

I

STATE OF MAINE
KENNEBEC, ss.

UNIFIED CRIMINAL DOCKET
LOCATION: Augusta
DOCKET NO.: KENCDCR-23-1944

Rep. Sinclair
LD 1146

STATE OF MAINE

v.

TIMOTHY MCFARLAND,
Defendant.

)
)
) ORDER ON DEFENDANT'S
) MOTION TO DISMISS
)
)

This matter came before the Court on June 28, 2024. Present were Defendant, Timothy McFarland, represented by his attorney, David Sinclair, Esq. Assistant District Attorney Jacob Demosthenes appeared on behalf of the State. After careful consideration of the arguments presented, the Court issues this Order GRANTING Defendant's Motion to Dismiss.

Procedural history/ Background

On October 27, 2023, Defendant was charged by complaint with one count of Robbery, 17-A M.R.S. §651(1)(B)(2). On February 21, 2024, the Grand Jury returned an Indictment with the same singular count. On May 2, 2024, Defendant filed the instant motion, arguing that the charge arises under a statute that is facially unconstitutional under the First Amendment.

As noted above, the Court heard argument on the motion on June 28, 2024. In support of his motion to dismiss, Defendant argues that the U.S. Supreme Court's holding *Counterman v. Colorado*, 600 U.S. 66, 69 (2023), requiring the State to "show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence"

in order to convict a defendant under a true-threat criminal statute, renders the “threatening” portion of Maine’s robbery statute facially invalid. The State argues that the robbery statute survives a facial challenge because it is not overly broad in relation to its plainly legitimate sweep.

Discussion

As noted above, *Counterman v. Colorado* addressed the issue of a mens rea requirement in “true-threats” cases. 600 U.S. 66, 74 (2023). True threats are distinguishable from “jests, ‘hyperbole,’ or other statements that when taken in context do not convey a real possibility that violence will follow True threats are ‘serious expressions’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Id.* (internal citations omitted). The Supreme Court held that a minimum mens rea standard of recklessness is required in true threats cases to avoid a chilling effect that may otherwise arise. *Id.* at 77-80.

Here, Defendant is charged with Robbery under 17-A M.R.S. §651(1)(B)(2), which falls within the ambit of “true-threats” jurisprudence. The entire text of the statute is as follows:

1. A person is guilty of robbery if the person commits or attempts to commit theft and at the time of the person’s actions:

B. The actor *threatens to use force* against any person present or otherwise intentionally or knowingly places any person present in fear of the imminent use of force with the intent:

2. To compel the person in control of the property to give it up or to engage in other conduct that aids in the taking or carrying away of the property.

(Emphasis added.)

The charging language in both the Complaint and the Indictment is as follows:

On or about October 06, 2023, in Augusta, Kennebec County, Maine, Timothy R. McFarland, did commit or attempt to commit theft from CVS and at that time did *threaten to use force* against Colleen Williams and/or Lea Martin, who was present, with the intent to compel the person in control of the property to give it up or to engage in other conduct that aids the taking or carrying away of the property.

(Emphasis added.)

17-A M.R.S. §651(1)(B)(2) does not explicitly include a culpable state of mind. While the Legislature has included a mens rea of intentional or knowing conduct for robbery that is based on placing any person present in fear of the imminent use of force, this is not the language used to charge Defendant. Rather, Defendant has been charged with the first part of the statute: with “threatening to use force against” any person present. This language does not include a culpable state of mind.

As Active Retired Justice Hjelm noted in his order in *State v. Hasahn Carter*, No. ROCCD-CR-21-659 Unified Criminal Docket (Knox County, Dec. 11, 2023), “[w]hile statutes are to be construed to preserve their constitutionality, when section 651 was enacted it *was* constitutional based on the then-current understanding of the First Amendment. To the extent that the statute does not contain a culpable state of mind as an element, it has *become* unconstitutional pursuant to *Counterman*.” (Emphasis in original.)

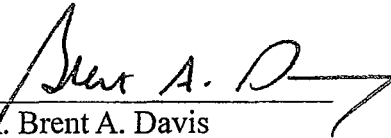
The State argues that this lack of mens rea can be cured by a jury instruction that conforms to the standard outlined in *Counterman*. The Court disagrees. To the extent that the State asks the Court to instruct the jury with the requisite culpable state of mind as an element, the Court agrees with A.R.J. Hjelm: to do so, “the court would be improperly re-writing the statute and engaging in legislative conduct by adding an element to the crime as defined by the Legislature in order to make it comport, post hoc, with *Counterman*.” *State v. Hasahn Carter*.

In conclusion, “[t]he reach of the portion of section 651(1)(B) at issue here extends to protected speech and conduct. It is therefore constitutionally overbroad.” *Id.*

Conclusion

Wherefore, for the foregoing reasons, Defendant's Motion to Dismiss is hereby GRANTED and Count One is DISMISSED WITHOUT PREJUDICE. The clerk may incorporate this order into the docket by reference pursuant to M.R.U. Crim. P. 53(a).

Dated: 7/23/2024


Hon. Brent A. Davis
Chief Judge, Maine District Court

Entered on the docket 7/24/24

STATE OF MAINE
v.
TIMOTHY MCFARLAND
TRANSIENT
AUGUSTA ME 04330

CRIMINAL DOCKET
KENNEBEC, ss.
Docket No KENCDCR-2023-01944

DOCKET RECORD

DOB: 01/05/1988
Attorney: DAVID SINCLAIR
LAW OFFICE OF DAVID A SINCLAIR PA
746 HIGH STREET
BATH ME 04530
APPOINTED 10/27/2023

State's Attorney: MAEGHAN MALONEY

Filing Document: CRIMINAL COMPLAINT
Filing Date: 10/27/2023

Major Case Type: FELONY (CLASS A,B,C)

Charge(s)

1 ROBBERY 10/06/2023 AUGUSTA
Seq 4885 17-A 651(1)(B)(2) Class B
GUAY / AUG

Docket Events:

10/27/2023 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 10/27/2023

10/27/2023 Charge(s): 1
HEARING - INITIAL APPEARANCE SCHEDULED FOR 10/27/2023 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

10/28/2023 Charge(s): 1
HEARING - INITIAL APPEARANCE HELD ON 10/27/2023
M MICHAELA MURPHY , JUSTICE

10/28/2023 Charge(s): 1
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 10/27/2023
M MICHAELA MURPHY , JUSTICE

10/28/2023 BAIL BOND - \$5,000.00 CASH BAIL BOND SET BY COURT ON 10/27/2023
M MICHAELA MURPHY , JUSTICE
NO USE OR POSSESSION OF ALCOHOL, NO USE OR POSSESSION OF ANY ILLEGAL DRUGS OR THEIR
DERIVATIVES, SUBMIT TO SEARCH UPON ARTICULABLE SUSPICION. NO USE OR POSSESSION OF ANY
DANGEROUS WEAPONS OR FIREARMS, SUBMIT TO SEARCH UPON AT ANY TIME WITHOUT ARTICULABLE
SUSPICION. NO DIRECT OR INDIRECT CONTACT WITH COLLEEN WILLIAMS 8/18/82 AND LEA MARTIN
8/4/97. NOT TO RETURN TO ANY CVS IN THE STATE OF MAINE. MAY BE REVIEWED

10/28/2023 BAIL BOND - CASH BAIL BOND COND RELEASE ISSUED ON 10/27/2023
M MICHAELA MURPHY , JUSTICE

10/28/2023 ORDER - ORDER APPOINTING COUNSEL ENTERED ON 10/27/2023
M MICHAELA MURPHY , JUSTICE

10/28/2023 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 01/16/2024 at 01:00 p.m. in Room No. 1

11/01/2023 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 10/30/2023

11/01/2023 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 10/27/2023
M MICHAELA MURPHY , JUSTICE
COPY TO PARTIES/COUNSEL

11/02/2023 Party(s): TIMOTHY MCFARLAND

ATTORNEY - APPOINTED ORDERED ON 10/27/2023

Attorney: DAVID SINCLAIR

11/02/2023 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 11/02/2023

01/16/2024 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 01/16/2024

Attorney: DAVID SINCLAIR

01/19/2024 MOTION - MOTION TO CONTINUE GRANTED ON 01/16/2024

DANIEL MITCHELL , JUDGE

COPY TO PARTIES/COUNSEL

01/19/2024 HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 01/16/2024

DANIEL MITCHELL , JUDGE

01/19/2024 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 04/09/2024 at 01:00 p.m. in Room No. 1

01/25/2024 OTHER FILING - OTHER DOCUMENT FILED ON 01/25/2024

NOTICE OF APPT OF COUNSEL RETURNED UNDELIVERABLE

03/06/2024 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 03/06/2024

03/14/2024 Charge(s): 1

SUPPLEMENTAL FILING - INDICTMENT FILED ON 02/21/2024

03/14/2024 Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULED FOR 04/09/2024 at 01:00 p.m. in Room No. 1

03/14/2024 Charge(s): 1

HEARING - ARRAIGNMENT NOTICE SENT ELECTRONICALLY ON 03/14/2024

04/10/2024 HEARING - DISPOSITIONAL CONFERENCE NOT HELD ON 04/09/2024

WILLIAM STOKES , JUSTICE

04/10/2024 Charge(s): 1

HEARING - ARRAIGNMENT HELD ON 04/09/2024

WILLIAM STOKES , JUSTICE

DEFENDANT INFORMED OF CHARGES.

04/10/2024 Charge(s): 1

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 04/09/2024

04/10/2024 Charge(s): 1

HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 06/11/2024 at 01:00 p.m. in Room No. 1

05/08/2024 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 05/02/2024

Attorney: DAVID SINCLAIR

06/12/2024 Charge(s): 1

HEARING - DISPOSITIONAL CONFERENCE NOT HELD ON 06/11/2024

PATRICIA WORTH , JUDGE

06/12/2024 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 06/28/2024 at 10:00 a.m. in Room No. 3

NOTICE TO PARTIES/COUNSEL

06/12/2024 HEARING - MOTION TO SUPPRESS NOTICE SENT ELECTRONICALLY ON 06/12/2024

06/12/2024 BAIL BOND - \$750.00 CASH BAIL BOND AMENDED ON 06/11/2024

PATRICIA WORTH , JUDGE

AMENDED AS FOLLOWS: CASH AMOUNT FROM 5000 TO 750. ALL OTHER CONDITIONS REMAIN EFFECT AS
PREVIOUSLY ORDERED

06/12/2024 MOTION - MOTION TO AMEND BAIL MADE ORALLY BY DEF ON 06/11/2024

Attorney: DAVID SINCLAIR

AMEND AS FOLLOWS: LOWER CASH BAIL AMOUNT FROM 5000 TO 750

06/12/2024 MOTION - MOTION TO AMEND BAIL GRANTED ON 06/11/2024

PATRICIA WORTH , JUDGE

COPY TO PARTIES/COUNSEL

06/24/2024 HEARING - MOTION TO SUPPRESS NOT HELD ON 06/24/2024

06/24/2024 HEARING - MOTION TO DISMISS SCHEDULED FOR 06/28/2024 at 10:00 a.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

06/24/2024 HEARING - MOTION TO DISMISS NOTICE SENT ELECTRONICALLY ON 06/12/2024

06/28/2024 HEARING - MOTION TO DISMISS HELD ON 06/28/2024

BRENT DAVIS , JUDGE

Attorney: DAVID SINCLAIR

DA: JACOB DEMOSTHENES

06/28/2024 MOTION - MOTION TO DISMISS UNDER ADVISEMENT ON 06/28/2024

BRENT DAVIS , JUDGE

07/24/2024 MOTION - MOTION TO DISMISS GRANTED ON 07/24/2024

BRENT DAVIS , JUDGE

COPY TO PARTIES/COUNSEL

07/24/2024 ORDER - COURT ORDER ENTERED ON 07/24/2024

BRENT DAVIS , JUDGE

ORDER ON DEFENDANT'S MOTION TO DISMISS

07/24/2024 Charge(s): 1

FINDING - DISMISSED BY COURT ENTERED BY COURT ON 07/24/2024

BRENT DAVIS , JUDGE

A TRUE COPY

ATTEST: _____

Clerk