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Nov 17 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Hon. Jocelyn Newman, Court of Common Pleas Judge

Case No. 2025-000253
Trial Case No. 2024CP2800851

Shelby Troublefield, Respondent,

v.

Freda Stevens, Appellant.

APPELLANT'S AMENDED INITIAL BRIEF

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PROCEDURAL HISTORY

This case originated from the filing of a petition for a restraining order by the Respondent against the Appellant. Following a hearing on October 21, 2004, the magistrate court learned that there had been a malfunction in the court's recording system and, as such, no transcript was available when the Appellant filed notice of appeal from the order granting the restraining order on October 28, 2024.

Therefore, the magistrate judge issued a fairly detailed ruling addressing the lack of a recording and his response to it. He wrote,

> After the hearing concluded, and a ruling on the record was made, the Court learned that the hearing was not recorded due to a malfunction of the recording system, or human error. Thus, this return is based on the notes commensurately taken by the undersigned, the exhibits offered and testimony taken and recounted and summarized herein, and the complete Court file, attached hereto.)

Magistrate's Return filed December 18, 2024.

In his return, the magistrate determined that the Appellant had engaged in a pattern of behavior that constituted legal harassment and that her actions had placed the Respondent in reasonable fear of harm.

The Appellant filed notice of appeal from the magistrate court and the case came on for a hearing in the Kershaw County Court of Common Pleas on January 16, 2025, the Honorable Jocelyn Newman presiding. T. p. 1. Judge Newman's decision was based on the magistrate's Return and on very brief testimony (the transcript is only 20 pages long). In appealing the magistrate's decision, the Appellant set forth a number of grounds that she alleged constituted error. She contended that she was being denied meaningful appellate review by virtue of an

incomplete record caused by the recording malfunction, placing her in the position of assigning error to a record whose contents cannot be fully known.

She further argued that the court's restraint on her liberty was unjustified based on the pattern of behavior cited by the judge, which included her calling the Respondent a disrespectful name and engaging in various back and forth messages that would likely be typical for interactions between a mother of young children and their teacher. However, the pattern that most troubled the court (and appears to form the real basis of the restraining order) relates to a statement the Appellant allegedly made relating to firearms and another alleged statement which the court took to be a true threat.

In this appeal from the order issued by the Court of Common Pleas affirming the magistrate's order, the Appellant argues that but for those statements, interpreted in the worst possible context, the remaining items cited by the magistrate would be insufficient to support a restraining order.

ISSUE PRESENTED

I. Whether the trial court incorrectly interpreted the Appellant's remarks to find the existence of a threat where no true threat existed.

FACTUAL BASIS

The Respondent, Ms. Troublefield, is a school teacher, employed at Doby's Mill Elementary School. The Appellant, Ms. Stevens, is the mother of a minor child who attended that school and was in the Respondent's class. A review of a series of communications between the parties (which is to be included in the record and was attached to the Return) will show this court that the parties had a pattern of engaging in mostly normal and constructive parent-teacher dialogue, but that the Appellant did become angry with Respondent on some occasions, resulting

in her at times aggressively challenging the Respondent and complaining about the Respondent's behavior. The crux of the Appellant's complaints related to what she characterizes as targeted and retaliatory behavior by certain individuals associated with the school, including the Respondent, allegedly directed toward her children.

The Appellant's specific complaints are the basis on an ongoing federal lawsuit against the school district and various individuals, including the Respondent. However, the facts at issue here relate to statements allegedly made by the Appellant relating to guns and violence.

The first statement allegedly occurred on September 10, 2024, with Appellant accused of uttering the words, "I have too many guns." According to the magistrate's Return, "The context for this comment was a meeting at the school regarding child transportation. The comment was testified to by Ms. Heights and Ms. Cappozziello, school employees and witnesses for Plaintiff. The comment was communicated to Plaintiff."

The second statement was allegedly made on September 30, 2024, resulting from an incident involving the Appellant and the Respondent in a car pick up line at the school five days earlier. According to the magistrate's findings, this involved the Appellant getting into a verbal altercation with the Respondent. In his Return the magistrate wrote, "Witnesses for Plaintiff Ms. Mosely and Ms. Lewis (the Principal) testified of yelling and irate conduct by Ms. Stevens and Ms. Stevens accusing Ms. Troublefield of unprofessional conduct."

Five days later, on September 30, 2024, Appellant is alleged to have made a series of angry statements about the Respondent. According to the Return, the school's principal testified that the Appellant discussed "destroying" the Respondent's career and "turning her career and the school upside down." However, the alleged statement that seems to have troubled the court the most was a statement attributed to Appellant by the principal in which the Appellant is

accused of saying, “If I think she (Troublefield) will hurt me or my child, I will blow her brains out.” The principal relayed these remarks to the Respondent.

According to the Return, the Appellant’s counsel contended that any comments made were not threats, and to the extent that comments were made they were not serious comments or were joking comments not to be taken literally. “Defendant did introduce a text chain between her and Ms. Troublefield concerning a variety of normal back and forth conversations between a parent and teacher. The item introduced was for the purpose of showing just that, a normal back and forth regarding the welfare and education of the child.” Magistrate’s Return filed December 18, 2024.

The Appellant did not testify at the original hearing, but she did address the Court of Common Pleas on appeal. At the magistrate’s court hearing, Appellant’s counsel “reiterated that no direct threats were made by Defendant to Plaintiff, that if made it was protected speech, and that actions by Ms. Stevens were taken by her only in furtherance of the best interests of her child.”

The magistrate, in the Return, emphasized that of all the testimony heard, the things that convinced him that the Appellant had unreasonably intruded into the life of the Respondent were the alleged events of September 10 and September 30, because both alleged statements referred to guns and/or firearm violence, stating, “The Court considers these comments to be unreasonable intrusions into the life of Plaintiff, *per se*.”

In the Return, the court states that it “wondered out loud what a proper context would actually be for comments such as that, involving allusions to firearms on school grounds,” stating that it felt that “even if these comments were made outside of the presence of Plaintiff, but were communicated to her, a pattern of harassment was established nonetheless.”

Before the Court of Common Pleas, the Appellant gave her own account of what happened with respect to the alleged threat. She stated:

> Now, the extent to which they have done in this particular case has caused me a lot of physical and emotional distress. So what actually took place in this matter is that, on September 25th, the teacher in this case, Mr. Troublefield, approached my car when I was there pick up three children -- three of my four children.
>
> She approached my car. She started yelling at me. My four-year-old daughter -- she was four at the time -- she had another head injury in her class. She starts yelling at me about the head injury. You know, "Did you hear from the nurse?" so on and so forth about the head injury. And I actually happened to be on the phone with someone from the State of Florida. This was a State official I was talking to in the State of Florida. I was on the phone.
>
> And then, immediately after that, she storms off. The principal comes over. And I told the principal, "I don't want my child in her class ever again. I don't want her to ever come up to my car. I don't want her to have contact with my other kids." Because she made one of my other kids so afraid that she couldn't even sleep in her own bed that night. I made a complaint to the Department of Education. I also found out the very next day that she put my daughter -- all four of my kids are adopted. She put my daughter on the school website, which I signed a note saying they can't do that at the beginning of the school year. No other teacher has done that but this one teacher. No other teacher.

Transcript p. 7, line 16-p. 8, line 13.

The Appellant further explained, stating,

> what I said as far as error in applying the law, what they have attributed to harassment has been nothing but my advocacy for my kids for their educational needs and their safety. That's all I've ever done is advocate for my kids' educational needs and safety. I have never at any point made a threat to Ms. Troublefield. And, in fact, the day that she approached my car and started yelling at me, I did not get out of my car. I did not make any sort of threats towards her. I just simply asked that she would -- that my kid would be moved from her class, basically, and she have no more contact with me.

Transcript p. 13, lines 6-16.

She further elaborated,

> The First Amendment protects my right to free speech, including the right to express concerns to advocate for my children and report misconduct. In this case, what you're speaking to the September 10th, that whole conversation had nothing to do with Ms. Troublefield. She was not in the room and it was not said about her. That was at an IEP meeting for my son where we were talking about -- who is an elopement risk, by the way; he's autistic. And he wears this band from the police. And that meeting and that comment had to do with the pedophile in the community that I had just, maybe an hour or two before that, sent information to the principal about because where I live is in proximity to the school, and the guy was walking up and down the street close to the school. So that's what that comment was about. It had absolutely nothing to do with her. When a person is at a school or wherever, they don't lose their constitutional rights.

Transcript p. 14, lines 6-21.

The Appellant further urged the court to consider the timeline and view the alleged remarks in their proper context. "So the context of the conversation -- we all, in different conversations, have had conversations where we made statements," she said. "But if we take them out of context, they can sound like something that they're not. That wasn't the context here. There was no conflict with us on September 10th." Transcript p. 15, lines 7-12.

The Appellant made it clear that, "I maintain that I've never threatened her. I have no desire in my heart to try to harm her or anybody else. I've made that clear. This is an effort to protect my children." Transcript p. 18, lines 21-23.

ARGUMENT

I. THE COURT IMPROPERLY INTERPRETED THE COMMENTS IT FOUND CONCERNING AND RESTRAINED THE APPELLANT'S LIBERTY FOR ENGAGING IN PROTECTED SPEECH.

"When the government seeks to punish speech based on its content, the First Amendment typically imposes stringent requirements. This ensures that the government, even when pursuing

compelling objectives, does not unduly burden our Nation's commitment to free expression." *Counterman v. Colorado*, 600 U.S. 66, 83-84, 143 S. Ct. 2106, 2119-20 (2023).

"From 1791 to the present. . . the First Amendment has permitted restrictions upon the content of speech in a few limited areas." *United States* v. *Stevens*, 559 U. S. 460, 468, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010) (internal quotation marks omitted). These categories must be "well-defined and narrowly limited" in light of the serious consequences that flow from carving out speech from ordinary First Amendment protections. *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571, 62 S. Ct. 766, 86 L. Ed. 1031 (1942).

"True threats" are one such category.

> This includes punishing single utterances based on the message conveyed. One paradigmatic example of this would be writing and mailing a letter threatening to assassinate the President. Such laws are plainly important. There is no longstanding tradition, however, of punishing speech merely because it is unintentionally threatening. Instead, this Court's precedent, along with historical statutes and cases, reflect a commonsense understanding that threatening someone is an intentional act. As to what intent is needed, [t]raditionally, one intends certain consequences when he desires that his acts cause those consequences or knows that those consequences are substantially certain to result from his acts. This does not require showing that an individual intends to carry through with the threat. But it does require showing that an individual desires to threaten or is substantially certain that her statements will be understood as threatening.

Counterman, 600 U.S. at 83-84. (internal citation omitted).

"Speech amounts to a 'true threat' when 'an ordinary, reasonable recipient who is familiar with the context of the [communication] would interpret it as a threat of injury." *United States v. Turner*, 720 F.3d 411, 420 (2d Cir. 2013). Here, the context of the concerns seized on by the court were known to all parties.

The comment about the Appellant having "too many guns" did not arise from the context of her linking any threat from her owning guns to school personnel or property. As she explained to the Court of Common Pleas, the comment related to her concerns about a sex offender who had been observed in an area not far from her children. A parent imagining that he or she would use a gun to protect their child from a pedophile is not a threat to anyone (except possibly to the pedophile, should he act on his proclivities). We have all made similar hyperbolic statements and we all understand that the nature of the statements is generally not to project an improper threat toward an individual, but a statement of our boundless love for our children and an expression of how we would be willing to do anything necessary to keep them safe.

Such a statement is protected speech. To strip away those protections, the listener has to hear the statement as simply involving "guns" and a "school." Obviously, any time we hear guns being mentioned in a school context, we feel a sense of alarm. We have all come to associate such statements with gun violence at schools. And we are right to be vigilant about such statements, given that we regularly see gun tragedies involving school students and personnel played out in real time on the news.

However, the first statement at issue here, in context, should not raise those same concerns. It should instead raise the same concerns that would be raised if we overheard someone saying, "If I pedophile sexually assaulted my child, I'd shoot him." Which is to say, very little concern, especially where the entire scenario is speculative as to the pedophile engaging in any prospective action. It is an expression of every parent's biggest fear, and one way we cope with that fear is to imagine that we would be willing to do whatever is necessary to remove such a threat from our children's lives.

The second statement, which did involve Respondent (although it was not communicated to Respondent by the Appellant), is of a similar contextual nature. If it is any kind of threat at all, it is one that is conditioned on something harming the speaker's children. It carries the same hyperbolic exaggeration as the first statement and conveys the same purpose and motive. That is, an expression by a parent stating that she would do anything to keep her children safe.

As Appellant made clear to the court, she never intended to threaten the Respondent and in fact did not directly threaten the Respondent. Rather, she was frustrated at what she perceived as her child being singled out for unfair and malicious treatment by the Respondent. Her alleged statement is nothing more than an expression of such frustration combined with the expression previously discussed—the willingness of a parent to do anything to protect her child.

Obviously, the Appellant did not intend to convey any actual threat. But more importantly, the listeners, knowing full well the context of the statements, could not have reasonably believed them to be serious threats.

The trial court failed to properly apply the First Amendment tests to the statements it singled out as causing such concern. It erred in basing its decision to restrain the Appellant's liberty on her allegedly uttering those statements. Although it is impossible to know for sure, it does not appear that the court, but for those statements, would have entered a restraining order against Appellant. As such, the order affirming the magistrate's ruling should be reversed and the matter remanded for the court to determine whether the other factors, such as the patterns of communications between the parties, is sufficient to support the entry of a restraining order.

CONCLUSION

For the reasons stated above, the Appellant respectfully asks that this court reverse the judgment affirming the magistrate's entry of a restraining order and remand the case to the trial court for further consideration.

Respectfully Submitted,

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August 22, 2025
Columbia, South Carolina