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3RD DISTRICT COURT SALT LAKE COUNTY, STATE OF UTAH	
STATE OF UTAH, Plaintiff, v. JASON CHRISTOPHER HALL, Defendant.	STATE’S MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS COUNTS 2 AND 3 OF THE INFORMATION (Oral Argument Requested) Case No.: 221906445 Judge: PAUL B. PARKER

STATE OF UTAH, through Steven A. Wuthrich, Assistant Attorney General, hereby opposes the Defendants’ Motion to Dismiss Counts 2 and 3 of the information as follows:

SUMMARY OF THE ARGUMENTS

Defendant argues that *Counterman* calls into question the constitutionality of Utah’s stalking statute (Utah Code § 76-5-106.5). It may be appropriate, in the right case, to review whether Utah’s stalking statute satisfies *Counterman*. But this is not that case. Here, the State will prove that for both Counts 2 and 3 the Defendant acted with knowledge, and with an intent

to achieve specific purposes. The State must therefore, by statute, instruct the jury to convict under that standard.¹ Thus, there is no need to resolve Defendant's allegations of unconstitutionality because the knowledge standard of *mens rea* satisfies *Counterman* and any First Amendment concerns.

The doctrine of constitutional avoidance dictates the Court should not address Defendant's constitutional claims in these circumstances. In *Ashwander v. Tennessee Valley Authority*, Justice Louis Brandeis summarized the canon of constitutional avoidance for federal claims. *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 345-48 (1936). The fourth tenet of the canon, as numbered by Justice Brandies, is applicable here. "The Court will not pass upon a constitutional question although properly presented in the record, if there is also present some other ground upon which the case may be disposed of." *Id.* The second tenet also applies: "It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case." *Id.*

Because Defendant engaged in both a true threat and fraudulent representations with knowledge and a specific intent to cause fear or emotional distress the court need not address whether Utah's statutes satisfy the *mens rea* negligence standard found to be constitutionally deficient in *Counterman*.

¹ For example, the threat to influence charge Count 3, has a specific intent requirement, i.e., "threatens any harm to a public servant, party official, or voter with a purpose of influencing his action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion." This too is a specific intent crime with a *mens rea* that satisfies *Counterman*.

NATURE OF THE CASE

Bluffdale City Councilman Jeff Gaston announced in the spring of 2021 that he would be running for City Mayor in the fall.²² Another individual, Natalie Hall, also expressed an interest in running. Her husband, Jason Hall, defendant herein, then secretly sent emails to the City and Gaston, as well as delivering packages to the City and Gaston, all of which were disguised as coming from purported political groups or at least multiple individuals, and some of which contained threats of physical harm or death, with the intent of removing Mr. Gaston from the electoral race, (hereinafter “scheme”). In actual fact, defendant was the sole author and initiator of the emails, letters, and packages.

The scheme was successful and ultimately Jeff Gaston decided not to run never realizing who was behind the communications until after the election. The charges in this case stem from those communications. The defendant argues his communications are protected by the First Amendment speech because they were directed at or about a politician. The State maintains that neither fraudulent representations nor true threats have any such protection under the law regardless of the public figure status of the victim.

STANDARD OF REVIEW

A constitutional challenge presents a question of law, which is reviewed for correctness. When addressing such a challenge the court presumes that the statute is valid and resolves any reasonable doubts in favor of constitutionality. *State v. Willis*, 2002 UT App 229, 52 P.3d 461, aff'd, 2004 UT 93, 100 P.3d 1218; *See also, State v. Morrison*, 2001 UT 73, 31 P.3d 547; *State v. Lopes*, 1999 UT 24, 980 P.2d 191.

²² Mayor Timmothy had declared he was not running after the expiration of his term.

RESPONSE TO DEFENDANT'S STATEMENT OF FACTS

The State responds to Defendant's statement of facts as follows:

1. Mr. Hall was charged with the following crimes:
Count 1: Threatening Elected Officials-Assault (Utah Code § 76-8-313; 76-8-315; 76-5-102), a third degree felony;
Count 2: Stalking (Utah Code § 76-5-106.5 (2) (a) (b), (6) (a); § 76-2-202), a Class A misdemeanor; and
Count 3: Threats to Influence Official or Public Action (Utah Code § 76-8-104, a Class A misdemeanor).

RESPONSE: The State does not dispute this allegation for purposes of the Motion.

2. Under Utah Code § 76-5-106.5: "An actor commits stalking if the actor intentionally or knowingly: (a) engages in a course of conduct directed at a specific individual and knows or should know that the course of conduct would cause a reasonable person: (i) to fear for the individual's own safety or the safety of a third individual; or (ii) to suffer other emotional distress."

RESPONSE: This statement is accurate as written but deny that it meets the totality of the statute's wording.

3. Under Count 2, the Information stated the following:

On or about and between March 1, 2021, and December 31, 2021, in Salt Lake County, State of Utah the defendant did commit, solicit, request, command, encourage, or intentionally aid another person by intentionally or knowingly engaging in a course of conduct directed at a specific person, and knew or should have known that the course of conduct would cause a reasonable person to fear for the person's own safety or the safety of a third person or to suffer other emotional distress, to wit: by engaging in two or more acts directed towards Jeff Gaston, including surreptitious delivery of a numerous objects to Jeff Gaston's place of employment, and by placing an object on or delivering an object to property owned, leased, or occupied by Jeff Gaston, or to Jeff Gaston's place of employment with the intent that the object be delivered to Jeff Gaston or appearing at Jeff Gaston's workplace or contacting Jeff Gaston's employer or coworkers, or sending material by any means to Jeff Gaston or for the purpose of obtaining or disseminating information about or communicating with Jeff Gaston to a member of Jeff Gaston's family or household, employer, coworker, friend, or associate of Jeff Gaston.

Information at 2.

RESPONSE: The State does not dispute the accuracy of this allegation.

4. Under Utah Code § 76-8-104: "A person is guilty of a class A Misdemeanor if he threatens any harm to a public servant, palty [sic] official, or voter with a purpose of influencing his action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion."

RESPONSE: The statute speaks for itself [except for the typographical error].

5. Under Count 3, the Information stated the following:

On or about and between March 5, 2021, and November 23, 2021, in Salt Lake County, Utah the defendant did threaten harm to a public servant, palty [sic] official, or voter, to wit Jeff Gaston, with a purpose of influencing his action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion.

Information at 2.

RESPONSE: The information speaks for itself, {except for the typographical error}.

6. The Information also provided a list of the following communications that were allegedly sent by Mr. Hall [sic] to Jeff Gaston:

March 5 2021 — Email: In the email, the writer stated he she now finds Jeff Gaston's "paper-thin skin" and lack of experience to be a "poor combination for a politician." The writer accused Jeff Gaston, among other things of "grandstanding," "schoolyard bully," "not a statesman," "lash out viciously at anyone who contradicts you," and "defensive." There were no overt threats of harm, but the language descriptions were distinctive. The email concluded: "should we not see an apology to the mayor AND to the city for your temper tantrum, there will be significant efforts made to replace you when you are up for reelection" and "you should know that the wheels are in motion to render you irrelevant."

March 9. 2021 — Package & Notes: The package allegedly included a children's book on anger management and two notes. The first printed note read, "I hope this helps with your issues buddy." A second note read, "Hey Imbecile !!!!! Move out of Bluffdale, apologize, or kill yourself. It's time for you to start watching your back. This is your final warning. We are moving to the next phase. Do what we ask, or we will do what must be done."

March 9, 2021 — Gag gifts: The package included gag gifts, labeled "City Council Meeting Survival Kit," with instructions on how and when to use the gifts to deal with Jeff Gaston during council meetings. The gifts came with notes attached to items explaining their purpose, such as reflective glasses with a note, "To hide your eye rolls at Jeff Gaston's Posturing and Self-aggrandizement," a baby's bottle, "in case Jeff Gaston gets cranky and needs his ba-ba," a Baby's "Binky," "To help sooth you in case someone says something you don't like. Poor little guy," (a "Blanky," a juice box, a binky, fruit snacks, "pull-up" diapers, etc.)

March 24 2021 — Letter: In the letter, the writer cited Jeff Gaston's "paper-thin skin," and then stated, "it has become very clear lately our messages are not getting across to you. We are ready to move to the next phase. You will no longer have the will to live in Bluffdale. It's time we put you down like the Dog you are, not a statesman."

June 14 2021 — Email: In the email, the writer encouraged Jeff Gaston to run for mayor and used comments phrases like: "amusing to destroy you politically, sentiment of the city has turned against you, you're a joke, and Man-child for mayor."

July 20, 2021 — Email: In the email, the writer mocked the candidates [sic] and called Jeff Gaston an imbecile.

November 2, 2021 — Package: The package included a jester's hat and a message, "you've earned this."

November 23 2021 — Letter: In the letter, the writer stated: "You've really earned the hat we sent you." The letter then continues, "Unfortunately, Jeff Gaston you have shown that you will not change until something is done. It's time you leave Bluffdale or resign. If you don't you will end up dead."

RESPONSE: The State denies the foregoing is a complete or accurate representation of the defendant's "course of conduct." For example, the November 2, 2021, package had a return address that was of an axe throwing social club located in Salt Lake Valley, Utah. No purpose is served other than to threaten Jeff Gaston by including such a false address. The Defendant's summary fails to include the efforts taken by the Defendant to both conceal his identity, and to deceive Defendant into thinking multiple political action groups were behind the communications, when in fact all communications were perpetrated by Defendant Hall.

STATE'S SUPPLEMENTAL STATEMENT OF FACTS

Trial of this case is not limited to the facts set forth in the probable cause statement in the information. Nor is it limited to the facts presented at preliminary hearing Utah. R. of Crim. P. 7B. *See also, State v. Nihells*, 2019 UT App 210, 457 P.3d 1121 (To support bind over of defendant for trial, the State must satisfy the relatively low probable cause standard). The State supplements the facts stated by Defendant as follows:

1. In addition to what was included in Defendant's fact statement, the Defendant falsely represented to Jeff Gaston that he was acting on behalf of a "group of likeminded conservatives who are determined to restore civility to our local politics" and used an email entitled cpacbluffdale@gmail.com which is neither a registered political action committee nor a group, but solely defendant Jason Hall. (Jeff Gaston 1102 attached hereto as Exhibit "A" (hereinafter exhibit "A" ; attached thereto Exhibit 1, hereinafter Exhibit "A1".)
2. Defendant also sent another email dated March 8, 2021, again purporting to be on behalf of a group to wit, Bluffdale Citizens for Civility. In addition to numerous defamatory rants, it contains an implied threat "[T]here is a group of us that are ready to move to the next phase." Contrary to Defendant's' misrepresentation, this email conveys the intent of solely Defendant as well, (Exhibit A2) Tr. P.18 ln.14-16.
3. Defendant failed to note that the threat letter of March 9, 2021, was addressed to the victim's house, albeit improperly omitted the word "West" or "W" in the street address (Exhibit A3).
4. Defendant further omitted mentioning to the Court that gag gifts delivered Marh 9, 2021, to the victim's place of business at City Hall were delivered by an individual masked up and wearing clothes designed to make his identity untraceable and that, at Defendant's specific request, his license plate was covered by cardboard. (Tr. pp.19-20, 21)
5. Defendant failed to mention to the Court that the letter of March 24, 2021, was sent not to Jeff Gaston's house but to City Hall addressed to Jeff Gaston Again, the address failed to denote either "West" or "W" in the address, which was later proved to be a pattern peculiar to Defendant's mailings to Jeff Gaston (Ex. A5).

6. Defendant failed to specify that the return address on the package sent to Jeff Gaston and received November 2, 2021, had the return address of an axe throwing society in Salt Lake valley (Tr.p.58: 12-19).
7. Both the November 2, 2021, and November 23, 2021, letters failed to include the designation “West” of “W” in the address. (Ex. A8 and A9)
8. On or about August 14, 2021, at the Old West Days festival in the city park, Defendant apologized for his behavior and admitted that his conduct toward the victim was in retribution for what Jeff Gaston had said about his wife. (Ex. A, ¶ 20)
9. Special Agent T. Russell attested at the preliminary hearing to the use of a VPN on an email address acquired from a broker by Hall’s business made tracing the CPACBLUFFDALE email very complicated and complex. Only by Defendant’s failure to use the VPN on one occasion was the agent able to trace it to Hall, Tr. P. 14, l.14-p.16, l.5).

ARGUMENT AND AUTHORITIES

1. THE UTAH STALKING STATUTE REQUIRES SPECIFIC INTENT.

Defendant’s assault on the Utah stalking statute is predicated on *Counterman v Colorado*, 600 U.S. ____ (2023), 143 S. Ct 2106, 2023 WL 418751. In *Counterman*, the United States Supreme Court considered “whether the First Amendment ... demands that the State in a true-threats case prove that the defendant was aware in some way of the threatening nature of his communications.” *Id.* at 2114. The statute at issue in *Counterman* only required the prosecution to prove two things: that the defendant “[r]epeatedly ...ma[d]e any form of communication with another person’ in ‘a manner that would cause a reasonable person to suffer serious emotional distress and [did] cause that person ... to suffer serious emotional distress.” *Id.* at 2112. The Court held that the statute was unconstitutional because it did not require proof that a defendant had some subjective understanding of the threatening nature of his statements. *Id.* However, in so holding, the Court stated that the prosecution need only prove that a defendant acted with a *mens*

rea of recklessness. Importantly, the Court did not strike down the statute as unconstitutional in all of its applications.

In contrast to the Colorado statute at issue in *Counterman*, the Utah statute has a specific *mens rea* requirement that the actor “intentionally or knowingly: engages in a course of conduct directed at a specific individual and *knows or should know* the course of conduct would cause a reasonable person (i) to fear for the individual’s own safety or the safety of a third person; or (ii) to suffer other emotional distress,” Utah Code § 76-5-106.5 (2) (emphasis supplied). By its express terms, the Utah statute permits the State to obtain a conviction under a theory that Mr. Hall either: 1) knew or 2) should have known his conduct would cause a reasonable person to fear for their safety. The statute therefore explicitly permits a conviction based on evidence that the defendant “knows” his course of conduct would cause harm. That is how the State is proceeding in this case.

In this case, the State will prove that Mr. Hall *knew* his course of conduct would cause a reasonable person to fear for the individual’s own safety. The facts of this case clearly support the State’s position—that Mr. Hall engaged in stalking *and knew* that it would cause a reasonable person to fear for their safety. And by proving that Mr. Hall acted knowingly, this clearly satisfies *Counterman*, which only requires recklessness. In sum, the State will prove more than what is required in *Counterman*.

The Utah Court analyzes the statute as a specific intent requirement. Utah statutes proscribe that:

Every offense not involving strict liability shall require a culpable mental state, and **when the definition of the offense does not specify a culpable mental state and the offense does not involve strict liability, intent, knowledge, or recklessness shall suffice to establish criminal responsibility.** An offense shall

involve strict liability if the statute defining the offense clearly indicates a legislative purpose to impose criminal responsibility for commission of the conduct prohibited by the statute without requiring proof of any culpable mental state.

U.C.A. § 76-2-102 (1983) [emphasis added]

Utah Courts have used this statute to address the question of what *mens rea* applies to a specific intent statute. As explained in *State v Vigil*, 2019 UT 131, ¶ 13, 488 P.3d 738,741:

To be sure, obstruction of justice “is a crime of specific intent.” *State v. Maughan*, 2013 UT 37, ¶ 13, 305 P.3d 1058. But as the State correctly explains, Utah courts use the term specific intent “to designate a special mental element which is required above and beyond any mental state required with respect to the actus reus of the crime.” (Quoting 1 Wayne R. LaFave, *Substantive Criminal Law* § 5.2(e) (3d ed. 2017)). Even when an offense contains a strict liability element, “our criminal code requires proof of *mens rea* for each element of a non-strict liability crime.” *State v. Barela*, 2015 UT 22, ¶ 26, 349 P.3d 676 (citing Utah Code section 76-2-101(1)). Thus, obstruction of justice requires proof of both a general culpable mental state as to conduct and the specific intent to cause a result. See *State v. Hutchings*, 2012 UT 50, ¶ 14 n.3, 285 P.3d 1183 (explaining that “Utah’s criminal code no longer applies the labels of specific intent and general intent” but “[t]he distinction is still embodied in our case law ... described as intent to cause a result and intent as to conduct, respectively”). Because the statute “does not specify a culpable mental state” for the general intent element, that element may be established by showing “intent, knowledge, or recklessness.” Utah Code Ann. § 76-2-102; see also *id.* § 76-8-306(1).

Because both statutes attacked by Defendant are specific intent crimes, so long as the appropriate jury instructions are submitted, with a minimum of at least recklessness, the statute satisfies the *Counterman* standard. Nowhere does the Supreme Court ever apply a negligence standard to the stalking statute. See, e.g., *State v Miller*, 2023 UT 3, 496 P.3d 282; *Ragsdale, v. Fishler*, 2021 UT 29, 491 P.3d 835 *Baird v Baird* 2014 UT 08, 322 P.3d 728; *Salt Lake City v. Josephson*, 2019 UT 6, 435 P.3d 255; *Towner v. Ridgway*, 2008 UT 23, 182 P.3d 347.

The facts of this case focus on the Defendant’s intent, not the victim’s subjective response. In the present case the State intends to introduce a number of factors that demonstrate the

Defendant knew his actions would cause fear or suffering to a reasonable person, each of which was directed specifically by the Defendant at the alleged victim. The Defendant's knowledge and his intentions are the very thing the jurors will decide in this case. Moreover, the Defendant took elaborate steps to conceal his identity, because he intended to deceive the readers of the emails into thinking there were political groups adverse to Jeff Gaston, when in fact it was the spouse of a competing candidate for mayoral office spewing forth all the vitriol. Had the readers known the true identity, those words would have been viewed with a much more jaundiced eye.

Statements made for purposes of concealing a scheme or artifice to defraud is evidence of criminal intent. See, e.g. *State v. Mattinson*, 2007 UT 7, 152 P.3d 300, 303; *State v. Norris*, 2007 UT 6, 152 P.3d 293, 297, *See also*, *State v. Logan*, 203 Kan. 864, 866. 457 P.2d 31 (1969) (Concealment of identity may be relevant to the element of criminal intent); *Commonwealth v. Braune*, 481 Mass. 304, 114 N.E.3d 964 (2019) (evidence of concealment was sufficient to support money laundering charge); *People v. Talbot*, 220 Cal. 3, 13 28 P.2d 1057 (1934) (secrecy or concealment is evidence of criminal or felonious intent).

Flight of the accused, concealment, assumptions of a false name and related conduct are admissible as evidence of consciousness of guilt, and guilt itself, but it is for the jury to decide the weight to be given it, *Reno v State*, 228 N.E. 2d 14 (Indiana 1967).

In the present case, we have both the assumption of false names and elaborate steps taken by the defendant to conceal his identity. These facts alone are sufficient evidence of Defendant's specific intent for a jury to convict.

2. THE THREATS TO INFLUENCE A POLITICAL OFFICIAL OR POLITICAL ACTION IS CONSTITUTIONAL.

Utah courts have not yet interpreted Utah Code § 76-8-104; however, the required elements are:

A person is guilty of a class A misdemeanor if he threatens any harm to a public servant, party official, or voter with a purpose of influencing his action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion, Utah Code § 76-8-104.

Thus, the State must prove: (1) that the defendant made a threat of harm to a public servant, and (2) that he did so with the purpose of influencing the public servant's action. See *State v. Hartmann*, 783 P.2d 544, 546 (Utah 1989) (defining "threat" as "the expression of an intention to inflict injury on another" through conduct or words). True threats are "serious expression[s]" conveying that a speaker means to "commit an act of unlawful violence," *Virginia v. Black*, 538 U.S. 343, 359.

The United States Supreme Court said in *Counterman* that the State must prove in true-threats cases that the defendant had some understanding of his statements' threatening character. *Counterman*, 143 S. Ct. at 2113 (2023). The Utah "threats" statute is consistent with *Counterman*'s mandate. It does not exclude the actor's understanding of his statements' threatening character. Instead, the statute merely combines a threat of harm with a purpose to influence the threatened person's political views, meaning that the statute can be read in light of *Counterman* to require the actor's understanding of the issued threat. Thus, there is no need to declare the statute unconstitutional when a constitutional interpretation of the statute is still a viable possibility for the court. See, *State v. Willis*, *supra*.

3. DEFENDANT’S STATEMENTS AND COMMUNICATIONS TO JEFF GASTON AND OTHERS ARE NOT PROTECTED BY THE FIRST AMENDMENT.

Defendant cites *United States v. Alvarez*, 567 U.S. 709, 717 (2012),³ noting a few of the exceptions to the free speech protections include speech expressed as part of a crime, obscene expressions, incitement and fraud.⁴ Focusing just on the first two emails, the CPACBLUFFDALE and the Citizens for Civility, the State maintains these communications are fraudulent. A person commits communication fraud if he devises a scheme to defraud by means of false or fraudulent pretenses, representations, promises, or material omissions...*State v Hawkins*, 366 P.3d 884 (Ut. App. 2016). Here, Defendant schemed to deprive Jeff Gaston of his reputation as a councilman and elected politician by pretext and scheme, namely sending emails to the mayor, councilman, city attorney, and city manager all on behalf of what appeared to be groups of constituents acting in concert and complaining of Jeff Gaston’s antics at council meetings. Had the councilmen and his peers known the truth, that it was a single individual writing, these email messages would have likely fallen on deaf ears.

Moreover, had they known the author was the spouse of an active candidate for a competitive office, the emails would have likely been ignored and they would have been poorly received. Hall recognized this, and to “ambush” Jeff Gaston’s reputation and eliminate the competition for his wife he devised this scheme and took great steps not to be discovered as the sender. His complaint about “first amendment” rights is equally a sham. Defendant did not engage in protected political speech; it was a fraud from the onset. He concealed his true identity

³ Def.’s Mot. to Dismiss, p. 8.

⁴ *Counterman* also cites to defamation-false statements of fact harming another’s reputation, and “true threats”. *Counterman supra* at 2114. Notably, the defendant references neither of these exceptions to protected speech under the first amendment.

and lied about representing a group of like-minded citizens, utilized fictitious names having an appearance of being political action committees, directed his employee to deliver the gag gifts to Bluffdale City Hall in unrecognizable disguise and to illegally “cover up” his license plate. This is not the indicia of protected political discourse, it’s the indicia of criminality. Even the emails sent subsequently in June of 2021, were little more than a continuation of the fraud, to convince Jeff Gaston he was a target of political enemies. In each case, the letters or packages sent or directed to be sent by the Defendant contained false return addresses and in one case, the return address was that of an axe throwing society.

Defendant points to that November 2, 2021, package return mail address and argues the State made no showing at preliminary that Jeff Gaston was alarmed, upset or distressed by it.⁵ However, Defendant misunderstands the Utah stalking statute. The subjective effect of the respondent’s [defendant] conduct on the petitioner [Jeff Gaston] is irrelevant. *Ragsdale, supra* at ¶ 45, 847; *See also State v. Bingham*, 2015 UT App 103, 348 P.3d 730 ¶ 17, 736; *Baird v. Baird*, 2014 UT 08, 322 P.3d 728, ¶24, 734-35. Utah, and states who model their stalking on the Model Criminal Code differ from states, like Colorado and Nevada, whose stalking statutes require both an objective and subjective analysis, which place an unnecessary burden on victims. *Id.*

However, that act of specifying an axe throwing society as the sender of that package bears heavily on defendant’s subjective intent. That return address reveals Defendant’s purpose to instill fear in Jeff Gaston.⁶

⁵ Defendants Motion to Dismiss Counts 2 and 3, pages 17-19.

⁶ Defendant argued at preliminary that he was simply mocking or ridiculing Jeff Gaston But that explanation falls short of explaining the malicious and secretive conduct in this case. In fact, at the Old West Days confrontation in August 2021, he admitted he was upset because of things Jeff Gaston had said about his wife. This was not just political discourse; it was very personal. And, indisputably, Defendant’s conduct was completely consistent with his desire to eliminate the competition.

Neither are Defendant's true threats protected speech.

True threats of violence, everyone agrees, lie outside the bounds of the First Amendment's protection. And a statement can count as such a threat based solely on its objective content. The first dispute here is about whether the First Amendment nonetheless demands that the State in a true-threats case prove that the defendant was aware in some way of the threatening nature of his communications.

Counterman, supra at 2113.

Here the State purports to introduce true threats that: (1) "Hey Imbecile !!!!! Move out of Bluffdale, apologize, or kill yourself. It's time for you to start watching your back. This is your final warning. We are moving to the next phase. Do what we ask, or we will do what must be done."; (2) "[I]t has become very clear lately our messages are not getting across to you. We are ready to move to the next phase. You will no longer have the will to live in Bluffdale. It's time we put you down like the Dog you are, not a statesman." (3) "Unfortunately, Jeff Gaston you have shown that you will not change until something is done. It's time you leave Bluffdale or resign. If you don't you will end up dead." These words were not spoken by accident or recklessly, its malice aforethought. This is not protected free speech, its criminal. Between the scheme to defraud and the true threats there is no First Amendment right to be protected.

CONCLUSION

For the foregoing reasons the Defendant's Motion to Dismiss Counts 2 and 3 should be denied. Oral Argument is requested.

DATED: August 30, 2022

SEAN D. REYES
Utah Attorney General

/s/ Steven A. Wuthrich
STEVEN A. WUTHRICH
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served on the following via the court's e-filing system.

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