STATE OF MAINE

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

***LAW COURT DOCKET NO. KNO*-25-10**

Pat Doe,

Appellee

v.

Jeffrey James Weymouth,

Appellant.

ON APPEAL FROM THE ROCKLAND DISTRICT COURT

REPLY BRIEF OF APPELLANT

June 23, 2025
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I. Appellee's brief does not address the "true threats" test.

At the core of this appeal lies the Supreme Court's "true threats" doctrine – a narrowly defined category of unprotected speech. Yet, the "true threat" test – or even the phrase "true threat" – is not mentioned anywhere in Appellee's brief. Appellee avoids substantively engaging in this test because the Facebook post and the poster are not "true threats." To prove that Mr. Weymouth's speech is not protected by the First Amendment, the Appellee must meet the objective and subjective components of the "true threats" test. First, Appellee must show that a reasonable person would interpret the Facebook post or the poster as a serious expression conveying that Mr. Weymouth meant to commit an act of unlawful violence against [redacted] *See Counterman*, 600 U.S. at 74. Second, Appellee must show that Mr. Weymouth acted recklessly – meaning that he consciously disregarded a substantial risk that his statement would be interpreted as a threat of violence. *See Counterman*, 600 U.S. at 79 (explaining that recklessness involves a "deliberate decision to endanger another" and that the "speaker is aware 'that others could regard his statements as' threatening violence and 'delivers them anyway.'").

First, Appellee cannot meet the objective prong. Neither the Facebook post nor poster contain any explicit – or even implicit – statements conveying

that Mr. Weymouth meant to commit violence against [redacted] This becomes clear when the "true threats" test is applied. Again, the issue is whether a reasonable person would interpret the Facebook post and the poster as a serious expression conveying that Mr. Weymouth meant to commit an act of unlawful violence against [redacted] The Facebook post contains no threat, no mention of harm, and no language even hinting at violence toward anyone – let alone [redacted] Instead, it is a tongue-in-cheek photograph clearly expressing Mr. Weymouth's relief at the end of his marriage. Likewise, the poster, while unkind, is an insulting commentary on [redacted]s romantic history, not a threat of bodily injury.

Second, Appellee cannot satisfy the subjective reckless prong. There is no evidence that Mr. Weymouth consciously disregarded a substantial and unjustifiable risk that either the Facebook post or the poster would be viewed as a threat of violence. He did not expect [redacted] to see the Facebook post as they were no longer friends on Facebook. As for the poster, even assuming for argument's sake that Mr. Weymouth created or helped create it, there is nothing to suggest he was aware of, or consciously ignored, any risk that it would be taken as a threat of unlawful violence. At most, the poster was an immature and unkind jab at [redacted]s past failed relationships – not a serious warning of harm. Neither the content nor the context supports that Mr. Weymouth made

a deliberate decision to endanger another that recklessness requires under *Counterman*.

II. *State v. Heffron* is distinguishable.

Appellee asserts that "[t]his Court addressed a similar fact pattern and issues in *State v. Heffron*, 2018 ME 102, 190 A.3d 232." Red Br. 18. This comparison is misplaced.

In *Heffron*, the defendant was already subject to a protection from abuse order prohibiting all contact with the victim. *Heffron*, 2018 ME 102, ¶ 3, 190 A.3d 232. Despite this, he posted direct, threatening statements on Facebook that named the victim directly and were "described by the [trial] court [as] 'obviously offensive.'" *Id*. For example, one post read: "IM GONNA RUN YOU DOWN EVERY CHANCE I CAN TODAY AND TOMORROW AND THE NEXT DAY AND THE NEXT." *Id*. The Law Court rejected the defendant's First Amendment appeal reasoning that the underlying protection order was "constitutionally sound" and that the defendant's posts "fell short of those that deserve constitutional protection." *Id*. ¶ 12.

Mr. Weymouth's Facebook post bears no resemblance to the explicit threats in *Heffron*. First, Mr. Weymouth was not under a protection order restricting contact with [redacted] at the time of the post. Second, unlike the posts

in *Heffron*, Mr. Weymouth's post did not address [redacted] by name. Third, whereas the trial court in *Heffron* found that the posts were "obviously offensive," the District Court in this case found that Mr. Weymouth's hand gesture – the only aspect of the Facebook post that Appellee claims is violent – was "a double entendre." Tr. 191. Finally, *Heffron* was decided before the Supreme Court's decision in *Counterman* and therefore did not apply the now-required subjective recklessness standard for determining whether speech constitutes a "true threat."

Heffron highlights, rather than undermines, why Mr. Weymouth's Facebook post remains protected speech. It was a nonviolent, symbolic expression communicating Mr. Weymouth's relief that the parties' marriage and litigation about their divorce was finally over. It was not a direct, explicit threat intended to intimidate.

III. Appellee's brief misstates the record.

A. There was no evidence in the record that "the shocker" gesture is aggressive or violent.

Appellee refers to the "the shocker" gesture as "an aggressive sexual act." Red. Br. 5. This is not supported by the record.

At the hearing, [redacted] never testified that the image was aggressive or violent. *See* Tr. 27-28. In fact, when asked on direct examination whether "the shocker" was "a lewd, violent sexual act," the District Court sustained an objection, ruling that calling it "violent" was leading. *See* Tr. 26-27. Then, the Court stated that "[i]f the witness believes ["the shocker" gesture] has a violent connotation, I think she's going to explain that." Tr. 27. She did not. Instead, [redacted] testified that she viewed the image as "crude and rude and lewd" and "a construction of meanness." Tr. 66. Both parties testified that "the shocker" is understood as a sexual symbol and nothing more. Tr. 26; 164-65. [redacted] had every opportunity to tell the District Court why she believed a photograph with a ring finger down was violent, but she did not do so. Appellee's attempt to characterize it differently now does not substitute for the absence of evidence in the record.

B. Mr. Weymouth does not have a history of "extreme alcohol abuse."

Appellee claims that the District Court made a finding that Mr. Weymouth "had a history of extreme alcohol abuse." Red Br. 17. This characterization misstates the District Court's findings and the evidence presented at the hearing.

The District Court did not find that Mr. Weymouth had a history of *extreme* alcohol abuse because no such evidence was presented. In its oral ruling, the District Court made only two findings regarding Mr. Weymouth's addiction. *See* Tr. 190, 194. First, the District Court stated that Mr. Weymouth "struggled with alcohol dependency and abuse over the years." Tr. 190. Second, the Court also stated that their "appear[ed] to be [an] escalating pattern of drinking alcohol." Tr. 194.

What is true – and undisputed – is that Mr. Weymouth is in recovery for alcohol use disorder. Tr. 190. Like many who battle addiction, the path to recovery has not always been linear. He abused alcohol towards the end of his marriage but sought help by completing a four-week inpatient rehabilitation program. Tr. 148-49. Although, [redacted] called Mr. Weymouth a "severe alcoholic" during direct examination, she did not explain how Mr. Weymouth's alcohol use disorder affected her or related to her allegations of abuse. Accordingly, the record does not support Appellee's exaggerated claim of "extreme alcohol abuse," nor did the District Court ever make such a finding.

C. Mr. Weymouth did not take a photograph from [redacted]s garage.

Appellee states that a "private family photo was taken from Appellee's garage for the poster." Red Br. 7. However, this is not supported by the record, and it is not part of the District Court's factual findings. *See* App. 16-21.

At the hearing, the parties contested this fact. First, [redacted] testified that one of the photographs on the poster must have been taken from her garage because she claimed that is where the only copy of the photograph was stored. Tr. 38. The photograph depicted [redacted] her ex-husband, and her two daughters from that marriage. App 69; Tr. 36. [redacted] also testified that she had security cameras that send her notifications if anyone enters her property. Tr. 72-73, 87. Yet, no evidence from the cameras was produced.

Alternatively, Rosemary Weymouth – Mr. Weymouth's mother – testified that she found the photo inside her house in Lincolnville – the home where Mr. Weymouth, [redacted] and their children lived during their marriage. Tr. 118-21. Specifically, she explained that she found the photograph between a mattress and boxspring while she was replacing a mattress in a room previously occupied by one of [redacted]s daughters. Tr. 119. Both Rosemary and Mr. Weymouth testified that neither of them broke into [redacted]s garage. Tr. 126-27, 157.

The District Court made no finding that the photograph was stolen from [redacted]s garage and the record does not support that claim. Accordingly, Appellee's statement misstates both the evidence presented and the Court's actual findings.

CONCLUSION

For all the reasons advanced herein, Appellant respectfully requests that this Court vacate the District Court's protection from abuse Order and remand the case to the trial court for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We, Michael B. Whipple, and Jeffrey P. Sherman, do hereby certify that we have sent a copy of Appellant's Brief to counsel for the appellee, Pat Doe via electronic mail at:

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Dated this 23rd day of June 2025, at Portland, Maine.

Respectfully submitted,

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