# Supreme Court Ruling on Navigating the Line Between True Threats and Free Speech

## Description

On June 27, 2023, the United States Supreme Court's verdict on Counterman v. Colorado will likely send ripples through the legal landscape, offering critical guidance on First Amendment interpretation, 'true threats,' and protected speech. This article seeks to break down the Court's decision and rationale, helping law enforcement officers grasp the ruling's implications.

Billy Counterman was found guilty of stalking after engaging in two years of continuous harassment of a Colorado-based musician whom he had never met, through sending her aggressive and violent messages on multiple Facebook accounts. The musician, C.W., perceived these messages as threats, which led her to cancel shows, withdraw from maintaining an online presence, and distance herself from the public and fans. The severity of the situation prompted C.W. to contact local law enforcement to obtain a protective order, which resulted in Counterman's eventual arrest in May of 2016.

He was subsequently charged on three counts: stalking, inflicted severe emotional distress; stalking, by a credible threat; and one count of harassment. After he was found guilty as to the first count of stalking, Counterman was sentenced to prison but later appealed his motion to dismiss the charge, arguing his messages did not constitute "true threats" and, hence, could not lead to criminal prosecution.

The trial court, applying Colorado law which adopts an objective standard, denied Counterman's motion to dismiss the charges. Counterman contested this interpretation, arguing that the First Amendment required the State to prove not only that his statements were objectively threatening but also that he was conscious of their threatening nature, taking on a subjective-intent approach.

There were two key issues that remained before the Supreme Court.

First, whether the First Amendment in the context of a true-threats case necessitates the State to establish that the defendant was in some way aware of the threatening nature of their communications. The second issue necessitated a determination of the precise standard of mens rea or mental intent that would be deemed satisfactory under the purview of the First Amendment in these circumstances.

The Supreme Court held that the State must prove in true-threats cases that the defendant had some understanding of his statements' threatening character. However, it would suffice if the defendant demonstrated a mental state of recklessness. That is, the prosecution must establish that the defendant consciously disregarded a substantial risk that their communications would be viewed as threatening violence.

In a landmark decision, the Supreme Court ruled that for true-threat cases, the State must prove that the defendant had some level of subjective understanding of their statements' threatening nature. In the context of true threats, the Court identified recklessness as the appropriate mens rea. The recklessness standard, adopted in the Court's defamation decisions, requires the State to prove that the person


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consciously disregarded a substantial and unjustifiable risk that their conduct would harm another.

The Court reiterated that the First Amendment allows for content restrictions on speech in certain limited areas, including true threats – “serious expressions that convey a speaker’s intent to commit unlawful violence.”[1] While the existence of a threat depends more on the statement’s conveyed implications to the recipient rather than the author’s mental state, the Court affirmed that the First Amendment might necessitate a subjective mental-state requirement to shield some true threats from liability.

In terms of Counterman’s case, the Court found that the State prosecuted him based solely on an objective standard and did not demonstrate any awareness on Counterman’s part of the threatening character of his statements, thereby violating the First Amendment.

The Counterman v. Colorado verdict underscores the delicate balance between protecting citizens’ rights to free speech and guarding individuals against threatening and harmful communications. The nuanced understanding provided by the ruling will undoubtedly impact future cases that hinge on the interpretation of the First Amendment, particularly regarding ‘true threats.’

[1] Virginia v. Black, 538 U.S. 343, at 359 (2003)

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