



KYM L. WORTHY  
PROSECUTING ATTORNEY

COUNTY OF WAYNE  
OFFICE OF THE PROSECUTING ATTORNEY

FRANK MURPHY HALL OF JUSTICE  
1441 ST. ANTOINE STREET  
DETROIT, MICHIGAN 48226-2302

Press Release  
August 30, 2016  
Eight Pages

Contact: Maria Miller  
Wayne County Prosecutor's Office  
Assistant Prosecuting Attorney  
(313) 224-5817  
(313) 213-0457  
[mmiller@waynecounty.com](mailto:mmiller@waynecounty.com)

***For Immediate Release***

## **Three Facebook Warrants Denied for Insufficient Evidence**

### **July 8, 2016 Facebook Threat Case with 28-year-old Detroit Male Suspect**

#### **FACTS**

On July 8, 2016, the Facebook account of a 28-year-old man was investigated by the Detroit Police Department. This account is listed under the name of a male suspect, and DPD determined that the page contained threatening statements. On July 9, 2016, DPD arrested a suspect for an unrelated traffic warrant. Police officers questioned him while he was in custody at the Detroit Detention Center (DDC), without giving Miranda warnings.

On July 15, 2016, DPD presented a warrant request that included: a short investigator's report, one police report that is nine sentences long, a criminal history reflecting one conviction for driving with a suspended license, a screenshot of a Facebook page under the suspect's name and the video of the interrogation. The screenshot of the man's Facebook page contained a picture of Micah Johnson, the suspect in the Dallas, TX mass shooting. Underneath the picture, there are three comments. The first comment under the picture states, "He is my hero...he inspired me to do the exact same thing." The second comment states, "I feel you...it's a few niggas I got to knock off...then I'm done killing blacks." And the third comment states, "I hope I never cross path of racist cops again." During interrogation, the man admitted he posted messages on his Facebook page, but explained that "I was joking to my pops", and "I was thinking maybe I shouldn't have said that shit."

-more-

During the interview, one of the officers said to the man, "This is America. You can say whatever you want. You just have to make sure you say the right thing." At the end of the interrogation, the officer appeared satisfied that there was no threat and said, "I don't think you are going to be out killing police officers." The man replied, "No."

## **ANALYSIS**

### **There is no Admissible Evidence to Prove the Suspect Committed a Crime**

Before considering terrorism, or other crimes, it is important to first consider what evidence is admissible. At this point, we have insufficient evidence to establish that it was, in fact, the suspect who made the three statements on Facebook. The only evidence presented in the warrant package are the suspect's admissions during interrogation. His admissions are inadmissible evidence due to the fact he was in custody and interrogated without Miranda Rights given.

There is no other evidence that the screenshot is linked to his account, or that the suspect typed the statements. We cannot prove that it was actually the suspect who typed the three statements.

### **Do the three statements violate any Criminal Statute?**

The most serious crime to consider is terrorism, MCL 750.543m. The elements of this offense are: (1) a threat, (2) to commit an act, (3) (a) that would be a violent felony, (b) that the person knows or has reason to know is dangerous to human life, and (c) that is intended to intimidate or coerce a civilian population or affect the conduct of government or unit of government.

The suspect's first statement is directly underneath a photograph of the Dallas shooter, Micah Johnson. The statement reads "He's my hero...he inspired me to do the exact same thing." The terrorism statute only prohibits "true" threats. *People v. Osantowski*, 274 Mich App 593, 602-603 (2007). The Court held that true threats "encompass those statements where the speaker means to communicate a serious expression of the intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.* at 602, quoting *Virginia v Black*, 538 US 343, 359 (2003).

The statement in this case is vague, and it is unclear if it is a true threat. It is unclear who the speaker intends as the target of the message. The statement does not communicate what the unlawful act of violence the speaker is communicating. The statement does not specify what "the exact same thing" means. The statement could be read to mean that he was inspired in the past, but does not have a current intent to carry out a violent act. There

-more-

are too many questions that arise in connection with the statements; therefore it fails to communicate a true threat to a particular individual or group of individuals.

The terrorism statute also requires that a defendant must have intended to intimidate or coerce a civilian population or unit of government. The officers conducting the interrogation stated to the man, "I don't think you are going to be out killing police officers", and he replied "No." Officers also asked the man what he meant by the statement "he inspired me," and he replied that he was just joking with his father. He further stated that after the statements were made on Facebook, "I was thinking maybe I shouldn't have said that shit."

The second statement on Facebook to be analyzed is "I feel you ... it's a few niggas I got to knock off... then I'm done killing blacks." While this statement does communicate a violent act, it fails to communicate a true threat to a particular individual or group of individuals. This statement is too vague, and we cannot prove with the language "a few niggas" that he intended to communicate intent to commit an unlawful act of violence against a particular individual or group of individuals.

The third statement on the suspect's Facebook page states "I hope I never cross path of racist cops again." This statement is vague and fails to communicate a threat of unlawful violence to a particular individual or group of individuals. In fact, it can be interpreted to mean that the suspect hopes to never meet a racist police officer.

In addition to the Terrorism Statute, the following criminal offenses were also considered: Unlawful Posting of Message with Aggravating Circumstances, False Report or Threat of Terrorism, and Unlawful Posting of Message. All of these statutes require that we prove that the suspect was the one who made the threat or posted the message. Because Miranda warnings were not given, we are unable to use the suspect's admissions as evidence and are unable to prove this element of the above criminal offenses.

### **Is there venue in Wayne County?**

No. The law requires that the threat must have been made in Wayne County, *People v Houthoofd*, 487 Mich 568 (2010). There is no evidence that establishes that the statements on Facebook were made in Wayne County. We do not have evidence from Facebook, or otherwise, that proves the suspect was in Wayne County at the time the Facebook posts were made.

### **CONCLUSION**

There is insufficient evidence that: the suspect posted messages on Facebook; that the messages were a true threat and were communicated as an expression of intent to commit an act of unlawful violence to a particular individual, or group of individuals; and we lack evidence to establish venue. The warrant is denied because there is insufficient evidence to charge the suspect with a crime that can be proven beyond a reasonable doubt.

-more-

## **July 8, 2016 Facebook Threat Case with 33-year-old Detroit Male Suspect**

### **FACTS**

On July 8, 2016 a 33-year-old man made is alleged to have made three posts to his Facebook account. All of the posts appeared to be screen shots from other sources.

The first post is a video of the Dallas shooting, and the man comments, "This needs to happen more often...until the ppl are free from government terrorism."

The second post is a picture of a man firing into a police car, and the man states, "Let's get it," followed by handgun emojis.

The third post is a picture from the Black Panthers, and the man states, "cause I am loaded and I am ready," with handgun emojis.

It is unclear whether these three posts were posted at the same time or separately. The third post is the only one indicating that the man had any weapons. None of the posts target a specific person or group.

On or about July 10, 2016, the man was arrested and incarcerated for traffic warrants. Two officers interviewed him at the Detroit Detention Center (DDC) without giving him his *Miranda* rights. In the taped interview, the man said he didn't intend to do anything, or act on these posts. He said he had no access to firearms and that he removed the three posts shortly after he put them on Facebook because he realized it was a stupid thing to do.

He further explained that he knows he is not supposed to be around firearms because he is a felon and he makes it a point not to be around people who carry firearms. His prior record consists of theft offenses.

One of the officers told him during the interview, "It is a free country and you can say what you want to say unless you have traffic warrants. Then instead of coming to you now we.... can lock you up for warrants and talk to you here."

### **ANALYSIS**

#### **There is no Admissible Evidence to Prove the Suspect Committed a Crime**

Before considering terrorism, or other crimes, it is important to first consider what evidence is admissible. At this point, we have insufficient evidence to establish that it was, in fact, the suspect who made the three posts on Facebook. The suspect's admissions during interrogation are the only evidence presented in the warrant request. His statements are inadmissible evidence due to the fact he was in custody, and interrogated without *Miranda* Rights given.

-more-

There is no other evidence that the posts are linked to his account, or that the suspect typed them. We cannot prove that it was actually the suspect who typed the three posts.

### **Is there venue in Wayne County?**

No. The law requires that the threat must have been made in Wayne County, *People v Houthoofd*, 487 Mich 568 (2010). There is no evidence that establishes that the posts on Facebook were made in Wayne County. We do not have evidence from Facebook, or otherwise, that proves the suspect was in Wayne County at the time the Facebook posts were made.

### **Does the Statement violate a Criminal Statute?**

It is important to note that even if there were venue, the case could not be charged under Michigan's terrorism statute. A person is guilty of making a terrorist threat if he threatens to commit to an act of terrorism. MCL.543m (1)(a). An act of terrorism is an act that would be a violent felony under the laws of Michigan, that the person knows or has reason to know is dangerous to human life, and that is intended to intimidate or coerce a civilian population or affect the conduct of government or unit of government through intimidation or Coercion. MCL 750.543b (a).

Accordingly, the elements of the offense are: (1) a threat, (2) to commit an act, (3) (a) that would be a violent felony, (b) that the person knows or has reason to know is dangerous to human life, and (c) that is intended to intimidate or coerce a civilian population or affect the conduct of government or a unit of government.

Only "true" threats are prohibited under the statute. In *People v. Osantowski*, 274 Mich App 593, 602-603 (2007), the Court of Appeals construed the statute as limited to true threats so as not to infringe on First Amendment protections. True threats, the Court explained, "encompass those statements where the speaker means to communicate a serious expression of the intent to commit an act of unlawful violence to a particular individual or group of individuals" *Id.* at 602 quoting *Virginia v. Black*, 538 US 343 (2003). An individual need not actually intend to carry out the threat, but must have the general intent to communicate a true threat. *Id.* at 602 & 605.

Since the defendant's statements are not admissible in this case, there must be other evidence presented to show that he was the one who posted the statements. In this case there is no other evidence.

The statements must be true threats, where the suspects intent to commit an unlawful act of violence. There are few facts supporting the charge of Threats of Terrorism. Stating that he is loaded and ready is notice, however, showing approval of what happened in Dallas is not a threat. He did not do anything in addition to the posts that would indicate there is a plan of

-more-

action. In fact, even before he was interviewed, he removed the posts voluntarily. Finally, there is no evidence that the defendant owns or has access to firearms.

## **CONCLUSION**

The statements of the suspect are inadmissible in court because the police failed to give him Miranda Rights when he was in custody. There is no other evidence to prove he made the posts on his Facebook account. There is no proof of venue in Wayne County. The posts fail to rise to the level of a threat of terrorism and the warrant must be denied.

## **July 9, 2016 Facebook Threat Case with 40-year-old Detroit Male Suspect**

### **FACTS**

A post made on the Facebook page of a 40- year- old Detroit man on July 9<sup>th</sup>, 2016 stated: "All lives can't matter until Black Lives Matter!!!! Kill all white cops!!!!" This statement also had a KRON 4 News video attached. KRON is a news station out of San Francisco and the video was related to the protests about the Dallas murders of police officers. An anonymous witness saw this on Facebook and forwarded it to a friend at the Dearborn Police Department who, in turn, passed it on to the Detroit Police Department.

Detroit Police officers went to the 40-year-old man's home, and a second home registered to his wife. No contact was made with anyone at either home.

On July 21, 2016, a search warrant was authorized for Facebook records of the man before and after the post in question. This was necessary to assist in identifying the IP address used when posting. This could also possibly provide circumstantial evidence as to who was posting the message. Subsequently, the WCPO returned the warrant request to the Detroit Police Department requesting the Facebook records and further investigation.

During the week of August 16, 2016, the DPD returned the requested information. The man was read his rights and voluntarily gave a statement to the police. In the statement he indicated that he was at a resort in Puerto Rico and was highly intoxicated when he posted the statement and that he had no intention on acting on the statement.

### **ANALYSIS**

#### **Is there venue in Wayne County?**

No. This case cannot be charged by the Wayne County Prosecutor's Office because there is no venue. The law requires that the threat be made in Wayne County, *People v. Houthoofd*, 487 Mich 568 (2010). In this case the man was in Puerto Rico when he wrote

-more-

the Facebook post; there are travel receipts and other evidence to prove that he was not in Wayne County and was not in Michigan when he posted the statement in question. Therefore under state law he cannot be charged for lack of venue.

### **Does the Statement violate a Criminal Statute?**

It is important to note that even if there were venue, the case could not be charged under Michigan's terrorism statute. A person is guilty of making a terrorist threat if he threatens to commit to an act of terrorism. MCL.543m (1) (a). An act of terrorism is an act that would be a violent felony under the laws of Michigan, that the person knows or has reason to know is dangerous to human life, and that is intended to intimidate or coerce a civilian population or affect the conduct of government or unit of government through intimidation or coercion. MCL 750.543b (a).

Accordingly, the elements of the offense are: (1) a threat, (2) to commit an act, (3) (a) that would be a violent felony, (b) that the person knows or has reason to know is dangerous to human life, and (c) that is intended to intimidate or coerce a civilian population or affect the conduct of government or a unit of government.

Only "true" threats are prohibited under the statute. *In People v. Osantowski*, 274 Mich App 593, 602-603 (2007), the Court of Appeals construed the statute as limited to true threats so as not to infringe on First Amendment protections. True threats, the Court explained, "encompass those statements where the speaker means to communicate a serious expression of the intent to commit an act of unlawful violence to a particular individual or group of individuals" *Id.* at 602 quoting *Virginia v. Black*, 538 US 343 (2003). An individual need not actually intend to carry out the threat, but must have the general intent to communicate a true threat. *Id.* at 602 & 605.

The statement posted in this case, "All lives can't matter until Black Lives Matter!!!! Kill all white cops" is vague. *People v. Osantowski*, 274 Mich App 593, 602,603 (2007) requires that true threats "encompass those statements where the speaker means to communicate a serious expression of intent to commit an unlawful act of violence to a particular individual or group of individuals." He did not indicate *that he* was the one who was going to kill all white cops, and never said that his Facebook friends should kill all white cops. Further, he did not indicate when all white officers should be killed or which white officers should be killed. There is no evidence the suspect took any action himself, or did anything to facilitate the killing of white officers.

The terrorism statute also requires he must have intended to coerce a civilian population or affect the conduct of government or unit of government. He never communicated the statement to others. He also doesn't indicate which department he is talking about and which white officers.

-more-

## **CONCLUSION**

We do not have venue and furthermore, we lack evidence that the message was a “true threat” as required by the terrorism statute. Therefore, the warrant must be denied.

### **July 7, 2016 Facebook Threat Case with 44-year-old Detroit Male Suspect**

On July 15, 2016 the warrant request was received and it was returned for further investigation on July 16, 2016. This case continues to be investigated by DPD.

### **Statement of Wayne County Prosecutor Kym L. Worthy**

The postings on Facebook are disturbing, especially since they are directed at the police who place their lives on the line each day to protect the public. However, in order to have a case we can prosecute, we must be able to prove it beyond a reasonable doubt in court.

These cases are very serious and the police investigation must be equally serious and thorough. DPD has many fine investigators, but the work in the four Facebook cases was substandard. When this happens, we must request further investigation. We cannot fly by the seat of our pants in charging cases. The police are trained to know when they must give Miranda rights, and they are aware that a viable case is not possible with Miranda violations and no other evidence. If any other agency wants to review these cases and issue charges based on their current status, that is their decision. We must be able to prove our cases lawfully. We will follow the law even when we detest the allegations.

#####