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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, v. JASON CHRISTOPHER HALL, Defendant.	**MR. HALL'S MOTION IN LIMINE TO EXCLUDE ARGUMENT AND EVIDENCE REGARDING NEGLIGENCE OR RECKLESSNESS** Case No: 221906445 Judge Paul B. Parker

Defendant Jason Christopher Hall (**"Mr. Hall"**), through counsel, submits this Motion in Limine requesting this Court enter an Order excluding argument and evidence that Mr. Hall ***should have known*** that conduct would cause a reasonable person to fear for their safety. In support, Mr. Hall argues as follows:

BACKGROUND

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; (Count 3) Threats to Influence Official or Public Action (Utah Code § 76-8-104, a Class A misdemeanor).

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.

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 J.G., including surreptitious delivery of a numerous objects to J.G.'s place of employment, and by placing an object on or delivering an object to property owned, leased, or occupied by J.G., or to J.G.'s place of employment with the intent that the object be delivered to J.G., or appearing at J.G.'s workplace or contacting J.G.'s employer or coworkers, or sending material by any means to J.G. or for the purpose of obtaining or disseminating information about or communicating with J.G. to a member of J.G.'s family or household, employer, coworker, friend, or associate of J.G.

Information at 2 (emphasis added).

4. Notably, the State did not point to any direct evidence in the information relating to Mr. Hall's knowledge. *See generally, id.*

5. Similarly, at the preliminary hearing, the State introduced evidence that Mr. Hall *should have known* that the conduct would cause a reasonable person to fear for their safety, including the following exchange between Mr. Wuthrich and Agent Russell:

Q. Okay. And what is the significance of looking at the whole package?

> A. A couple different items. Number one is, for whatever reason, Mr. Hall, when he would mail packages or would have Schliesser mail the packages, they would never utilize a "W" for "West." So whether it went to city hall or the victim's residence, any time there was a "West" used, there would never be a "W." Don't know why, but that was unique to those packages. And secondly, the return address comes back to – it's called Salt Lake City -- Salt Lake Ax Throwing Club. It's an ax throwing club where they hold competitions for ax throwing, *so we assumed there was some veiled threat that whoever sent this threw axes*.

Transcript, Preliminary Hearing, at 22:13-23:1.

6. On August 14, 2023, Mr. Hall moved, in part, to dismiss Count 2 as constitutionally overbroad based on the statute's permissive language allowing for proof of a lower mental state (*i.e.*, negligence via "should have known" language) than was constitutionally required under *Counterman v. Colorado*, 600 U.S. 66, 82 (2023) (*i.e.*, recklessness)—such that the statutes unconstitutionally allowed for argument or evidence that Mr. Hall should have known his conduct would cause a reasonable person to fear for their safety.

7. In its Order Denying Mr. Hall's Motion, the Court held that Utah Code § 76-5-106.5 already requires a constitutionally permissible mental state (*i.e.*, actual knowledge that the conduct would cause a reasonable person to fear) which "exceeds the recklessness requirement of Counterman." Order at 2. The Court explained, "[t]he only instance where [the statute] would potentially run afoul of Counterman's subjective mental state requirement for true threats would be where . . . the State charged only that a defendant 'should know' that such speech would cause a reasonable person to fear." *Id.*

8. Based on this reasoning, the Court denied Mr. Hall's Motion, holding that "the State may proceed based on proof that Mr. Hall 'knew' a reasonable person would consider his statements to be threats." *Id.*; *see also id.* at 3 ("[T]he State must prove that Mr. Hall acted by more than merely a minimal subjective understanding as to the nature of that threat. In this instance,

proof of recklessness is insufficient. To stay within constitutional bounds and to comply with U.C.A. § 76-5-106.5 (2), the State must prove that Mr. Hall acted with knowledge of the threatening nature of his alleged statements.").

ARGUMENT

In a true threats case such as this, *Counterman* requires more than mere negligence. *See Counterman*, 600 U.S. at 79. Here, the Court held that "the State must prove that Mr. Hall acted by more than merely a minimal subjective understanding as to the nature of that threat," and that "[i]n this instance, proof of recklessness is insufficient." Order at 2-3. "To stay within constitutional bounds and to comply with U.C.A. § 76-5-106.5 (2), the State must prove that Mr. Hall acted with *knowledge* of the threatening nature of his alleged statements." *Id.* at 3. "A person acts knowingly when 'he is aware that [a] result is practically certain to follow'—so here, when he knows to a practical certainty that others will take his words as threats." *Counterman*, 600 U.S. at 79.

The State should not be permitted to make arguments or introduce evidence (or opinion) that Mr. Hall *should have known* his conduct would cause a reasonable person to fear because this evidence is not admissible. The State has already shown a tendency to argue that Mr. Hall should have known the alleged conduct would cause a reasonable person to fear, and to introduce evidence to that effect. *See, e.g.*, Transcript, Preliminary Hearing, at 22:13-23:1 ("[W]e *assumed* there was some veiled threat that whoever sent this threw axes."). Based on the Court's ruling, any argument or evidence going to the claim that Mr. Hall *should have known* his conduct would cause a reasonable person to fear is outside the scope. *See* Utah R. Evid. 401.

Any probative value the State claims this type of argument or evidence might have on the actual and legitimate elements is substantially outweighed by a danger of confusing the issues and misleading the jury. *See* Utah R. Evid. 403. At trial, the jury will be asked to determine whether the State proved beyond a reasonable doubt that Mr. Hall had a subjective awareness and knowledge that his conduct would cause a reasonable person to fear for their safety. As the Court held, proof of recklessness or negligence is insufficient. Allowing the State to argue, or introduce evidence, that Mr. Hall was negligent or reckless would cause the jury to conflate the issues just as the State has already done, leading it to improperly lower the bar set by this Court.

Finally, the State is not allowed to introduce testimony that opines on the ultimate issue of whether Mr. Hall did or did not have the mental state constituting an element of the crime charged as "[t]hose matters are for the trier of fact alone." Utah R. Evid. 704; *see also State v. Davis*, 2007 UT App 13, ¶ 15 n.10, 155 P.3d 909, 914 ("Rule 704 is most often applied to expert testimony even though its plain language encompasses both lay and expert opinions."). Simply put, "opinions that tell the jury what result to reach or give legal conclusions continue to be impermissible under rule 704." *Davis*, 2007 UT App 13, ¶ 15; *see also id.* at ¶ 25 (reversing unlawful possession conviction because trial court improperly allowed an agent to render a legal conclusion, applying facts of case to statute); *Colosimo v. Gateway Cmty. Church*, 2016 UT App 195, ¶ 33, 382 P.3d 667, 676, *aff'd*, 2018 UT 26, ¶ 33, 424 P.3d 866 (upholding trial court's ruling that expert testimony that church knew or should have known of hazard created by improperly wired sign were inadmissible as they were impermissibly tied into the requirement of law).

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CONCLUSION

Based on the foregoing, Mr. Hall asks that this Court enter an Order excluding argument and evidence (or opinion) that Mr. Hall should have known that conduct would cause a reasonable person to fear for their safety.

DATED this 3rd day of June, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2024, a true and correct copy of the foregoing was served on the following via the Court's Electronic Filing System:

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