



LEGAL UPDATE

THREATS TO COMMIT A CRIME REQUIRE A RECKLESS INTENT

Commonwealth v. Cruz, (Supreme Judicial Court decision, December 13, 2024).

PROCEDURAL HISTORY

The defendant was convicted for making threats to commit a crime in violation of MGL c 275 § 2. While the appeal in this case was pending, the US Supreme Court (USSC) rendered a decision in Counterman v. Colorado, 600 U.S. 66 (2023). In Counterman, the USSC ruled that a true threat can only be punished as a crime if the author of the threat, “consciously disregarded a substantial risk that his communication would be viewed as threatening violence.” The Appeals Court upheld the defendant’s conviction and the SJC granted further appellate review.

DISCUSSION

The USSC decision in Counterman found that the First Amendment does offer protection for some true threats. To punish someone criminally for making a threat, the government must prove that the speaker either intended the threatening nature of the statement or was reckless in that regard.

“Specifically, to convict a person for making a true threat, the State must prove that the person acted at least recklessly – that is, the person is aware that others could regard his statements as threatening violence and delivers them anyway.” (quotations and citations omitted.)

The court reviewed MGL c 275 § 2 to determine whether it required the intent required by Counterman. Based upon the language of the statute and how the court interpreted it in the

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past, the court found that the Massachusetts threats statute met the requirements of Counterman.

“We construe the statute to require that the Commonwealth prove beyond a reasonable doubt, inter alia, that the defendant acted with at least a mens rea of recklessness – that is, that the defendant consciously disregarded a substantial risk that the communication would be viewed as threatening violence and delivered it anyway.”

In this case, the jury were provided with the standard jury instructions. The court found that these instructions were deficient because they did not require the Commonwealth to prove the intent of the defendant as required by Counterman. For this reason, the defendant’s conviction was vacated.

The court provided an appendix to the opinion which contained a provisional revision to the model jury instructions. These instructions add a fifth element that the Commonwealth must prove beyond a reasonable doubt. The jury instructions drafted by the court state:

The defendant is charged with having threatened to commit a crime against the person or property of another. Threatening [a person with a crime against his or her person or property] [a person by threatening a crime against someone else or their property] is itself a crime.

In order to prove the defendant guilty of this offense, the Commonwealth must prove five things beyond a reasonable doubt:

First: That the defendant expressed an intent to injure a person, or property of another, now or in the future;

Second: That the defendant intended that the threat be conveyed to a particular person;

Third: That the injury that was threatened, if carried out, would constitute a crime;

Fourth: That the defendant made the threat under circumstances which could reasonably have caused the person to whom it was conveyed to fear that the defendant had both the intention and the ability to carry out the threat; and

Fifth: That the defendant was aware of or consciously disregarded a substantial risk that the communication would be viewed as threatening violence. This element requires that the defendant was aware that others could regard his statement as threatening violence and yet the defendant delivered it anyway.

Practice Note: Police reports seeking to charge a suspect with threats to commit a crime must establish probable cause for each of the five elements listed above.

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