatening speech. "The [f]irst [a]mendment, applicable to

---

[14] We recently stated in *State v. Kono*, 324 Conn. 80, 123, 152 A.3d 1 (2016), that, "if the federal constitution does not clearly and definitively resolve the issue in the defendant's favor, we turn first to the state constitution to ascertain whether its provisions entitle the defendant to relief." In *Kono*, however, the defendant *prevailed* on his claim under the state constitution. *Id.*, at 122, 152 A.3d 1. In the present case, we conclude that the defendant cannot prevail on his state constitutional claim. *See* part I B of this opinion. It is necessary, therefore, to consider his federal constitutional claim. Moreover, because a review of federal precedent is part of our state constitutional analysis under *State v. Geisler*, 222 Conn. 672, 685, 610 A.2d 1225 (1992), we address the defendant's claim under the federal constitution first for the sake of efficiency.

the [s]tates through the [f]ourteenth [a]mendment, provides that Congress shall make no law . . . abridging the freedom of speech. The hallmark of the protection of free speech is to allow free trade [of] ideas—even ideas that the overwhelming majority of people might find distasteful or discomforting. . . . Thus, the [f]irst [a]mendment ordinarily denies a [s]tate the power to prohibit dissemination of social, economic and political doctrine [that] a vast majority of its citizens believes to be false and fraught with evil consequence. . . .

"The protections afforded by the [f]irst [a]mendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the [c]onstitution. . . . The [f]irst [a]mendment permits restrictions [on] the content of speech in a few limited areas, which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. . . .

"Thus, for example, a [s]tate may punish those words [that] by their very utterance inflict injury or tend to incite an immediate breach of the peace. . . . Furthermore, the constitutional guarantees of free speech and free press do not permit a [s]tate to forbid or proscribe advocacy of the use of force or of law violation except [when] such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. . . . [T]he [f]irst

[a]mendment also permits a [s]tate to ban a true threat. . . .

"True threats encompass those statements [through which] the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. . . . The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. . . .

"Thus, we must distinguish between true threats, which, because of their lack of communicative value, are not protected by the first amendment, and those statements that seek to communicate a belief or idea, such as political hyperbole or a mere joke, which are protected." (Citation omitted; internal quotation marks omitted.) *State v. Krijger*, *supra*, 313 Conn. at 448-50.

Until 2003, the objective foreseeability test, under which the state must prove that a reasonable person would interpret the defendant's threatening speech as a serious threat before the defendant may be punished for the speech, was universally acknowledged by federal courts as the proper constitutional standard for identifying punishable true threats under the first amendment. *See Doe v. Pulaski County Special School District*, 306 F.3d 616, 622 (8th Cir. 2002) ("[a]ll the [federal circuit courts of appeals] to have reached the

issue have consistently adopted an objective test that focuses on whether a reasonable person would interpret the purported threat as a serious expression of an intent to cause a present or future harm"); *see also State v. DeLoreto*, 265 Conn. 145, 156, 827 A.2d 671 (2003) (under federal constitution, "[w]hether a particular statement may properly be considered to be a threat is governed by an objective standard—whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault" [internal quotation marks omitted]).

As we recognized in *State v. Krijger*, *supra*, 313 Conn. at 451-52 n.10, however, this general consensus was shaken by the decision of the United States Supreme Court in *Virginia v. Black*, 538 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003), which led to a split in authority among the federal circuit courts of appeals about whether the true threats doctrine requires proof of subjective intent to intimidate the recipient of the threat or, instead, requires proof of objective foreseeability. In *Black*, the court considered the constitutionality of a Virginia statute providing in relevant part that "[i]t shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place." (Internal quotation marks omitted.) *Id*., 348. In an opinion authored by Justice O'Connor, a majority of the court observed that " '[t]rue threats'

encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.*, 359. The majority further observed that "[i]ntimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id.*, 360. Accordingly, the majority concluded that "[t]he [f]irst [a]mendment permits Virginia to outlaw cross burnings done with the intent to intimidate. . . ." *Id.*, 363.

A plurality of the court also held, however, that a provision of the Virginia statute stating that "[a]ny such burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons" was unconstitutional on its face because it did not differentiate between cross burnings that were intended to intimidate and other cross burnings and, therefore, "would create an unacceptable risk of the suppression of ideas."[15] (Internal quotation marks omitted.) *Id.*,

[15] Chief Justice Rehnquist and Justices Stevens and Breyer agreed with the portion of Justice O'Connor's opinion holding that the prima facie evidence provision was unconstitutional. The plurality noted, however, that the Supreme Court of Virginia had not authoritatively interpreted the meaning of the prima facie evidence provision, and it was theoretically possible that "the court, on remand, could interpret the provision in a manner different from that so far set forth in order to avoid the constitutional objections we have described." *Virginia v. Black*, *supra*, 538 U.S. at 367. Justice Scalia, who had provided the fifth vote in the majority, contended in his concurring and dissenting opinion, which Justice Thomas joined, that the prima facie evidence provision

363-66; *see also id.*, 367 (provision "ignore[d] all of the contextual factors that are necessary to decide whether a particular cross burning *is intended to intimidate*" [emphasis added]).

As we observed in *State v. Krijger*, *supra*, 313 Conn. at 451-52 n.10, several courts have concluded that the statement of the majority in *Virginia v. Black*, *supra*, 538 U.S. at 360, that "a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death" constitutes a true threat as well as the statement of the plurality suggesting that the finder of fact must determine whether the defendant "intended to intimidate"; *id.*, 367; show that the Supreme Court intended to adopt a specific intent standard.[16] Most of the courts that have

---

was constitutional because it allowed defendants to rebut the presumption of the intent to intimidate. *See id.*, 370-71. Justice Souter contended in his concurring and dissenting opinion, in which Justices Kennedy and Ginsburg joined, that the entire cross burning statute was unconstitutional. *See id.*, 387. Justice Thomas contended in a concurring and dissenting opinion that the prima facie evidence provision was constitutional. *See id.*, 388.

[16] *See United States v. Heineman*, 767 F.3d 970, 980 (10th Cir. 2014) ("one of the predicates for the plurality's overbreadth ruling [in *Black*] was the [c]ourt's view that a threat was unprotected by the **[f]irst [a]mendment** only if the speaker intended to instill fear in the recipient"); *id.*, 981 (if subjective intent is required to convict defendant of intimidation, it must be required for other types of true threats as well); *United States v. Bagdasarian*, 652 F.3d 1113, 1117-18 (9th Cir. 2011) (holding without analysis that *Black* adopted specific intent requirement); *Brewington v. State*, 7 N.E.3d 946, 964 (Ind. 2014) (stating in dictum that *Black* held that **first amendment** requires subjective intent to intimidate), cert. denied, ___ U.S. ___, 135 S. Ct. 970, 190 L. Ed. 2d 834 (2015); *see also United States v. Parr*, 545 F.3d 491, 500 (7th Cir. 2008)

addressed the issue, however, have held that *Black* did not overrule the objective foreseeability standard.[17]

Several of these courts have reasoned that, although the court's statements in *Black* indicate that a speaker who has the specific intent to intimidate constitutionally may be punished for his speech, they do not

---

(declining to decide whether *Black* adopted subjective intent standard, but stating in dictum that "[i]t is more likely . . . an entirely objective definition is no longer tenable"), cert. denied, 556 U.S. 1181, 129 S. Ct. 1984, 173 L. Ed. 2d 1083 (2009).

[17] *See United States v. Martinez*, 736 F.3d 981, 988 (11th Cir. 2013), vacated on other grounds, ___ U.S. ___, 135 S. Ct. 2798, 192 L. Ed. 2d 842 (2015); *United States v. Elonis*, 730 F.3d 321, 329-30 (3d Cir. 2013), rev'd on other grounds, ___ U.S. ___, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015); *United States v. Jeffries*, 692 F.3d 473, 479-80 (6th Cir. 2012), cert. denied, 571 U.S. 817, 134 S. Ct. 59, 187 L. Ed. 2d 25 (2013); *United States v. White*, 670 F.3d 498, 508-509 (4th Cir. 2012); *United States v. Mabie*, 663 F.3d 322, 332 (8th Cir. 2011); *People v. Stanley*, 170 P.3d 782, 788 (Colo. App. 2007), cert. denied, Colorado Supreme Court, Docket No. 07SC575, 2007 Colo. LEXIS 1088 (November 19, 2007), cert. denied, 552 U.S. 1297, 128 S. Ct. 1750, 170 L. Ed. 2d 541 (2008); *People v. Diomedes*, 2014 IL App(2d) 121080, 382 Ill. Dec. 712, 13 N.E.3d 125, 137 (Ill. App. 2014), appeal denied, 396 Ill. Dec. 180, 39 N.E.3d 1006 (Ill. 2015); *State v. Draskovich*, 2007 SD 76, 904 N.W.2d 759, 762 (S.D. 2017); *State v. Schaler*, 169 Wash.2d 274, 283, 236 P.3d 858 (2010); *see also Elonis v. United States*, *supra*, 135 S. Ct. at 2016 (Alito, J., concurring in part and dissenting in part) (statute requiring proof of recklessness in making threat was constitutional under first amendment); *Elonis v. United States*, *supra*, at 2027 (Thomas, J., dissenting) ("[t]he [c]ourt's fractured opinion in *Black* . . . says little about whether an intent-to-threaten requirement is constitutionally mandated"); *United States v. Turner*, 720 F.3d 411, 420 and n.4 (2d Cir. 2013) (applying objective test and noting that defendant did not rely on split caused by *Black*, but concluding that result would be same under either objective or subjective test), cert. denied, ___ U.S. ___, 135 S. Ct. 49, 190 L. Ed. 2d 29 (2014).

support the proposition a speaker constitutionally may be punished *only* when he has a specific intent to intimidate. *See United States v. Martinez*, 736 F.3d 981, 987 (11th Cir. 2013) (under *Black*, "intimidation is but one type of true threat," and court did not intend to require specific intent to intimidate for all true threats), vacated on other grounds, ___ U.S. ___, 135 S. Ct. 2798, 192 L. Ed. 2d 842 (2015); *United States v. Jeffries*, 692 F.3d 473, 480 (6th Cir. 2012) (stating that court in *Black* merely observed "that intimidation is *one* type of true threat" [emphasis in original; internal quotation marks omitted]), cert. denied, 571 U.S. 817, 134 S. Ct. 59, 187 L. Ed. 2d 25 (2013); *People v. Stanley*, 170 P.3d 782, 789 (Colo. App. 2007) (stating that court in *Black* merely defined intimidation as one type of true threat), cert. denied, Colorado Supreme Court, Docket No. 07SC575, 2007 Colo. LEXIS 1088 (November 19, 2007), cert. denied, 552 U.S. 1297, 128 S. Ct. 1750, 170 L. Ed. 2d 541 (2008).

Several courts have also concluded that the plurality in *Black* held that the prima facie evidence provision of the cross burning statute was unconstitutional because the plurality was concerned that cross burning could be punished under that provision even when it was *not reasonably foreseeable* that anyone would be intimidated or terrorized, not because the statute failed to require proof of specific intent. Thus, these courts have reasoned, the plurality in *Black* was focused more on the Virginia cross burning statute's failure to differentiate between different levels of intent than on the specific mens rea that is

constitutionally required before a person may be punished for threatening speech. *See United States v. Martinez*, *supra*, 736 F.3d 986-87 ("*Black* was primarily a case about the overbreadth of a specific statute—not whether all threats are determined by a subjective or objective analysis in the abstract"); *United States v. Jeffries*, *supra*, 692 F.3d 479-80 (*Black* "did not turn on subjective versus objective standards for construing threats. It turned on overbreadth—that the statute lacked any standard at all."); *United States v. White*, 670 F.3d 498, 511 (4th Cir. 2012) ("[w]hile the *Black* discussion was . . . concerned with the fact that criminalizing cross burning without proof of *any* intent to intimidate would be unconstitutional, the [c]ourt did not engage in any discussion that proving true threats . . . required a subjective, rather than objective, analysis" [emphasis in original]); *United States v. Mabie*, 663 F.3d 322, 332 (8th Cir. 2011) ("*Black* . . . did not hold that the speaker's subjective intent to intimidate or threaten is required in order for a communication to constitute a true threat. Rather, the [c]ourt determined that the statute at issue in *Black* was unconstitutional because the intent element that was included in the statute was effectively eliminated by the statute's provision rendering any burning of a cross on the property of another prima facie evidence of an intent to intimidate.").

Finally, one state court that has rejected the claim that *Black* adopted a subjective intent requirement reasoned that the purpose underlying the true threats doctrine, namely, protecting the targets of threats from

the fear of violence, would not be "served by hinging constitutionality on the speaker's subjective intent. . . ." (Internal quotation marks omitted.) *People v. Stanley*, *supra*, 170 P.3d at 789, quoting *Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life Activists*, 290 F.3d 1058, 1076 (9th Cir. 2002), cert. denied, 539 U.S. 958, 123 S. Ct. 2637, 156 L. Ed. 2d 655 (2003).

We are persuaded by the reasoning of the courts that have concluded that *Black* did not adopt a subjective intent standard. Indeed, nothing in *Black* itself suggests that the court intended to overrule the preexisting consensus among the federal circuit courts of appeals that threatening speech may be punished under the first amendment when a reasonable person would interpret the speech as a serious threat. We also note that, in *State v. DeLoreto*, *supra*, 265 Conn. at 154, this court cited *Black*, and we did not suggest that the decision had affected the objective foreseeability test in any way. Accordingly, we conclude that the first amendment does not require the state to prove that the defendant had the specific intent to terrorize Judge Bozzuto before he could be punished for his threatening speech.

Having rejected the defendant's claim that the first amendment requires proof of a subjective intent, we need not determine whether the objective foreseeability standard, which requires the state to prove that "an objective listener would readily interpret the [threatening] statement as a real or true threat"; *State v. Krijger*, *supra*, 313 Conn. at 460; but which does not

require the state to prove that *the defendant subjectively knew* that the threat would be interpreted as a serious one, satisfies the first amendment. Even if we were to assume that proof of subjective knowledge is constitutionally required, § 53a-61aa(a)(3) satisfies that requirement because it requires the state to prove the element of reckless disregard, namely, that the defendant violated § 53a-62(a)(3) by "threaten[ing] to commit [a] crime of violence in reckless disregard of the risk of causing . . . terror" to another person. Put another way, the state must show that the defendant was aware of and *consciously disregarded* a substantial and unjustifiable risk that the target of the threat would be terrorized. *See* General Statutes § 53a-3(13). We conclude, therefore, that § 53a-61aa(a)(3) is constitutional under the first amendment as applied to threatening speech directed at a private individual.

B

We next address the defendant's claim that the free speech provisions of article first, § 4, 5 and 14, of the Connecticut constitution provide greater protection than does the first amendment, and require the state to prove that an individual had the specific intent to terrorize the target of the threat before that person may be punished for threatening speech directed at a private individual. Specifically, the defendant relies on this court's statement in *State v. Linares*, 232 Conn. 345, 380, 655 A.2d 737 (1995), that the state constitution "bestows greater expressive rights on the public than that afforded by the federal constitution." Accord

Leydon v. Greenwich, 257 Conn. 318, 349, 777 A.2d 552 (2001). We again disagree and conclude that the Connecticut constitution does not require the state to prove that a defendant had the specific intent to terrorize the target of the threat before that person may be punished for threatening speech directed at a private individual.

"[I]n determining the contours of the protections provided by our state constitution, we employ a multifactor approach that we first adopted in [*State v. Geisler*, 222 Conn. 672, 685, 610 A.2d 1225 (1992)]. The factors that we consider are (1) the text of the relevant constitutional provisions; (2) related Connecticut precedents; (3) persuasive federal precedents; (4) persuasive precedents of other state courts; (5) historical insights into the intent of [the] constitutional [framers]; and (6) contemporary understandings of applicable economic and sociological norms [otherwise described as public policies]. . . . We have noted, however, that these factors may be inextricably interwoven, and not every [such] factor is relevant in all cases." (Internal quotation marks omitted.) *State v. Kono*, 324 Conn. 80, 92, 152 A.3d 1 (2016).

In the present case, because neither the constitutional text nor the relevant federal case law supports his position,[18] the defendant relies primarily on the

[18] Although the defendant relies on the federal precedent *Geisler* factor, we concluded in part I A of this opinion that persuasive federal precedent does not require proof of subjective intent. Accordingly, that factor favors the state's position that the recklessness standard of § 53a-61aa(a)(3) comports with the state constitution.

holdings and dicta of decisions from this state's appellate courts, in particular *State v. Linares, supra*, 232 Conn. at 345, to support his claim that the state constitution requires proof of a specific intent to terrorize. We are not persuaded. In *Linares*, the defendant pleaded nolo contendere to charges of intentional interference with the legislative process in violation of General Statutes § 2-1d(a)(2)(C) and (E) in connection with an incident in which she unfurled a banner and loudly chanted in the gallery of the hall of the House of Representatives during the governor's budget address. *State v. Linares*, *supra*, at 347-54. The defendant contended that § 2-1d(a)(2)(C) and (E) was overbroad in violation of the speech provisions of the state constitution. *Id*., at 376-77. To resolve this issue, this court was required to decide whether the state constitution incorporated the rigid forum analysis, which was the standard under the federal constitution, or, instead, the state constitution incorporated the "more flexible, fact specific [compatibility] approach," under which courts consider "whether the particular speech in issue was consistent with the uses of the specific public property involved." *Id*., at 377-78. Noting that the more flexible compatibility approach "is designed to maximize the speech which the government is constitutionally required to tolerate, consistent with the appropriate and needful use of its property," this court concluded that the state constitution incorporated that approach. (Internal quotation marks omitted.) *Id*., at 383-84.

Nothing in either *Linares* or *Leydon v. Greenwich*, *supra*, 257 Conn. at 318, suggests, however, that the

government is constitutionally required to tolerate threatening speech when the speaker acted in reckless disregard and was aware that there was a substantial and unjustifiable risk that the speech would be interpreted as a serious threat. Nor does the defendant contend that the other *Geisler* factors, namely, constitutional history and public policy, support his position. Accordingly, we conclude that § 53a-61aa(a)(3) does not violate the free speech provisions of the state constitution because those provisions protect a broader range of threatening speech than does the first amendment.

C

We next address the defendant's claim that threatening speech that is directed at a public official is subject to a higher standard than speech directed at a private individual under the free speech provisions of both the federal and state constitutions. We disagree with both claims.

1

We first consider whether the first amendment imposes a higher mens rea standard on threatening speech directed at public officials. The defendant contends that, because a statute criminalizing political advocacy of the use of force or of lawlessness violates the first amendment unless "such advocacy is directed to inciting or producing *imminent* lawless action and is likely to incite or produce such action"; (emphasis

added) *Brandenburg v. Ohio*, 395 U.S. 444, 447, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969); threatening speech directed at public officials is punishable only if the speaker had a specific intent to terrorize the official. He cites no authority for this proposition, however, and our independent research reveals that courts have uniformly concluded that, if threatening speech directed at a public official satisfies the traditional true threats doctrine, it is not constitutionally protected.[19]

---

[19] *See Watts v. United States*, 394 U.S. 705, 707, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969) (statute criminalizing threats against president was constitutional because "[t]he [n]ation undoubtedly has a valid, even an overwhelming, interest in protecting the safety of its [c]hief [e]xecutive and allowing him to perform his duties without interference from threats of physical violence"); *United States v. Bazuaye*, 559 Fed. Appx. 709, 714 (10th Cir. 2014) (when defendant made true threat against police officer, threat was not constitutionally protected speech); *United States v. Turner*, 720 F.3d 411, 423-24 (2d Cir. 2013) (statute criminalizing threats against judges was constitutional because **first amendment** does not protect true threats), cert. denied, ___ U.S. ___, 135 S .Ct. 49, 190 L. Ed. 2d 29 (2014); *United States v. Beale*, 620 F.3d 856, 865-66 (8th Cir. 2010) (statute criminalizing threats against judicial officers of United States was constitutional because first amendment does not protect true threats), cert. denied, 562 U.S. 1190, 131 S. Ct. 1023, 178 L. Ed. 2d 847 (2011); *United States v. Wolff*, 370 Fed. Appx. 888, 893 (10th Cir. 2010) ("[t]he fact that a specific threat accompanies pure political speech does not shield a defendant from culpability" [internal quotation marks omitted]); *United States v. Fulmer*, 108 F.3d 1486, 1493 (1st Cir. 1997) (when defendant was charged with threatening federal agent, "a conviction . . . based on a finding that the statement was a true threat would not violate [the defendant's] constitutionally protected right to [political] speech"); *People v. Nishi*, 207 Cal. App. 4th 954, 965, 143 Cal. Rptr. 3d 882 (2012) (statute criminalizing threats against executive officers of state was constitutional because first amendment does not protect true threats), review

We emphasize that courts must carefully scrutinize the evidence in cases involving charges of threats against public officials to ensure that the speech at issue was, in fact, a true threat, and not constitutionally protected political advocacy. *See Watts v. United States*, 394 U.S. 705, 707, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969) (threatening statute "must be interpreted with the commands of the [f]irst [a]mendment clearly in mind" and "[w]hat is a threat must be distinguished from what is constitutionally protected speech"); *see also United States v. Turner*, 720 F.3d 411, 420 and n.4 (2d Cir. 2013) (distinguishing between advocacy of violence, which is constitutionally protected speech, and true threats, which are not), cert. denied, ___ U.S. ___, 135 S. Ct. 49, 190 L. Ed. 2d 29 (2014). If the evidence establishes beyond a reasonable doubt, however, that the defendant's threatening speech was "so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution"; (internal quotation marks omitted) *State v. Krijger*, *supra*, 313

---

denied, California Supreme Court, Docket No. 07SC575 2012 Cal. LEXIS 9876 (October 17, 2012); *State v. Draskovich*, 2017 SD 76, 904 N.W.2d 759, 764 (S.D. 2017) (upholding conviction of charge of threatening courthouse employees and judge because speech constituted true threat); *Ex parte Eribarne*, 525 S.W.3d 784, 785 (Tex. App. 2017) (statute criminalizing threats directed at public servants was constitutional because "the statute punishes conduct rather than the content of speech alone and bears a rational relationship to the [s]tate's legitimate and compelling interest in protecting public servants from harm"), review refused, Texas Court of Criminal Appeals, Docket No. PD-0901-17, 2017 Tex. Crim. App. LEXIS 1086 (October 25, 2017).

Conn. at 450; and that the defendant had the constitutionally required mens rea for true threats directed at private individuals, we cannot perceive why his speech should, nevertheless, be protected because it was directed at a public official. Unlike passionate disagreement with existing laws and abstract advocacy of the violent overthrow of the government, true threats have no social value. *See State v. DeLoreto*, *supra*, 265 Conn. at 163 ("[t]rue threats have no communicative value but, rather, are words [used] as projectiles where no exchange of views is involved" [internal quotation marks omitted]); cf. *Rice v. Paladin Enterprises, Inc.*, 128 F.3d 233, 243 (4th Cir. 1997) ("[A] right to advocate lawlessness is, almost paradoxically, one of the ultimate safeguards of liberty. Even in a society of laws, one of the most indispensable freedoms is that to express in the most impassioned terms the most passionate disagreement with the laws themselves, the institutions of, and created by, law, and the individual officials with whom the laws and institutions are entrusted."), cert. denied, 523 U.S. 1074, 118 S. Ct. 1515, 140 L. Ed. 2d 668 (1998). Accordingly, we conclude that § 53a-61aa(a)(3) is not unconstitutional as applied to threatening speech directed at public officials under the first amendment.

2

We next address the defendant's contention that the free speech provisions of the Connecticut constitution require the state to prove that the defendant had a specific intent to terrorize when threatening speech

is directed at public officials. In support of this claim, the defendant relies on the text of article first, § 14, of the Connecticut constitution, which provides that citizens have a right "to apply to those invested with the powers of government, for redress of grievances . . . by petition, address or remonstrance." The defendant contends that his e-mail regarding Judge Bozzuto was a "remonstrance" within the meaning of this provision and, therefore, it was constitutionally protected. We disagree.

Without additional analysis explicating the term "remonstrance," we find it difficult to reconcile the defendant's claim that the purpose of his e-mail was "to apply to those invested with the powers of government, for redress of grievances" with his contention that he did not intend for Judge Bozzuto to receive the e-mail. In any event, article first, § 14, of the Connecticut constitution expressly guarantees the right to apply to government officials for the redress of grievances only if the redress is sought "in a peaceable manner. . . ." A statement that is a true threat would, ipso facto, not be one seeking redress in a peaceable manner. Accordingly, we conclude that the constitutional framers did not intend to protect the right to seek redress from a public official by way of a "remonstrance" when the speaker was aware that there was a substantial and unjustifiable risk that the public official would interpret the "remonstrance" as a serious threat of violence. We conclude, therefore, that § 53a-61aa(a)(3) is constitutional under the state constitution as it is applied to threatening speech directed at public officials.

II

EVIDENTIARY CLAIMS

We next address the defendant's claim that the trial court improperly admitted evidence of events that occurred *after* he sent the e-mail to support its conclusion that the defendant violated § 53a-61aa(a)(3). Specifically, he contends that the trial court improperly admitted (1) evidence that firearms were seized from the defendant's residence one week after he sent the e-mail, and (2) the defendant's second e-mail to Nowacki, in which he reiterated his threats against Judge Bozzuto, because this evidence was irrelevant. We agree with the defendant's first claim, but conclude that the impropriety was harmless. We disagree, however, with his second claim.

Before turning to the defendant's evidentiary claims, we note that he has cast them as sufficiency of the evidence claims, predicated on the trial court's improper consideration of the challenged evidence. Because the defendant's arguments, in essence, attack the relevancy of the challenged evidence when considered by the trial court as the trier of fact, we view those claims as evidentiary in nature. The defendant has not, however, indicated how these evidentiary claims were preserved for review. Nevertheless, because the state does not object on preservation grounds, and because the defendant cannot prevail on the claims in any event, we review their merits. *See Blumberg Associates Worldwide, Inc. v. Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 157-58, 84 A.3d 840 (2014) ("[r]eview of

an unpreserved claim may be appropriate . . . when . . . the party who raised the unpreserved claim cannot prevail" [citation omitted; footnote omitted]).

"Our standard of review for evidentiary claims is well settled. To the extent [that] a trial court's admission of evidence is based on an interpretation of the Code of Evidence, our standard of review is plenary. For example, whether a challenged statement properly may be classified as hearsay and whether a hearsay exception properly is identified are legal questions demanding plenary review. . . . We review the trial court's decision to admit [or exclude] evidence, if premised on a correct view of the law, however, for an abuse of discretion. . . . The trial court has wide discretion to determine the relevancy of evidence and the scope of cross-examination. . . . Thus, [w]e will make every reasonable presumption in favor of upholding the trial court's [rulings on these bases]." (Citations omitted; internal quotation marks omitted.) *State v. Davis*, 298 Conn. 1, 10-11, 1 A.3d 76 (2010). Because the defendant in the present case contends that the trial court improperly admitted evidence of events that occurred after the defendant sent the threatening e-mail on the ground that the evidence was irrelevant, we review the trial court's action for abuse of discretion.

A

We first address the defendant's claim that the trial court improperly considered evidence that firearms were seized from his home approximately one

week after he sent the threatening e-mail to support its conclusion that the defendant violated § 53a-61aa(a)(3). The record reveals the following additional relevant facts. The state presented evidence that, during their investigation of the defendant, the police obtained a "risk warrant" pursuant to General Statutes § 29-38c, authorizing them to enter the defendant's residence and to seize any firearms and ammunition that they found there. Upon executing the warrant, the police found and seized fifteen firearms and multiple rounds of ammunition. The police subsequently learned that, in March, 2013, the family court had issued an order prohibiting the defendant from possessing any firearms. In accordance with that order, the defendant had surrendered a number of firearms to a friend. When the police went to that friend's residence on September 2, 2014, he confirmed that he had received thirteen firearms from the defendant in March, 2013. During the summer of 2014, however, the defendant had indicated that he wanted them back. On August 27, 2014, five days after sending the e-mail, the defendant went to his friend's residence and retrieved six of the firearms. The friend turned over the remaining firearms to the police. Thereafter, the police examined the fifteen firearms that had been seized from the defendant's residence and determined that four of them were capable of accurately firing a projectile 245 yards, the distance to which the defendant had referred in his e-mail. The trial court concluded that, under *State v. Krijger*, *supra*, 313 Conn. at 456 n.11, it could rely on this evidence to support a finding that the defendant "possessed the skills or wherewithal necessary to carry out [his] threat." *Id*.

In *Krijger*, however, this court concluded only that *knowledge by the target of a threat* that the defendant had the means to carry out the threat can support the inference that the target would reasonably interpret the threat to be serious. *See id*. We did not suggest that the same inference may be drawn when the defendant had the means to carry out the threat, but the target was unaware of that fact. In this regard, we emphasize that § 53a-61aa(a)(3) does not allow a person to be punished for a thought—namely, having the subjective intent to carry out a threat. Rather, it allows threatening speech to be punished when the speaker was aware that there was substantial and unjustifiable risk that the speech *would be interpreted* as a serious threat of violence, regardless of the speaker's actual intentions. *See Virginia v. Black*, *supra*, 538 U.S. at 360 ("a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders" [internal quotation marks omitted]); *Roberts v. State*, 78 Ark. App. 103, 108, 78 S.W.3d 743 (2002) (essence of threat is "communication"). Because there is no evidence in the present case that either the recipients of the e-mail or Judge Bozzuto knew that the defendant actually possessed firearms when they received the e-mail, that fact could have no bearing on whether they would interpret the e-mail as a serious threat.[20] Accordingly, we conclude that the trial court improperly admitted this evidence.

---

[20] Judge Bozzuto testified that, when she received the copy of the defendant's e-mail, she was aware that the family court previously had issued an order requiring the defendant to surrender

We also conclude, however, that the defendant has failed to prove that the impropriety was harmful. As we discuss more fully in part III of this opinion, the other evidence supporting the trial court's conclusion that the defendant violated § 53a-61aa(a)(3), including the extremely detailed and disturbing language of the defendant's e-mail, the reactions of Nowacki and Verraneault, Judge Bozzuto's reaction, the defendant's extreme animosity toward the family court system, with which he interacted primarily through Judge Bozzuto, the contentious history between the defendant and Judge Bozzuto, and the events immediately preceding the sending of the e-mail, was extremely strong. *See State v. Swinton*, 268 Conn. 781, 797-98, 847 A.2d 921 (2004) ("to establish reversible error on an evidentiary impropriety, the defendant must prove both an abuse of discretion and a harm that resulted from such abuse" [internal quotation marks omitted]); *see also State v. Mitchell*, 296 Conn. 449, 460, 996 A.2d 251 (2010) (harmfulness determination must be made in light of entire record including overall strength of state's case without evidence admitted in error). Accordingly, we conclude that the evidentiary impropriety in the admission of the firearms evidence was harmless and, therefore, does not require reversal of the defendant's conviction.

---

all of his weapons. She also testified that, when she read the e-mail, she "took it that he had a weapon." There is no evidence, however, that Judge Bozzuto had any reason other than the reference in the e-mail to a .308 caliber rifle to believe that the defendant possessed weapons in violation of the family court order.

B

The defendant also claims that the trial court improperly relied on his second e-mail to Nowacki to support the conclusion that the defendant was aware that there was a significant and unjustifiable risk that his initial e-mail would be interpreted as a serious threat. Specifically, the trial court concluded that the fact that the defendant expressed no surprise that Nowacki had interpreted the e-mail as a serious threat of violence and made no attempt to clarify his intent or retract the threat but, instead, reiterated his threats against Judge Bozzuto and also threatened her children, showed that the defendant was aware that his first e-mail would be interpreted as a serious threat. The defendant again contends that the trial court should have considered only the circumstances that existed at the time that the defendant sent the first e-mail when determining whether that e-mail contained a serious threat.

This court, however, has expressly recognized that "evidence of the conduct of a defendant subsequent to the commission of a crime is admissible to show the defendant's state of mind at the time of the crime." (Internal quotation marks omitted.) *State v. Croom*, 166 Conn. 226, 230, 348 A.2d 556 (1974). Although the defendant's second e-mail to Nowacki had no bearing on the question of whether the *recipients* of the first e-mail would have interpreted it as a serious threat, the trial court reasonably could have concluded that it was relevant to the issue of whether *the defendant was aware* when he sent the first e-mail that it would be

interpreted in that manner. Specifically, the trial court reasonably could have inferred that, if the defendant had been unaware when he sent the first e-mail that it would be interpreted as a serious threat, he would have reacted quite differently to Nowacki's characterization of the e-mail as "disturbing" and his admonition to the defendant to refrain from making such statements. We conclude, therefore, that the trial court did not abuse its discretion when it considered this evidence.

III

SUFFICIENCY OF THE EVIDENCE CLAIMS

A

We next address the defendant's contention that the evidence was insufficient to convict him of threatening in the first degree in violation of § 53a-61aa(a)(3). Specifically, the defendant contends that the state failed to satisfy the constitutional requirement that (1) it was objectively foreseeable that the e-mail would be interpreted as a serious threat, and (2) it was reasonably foreseeable that Judge Bozzuto would be terrorized by his e-mail when the defendant did not send the e-mail to her. The defendant fails to recognize, however, that, even if the *constitutional* standard is objective foreseeability, an issue that we have declined to decide in the present case,[21] § 53a-61aa(a)(3) required the state to prove the higher

---

[21] *See* part I A of this opinion.

recklessness standard.[22] Thus, the questions that we must address are whether the evidence was sufficient to establish beyond a reasonable doubt that (1) the defendant was aware that there was a substantial and unjustifiable risk that the language of the e-mail would be interpreted as a serious threat, and (2) the defendant was aware that there was a substantial and unjustifiable risk that Judge Bozzuto would be terrorized by the e-mail even though he did not communicate it to her directly. We conclude that the evidence was sufficient to establish beyond a reasonable doubt that the defendant committed the crime of threatening in the first degree.

---

[22] This point may also have been missed by the Appellate Court in *State v. Krijger*, 130 Conn. App. 470, 24 A.3d 42 (2011), rev'd, 313 Conn. 434, 97 A.3d 946 (2014). In that case, the defendant was convicted of threatening in the second degree in violation of § 53a-62(a)(3), and breach of the peace in violation of § 53a-181(a)(3). *Id*., 472. The defendant claimed on appeal to the Appellate Court that the convictions must be reversed because his speech was constitutionally protected under the true threats doctrine. *Id*., 476. Like the defendant in the present case, the defendant in *Krijger* did not directly raise a *statutory* sufficiency claim, and the Appellate Court affirmed the convictions upon concluding that the evidence was sufficient to establish the constitutional objective foreseeability standard, without considering whether the evidence was sufficient to satisfy the higher statutory recklessness standard. *Id*., 484. On appeal to this court, we concluded that the state had not met the constitutional standard and reversed the judgment of the Appellate Court. *See State v. Krijger*, *supra*, 313 Conn. 460. Accordingly, we had no occasion to consider whether the higher statutory standard had been met.

"The standard of review we apply to a claim of insufficient evidence is well established. In reviewing the sufficiency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"We also note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Additionally, [a]s we have often noted, proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [finder of fact], would have resulted in an acquittal. . . . On appeal, we do not ask whether there is a reasonable view of the evidence that would

support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [finder of fact's] verdict of guilty." (Citations omitted; internal quotation marks omitted.) *State v. Morgan*, 274 Conn. 790, 799-800, 877 A.2d 739 (2005).

To convict a defendant of threatening in the first degree in violation of § 53a-61aa(a)(3), the state must prove that (1) the defendant committed threatening in the second degree in violation of § 53a-62, and (2) in committing that offense, the defendant represented by his words that he possessed a firearm. To prove that the defendant committed threatening in the second degree in violation of § 53a-62(a)(3), the state must prove beyond a reasonable doubt that (1) the defendant threatened to commit a crime of violence, and (2) in doing so, the defendant acted in reckless disregard of the risk of causing terror to another person. Pursuant to § 53a-3(13), "[a] person acts 'recklessly' with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. . . ." Thus, to convict a defendant of the crime of threatening in the second degree in violation of § 53a-62(a)(3), the state must prove that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that his threatening

speech would cause terror to another person, that is, that the person being threatened would interpret the threat as a serious one. As we explain more fully in part III A 2 of this opinion, when the threat has been conveyed to a third party, the state must also prove that the defendant knew that there was a substantial and unjustifiable risk that the third party would communicate the threat to its target.

"Recognizing the difficulty in proving by direct evidence that an accused subjectively realized and chose to ignore a substantial risk . . . we have long held that the state of mind amounting to recklessness . . . may be inferred from conduct." (Internal quotation marks omitted.) *State v. Salz*, 226 Conn. 20, 33, 627 A.2d 862 (1993); *see also State v. Tucker*, 181 Conn. 406, 415, 435 A.2d 986 (1980) (although conduct prior to offense did not in and of itself prove intent to murder, it was relevant to establish, in connection with question of intent, pattern of behavior and attitude toward victim that was indicative of defendant's state of mind). Accordingly, it may be inferred from evidence that the defendant engaged in speech that a reasonable person would interpret as a serious threat that *the defendant himself was aware* that there was a substantial and unjustifiable risk that the speech would be so interpreted.[23]

[23] We acknowledge that, in *Elonis v. United States*, *supra*, 135 S. Ct. 2011, the Supreme Court rejected the government's argument that it could be inferred from proof that a reasonable person would interpret the defendant's threatening speech as a serious threat that the defendant was aware that the speech was threatening. *Elonis*, however, did not involve a sufficiency of the evidence claim. Rather, it involved a claim that the jury had not been

Similarly, proof beyond a reasonable doubt that a reasonable person would be aware that there was a substantial and unjustifiable risk that a threat that was communicated to a third party would subsequently be communicated to the target of the threat would support the inference that the defendant was aware of that risk.

1

With these principles in mind, we first consider whether the evidence was sufficient to establish beyond a reasonable doubt that the defendant was aware that there was a substantial and unjustifiable risk that the recipients of his e-mail would interpret it as a

---

instructed that it must find that the defendant was aware that his speech would be interpreted as a serious threat. *See id.*, 2012 ("[t]he jury was instructed that the [g]overnment need prove only that a reasonable person would regard [the defendant's] communications as threats"). Accordingly, we do not believe that *Elonis* supports the proposition that recklessness cannot be inferred from proof that the defendant engaged in speech that a reasonable person would interpret as a serious threat even when the fact finder applied the proper mens rea standard. Indeed, "[w]e have long recognized that a defendant's state of mind can usually be proven only by circumstantial evidence." *State v. Salz*, *supra*, 226 Conn. 32. We recognize, however, that there might be rare cases in which a defendant could undercut such an inference by showing that he simply was not aware of the objectively reasonable meaning of his speech. For example in *Elonis v. United States*, *supra*, 2011, the government suggested the inference might be undercut by showing that the threatening speech was uttered by "a foreigner, ignorant of the English language, who would not know the meaning of the words at issue, or an individual mailing a sealed envelope without knowing its contents." (Internal quotation marks omitted.)

serious threat. In making this determination, we consider the language used by the defendant; *State v. Krijger*, *supra*, 313 Conn. at 452; the context in which the statements were made, including the reactions of the persons to whom the threat was communicated; *id*., 454-55; "the prior relationship between the parties"; *id*., 454; and "the immediate circumstances surrounding the alleged threat. . . ."[24] *Id*.

We turn first to the contents of the defendant's first e-mail. That e-mail stated: "The court is dog shit and has no right to shit they don't have a rule on"; "there [are] 245 [yards] between [Judge Bozzuto's] master bedroom and a cemetery that provides cover and concealment"; "[t]hey could try and put me in jail but that would start the ringing of a bell that can be undone"; "[s]omeone wants to take my kids better have an [F-35 fighter jet] and smart bombs . . . otherwise they will be found and adjusted . . . they should seek shelter on the ISS ([international] space station)"; "a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition"; and "unless you sleep with level [three] body armor or live on the [international space station] you should be careful of actions." Judge Bozzuto testified that the

[24] Whether the defendant actually intended to harm Judge Bozzuto or, instead, the statements in his e-mail were, as he claims, merely hyperbolic bluster, has no bearing on our analysis. The question before us is whether the defendant knew that there was a substantial and unjustifiable risk that the recipients of the e-mail would *interpret it* as a serious threat.

descriptions of her residence and the surrounding area were accurate. Thus, the defendant's e-mail made it clear that he was extremely angry at the "court," over which Judge Bozzuto had presided, that he had discovered where she lived, that he had surveilled her residence, that he had thought through a very detailed and specific way to kill her at that location, and that he had anticipated being punished for his conduct. Although the defendant did not explicitly say that he was going to shoot Judge Bozzuto, we have recognized that "rigid adherence to the literal meaning of a communication . . . would render [statutes proscribing true threats] powerless against the ingenuity of threateners who can instill in the victim's mind as clear an apprehension of impending injury by an implied menace as by a literal threat." (Internal quotation marks omitted.) *State v. Krijger*, *supra*, 313 Conn. 453. We conclude, therefore, that the language of the defendant's e-mail conveyed the clear connotation that he was seriously contemplating violence against Judge Bozzuto.

Indeed, the reactions of Nowacki, who called the e-mail disturbing, warned the defendant to refrain from making such statements, and admonished him that violence was not a solution, and Verraneault, who immediately contacted several people to express her concern and ultimately took steps to warn Judge Bozzuto, indicate that this is how they, in fact, interpreted the defendant's e-mail.[25] In addition, Judge Bozzuto's fearful

[25] The defendant contends that the fact the [sic] Verraneault did not immediately communicate the contents of the e-mail to Judge Bozzuto or to others who could warn her shows that a

reaction and the steps that she took to protect herself and her family from the defendant, including installing security equipment and warning her niece not to go to her house without a police escort, show that she believed the defendant's threats were serious.

The history between the defendant and Judge Bozzuto, along with the events immediately preceding the e-mail, also support the conclusion that the defendant was aware that there was a substantial and unjustifiable risk that the recipients of the e-mail and Judge Bozzuto would interpret it as a serious threat. One of the recipients of the e-mail, Kelley, testified that, during her dealings with the family court system, her feelings ran the "full gamut of every horrible thing that you can imagine. I've been angry, I've been sad, I've been despondent. There [are] no words. Apoplectic. I mean, it's the full gamut of terror. It's absolute terror." Kelley testified that she expressed those feelings to the defendant "[b]ecause he was experiencing something similar." The trial court reasonably could have inferred

---

reasonable person would not interpret the e-mail as a serious threat of harm. The trial court found, however, that the fact that Verraneault took the threat seriously was established by evidence showing that she sought guidance from a number of people as to how to proceed immediately after reading the e-mail. The trial court also found that Verraneault's delay in warning Judge Bozzuto was explained in part by the fact that "she harbored genuine concerns as to how the defendant would react if he was to learn that she was the person who had reported the e-mail to authorities." It would, indeed, be ironic to conclude that a delay in reporting caused by a genuine fear of the person who made the threat could be used to infer that the recipient did not interpret the threat to be serious.

from this testimony that the other e-mail recipients, all of whom had been engaged with the defendant in efforts to reform the family court system, were equally aware that the defendant harbored such feelings toward the family court system, which Judge Bozzuto represented.

The state also presented evidence in the form of testimony by Tanya Taupier that the defendant's demeanor throughout the course of the divorce proceeding had been contentious and adversarial to all court personnel involved in the case. In addition, there was evidence that, on June 18, 2014, Judge Bozzuto had admonished the defendant in court to stop interjecting his political views into the custody evaluation that was being performed by the family services unit.[26] Although there was no specific evidence that the e-mail recipients were aware of the details of this particular interaction between the defendant and Judge Bozzuto, the trial court reasonably could have inferred that the interaction would have reinforced the defendant's negative feelings toward the family court and Judge Bozzuto, and that the members of the informal family

[26] The state presented evidence, on which the trial court relied, that, after Judge Bozzuto admonished the defendant in court on June 18, 2014, the defendant sent out multiple e-mails and Facebook postings criticizing Judge Bozzuto. There is no direct evidence, however, that either the recipients of the defendant's e-mail or Judge Bozzuto were aware of these specific communications. Nevertheless, the trial court reasonably could have concluded that the members of the informal family court reform group, which included the recipients of the e-mail, were generally aware of the defendant's negative attitude toward the family court and its personnel.

court reform group would have been generally aware of his growing animosity and frustration.

In addition, the state presented evidence that the defendant had enrolled his children in school in Cromwell, where the defendant lived, in defiance of the court order requiring that the children attend school in Ellington, where Tanya Taupier lived. In response, on August 22, 2014, the same day that the defendant sent the threatening e-mail, counsel for Tanya Taupier sent the defendant drafts of a contempt motion and an application for an emergency ex parte order of custody that she planned to file with the family court and, more specifically, Judge Bozzuto. The recipients of the e-mail and Judge Bozzuto were aware of these developments in the case when they received the defendant's e-mail.

We conclude this evidence was sufficient to establish beyond a reasonable doubt that, as the trial court stated, "a reasonable person not only *could* foresee, but readily *would* foresee, that the language in the e-mail would be interpreted by those to whom it was communicated as a serious expression of an intent to commit an act of violence [against] Judge Bozzuto. . . ." (Emphasis in original.) As we have explained, in the absence of any evidence to the contrary, proof beyond a reasonable doubt that a reasonable person would interpret threatening speech as a serious threat supports the inference that the speaker was aware that the speech would be interpreted in that manner. Cf. *State v. Salz*, *supra*, 226 Conn. 33 ("the state of mind amounting to recklessness . . . may be inferred from conduct" [internal quotation marks

omitted]). Moreover, as we explained in part II B of this opinion, the second e-mail that the defendant sent to Nowacki and Boyne in response to Nowacki's e-mail characterizing the defendant's first e-mail as "disturbing," and urging the defendant to refrain from making such statements, supports the inference that the defendant was subjectively aware when he sent the first e-mail that there was a substantial and unjustifiable risk that it would be interpreted as a serious threat. The defendant did not suggest in that e-mail that Nowacki should have known that the language of the first e-mail was merely hyperbolic bluster resulting from late night fatigue or a passing moment of intense despondency or frustration. Cf. *State v. Krijger*, *supra*, 313 Conn. 458 (defendant's apology moments after making threatening comments showed that threat was not serious). To the contrary, the defendant confirmed the validity of Nowacki's initial interpretation of the e-mail by stating, among other things, that, "[i]f they feel it's disturbing that I will fiercely protect my family with all my life . . . they would be correct, I will gladly accept my death and theirs protecting my civil rights under my uniform code of justice." Accordingly, we conclude that the trial court properly found that the evidence was sufficient to support a finding beyond a reasonable doubt that "the defendant was himself aware that his e-mail would be seen as threatening. . . ."

2

We next address the defendant's claim that the evidence was insufficient to establish that he was aware that there was a substantial and unjustifiable risk that Judge Bozzuto would be terrorized by the e-mail because he did not send it to her. The defendant contends that, when he sent the e-mail regarding Judge Bozzuto, he could not have foreseen that it would be communicated to her because he sent it "to friends and fellow travelers."

To the extent that the defendant contends that threatening speech that is not communicated directly to the target of the speech cannot, as a matter of law, constitute a punishable true threat, we disagree. Numerous courts have held to the contrary.[27] Although

---

[27] See *United States v. Turner*, *supra*, 720 F.3d 425 (rejecting defendant's claim that blog posts on public website in which defendant repeatedly stated that three judges deserved to be killed for issuing decision affecting gun rights was not true threat because he did not threaten to kill judges on ground that threats "need be neither explicit nor conveyed with the grammatical precision of an Oxford don"); *United States v. Jeffries*, *supra*, 692 F.3d 483 (defendant who posted YouTube video of himself performing song containing numerous threatening statements directed at judge assigned to defendant's child custody case was properly convicted under threatening statute because statute contained no requirement that threat be communicated to its target); *United States v. Bagdasarian*, 652 F.3d 1113, 1121-22 (9th Cir. 2011) (concluding that evidence that defendant had posted comments on public internet message board suggesting that presidential candidate Barack Obama should be shot was insufficient to establish that comments would be understood as serious threat because only one of many persons who read posts understood them as sufficiently disturbing to notify authorities and because defendant

did not indicate that he personally intended to shoot Obama); *United States v. Parr*, 545 F.3d 491, 497-98 (7th Cir. 2008) ("[a] threat doesn't need to be communicated directly to its victim"), cert. denied, 556 U.S. 1181, 129 S. Ct. 1984, 173 L. Ed. 2d 1083 (2009); *Doe v. Pulaski County Special School District*, *supra*, 306 F.3d 624 (threatening speech can be punished as true threat if speaker intended to communicate threat to third party); *United States v. Snelenberger*, 24 F.3d 799, 803 (6th Cir.) (under statute making it crime to threaten judge with intent to retaliate, government was not required to prove that defendant intended that threat would be communicated to judge, overruled in part on other grounds by *United States v. Hayes*, 227 F.3d 578 [6th Cir. 2000]), cert. denied, 513 U.S. 967, 115 S. Ct. 433, 130 L. Ed. 2d 346 (1994); *Roberts v. State*, *supra*, 78 Ark. App. at 108 (although threatening statute did "not require that the threat be communicated directly to the person threatened," proof of intent to communicate is required because "the gravamen of the offense is communication, not utterance"); *People v. Nishi*, 207 Cal. App. 4th 954, 967, 143 Cal. Rptr. 3d 882 (2012) (threat communicated to third parties was punishable under threatening statute because "defendant intended, and expected or at least foresaw, [that the threat] would be conveyed from [the third parties] to the intended law enforcement targets of the threat"), review denied, California Supreme Court, Docket No. 07SC575, 2012 Cal LEXIS 9876 (October 17, 2012); *People v. Felix*, 92 Cal. App. 4th 905, 913, 112 Cal. Rptr. 2d 311 (2001) ("Where the threat is conveyed through a third party intermediary, the specific intent element of the statute is implicated. Thus, if the threatener intended the threat to be taken seriously by the victim, he must necessarily have intended it to be conveyed." [Internal quotation marks omitted.]), review denied, California Supreme Court, Docket No. S101923, 2001 Cal. LEXIS 8935 (December 19, 2001); *State v. Chung*, 75 Haw. 398, 417, 862 P.2d 1063 (1993) (statements made to third parties constituted true threat when they "were sufficiently alarming to impel [the third parties] to transmit them to [the target of the threat] and for the police to be notified"); *People v. Diomedes*, 2014 IL App (2d) 121080, 382 Ill. Dec. 712, 13 N.E.3d 125, 139 (Ill. App. 2014) (threat communicated to third party was true threat because "a reasonable sender would foresee that a reasonable recipient would view it as a serious threat to harm another"), appeal

the reasoning of these cases is somewhat ad hoc, in light of the purpose of the true threats doctrine, which is not to punish threatening speech in a vacuum, but to protect targets of threats from the fear of violence; *see Virginia v. Black*, *supra*, 538 U.S. 360 ("a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders" [internal quotation marks omitted]); *Roberts v. State, supra*, 78 Ark. App. 108 (essence of threat is "communication, not utterance"); we conclude that threatening speech that is not communicated directly to the target may nevertheless be punished if the state establishes that the defendant's intent that the threat would be communicated to the target meets the same standard that the state must satisfy in order to punish

---

denied, 396 Ill. Dec. 180, 39 N.E.3d 1006 (2015); *Commonwealth v. Beasley*, 2016 PA Super 92, 138 A.3d 39, 47 (Pa. Super.) (threat posted on Facebook page was true threat because defendant "wanted" target of threat to receive it and "successfully and intentionally communicated his threat" to target), appeal denied, 639 Pa. 579, 161 A.3d 791 (2016); *Wilkins v. State*, 279 S.W.3d 701, 705 (Tex. App. 2007) (under statute making it crime to intentionally or knowingly threaten another, when defendant made threatening comment on telephone that was overheard by others who then reported threat to its target, evidence was insufficient to support conviction because "nothing in the record can be construed as evidence that appellant intended or knew with reasonable certainty that his statement would" place target of threat in fear); *State v. Johnson*, 2008 UT App. 5, 178 P.3d 915, 919-20 (Utah App. 2008) (holding as matter of statutory interpretation that statute that criminalized threats to kill judge with intent to intimidate or retaliate did not require state to prove that defendant knew that threat would be communicated to target, but only that person to whom threat was communicated would interpret it as serious threat).

speech that is directed specifically to the target. As we explained in part I A of this opinion, the statutory recklessness standard is constitutional. We conclude, therefore, that a defendant may be punished for threatening speech directed at a third party if the state proves beyond a reasonable doubt that the defendant was aware that there was a substantial and unjustifiable risk *both* that his speech would be interpreted as a serious threat *and* that the threat would be communicated to the target of the threat. Cf. *People v. Felix*, 92 Cal. App. 4th 905, 913, 112 Cal. Rptr. 2d 311 (2001) ("Where the threat is conveyed through a third party intermediary, the specific intent element of the statute is implicated. Thus, if the threatener intended the threat to be taken seriously by the victim, he must necessarily have intended it to be conveyed." [Internal quotation marks omitted.]), review denied, California Supreme Court, Docket No. S101923, 2001 Cal. LEXIS 8935 (December 19, 2001).

In the present case, we agree with the trial court that, even if the recipients of the e-mail were " 'like-minded individuals' who understood and shared [the defendant's] frustration with the family court system" and his desire to reform it, the language of the e-mail was so extreme that the defendant had to have been "aware of and consciously disregarded the substantial and unjustifiable risk that . . . it would be disclosed to others and cause terror to Judge Bozzuto." Indeed, there was no credible evidence that would support, much less compel, a finding that the defendant believed that all of the recipients would either support or

be indifferent to a serious threat to kill a family court judge. To the contrary, the reactions of Nowacki and Verraneault to the defendant's first e-mail support the inference that it was not typical of the communications that previously had been shared by the group and, therefore, that the defendant would have had no reason to believe the recipients would share his desire to inflict violence against Judge Bozzuto.[28]

Moreover, when Skipp was asked if all of the recipients of the e-mail were "of a like mind when the issue was family court in Connecticut," she agreed that they were with the *exception* of Verraneault, who had "no children that were endangered by the state's actions." We conclude that this evidence was sufficient to establish beyond a reasonable doubt that the defendant was aware that there was a substantial and unjustifiable risk that *at least* Verraneault would react to the e-mail in the same manner that any reasonable person would react to a serious death threat against another person, and take steps to notify Judge Bozzuto. Accordingly, we

---

[28] As the trial court recognized, Skipp testified that the group of people interested in reforming the family court system had exchanged communications that were similar in intensity and hyperbole to the statements in the defendant's e-mail. The only examples that she could provide, however, were her own statements that "I wish I could mail [the guardian ad litem in her family court case] a box of dog poop" and "I wish [the guardian ad litem] would [self-immolate]. . . ." Kelley characterized the defendant's e-mail as a "hyperbolic [rant]." The trial court concluded, however, that there were serious questions as to whether Skipp and Kelley "were objective and unbiased witnesses [that] significantly undermined the value and credibility of their testimony" on this issue.

conclude that the evidence was sufficient to establish beyond a reasonable doubt that the defendant committed the crime of threatening in the first degree in violation of § 53a-61aa(a)(3).

B

Finally, we address the defendant's contention that the evidence was insufficient to establish that he engaged in disorderly conduct directed at Verraneault. To prove this charge, the state was required to establish that the defendant, by engaging in offensive or disorderly conduct, recklessly created a risk of causing inconvenience, annoyance or alarm to Verraneault. *See* General Statutes § 53a-182(a). The defendant contends that although Verraneault "undoubtedly experienced 'inconvenience, annoyance or alarm' upon receipt of the e-mail," because the e-mail was not a true threat, Verraneault's "tender sensibilities should be of no moment to this court."

We have concluded, however, that the defendant's e-mail *was* indeed a true threat. We further conclude that, when a speaker communicates a true threat to a person other than the target of the threat, and there is no evidence that the speaker believed that the third party would share or be indifferent to the speaker's desire to inflict violence on the target, the communication constitutes offensive conduct and creates a substantial and unjustifiable risk that the person will be inconvenienced, annoyed and alarmed. The defendant placed Verraneault in a position requiring her to either keep

quiet about the threat, thereby making herself partially responsible—at least morally, if not legally—in the event it was carried out, or to instead communicate the threat to Judge Bozzuto, thereby taking the risk that the defendant's homicidal anger would be directed at her. Indeed, the trial court expressly found that Verraneault "harbored [fears] about her own safety if [the defendant] were to learn that she was the person who had disclosed the e-mail to law enforcement authorities. . . ." Accordingly, we conclude that the evidence was sufficient to support the defendant's conviction of disorderly conduct directed at Verraneault.

The judgment is affirmed.

In this opinion the other justices concurred.

State v. Taupier

Supreme Court of Connecticut, Judicial District of Middlesex At Middleton

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

MMXCR140675616T

Judges: David P. Gold, J.

Opinion by: David P. Gold

Opinion

VERDICT AND MEMORANDUM OF DECISION

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

On March 12, 2015, the defendant waived his right to a jury and elected to be tried by the court. The court heard evidence from twenty-five witnesses between

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

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

In the sections that follow, the court will indicate its verdict as to the [sic] each of the charges—verdicts that this court today announced from the bench in open court in the presence of the parties—and then set forth the facts and law on which those verdicts are based.

I. THE COURT'S VERDICT

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

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

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

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

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

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

II. THE COURT'S FACTUAL FINDINGS

The verdicts in this case are based on the following facts that the court finds were proven by the reliable

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

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

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

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

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

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

---

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

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

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

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

Although the parties had negotiated the above-referenced agreements, the family case still had not gone to judgment by the spring of 2014. At that time, the Honorable Elizabeth A. Bozzuto, whose duties as a family court judge in Hartford included the management of cases and dockets, was alerted to and became involved in the family case because it had been pending for approximately a year and a half. Believing that

the case needed to be actively monitored, Judge Bozzuto assumed sole responsibility for the management of the case to ensure that it would either be resolved by the parties or adjudicated by the court in a timely manner. To that end, Judge Bozzuto scheduled status conferences with the lawyers and the guardian ad litem in order to oversee the matter's progress. On May 23, 2014, she also ordered a full comprehensive evaluation to be completed by the Family Services Unit of the Court Support Services Division and directed the parties to cooperate fully with that evaluation.

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

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

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

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

contempt motions). The contempt motions were emailed by Attorney Ficarra to the defendant on the afternoon of August 22, 2014.[3]

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

Soon after receiving the contempt motions from Attorney Ficarra in the afternoon or early evening of August 22, 2014, the defendant shared them or discussed their substance with other persons by email. At 7 p.m. on that date, Anne Stevenson, who had become aware of the contempt motions and their manner of service upon the defendant, emailed the defendant, copying on the email Michael Nowacki and others, under the subject line "third times a charm?" Both Ms.

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

Stevenson and Mr. Nowacki had been involved in family court reform efforts and previously had communicated with the defendant regarding those efforts and their individual experiences within that court system. In her email, Ms. Stevenson offered the following opinion as to the contempt motions filed by Attorney Ficarra: "I still don't understand how the attorney can file a motion without citing a single law in support, not sign them, not get them endorsed by the court, then serves you by email. Is that legal?"

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

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

That same evening, Jennifer Verraneault,[4] who was acquainted with the defendant, Mr. Nowacki and Ms. Stevenson and shared their desire to improve the family court system, learned through email correspondence

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

of the contempt motions filed against the defendant, and of Mr. Nowacki's opinion as to their legal merit. At 9:21 p.m., she emailed the defendant, Mr. Nowacki and Ms. Stevenson to express her agreement with Mr. Nowacki's view, writing simply: "Mike is right."

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

> Facts: JUST an FYI
>
> 1) Im still married to that POS . . . we own our children, there is no decision . . . its 50/50 or whatever we decide. The court is dog shit and has no right to shit they don't have a rule on.
>
> 2) They can steal my kids from my cold dead bleeding cordite filled fists . . . as my 60 round mag falls to the floor and im dying as a I change out to the next 30 rd . . .
>
> 3) Buzzuto lives in watertown with her boys and Nanny . . . there is 245 yrds between her master bedroom and a cemetery that provides cover and concealment.

---

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

> 4) They could try and put me in jail but that would start the ringing of a bell that can be undone . . .
>
> 5) Someone wants to take my kids better have an f35 and smart bombs . . . otherwise they will be found and adjusted . . . they should seek shelter on the ISS (Int space station).
>
> 6) BTW a 308 at 250yrd with a double pane drops .5 inches per foot beyond the glass and loses 7% of ft lbs of force @ 250yrds—non armor piercing ball ammunition
>
> 7) Mike may be right . . . unless you sleep with level 3 body armor or live on the ISS you should be careful of actions.
>
> 8) Fathers do not cause cavities, this is complete bullshit.
>
> 9) Photos of children are not illegal—
>
> 10) Fucking Nannies is not against the law, especially when there is no fucking going on, just ask Buzzuto [sic] . . . she is the ultimate Nanny fucker.

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

Less than an hour later at 8:50 a.m., the defendant replied to Mr. Nowacki's comment and warning, again under the same subject heading, with the following:

> Hi Mike: the thoughts that the courts want to take my civil rights away is equally disturbing, I did not have children, to have them abused by an illegal court system.
>
> My civil rights and those of my children and family will always be protected by my breath and hands.
>
> I know where she lives and I know what I need to bring about change . . .
>
> These evil court assholes and self appointed devils will only bring about an escalation that will impact their personal lives and families.
>
> When they figure out they are not protected from bad things and their families are taken from them in the same way they took yours then the system will change.
>
> This past week in FERGESON [sic] there was a lot of hurt caused by an illegal act, if it were my son, shot, there would be an old testament response.
>
> *2nd amendment* rights are around to keep a police state from violating my families rights.
>
> If they—courts . . . need sheeeple they will have to look elsewhere. If they feel it's disturbing that I will fiercely protect my family with all my life . . . they would be correct, I will gladly accept my death and theirs protecting my civil rights under my uniform code of justice.

> They do not want me to escalate . . . and they know I will gladly . . .
>
> I've seen years of fighting go un-noticed, people are still suffering . . . Judges still fucking sheeple over. Time to change the game.
>
> I don't make threats, I present facts and arguments. The argument today is what has all the energy that has expended done to really effect change, the bottom line is—insanity is defined as doing the something over and over and expecting a different outcome . . . we should all be done . . . and change the game to get results . . . that's what Thomas Jefferson wrote about constantly . . .
>
> Don't be disturbed . . . be happy there are new minds taking up a fight to change a system.
>
> Here is my daily prayer:
>
> > I will never quit. I persevere and thrive on adversity.
> >
> > My Nation and Family expects me to be physically harder and mentally stronger than my enemies.
> >
> > If knocked down, I will get back up, every time.
> >
> > I will draw on every remaining ounce of strength to protect my FAMILY & teammates and to accomplish our mission.
> >
> > I am never out of the fight.—ML

Mr. Nowacki tersely replied to the defendant at 9:08 a.m., as follows: "Violence is not a rational

response to injustice. Please refrain from communicating with me if you are going to allude to violence as a response."

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

As noted above, the defendant also had sent his August 22, 2014 email to Jennifer Verraneault. Ms. Verraneault first accessed and read that email on the morning of Saturday, August 23, 2014,[6] and, like Mr. Nowacki, found its content to be disturbing. She was especially frightened by those portions of the email that were directed at Judge Bozzuto, particularly given the detailed references to the judge's home. Within minutes of reading the email, and because of the concerns and fears she had about it, Ms. Verraneault emailed the defendant telling him that she was worried about him. The defendant never responded to Ms. Verraneault, which served only to heighten her level of distress.

Unsure as to what action, if any, she should take, Ms. Verraneault discussed the email and its contents over the course of that weekend with some of her traveling partners in Massachusetts, and by phone and email with other friends who were involved with her in family court reform. Among the friends with whom she spoke over that weekend was Connecticut State

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

Representative Minnie Gonzalez. Around that time in 2014, Ms. Verraneault and Representative Gonzalez talked with one another on a nearly daily basis regarding family court issues and legislative efforts related thereto. On August 23, 2014, Ms. Verraneault forwarded Representative Gonzalez a copy of the defendant's email, and during a follow-up phone call later that day, read the defendant's email to her as well.

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

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

On the morning of August 25, 2014, the application for an emergency order of custody that had been prepared by Attorney Ficarra was submitted to the family court and was promptly considered by Judge Bozzuto.[7] Although she denied the request for

[7] This application had taken on greater urgency in the shared view of Attorney Ficarra and Ms. Taupier because the defendant had not returned the children to Ms. Taupier at 7 p.m. on August 24, 2014, as required by the terms of the earlier referenced summer parenting plan. Prior to that agreed-upon time, Ms. Taupier had emailed the defendant to remind him that she would

temporary custody, Judge Bozzuto ordered that the parties were to abide by the August 13, 2013 agreement regarding the children's schooling and that, "consistent therewith, the children shall attend school in Ellington, forthwith."[8] Later on August 25, 2014, the defendant was served by a judicial marshal with Judge Bozzuto's order.

On Wednesday, August 27, 2014, and in accordance with Judge Bozzuto's order that the children attend school in Ellington, Ms. Taupier took steps to remove her children from Stevens School. Arriving at the school with Cromwell police because she feared a possible confrontation with the defendant, Ms. Taupier went to the school office and took her children into her care. As she left the school with the children and walked toward her car, she observed that the defendant was in the school parking lot and that he was

---

be at his Cromwell home at 7 p.m. to pick up the children. The defendant did not respond to that email. Upon her arrival at the defendant's home, Ms. Taupier discovered that the shades were drawn and no one was home. Ms. Taupier tried to contact the defendant on his cell phone, on his home phone and by email to advise him that she was at his home and would go to the police if she did not hear back from him. When she did not hear from him, Ms. Taupier went to the police in Cromwell that night to make a report of what had transpired, and also contacted Attorney Ficarra to advise her. The defendant still had not returned the children to Ms. Taupier's care as of August 27, 2014, when the events next described in the text occurred.

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

videotaping the events as they unfolded.[9] Police efforts to persuade the defendant "not to make matters worse" for the children went largely unheeded, as the defendant can be heard on the video directing a series of mocking comments to the police and Ms. Taupier all in the presence of the children. At one point in the video, after Ms. Taupier allowed the children to share a few moments with the defendant, the Taupiers' daughter clearly can be seen and heard crying.[10] Eventually, Ms. Taupier was able to place the children in her car and drive from the scene. As she was doing so, the defendant, making apparent reference to his intention to upload the video to the internet, can be heard on the video stating to Ms. Taupier and the police: "You Tube. Look for it tonight."

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

On the afternoon of August 27, 2014, Ms. Verraneault received a phone call from Representative Gonzalez in which Representative Gonzalez reported having seen a video of the Taupier children being removed from school in Cromwell earlier that day. After being told that the children could be seen and heard crying on the video, Ms. Verraneault feared that the

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

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

events at the school might, in her words, put the defendant "over the edge." Recalling the statements the defendant had made in his email, and despite fears she harbored about her own safety if he were to learn that she was the person who had disclosed the email to law enforcement authorities, Ms. Verraneault contacted Attorney Allard on August 28, 2014, regarding the need to alert police and Judge Bozzuto of the email's content. Unlike her communications with Attorney Allard the previous weekend, Ms. Verraneault at this point identified Judge Bozzuto and the defendant by name, and forwarded to Attorney Allard a screen shot of the contents of the defendant's email.[11]

After discussing the matter with Ms. Verraneault, Attorney Allard immediately phoned the family court clerk's office in Hartford and was directed by a representative there to contact Judicial Marshals Services. Attorney Allard did so, and eventually spoke with Judicial Marshal Brian Clemens and informed him of the contents of the defendant's email. Judicial Marshal Clemens alerted the Connecticut State Police at Troop H in Hartford and then, knowing that Judge Bozzuto

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

was traveling out of state at the time, left a message on her personal cell phone asking that she call him. When Judge Bozzuto returned his call, he told her that she and her family had been the subject of a threat made by the defendant and that State Police investigators were in the process of retrieving a copy of the threatening communication. Early that same evening, Judicial Marshals Services forwarded Judge Bozzuto a copy of the screen shot of the defendant's email, along with a photograph of the defendant.

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

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

Upon reviewing the screen shot of the email, Judge Bozzuto was immediately alarmed by the extent of the defendant's knowledge of aspects of her personal life and relationships. Most frightening to Judge Bozzuto was the defendant's intimate knowledge of details regarding her personal residence, including not just

the town in which she resided, but her home's proximity to a nearby cemetery, the general topography of her property and the land around it, the location of the master bedroom within the home, and the fact that the bedroom had double-pane windows that looked out over the rear yard. The email was so detailed and specific in its substance and so threatening in its tone that Judge Bozzuto concluded that, in her words, the defendant was "desperate," and had "become completely unraveled" and "really d[id]n't care what happens."

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

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

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

Law Enforcement Investigation re Defendant's Firearms

As their investigation continued in the days shortly after the defendant's arrest, the police came to learn of the existence of the March 6, 2013 family court

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

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

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

Moreover, the fact that the defendant possessed on August 29, 2014, nine firearms in addition to those he had retrieved from Mr. Sutula two days earlier, supports the reasonable inference that the defendant was in possession of firearms on August 22, 2014, when he wrote and sent the email threatening to shoot Judge Bozzuto. While it may be theoretically possible that the

the remaining seven firearms, and then voluntarily turned them over to the police upon their request.

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

---

defendant did not have a firearm in his possession when he sent his email and that he acquired all nine of these additional firearms in the six days that followed, the existence of such a remote and farfetched possibility wholly lacking in any evidentiary support does not prevent the court from drawing the reasonable inference that the defendant *did* possess at least one, if not several, firearms when he communicated his threat on August 22, 2014.

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

III. COURT'S CONSIDERATION OF THE CHARGES

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

A.

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

Identity

Upon consideration of the evidence presented at trial, the court finds that the state has proven beyond a reasonable doubt that the defendant was the person

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

> MR. TAUPIER: Hell is going on? Alright. So we have this coalition or slash group of families, group of people that are involved with this troublesome divorce system that goes on in the State of Connecticut every day. And I vented one afternoon for various reasons. Basically my ex—I was pro se, so I was self-represented—and my ex's attorney filed this fictitious, you know, list of six major complaints like cavities, I was having sex in front

---

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

of the kids with nanny, all of this—it's like silly—you know, she might as well have said I was absconding to Italy with the children as well. I mean it was just erroneous. And so I flipped out on her and she sent me four different copies of it. And when I looked on the case detail system—now here's the issue— when somebody files these kind of motions, if you're a pro se litigant, the judiciary that receives these motions and the Court case workers that manage the Court cases, are supposed to inform you if they've been approved to move forward or they've been denied. I don't get any denial notice. In fact, I get nothing because I'm pro se and they don't have to do anything because they know that I don't have any standing in the Court because I'm a pro se self represented litigant. So she approves it and she scheduled a hearing for 9/2, September 2nd.

THE CAPTAIN: Wow.

MR. TAUPIER: And so this motion that was completely b.s. and it made no sense to anyone, I vented to six people on a private email, it was never intended to the Judge, it was—half Charlton Heston, half F35s and smart bombs, and international space stations, and there's a bunch of hyperbole all woven in there.

THE CAPTAIN: Right.

MR. TAUPIER: So one of these people take the email and they start sending it out and her name is Jennifer Verno. Now Jennifer Verno was on this task force to help fix the guardian ad litem and

AMC problem and she was the one that was actually was corresponding with me earlier that morning. So I included her—

THE CAPTAIN: So you thought that she was like one of—one of your—

MR. TAUPIER: Us.

THE CAPTAIN: —yeah.

MR. TAUPIER: One of us.

THE CAPTAIN: Yeah.

MR. TAUPIER: So then she spends the next five days surfing the email to many, many, many, many—10, 15 people trying to see if somebody would actually pick up the phone and call the police and have me arrested.

THE CAPTAIN: Alright.

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

THE CAPTAIN: Oh.

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

THE CAPTAIN: Wow.

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

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

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

MR. TAUPIER: You’re right.

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

MR. TAUPIER: Right.

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

MR. TAUPIER: It’s a list of facts –

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

MR. TAUPIER: None of it.

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

MR. TAUPIER: Hands, right.

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

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

* * *

On the basis of these statements of the defendant, the authenticity of which was not seriously disputed, and the other evidence introduced at trial, the court concludes that the defendant authored and intentionally communicated[14] the August 22, 2014 email that is the subject of the charges in the present prosecution.[15]

---

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

[15] On the basis of these same admissions and other evidence, and in the absence of any persuasive evidence to the contrary, the

"True Threat"

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

---

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

1.

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

> The [f]irst [a]mendment, applicable to the [s]tates through the [f]ourteenth [a]mendment, provides that Congress shall make no law . . . abridging the freedom of speech. The hallmark of the protection of free speech is to allow free trade in ideas—even ideas that the overwhelming majority of people might find distasteful or discomforting . . . Thus, the [f]irst [a]mendment ordinarily denies a[s]tate the power to prohibit dissemination of social, economic and political doctrine [that] a vast majority of its citizens believes to be false and fraught with evil consequence . . .
>
> The protections afforded by the [f]irst [a]mendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the [c]onstitution . . . The [f]irst [a]mendment permits restrictions [on] the content of speech in a few

---

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

limited areas, which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality . . .

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 [f]irst [a]mendment also permits a[s]tate to ban a true threat . . .

True threats encompass those statements [through which] the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals . . . The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. . . . *Virginia v. Black*, 538 U.S. 343, 358-60, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003) (opinion announcing judgment).

Thus, we must distinguish between true threats, which, because of their lack of communicative value, are not protected by the first amendment, and those statements that seek to communicate a belief or idea, such as political hyperbole or a mere

> joke, which are protected. *State v. DeLoreto*, 265 Conn. 145, 155, 827 A.2d 671 (2003).

State v. Krijger, supra, at 448-50.

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

2.

Under established Connecticut law, courts are directed to apply an objective test in order to determine whether threatening statements constitute a true threat. As recently as last year, the court in *Krijger* expressed the test as follows: "In the context of a threat of physical violence, [w]hether a particular statement may properly be considered to be a [true] threat is governed by an objective standard—whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates

the statement as a serious expression of intent to harm or assault." (Internal quotation marks omitted.) *State v. Krijger, supra*, 313 Conn. 450. The court here must, therefore, apply this objective standard in considering whether the state, as to each of the charges in the Information, has introduced sufficient evidence to prove beyond a reasonable doubt that the defendant's email constitutes a true threat.[17]

---

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

Moreover, as to the defendant's suggestion that *Elonis v. United States*, 575 U.S. ___, 135 S.Ct. 2001, 192 L.Ed.2d 1 (2015), compels the application of a subjective test, the court does not agree. In *Elonis*, the defendant was charged with violating 18 U.S.C. § 875(c), a statute that makes it a crime to "transmit . . . any communication containing any threat . . . " At the defendant's trial, the jury was instructed that the government needed only to prove that the defendant communicated a "true threat," a concept that the District Court defined by means of an objective test nearly identical to that used in Connecticut. Because 18 U.S.C.

3.

Because the determination of whether the defendant's email constitutes a true threat will require this court's careful consideration of *Krijger*, it is useful at the outset to address the facts that were at issue in that case. In *Krijger*, the defendant was involved in a long-standing zoning dispute with the town of Waterford. *State v. Krijger, supra*, 313 Conn. 438. He was alleged to have made threatening statements to a town

---

§ 875(c) contained no scienter element requiring any proof as to the defendant's state of mind, the jury essentially was instructed that the defendant should be convicted if a reasonable person would see his statements as a threat, irrespective of the defendant's subjective awareness that his statements would be so viewed.

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

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

in the second degree and breach of the peace, for which he had been convicted. *Id.*, 443.

4.

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

Krijger identifies the starting point for a court's true threat analysis to be the threatening words themselves. Adopting that starting point here, the court has carefully considered the words used by the defendant in the present case in light of their entire factual context, and has concluded that the defendant's email communicated an explicit threat that expressly conveyed the defendant's intention to personally undertake a course of action that would culminate in injury to Judge Bozzuto. Unlike the threatening words in *Krijger*, the words contained in the defendant's email are neither vague nor ambiguous, and the court is not "left to speculate as to precisely what he meant." *State v. Krijger*, 130 Conn App. 470, 490, 24 A.3d 42 (2011)

(Lavine, J., dissenting), rev'd by, 313 Conn. 434, 97 A.3d 946 (2014). What the defendant meant here is abundantly clear, and it does not require "too much surmise, too much reading into the statements, [or] too much interpretation" to figure it out. *Id.*

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

[18] The court has not overlooked the fact that the email contained a few seemingly outlandish references to F35 fighter jets, smart bombs, and the International Space Station. However wild and exaggerated these references may be when considered in isolation, they do not, in the court's view, ultimately render the

5.

Indeed, even if a tortured interpretation of the defendant's words was used to produce facial ambiguity

---

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

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

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

Parties' Prior Relationship

Krijger holds that an "important factor to be considered in determining whether a facially ambiguous statement constitutes a true threat is the prior relationship between the parties." *State v. Krijger, supra*, 313 Conn. 453-54. In *Krijger*, the defendant and the target of his threat had a "long-standing working relationship that . . . had been quite cordial and

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

professional." *Id.*, 454. Indeed, the town attorney testified at the trial that he had been to the defendant's home on forty or fifty occasions and that the defendant "was always pleasant and cooperative in his demeanor." *State v. Krijger, supra*, 130 Conn.App. 498.

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

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

Circumstances Immediately Preceding the Threat

Krijger also holds that "the immediate circumstances surrounding the alleged threat" can be significant to the true threat determination. *Id.* In that case, the defendant's statements were made "on the heels of a contentious court hearing, at which, for the first time and apparently unbeknownst to the defendant, [the town attorney] had decided to seek the imposition of approximately $6,000 in fines . . . It was against this backdrop, and immediately following the court hearing, while the defendant and [the town attorney] were leaving the courthouse, that the defendant uttered the offending statements." *Id.*, 454-55. Resolving the facial ambiguity of the statements there, the court held that their timing—"that is, right after the court hearing, when the defendant was still very agitated over what had occurred," *id.*, 456—made a "benign interpretation [of the statements] . . . more plausible." *Id.*

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

Circumstances Following the Threat

Because the "surrounding circumstances" of an alleged threat include relevant events that may have followed the threat's utterance, *Krijger* additionally considered whether the defendant's behavior after he made the statements at issue shed any light on how its

words were most plausibly interpreted. *State v. Krijger, supra*, 313 Conn. 457-58. In holding that the defendant's threatening words were deserving of an innocuous interpretation, that court found it significant that the defendant apologized for his statements within minutes of making them. *Id.* The court concluded that the defendant's expression of contrition following the incident was "decidedly at odds with the view that, just moments beforehand, he had communicated a serious threat to inflict grave bodily injury or death" to the town attorney. *Id.*, 458.

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

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

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

In sharp contrast to vehicular sabotage, gun violence of the kind threatened by the defendant is neither practically unheard of in the real world, nor ubiquitous only in spy novels and movies. It is ubiquitous in the real world, and the defendant here had the wherewithal to commit it. The state not only proved that the defendant was in possession of a number of firearms and compatible ammunition on August 29, 2014, and by reasonable inference on the date of the email as well, it also proved that four of those guns

were operable and capable of firing a shot from the distance he had threatened. The defendant's access to these firearms, particularly in light of his knowledge of and apparent access to the area around Judge Bozzuto's home, lends clear support to the conclusion that his statements were a true threat by demonstrating that he had the ability "to follow through on [the] threat" and there was an "imminent prospect of [its] execution." *Id.*

Reactions of Recipients of the Threat

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

---

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

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

response of a person who believed that the defendant had just communicated a serious threat of injury or death."[21]

State v. Krijger, supra, 313 Conn. at 459, n.12.

It is true, of course, that the court also heard testimony from two of the other original recipients of the defendant's email—Susan Skipp and Sunny Kelley—

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

both of whom described their reactions upon reading the defendant's email. Ms. Skipp testified that she was not alarmed by the email, and did not consider the defendant's words as a threat nor believed that anyone was truly in danger. Instead, she characterized the email as "hyperbolic writing," later adding that "it was just ranting" and "like Dr. Seuss." Ms. Kelley voiced a similar lack of concern for the email and, using almost the same terms as Ms. Skipp, described it as a "hyperbolic rant."

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

---

[22] For example, Ms. Skipp testified that she believes that Judge Bozzuto, despite a conflict of interest, participated in Ms. Skipp's own family case and contributed to the wrongful removal of Ms. Skipp's children from her care. In addition, when she was shown a copy of the defendant's August 23, 2014 email to Mr. Nowacki, Ms. Skipp not only appeared unwilling to acknowledge that the defendant was its author, but went so far as to state that the language of the email "doesn't sound like Ted at all, [but] sounds like Paul [Boyne]," thereby seeming to suggest that, in her view, Mr. Boyne had written the email and communicated it through the defendant's email account, presumably without the defendant's knowledge. Later, when Ms. Skipp commented that she herself had sent emails with language equally as offensive as

these issues of credibility, the true threat determination, in any event, turns solely on an objective analysis and requires the state to prove that a reasonable person would interpret the threat as a serious expression of an intent to do harm. While the reactions of those who receive the threat may assist the court in making that reasonable person determination, these reactions, either way, are in no sense dispositive of the question of how a reasonable person would view the threat.

By way of summary, it is the court's conclusion that the defendant's August 22, 2014 email contained

---

that contained in the defendant's email, she offered as an example an email in which she stated that she wanted to, in her words, "mail dog poop" to the guardian ad litem in her own family case. Ms. Skipp's responses, not to mention her effort to equate the language of the defendant's email to Dr. Seuss, reflected a lack of insight or candor that, in either case, caused the court to question the reliability of the entirety of Ms. Skipp's testimony.

Ms. Kelley's objectivity regarding Judge Bozzuto was similarly brought into question when Ms. Kelley testified that she had in the past conducted an "audit" of property owned by Judge Bozzuto for evidence of financial irregularities. Even greater concerns regarding her credibility arose from the nature of her relationship with the defendant. Although Ms. Kelley denied having been involved with the defendant romantically, she admitted that she often visited with his children and babysat for them on occasion, and that she resided with the defendant in his Cromwell home at least from August 27, 2014 until August 29, 2014. She admitted also that she accompanied the defendant to Stevens School on August 27, 2014, and was present when his children were removed, and that, on that same day, she was with the defendant in Harwinton when he retrieved his guns from Mr. Sutula. This testimony raised doubts as to Ms. Kelley's impartiality, and, as a result, bore negatively on the court's assessment of her credibility as a witness.

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

---

[23] In connection with its finding that the defendant's statements constituted a true threat, the court adds one final note. The

---

court's use of Judge Bozzuto's professional title throughout this opinion was not intended to signify or even to suggest that the defendant's statements were held to be a true threat specifically because they targeted a judge. To the contrary, the court's holding in this case is actually that the defendant's statements constituted a true threat *even though* they targeted a judge.

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

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

In the court's opinion, the defendant's email contained statements that did not, by any conceivable stretch of the imagination, promote free trade in ideas or aid in the search for truth. It cannot

B.

Having concluded that the state has proven beyond a reasonable doubt that the defendant communicated a true threat—proof that was required for each of the charges alleged in the Information—the court now separately considers each charge to determine whether the state also has proven the other essential elements that each offense contains.

Threatening in the Second Degree—Second Count[24]

Pursuant to General Statutes § 53a-62(a)(3), and as alleged in the second count of the Information, the state was required to prove as to the charge of threatening in the second degree that the defendant threatened

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

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

(by way of a true threat) to commit a crime of violence; to wit: an assault against Judge Bozzuto, in reckless disregard of the risk of causing terror to another person. In order to sustain its burden of proof on this charge, the state must prove the following elements beyond a reasonable doubt:

(1) that the defendant threatened (by way of a true threat) to commit a crime of violence; and

(2) that, in doing so, the defendant acted in reckless disregard of the risk of causing terror to another person.

Threat to Commit a Crime of Violence

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

Reckless Disregard of the Risk of Causing Terror to Another

The state also had the burden of proving that the defendant acted in reckless disregard of the risk of causing terror to another person.[25] The concept of recklessness is defined in General Statutes § 53a-3(13) as follows: "A person acts 'recklessly' with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation."[26] Within the context of the crime of threatening in the second degree, the "substantial and

---

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

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

unjustifiable risk" that the defendant must be aware of and consciously disregard is the risk that his conduct will cause terror to another person. The word "terror" refers to stark fear or a state of intense fright or apprehension. *State v. Dyson*, 238 Conn. 784, 798, 680 A.2d 1306 (1996); Connecticut Criminal Jury Instructions, *supra*, § 6.2-3.

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

create a risk of terror, and yet consciously chose to disregard his awareness by transmitting the email to its recipients.

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

---

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

that the defendant acted with the reckless disregard required by the statute.

It is important to note first the precise language of General Statutes § 53a-62(a)(3), the particular subsection of the statute that is charged here. The statute prohibits a person from threatening to commit a crime of violence in reckless disregard of the risk of causing terror to another person. Although the statute therefore requires proof that a defendant threatened a crime of violence and thereby recklessly created a risk of terror to another person, the statute is not limited in its application only to those cases in which the defendant communicates a true threat directly to the person threatened.

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

threatened, thereby creating a risk of terror to the defendant's stated target or others.[28]

In the present case, the court concludes that the evidence introduced at trial, and the reasonable inferences that were properly drawn therefrom, prove beyond a reasonable doubt that the defendant knew of the threatening nature of his email, and was aware of and consciously disregarded the risk that it would be seen by those to whom he sent it as so unambiguously serious and alarming that one or more of them would alert law enforcement and/or Judge Bozzuto to its existence. In reaching this conclusion, the court has been guided by the principle that a defendant's "[s]ubjective realization of a risk may be inferred from [the defendant's] words and conduct when viewed in the light of

---

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

surrounding circumstances." (Internal quotation marks omitted.) *State v. James*, 154 Conn.App. 795, 809, 112 A.3d 791 (2015). Here, it is the defendant's words themselves—in particular, those he used both in the subject email and in his response to Mr. Nowacki the next morning—that circumstantially demonstrate that he was aware of the risk of terror that his actions created.[29]

As to the August 22, 2014 email, the court concludes that the defendant was aware that the words he used in the email, even considered against the backdrop of the type of language used by the most strident and vehement family court critics, were unprecedented in their detailed and specific description of the threatened assault and in its unambiguous expression of an

---

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

intent to do harm to Judge Bozzuto. In other words, the court has determined that, even in the context of the type of harsh, offensive and even vaguely threatening language directed at judges and other court officials that may have been expressed in prior communications between the defendant and other frustrated family court litigants, the defendant knew full well that his email would stand out and stand alone, precisely as he had intended. For very good reason, the defendant's email raised grave concern in the minds of Mr. Nowacki and Ms. Verraneault, both of whom, in the court's view, were in a better position than nearly anyone else to assess the seriousness of the defendant's threat and to distinguish it from the hyperbole that the defendant and other family court critics may have uttered in the past.

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

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

For these reasons, the defendant's conduct and statements after the fact fully support the reasonable inference that the defendant knew that his email would be seen as a serious expression of his intentions, and was aware of and consciously disregarded the substantial and unjustifiable risk that, as a result, it would be disclosed to others and cause terror to Judge Bozzuto. Under these circumstances, this court is persuaded that the defendant acted in reckless disregard of the risk of causing terror to Judge Bozzuto, and that the state has proven beyond a reasonable doubt the elements of the crime of threatening in the second degree.[30]

Threatening in the First Degree—First Count

Having concluded that the state has proven the elements of threatening in the second degree beyond a reasonable doubt, the court, before returning a verdict on that charge, must consider whether the state proved the crime of threatening in the first degree as alleged in the first count of the Information. Pursuant to General Statutes § 53a-61aa(a)(3), and as alleged in the Information, the state was required to prove as to the charge of threatening in the first degree that the

---

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

defendant committed threatening in the second degree and that, in committing that offense, he "represented by his words . . . that he possessed a firearm . . . " In order to sustain its burden of proof as to this charge, the state was therefore required to prove the following elements beyond a reasonable doubt:

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

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

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

As to the second element—that the defendant represented by his words that he possessed a firearm—the court similarly incorporates its earlier discussion and, on that basis, concludes that the state proved this aggravating factor beyond a reasonable doubt. Significantly, the defendant's email did more than merely communicate a vague, generalized threat of an assault against Judge Bozzuto. The email communicated the defendant's specific threat to shoot Judge Bozzuto, and went on to identify, and thereby to reflect the defendant's intimate knowledge of, both: (1) the particular type of weapon—a .308 caliber firearm—that had the sufficient long-range capacity to enable the defendant

to carry out the shooting of Judge Bozzuto from the precise distance and location that the email further described, and (2) the particular type of ammunition—non-armor piercing ball ammunition—that would maintain sufficient foot-pounds of force and energy to cause injury to Judge Bozzuto from that stated distance and location.

Given the email's precise description of the manner in which the shooting would be carried out and its specific reference not only to firearms and ammunition generally, but to a firearm of a certain caliber and ammunition of a certain type, and on the basis of the reasonable inferences that the court has drawn therefrom, the court concludes that the defendant, by the words he used in his email, represented that he possessed a firearm. Because the evidence proves beyond a reasonable doubt that the defendant committed threatening in the second degree by transmitting an email that represented by its words that the defendant possessed a firearm, it is the verdict of this court that the defendant is guilty of the crime of threatening in the first degree as alleged in the first count of the Information.[31]

Disorderly Conduct—Third Count

Pursuant to General Statutes § 53a-182(a)(2), and as alleged in the third count of the Information, the crime of disorderly conduct is defined as follows:

---

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

"A person is guilty of disorderly conduct when, recklessly creating a risk of causing inconvenience, annoyance or alarm to another person, such person by offensive or disorderly conduct annoys or interferes with such person." In order to sustain its burden of proof on this charge, the state must prove the following elements beyond a reasonable doubt:

> (1) that the defendant recklessly created a risk of inconvenience, annoyance or alarm to Judge Bozzuto by sending the email;
>
> (2) that the sending of the email constituted offensive or disorderly conduct; and
>
> (3) that the defendant's offensive or disorderly conduct annoyed or interfered with Judge Bozzuto.

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

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

As to the second element, the court finds that the defendant's communication of the email constituted offensive and disorderly conduct because that email contained a true threat[32] of a nature that would be "grossly

[32] Neither the disorderly conduct statute nor the applicable Judicial Branch Model Jury Instruction expressly references the concept of "true threats." Connecticut Criminal Jury Instruction (4th Ed.2008) § 8.4-8, available at http://www.jud.ct.gov/JI/criminal/part8/8.4-8.htm (last visited September 28, 2015) (copy contained in the file of this case in the Middlesex Superior Court clerk's office). The court believes, however, that in a disorderly conduct

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

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

---

prosecution in which the offensive or disorderly conduct alleged relates to the defendant's communication of threatening speech, the state is required to prove that the defendant communicated a true threat. Having imposed that burden on the state, the court has determined on the basis of the reasoning previously explained that the state has proven this "true threat" element for both the third and fourth counts of the Information.

[33] By way of example, Judge Bozzuto's lawful activities were disturbed and impeded because the defendant's threat caused her to take steps to protect herself and her family (i.e. upgrading her

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

Disorderly Conduct—Fourth Count

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

As to the elements of the crime of disorderly conduct that are explained above, the court concludes that the state proved each of these elements beyond a

---

home security system and providing officials at her children's schools with the defendant's name and photograph), and to experience the sense of disquietude and anxiety that she still now often experiences when she approaches her home in the evening. Judge Bozzuto's lawful activities clearly included her right *not* to take those actions that she felt compelled to take, or to experience those emotions that she still now is forced to endure.

reasonable doubt. As to the element of recklessness, the court specifically finds that the defendant, in sending the email to Ms. Verraneault, was aware of and consciously disregarded the substantial risk that she would herself be inconvenienced, annoyed and alarmed by its content, despite the fact that she was not the person threatened with harm in the email. As noted in the court's discussion of the third count, to "inconvenience" another person means to disturb that person, and to "alarm" another person means to fill that person with anxiety of threatened danger or harm. *State v. Indrisano, supra*, 228 Conn. 810. For the reasons earlier explained, the court concludes that when the defendant communicated his threatening email to Ms. Verraneault, he was aware that she would view its content as a serious expression of his intent to shoot Judge Bozzuto, and that Ms. Verraneault would be disturbed and filled with anxiety as a result of that threatened harm.[34]

---

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

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

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

---

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

Fifth Count—Breach of the Peace in the Second Degree

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

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

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

As to the element of recklessness, the court specifically finds that the defendant, in authoring and sending the email at issue, recklessly created a risk of causing inconvenience, annoyance and alarm to another person.[36] This same element is contained in the

[36] Unlike the disorderly conduct charges in the third and fourth counts of the Information, the breach of the peace in the second degree charge set forth in the fifth count does not specify a "victim"—that is, it does not allege that the defendant recklessly created a risk of inconvenience, annoyance or alarm to a particular named individual. The defendant did not request, either

disorderly conduct charges that are set forth in the third and fourth counts, and the court incorporates here its previous discussion regarding the sufficiency of the evidence on this element.

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

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

---

during pretrial proceedings or at trial, that the state identify by name the alleged victim in this count. In any event, as indicated in its discussion of the disorderly conduct offenses, the court has determined that the defendant recklessly created such a risk which appears in identical language in the disorderly conduct and breach of the peace in the second degree statutes—to both Judge Bozzuto and Jennifer Verraneault. Therefore, the state, as required, has proven that the defendant recklessly created a risk of inconvenience, annoyance or alarm "to another person."

IV. FURTHER ORDER OF THE COURT

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

THE COURT

Gold, J.