



DISTRICT ATTORNEY

John M. Haroldson
120 NW 4th Street
Corvallis, OR 97330-4788

Criminal Law Division (541) 766-6815
Victim Services (541) 766-6688
FAX (541) 766-6701

April 26, 2022

Tai Harden-Moore
info@votefortai.com

RE: Referral of Carey Martell for Prosecution, DA Case No. 2200357, Newburg-Dundee PD Case No. 22-0000105

Dear Ms. Harden-Moore,

On February 10, 2022, Yamhill County District Attorney Brad Berry requested that our office review a report by Newburg-Dundee Police Department Officer Joe Eubanks in order to determine whether to file charges against Carey Martell in connection with a blog post made last January. After reviewing the case, our office has concluded that there is insufficient evidence to warrant a criminal prosecution for the reasons specified below.

FACTUAL BACKGROUND

According to Officer Eubanks's report, on January 14, 2022, he was contacted via voicemail by Tai Harden-Moore, who expressed concerns over a recently published blog post on the internet which mentioned her and others. When Eubanks spoke to Ms. Harden-Moore by phone on January 16, 2022, she explained that Carey Martell had recently published a post on his blog, the Yamhill Advocate, in which he issued a call of action to others to harm her. Ms. Harden-Moore provided a link to the post in question, entitled "Exposing The Supporters of Kristen Stoller," which Eubanks reviewed. In the article, Mr. Martell published a list of various local individuals who he claimed were supporting and defending various behaviors of Ms. Stoller, which he deemed to be "child grooming." Before that list, the article contained a warning to readers that Mr. Martell intends to "expose" anyone who defends Ms. Stoller's actions, claiming that they deserve the consequences of that exposure:

"So, let me make this crystal clear to everyone

"If a person supports child grooming in any capacity, such as by defending Kristen Stoller's actions, helping her fundraise for her events designed to exploit minors, and other participation in anything that benefits her goals to change the voting "culture" of Newberg via exploitation of children by introducing them to fringe sexual fetishes, then they will be exposed by the Yamhill Advocate.

“Period.

“And I don’t care what happens to them as a consequence of their exposure. Whatever happens to them, they deserve, because they are doing evil.

“This is not about a person’s right to marry, have a sexual orientation or whatever they attempt to distract with. We are not talking about the decisions made by adults in their own personal lives and which only impacts themselves.

“I am not a politically conservative person; I am a moderate. I don’t have issues with the legality of gay marriage or homosexuality, and although I may disagree with it, if an adult wishes to modify their body they have a legal right to do it. That is not the issue here.

“What I have a problem with is a group of adults thrusting their nonsense onto children because those adults see the children as an asset to exploit for their own ends.

“This is about the exploitation of children solely because a fringe group of evil people believe they will gain more political and financial power in a small rural community via the exploitation of children, primarily those of other families whose children are being subject to this exploitation often without those families being aware.

“Many are betraying the trust of children to gain social clout with their friends in the NEED cult. This will ruin those children’s lives.

“I hope law enforcement and other activist groups investigate all of them, thoroughly.

“As far as I am concerned any child anywhere near this group and its membership is in danger.”

Later, when discussing one individual in particular, the post supplemented the prior warning as follows:

“No threat has been made by me against him or anyone else. What I have done is explain that anyone who defends the activities of Kristen Stoller and her associates that are designed to exploit children will be exposed by the Advocate, and that I do not care what happens to them as a result. Because I don’t.

“The Advocate does not encourage violence and I am not responsible for the actions of other people. The consequences I am referring to are, obviously, social ones.”

Although Officer Eubanks did not believe the threats were sufficiently specific or imminent to support a criminal charge, he nevertheless referred his report to the Yamhill County District Attorney’s Office, which referred the report to our office in turn, to consider whether criminal charges were warranted.

ANALYSIS

In Oregon, the act of sending certain electronic threats to another is criminalized by the harassment statute, ORS 166.065. In relevant part, that statute provides that an individual commits a Class B misdemeanor if he or she “[s]ubjects another to alarm by conveying a telephonic, electronic, or written threat to inflict serious physical injury on that person or to commit a felony involving the person * * * which threat would reasonable be expected to cause alarm.” ORS 166.065(1)(c).

Although the wording of ORS 166.065(1)(c) is broad, the courts have recognized significant constitutional limitations on the sort of threats that it criminalizes. In *State v. Moyle*, 299 Or. 691, 703, 705 P.2d 740 (1985), the Oregon Supreme Court held that that free speech provision of Oregon’s constitution, Article I, section 8, requires that the reach of ORS 166.065(1)(c) be limited to only those threats “which are so unambiguous, unequivocal and specific to the addressee that they convincingly express to the addressee the intention that they will be carried out.” The court drew a specific distinction between these threats and those which are “ambiguous, equivocal or non-addressee specific statements of intent to inflict some injury that either does not or, as a matter of law, should not reasonably induce a belief on the part of the addressee that the threat will be carried out.” *Id.* at 704.

The court described a similar limitation in *State v. Rangel*, 328 Or. 294, 977 P.2d 379 (1999). There, the court recognized that Article I, section 8, prohibits prosecution unless the threat at issue “is a communication that instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal, and is objectively likely to be followed by unlawful acts.” *Id.* at 303. The court noted that this definition excludes statements which are merely “the kind of hyperbole, rhetorical excesses, and impotent expressions of anger or frustration that in some contexts can be privileged even if they alarm the addressee.” *Id.*

In applying *Moyle/Rangel*, the courts have emphasized in particular that, in order to be prosecutable, a communication must contain an “unequivocal” threat of violence. In other words, if a threatening communication is not specific that the actor intends to commit a violent act or is ambiguous about what the actor is threatening to do to the recipient, then the communication cannot be the subject of prosecution. *See Goodness v. Beckham*, 224 Or. App. 565, 198 P.3d 980 (2008) (email threatening that petitioner was going to “get [respondent] back” and that respondent was “going to pay” fell short of the *Rangel* standard because they did not unequivocally threaten violence). Moreover, even if a communication does unequivocally threaten violence, the courts have held that a contact only meets the *Rangel* standard if the violence threatened is “imminent.” Even a clear threat of violence cannot be the subject of prosecution if the threat indicates only that it will be carried out at some point in the future rather than immediately. *See Swarrigim v. Olson*, 234 Or. App. 309, 227 P.3d 818 (2010) (respondent’s threats to have someone beat petitioner’s son up or slit his throat at school were protected speech because the threats were not imminent—they concerned something that respondent would have another do “at some point in the future”).

Here, under the foregoing standard, Mr. Martell’s remarks fail to rise to a level that would permit prosecution. In threatening to “expose” the supporters listed in the article and that

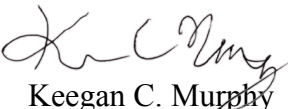
those involved “deserve the consequences” of that exposure, Mr. Martell did not unequivocally threaten to commit a violent act. Although one possible interpretation of this statement standing alone is that the “consequences” Mr. Martell speaks of are violent in nature, the wording of the message is ambiguous such that it is not the *only* way to interpret the statement. That determination is only further complicated by the clarifying note added later on in the article, in which Mr. Martell expressly disclaims any intent to encourage violence and clarifies that the consequences that he was referring to were “social ones” rather than violent ones. Taken together, these qualities of Mr. Martell’s statement mean that a court would not permit a prosecution on the basis of the statement to go forward.

Additionally, even if Mr. Martell’s threat to “expose” anyone who supports Kristen Stoller did constitute an unequivocal threat of violence, it fails to meet the requirement under case law that it be “imminent.” Given that context of the statement in a blog post, there is no reason to believe that Mr. Martell would be able to immediately or within a short time thereafter commit a violent act against any of the individuals that the threats concerned. Rather, if the threat were to be acted on, the concern is more than it would be carried out at some time in the future by other people, presumably supporters of Mr. Martell. Because *Swarrington* makes clear that threats of future violence to be carried out by others fall short of the required level of imminence, this factor also serves as a bar to prosecution.

In sum, after review of Officer Eubanks’s report and applicable case law, our office has concluded that the evidence here is insufficient to warrant filing charges against Mr. Martell for harassment. Notably, our office’s conclusions are limited only to potential criminal matters. We did not review—and offer no opinion regarding—whether Mr. Martell could be liable civilly for his post.

Please feel free to contact our office if you have any questions or require further information.

Respectfully,



Keegan C. Murphy
Deputy District Attorney

CC: Brad Berry, Yamhill County District Attorney
John Haroldson, Benton County District Attorney