

True Threats



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March 17, 2022

1

Free Speech...



- **First Amendment:**
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.

2

...But There Are Limits

- **Threats**
- Incite Violence
- Slander/Libel
- Obscenity/Pornography
- Perjury
- Copyright Rules
- Time, Place, Manner Restrictions



3

"True Threat" Step 1

The Doctrine Emerges:

- *Watts v. United States*, 394 U.S. 705 (1969)
- Anti-war protest, alleged threat to shoot the president
- "What is a threat must be distinguished from what is constitutionally protected speech."



4

"True Threat" Step 2

The Doctrine Develops:

- *Virginia v. Black*, 538 U.S. 343 (2003)
- Intimidation/threats based on burning a cross
- "“True threats” encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”"



5

"True Threat" Step 3

Intent and Electronic Threats:

- *Elonis v. United States*, 575 U.S. 723 (2015)
- Social media posts allegedly threatening violence against ex-wife and others
- "In light of the foregoing, Elonis's conviction cannot stand. The jury was instructed that the Government need prove only that a reasonable person would regard Elonis's communications as threats, and that was error."



6

True Threat?

Immediately following State's Exhibit 2, Detective Stewart read State's Exhibit 3:

If that what it takes R[.] Burch I will give them both the mtn justice they deserve. Regardless of what the law or courts say. I'm tired of this political bullshit. If our head prosecutor won't do anything then the death to her as well. Yeah, I said it. Now raid my house for communicating threats and see what they meet. After all those that flip Together swim together. Although this isn't a house or pond they want to fish in.

7

State v. Taylor

- Threatening a court official on Facebook, G.S. 14-16.7(a)
- Applies "true threat" analysis:

"we define a true threat as an objectively threatening statement communicated by a party which possesses the subjective intent to threaten a listener or identifiable group"

"we determine that the State is required to prove both an objective and a subjective element in order to convict defendant"



8

3 Big Questions



- Other Offenses?
- Objective/Subjective Determination?
- Whole Record Review?

9

Examples? Guidance?



→ "A paperclip can be a wondrous thing. More times than I can remember, one of these has gotten me out of a tight spot."

10

Problem #1



- Three classmates hear another student (age 11) threaten to "blow up the school"
- Two thought it was a joke, one wasn't sure
- Did not report to teachers/adults
- Student also threatened to hit one classmate with a crowbar and bury him in a shallow grave
- Student had made outlandish threats before, never carried them out
- True threat...?

11

Case Example:

No to one, Yes to the other...

In re Z.P., 2021-NCCOA-665 (Dec. 7, 2021)

In re D.W.L.B., 267 N.C. App. 392 (2019)



12

Problem #2



- Juvenile in middle school gets suspended
 - Other parents tell crossing guard their kids heard the student making threats
 - Reported to principal
 - Principal interviews students, who say juvenile cursed, said “something” about blowing up school, “wished” he could bring a gun to school
 - Statements directed at teacher and principal
- True threat...?

13

Case Example:

Yes, true threat...

In re Dakota R., 2013 WL 209751 (Ariz. App. 2013) (memorandum)



14

Problem #3



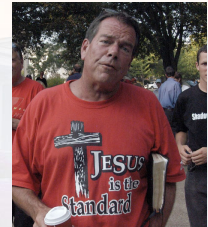
- Anti-abortion protest against a doctor
 - Protester distributes flyers near doctor's home and office
 - Looks like an Old West “Wanted” poster
 - Doctor feels threatened – similar posters used against other doctors who were killed
 - Protester denies any intent to harm, just trying to make an ethical/political point
- True threat...?

15

Case Example:

Yes, true threat (in 2012)...

State v. Benham, 222 N.C. App. 635 (2012) (unpublished)



16

Problem #4



- Woman comes to grocery store, asks to speak to manager about applying for a job
 - Told to fill out application, seems a bit tense
 - Hands letter to manager – says read this and you will hire me
 - Letter is a rant about the president, ends by saying if president doesn't fix this country she “will put a bullet in his head”
- True threat...?

17

Case Example:

Yes, true threat...

U.S. v. Lockhart, 382 F.3d 447 (4th Cir. 2004)

But what are the elements of the offense?



18

Problem #5



- Suspect and victim used to be a couple
- After break-up, victim endures serious harassment and threats, DVPO ordered
- Victim is later in a new relationship, suspect posts online about victim and new partner
- No contact with suspect for a couple years
- Suspect posts again on Facebook – photo of him with a gun, caption says “Make no mistake of my will to succeed in bringing you two idiots to justice”
- Victim sees post and is terrified

True threat...?

19

Case Example:

No, not a threat...

Commonwealth v. Walters,
472 Mass. 680 (2015)



20

Problem #6



- Defendant and victim have been arguing over Snapchat about a debt owed by the victim
- Defendant messages victim that he needs to pay up, “hate to see anything potentially violent happen to you”
- When victim fails to pay, defendant says “okay, what happens next is on you, hope you survive”
- Defendant lives in North Carolina, but the victim lives in California, and messages have all been erased

True threat?

21

Case Example:

Yes, true threat...

U.S. v. White, 810 F.3d 212 (4th
Cir. 2016)



22

Problem #7



- Two rival groups have protests related to issues of race planned for the same day
- Defendant belongs to one of the groups and posts a video on YouTube rallying his supporters and encouraging them to show up, but no actual calls for violence
- Video closes with an image of a noose swinging from a tree

True threat?

23

Compare With:

Yes, true threat...

Turner v. Commonwealth,
67 Va. App. 46 (2016),
aff’d, 295 Va. 104 (2018)



24

Problem #8



- Town attorney is in court with the suspect for a civil case, it gets very heated, they argue when it's over
- Suspect says “more of what happened to your son is going to happen to you” and “I’m going to be there to watch it happen”
- Attorney’s son, a police officer, was paralyzed and brain damaged in a very bad car accident a few years ago
- Attorney is shocked, disgusted, and scared – suspect apologizes afterward

▪ True threat?

25

Compare With:

No, not a threat...

State v. Krijger, 97 A.3d 946 (Conn. 2014)

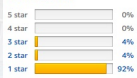


26

Problem #9

Customer reviews

1.1 out of 5 stars * 25



Search customer reviews

SORT BY: Top-rated FILTER BY: All review

- Defendant was laid off due to Covid-19 and is financially desperate
- After an unproductive meeting at the unemployment office, he posts in the comments on the office’s webpage
- Defendant writes that “something better get done soon” and he would “hate to have to burn the place down”

True threat?

27

Case Example:

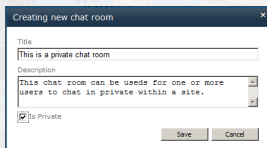
Yes, true threat...

Summerlin v. Commonwealth, 37 Va. App. 288 (2002)



28

Problem #10



- In a chat room for an online game, defendant makes numerous violent statements about a plan to kill his ex-wife
- Ex-wife is not on the platform, no evidence that she ever saw or knew about the messages at the time they were posted
- Messages reported to local police by a site administrator who sees them

True threat?

29

Case Example:

Yes, true threat...

U.S. v. McDonald, 444 Fed Appx. 710 (4th Cir. 2011) (unpublished)

But what are the elements of the offense?



30

Factors vs. Facts

- Threat
- Context
- Circumstances
- Reasonable Person
- Interpret
- Serious Intent
- Inflict Harm



- Specificity
- History
- Relationship
- Capability
- Fear
- Tone/Expression
- Format/Scope

Questions/Discussion?

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