Circuit Court for Charles County
Case No. C-08-JV-19-000200

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 5

September Term, 2020

IN RE: J.W.

Fader, C.J.,
Graeff,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: March 12, 2021

After searching unsuccessfully for an item he left in a classroom, J.W., the appellant, said something to the effect that if he did not find the item he was going to shoot up or blow up his school or classroom. Although witnesses understood the 17-year-old's words as joking or "playing," rather than a serious expression of intent to do harm, the State brought two charges against J.W.: (1) disturbing school operations in violation of § 26-101(a) of the Education Article (2018 Repl.); and (2) knowingly threatening to commit a crime of violence "that would place five or more people at substantial risk of death or serious physical injury . . . if the threat were carried out," in violation of § 3-1001 of the Criminal Law Article (2012 Repl.; 2020 Supp.). The Circuit Court for Charles County, sitting as a juvenile court, found that J.W. did not willfully disrupt school operations but found him "involved" in making a threat of mass violence.[1]

J.W., who was found delinquent and placed on three years' probation, contends that the circuit court erred in applying an objective standard to his conduct. He argues that the First Amendment required the State to prove that he subjectively intended to convey a threat of harm. He also contends that regardless of the standard, the evidence was insufficient to establish that he made a "true threat" that is not protected by the First Amendment. We agree that the evidence was insufficient to sustain the juvenile court's finding regardless of whether the standard is objective or subjective. Accordingly, we will reverse the judgment.

[1] A minor who is adjudicated by a juvenile court to be "involved" in an offense is not "convicted" of that offense, nor does the minor face "any of the civil disabilities ordinarily imposed by a criminal conviction." Md. Code Ann., Cts. & Jud. Proc. § 3-8A-23(a)(1) (2020 Repl.).

BACKGROUND

The basic facts of the underlying incident are undisputed. On September 19, 2019, J.W. was a student at Henry E. Lackey High School in Indian Head. Toward the beginning of an eighth-period history class, when the students in that class were engaged in a "warm up" exercise and formal instruction had not yet begun, J.W. entered teacher Aaron Craft's classroom looking for a folder he had left behind during an earlier class. When J.W. did not find it, he made the statement that is the subject of this case. The three witnesses who testified to hearing the statement had slightly different recollections of what J.W. had said, but it was something to the effect that if he did not find the folder when he returned, he was going to either "shoot up" or "blow up" the school or classroom. He then pointed at one student, T.L., and said that she would be his first victim. No one who heard the comment thought it was serious at the time, and no one reacted to it immediately. At the conclusion of the class, Mr. Craft decided that it was his duty to report J.W.'s comment to school administration regardless of whether he thought it was serious, and he did so. After an investigation, the school's administration concluded that the incident did not present a threat to the school.

The above facts were presented through the four witness who testified at the adjudicatory hearing: Mr. Craft; T.L.; T.B., another student who had heard J.W.'s statement; and David Mitchell, the school administrator who had investigated the incident. To provide additional context, we will now explore the testimony of each of those witnesses in more detail.

T.L., who saw J.W. "from time to time" but was "not really a friend," was in eighth-period history class when J.W. "came into the classroom looking for a folder or binder" that he had left after an earlier class. When J.W. did not find it, he said "something along th[e] lines" that he would come back and shoot up the school and then "pointed at [T.L.] and said [she] was going to be his first victim to shoot at." On direct examination by the prosecutor, T.L. described J.W.'s attitude when making the statement as "[v]ery jokingly, wasn't – it wasn't really, you know, like serious or anything." Accordingly, at the time, she took J.W.'s statement as a joke. Later, after she "got sent to the [school] administrator to write [a] statement" about the incident, T.L. "kind of thought about it and it wasn't very jokingly to me[.]" T.L. added that J.W. "wasn't like screaming or anything, he was just like really talking."

On cross-examination, defense counsel explored T.L.'s reaction further:

> [DEFENSE COUNSEL]: [W]hen you did hear [J.W.] make that comment though you knew that he was joking, right?
>
> [T.L.]: Yes.
>
> [DEFENSE COUNSEL]: And that's because – you said – maybe you said the word playing but playing means joking, right?[2]
>
> [T.L.]: Yes.
>
> [DEFENSE COUNSEL]: You didn't take it as a serious threat.
>
> [T.L.]: No.

[2] According to a report prepared by the Charles County Sheriff, T.L.'s written statement about the incident stated that "[s]he wasn't really paying any attention to him because she knew he was playing."

T.L. then testified that she perceived J.W.'s attitude when he made the remarks to be joking and playful, that she was not scared at the time, and that she was not worried that he was going to come shoot up the school or shoot her. She also confirmed that the classroom was never evacuated, class continued once J.W. left, and that she did not speak with school administrators until the next day, when they asked her to write a statement. It was only when writing that statement that she started to take it more seriously.

T.B., another student in the history class, testified that J.W. was someone she saw "around school[,] that's it." T.B. testified that after entering "the classroom looking for his green binder," J.W. "said that if he comes back and his green binder isn't in the classroom then . . . he was going to either shoot up the school, blow up the classroom, something with a weapon or whatever. And [T.L.] was going to be his first victim." T.B. stated that after J.W. made those remarks, "[t]he teacher was trying to get him out of the classroom and then [J.W.] just left." Asked how J.W.'s remarks had made her feel, T.B. replied that "it didn't make me feel any type of way because – I guess just because it didn't have nothing to do with me."

On cross-examination, T.B. testified that she was not scared by J.W.'s remarks and that she did not think he was going to blow up or shoot up the school or shoot T.L. She also confirmed that the classroom was not evacuated, that J.W. left when Mr. Craft asked him to, and that class then continued.

Mr. Craft testified that at the time of the incident, he was in his second year teaching history and government at Lackey High School. J.W. was a student in his second-period class. At the beginning of Mr. Craft's eighth-period class, J.W. came to the classroom

door, "looking for a green folder" that he "said he left . . . in there second period." Noting "[t]hat happens quite frequently," Mr. Craft "let him kind of look around the room, see if he had left it under a desk." "[A]fter . . . he didn't see it," Mr. Craft suggested that J.W. "come back later . . . to look for it" and "started to kind of shoo him towards the door" so class could begin. When J.W. "was out the door, he said something" that Mr. Craft "didn't quite pick up," but then J.W. "turned . . . and said that he was going to come back and if he could not find it then he was either going to shoot it up or blow it up." Mr. Craft did not react to the statement at the time. Instead, he "got started with class," but the comment "stuck in the back of [his] mind." Once class ended, Mr. Craft explained, "I made the decision that it's not my job to decide if the threat was real and I took it down to administration to have them investigate."

During cross-examination, Mr. Craft confirmed that he was not sure whom else had heard J.W.'s comment, that he did not evacuate the classroom, and that he let J.W. leave the classroom rather than sending him to the office. He explained that J.W.'s statement "kind of fell by the wayside" and that he did not send J.W. to a school administrator because he did not feel threatened and "was distracted" by his classroom duties. Yet he "was toying with the idea of whether or not it was serious and that is why [he] did alert eventually administration because" it was not his job to decide whether the comment was serious and he was "required to report it." Mr. Craft further testified that he did not follow active shooter procedures or other school protocol when the remarks were made because, he agreed with defense counsel, "there wasn't any active threat[.]"

Mr. Mitchell, an administrative intern assigned to the high school whose responsibilities included resolving student disciplinary matters, recounted the investigation he conducted into the incident. On September 19, when Mr. Craft reported J.W.'s statement, Mr. Mitchell immediately began to investigate the incident as a "safety issue." After he and another administrator talked to Mr. Craft, they notified the school resource officer and searched J.W.'s locker. The next day, they talked to J.W. and interviewed five other students from the class. Mr. Mitchell agreed that investigators ultimately did not find that there was a threat to school safety.

J.W. rested without presenting any evidence. At that point, defense counsel moved for a judgment of acquittal on the ground that J.W.'s remark was not a "true threat" but, instead, was "just an off-colored joke[.]" The juvenile court denied the motion and ruled that the teacher "could reasonably take [J.W.'s statement] as a threat" and "did take it as a threat. He eventually reported it for the reasons he gave."

In closing, the State maintained that J.W. "did knowingly threaten to shoot and blow up his classroom regardless of how he meant them to interpret it." In the State's view, J.W. had no defense under Criminal Law § 3-1001 because "[t]here's no provision saying that oh, if you were just kidding it doesn't matter." J.W., the State argued, "should have known that you can't threaten to blow up your school in the presence of a teacher."

In its closing, defense counsel argued that "this is a case about policing speech that is actually protected by the First Amendment" because J.W.'s statement was "an off-hand joke that was perceived as a joke. Nobody was actually scared. Nobody understood this to be a threat of a crime of violence." In counsel's view, the State also did not prove the

"knowingly" mens rea for this offense given J.W.'s "demeanor and how he said it . . . as a conditional statement."

In announcing its decision, the juvenile court first addressed the charge of willfully disturbing school operations in violation of § 26-101(a) of the Education Article. The court found that J.W. "was upset" and "said some things he shouldn't have said[.]" However, the court was "not convinced beyond a reasonable doubt that he willfully did" disrupt the orderly conduct of school activities. Accordingly, the court found J.W. not involved on that charge.

On the charge of threatening mass violence, however, the court reviewed the evidence and the elements of the offense, determined that each was met, and so found J.S. "involved" in conduct violating § 3-1001. The court then declined the defense's request for a declaration of non-delinquency, explaining:

> Look, everyone is aware that in St. Mary's County a child came in, had a gun, right?[3] And that freaks teachers out because people come back. They don't know what a student is capable of, whether it's a passing comment or maybe something that's more serious. In that case, somebody had broken up with a girlfriend then he came back and people were killed. It's just what happens. If it wasn't for an officer being in the school it may have been worse. . . . There's a lot of other places where

[3] The court was apparently referring to an incident at a high school in nearby St. Mary's County that occurred in 2018. *See* Pamela Wood, Talia Richman, Colin Campbell, Scott Dance, *Maryland high school shooting: Two students injured, suspected gunman dead after incident at Great Mills High School*, Capital Gazette (Mar. 20, 2018), https://www.capitalgazette.com/maryland/bs-md-st-marys-shooting-20180320-story.html.

> that maybe goes unheeded. In school in the modern [era] no one can not eventually report that, you just can't do it.[4]

The court ultimately found J.W. delinquent and placed him on three years' probation. This timely appeal followed.

DISCUSSION

Section 3-1001(b) of the Criminal Law Article prohibits threats of mass violence, defining such conduct as "knowingly threaten[ing] to commit . . . a crime of violence" that, if carried out, "would place five or more people at substantial risk of death or serious physical injury[.]" No reported Maryland decision has expressly addressed whether proof of a speaker's specific intent to threaten is a required element under § 3-1001. Although J.W. and the State present opposing arguments on that question, they agree that the State had the burden of proving beyond a reasonable doubt that J.W.'s statement was a "true threat," and therefore not protected by the First Amendment. We will hold that the evidence was insufficient to establish that the challenged remark was a true threat. As a result, we need not address whether the First Amendment also required the State to prove that J.W. had the specific intent to threaten.

I. CONSISTENT WITH THE FIRST AMENDMENT, THE STATE MAY PROHIBIT A TRUE THREAT THAT IS A SERIOUS EXPRESSION OF INTENT TO HARM.

Under the First Amendment to the United States Constitution, applicable to Maryland through the Fourteenth Amendment, the State "shall make no law . . . abridging

[4] The court reiterated the last sentiment at the disposition hearing, stating: "In the modern era you can't, in schools, threat[en] to shoot people. It's just – 10 years ago, 20 years ago maybe, but there's too many shootings and people are too nervous about it."

the freedom of speech[.]" Because § 3-1001 "makes criminal a form of pure speech," the statute "must be interpreted with the commands of the First Amendment clearly in mind," so that "[w]hat is a threat must be distinguished from what is constitutionally protected speech." *Watts v. United States*, 394 U.S. 705, 707 (1969). In this context, whether speech is protected by the First Amendment depends on whether it is a "true threat," as "distinct from 'words as mere political argument, talk or jest.'" *Abbott v. State*, 190 Md. App. 595, 619 (2010) (some quotation marks omitted) (quoting *United States v. Dysart*, 705 F.2d 1247, 1256 (10th Cir. 1983)).

The dividing line between a true threat and constitutionally protected speech has been explored under a range of statutes that prohibit threats made in different contexts. In a challenge to a state statute that prohibited cross-burning "with the intent of intimidating any person or group of persons," the Supreme Court explained that a statement is not protected by the First Amendment "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 348, 359 (2003). A statutory "prohibition on true threats" is constitutionally permissible regardless of whether the speaker intends to carry out the threat because, in addition to protecting people "from the possibility that the threatened violence will occur," such a law "protect[s] individuals from the fear of violence and from the disruption that fear engenders[.]" *Id*. at 360 (first alteration in original) (internal quotations and quotation marks omitted). As the Court found, burning a cross to "intimidat[e], intend[ing] to create a pervasive fear in victims that they are a target of violence" may be "a type of true threat[.]" *Id*.

Whether any particular statement is a true threat requires consideration of its context. In another landmark true threat case, *Watts v. United States*, 394 U.S. 705, 708 (1969), the Supreme Court reversed a threat conviction because, in context, the Court determined that the challenged statement was not a true threat. There, an 18-year-old student, having received his draft classification and orders to report for a physical examination, stated during a rally at the Washington Monument: "I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J." *Id*. at 706. Although Watts and the crowd laughed at this remark, he was subsequently convicted of the federal offense of threatening the president. *Id.* at 706-07.

The Supreme Court explained that even though federal appellate courts have "differed over whether or not the 'willfullness' requirement of the statute implied that a defendant must have intended to carry out his 'threat,'" the prosecution still had the threshold burden "to prove a true 'threat.'" *Id*. at 707-08. The Court was not persuaded "that the kind of political hyperbole indulged in by petitioner fits within that statutory term." *Id*. at 708. Emphasizing that "[t]he language of the political arena, like the language used in labor disputes, is often vituperative, abusive, and inexact," the Court stated, "[w]e agree with petitioner that his only offense here was 'a kind of very crude offensive method of stating a political opposition to the President.' Taken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners, we do not see how it could be interpreted otherwise." *Id*. (internal citation omitted).

The Court of Appeals and this Court have interpreted the statutory term "threat" consistently with this constitutional overlay to limit its scope to communications that

convey a serious expression of intent to inflict physical harm. In other contexts, the Court of Appeals has identified the plain meaning of threat as "a communicated intent to inflict harm," *Hammonds v. State*, 436 Md. 22, 41 (2013) (quoting *Black's Law Dictionary* 1519 (8th ed. 2004)); *accord Moosavi v. State*, 355 Md. 651, 664 (1999), and "[a]n expression of an intention to inflict something harmful," *Hammonds*, 436 Md. at 41 (alteration in original) (quoting *Webster's II New College Dictionary* 1176 (3d ed. 2005)).

This Court explored the true threat standard in *Abbott*, 190 Md. App. at 619. There, recognizing that an alleged threat must be viewed in context to ensure the protections afforded by the First Amendment and Article 40 of the Maryland Declaration of Rights, we considered the status of emailed statements to the sitting governor, whom Mr. Abbott had blamed for mounting personal and business losses. *Id*. at 604-05. Mr. Abbott wrote that if he "ever g[o]t close enough to [the governor]," he would "[w]rap [his] hands around [the governor's] throat and strangle the life from" him. *Id*. at 605. Calling himself a "true American[]" and the governor a "sell out," Mr. Abbott wrote: "Maybe you can send your Mexican army after me . . . . I hope you drop dead before I get to you, I would hate to . . . lose my life because of a piece of shit like you." *Id*. (some capitalization omitted).

Although we concluded that the evidence presented at trial would have been sufficient for a jury to find that Mr. Abbott had made a true threat, which ordinarily is a question for the trier of fact, *id.* at 619, we reversed the conviction because the trial court had erred in failing to "define the term 'threat'" or give the jury sufficient guidance on the meaning of a true threat, *id*. at 648. We defined a threat "as an expression of 'a determination or intent to injure presently or in the future,' . . . which is distinct from 'words

as mere political argument, talk or jest.'" *Id*. at 619 (citations omitted). We further recognized that "[w]hether a particular communication constitutes a true threat depends on both its language and its context," *id*. at 620, and we identified several such factors that "must be considered," including: "'the context in which the words were written, the specificity of the threat, and the reaction of a reasonable recipient familiar with the context in which the words were'" communicated, *id*. (quoting *United States v. Roberts*, 915 F.2d 889, 890-91 (4th Cir. 1990)) (internal quotation marks omitted).

Applying those factors, we concluded that the evidence was sufficient for a jury to find that a reasonable person reading Abbott's communication "could have interpreted it as a serious expression of an intent to harm the Governor." *Abbott*, 190 Md. App. at 629-30. We nevertheless vacated the conviction because the trial court had failed to "instruct[] the jury as to the requirement of a true threat, which is distinguished from constitutionally protected speech." *Id.* at 648. We remanded for a new trial and directed the court to "look for guidance," *id.* at 648 n.17, in instructing the jury to the following pattern jury instruction for a comparable federal statute, which defined threat as follows:

> A threat is a serious statement expressing an intention to inflict bodily injury (*or* kill *or* kidnap) at once or in the future, as distinguished from idle or careless talk, exaggeration, or something said in a joking manner. A statement is a threat if was made under such circumstances that a reasonable person hearing or reading the statement would understand it as a serious expression of intent to inflict bodily injury (*or* a reasonable person making the statement would foresee that the recipient would understand it as a serious expression of intent to inflict bodily injury).

Id. at 645 (quoting 2 L. Sand, *et al*., Modern Fed. Jury Instr.—Crim., § 31-4 (2009)).

Although current Maryland Pattern Jury Instructions ("MPJI-Cr") do not cover threats prohibited by § 3-1001, the recommended instruction for the comparable offense of threatening a public official in violation of § 3-708 of the Criminal Law Article reflects consistent standards for deciding whether a particular statement constitutes a criminal threat:

> A threat is a serious statement expressing an intent to kill, kidnap, or physically injure a [State] [local] official immediately or in the future. A threat is not idle or careless talk, exaggeration, or something said in a joking manner. A statement is a threat if it was made under such circumstances that a reasonable person hearing or reading the statement would understand it as a serious expression of an intent to kill, physically injure, or kidnap a [State] [local] official. In deciding whether the defendant made a threat, you may consider, among other circumstances, the language the defendant used, and whether a reasonable person, hearing or reading the words, and knowing all of the circumstances, would have considered the words to be a threat.

MPJI-Cr 4:12.2. With these standards in mind, we now turn to determining whether there was sufficient evidence for the juvenile court to conclude that J.W.'s remarks constituted a true threat in violation of Criminal Law § 3-1001.

II. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT J.W.'S REMARKS CONSTITUTED A TRUE THREAT.

The parties dispute whether the First Amendment required the State to prove that J.W. had the specific intent to make a threat. For purposes of our sufficiency analysis, we will assume that the State had no such burden and was required to prove only that J.W. made his remarks knowingly. Because we conclude that the evidence was insufficient to sustain the juvenile court's finding of involvement and declaration of delinquency even under that standard, we need not resolve whether a more stringent standard applies. We

will therefore assume, as the State contends, that the relevant consideration is not J.W.'s intent but, as stated in pattern jury instruction MPJI-Cr 4:12.2, "whether a reasonable person, hearing or reading the words, and knowing all of the circumstances, would have considered the words to be a threat."

"In a juvenile delinquency matter, . . . [w]e review any conclusions of law *de novo*, but apply the clearly erroneous standard to findings of fact." *In re David P.*, 234 Md. App. 127, 133 (2017) (quoting *In re Elrich S.*, 416 Md. 15, 30 (2010)). "We use the same evidentiary standard of review in juvenile delinquency proceedings as we apply in criminal cases," *Elrich S.*, 416 Md. at 30, and evaluate the evidence in the light most favorable to the State, as the prevailing party, to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt," *id.* (quoting *In re Anthony W.*, 388 Md. 251, 261 (2005), *abrogated on other grounds by State v. Jones*, 466 Md. 142 (2019)); *see also In re Kevin T.*, 222 Md. App. 671, 676-77 (2015) (same). In undertaking this review, we must first determine whether a rational fact-finder could have interpreted J.W.'s statement to be a true threat—that is, a serious expression of an intent to commit mass violence. *See, e.g.*, *Pendergast v. State*, 99 Md. App. 141, 149 (1994) (holding that the evidence was sufficient to find that a letter seeking "revenge" on two judges supported the appellant's conviction for threatening to inflict bodily harm upon

State officials). Because a true threat is not protected speech, the answer to that question will determine whether the First Amendment bars this delinquency adjudication.[5]

J.W. contends that because he "was joking when he made his comment," "the evidence was plainly insufficient to establish that [he] made a true threat." Based on the prevalence of active shooter drills and mass shootings, J.W. asserts, students today are highly aware of their vulnerability to violence at school, and, in that context, J.W. contends that his remark was a form of "gallows humor. Joking about a scary thing makes it a little less scary . . . [a]nd so sometimes kids joke about school shootings." He emphasizes that, shocking as it may seem that such "a comment could be made in jest, . . . none of the witnesses to the comment who testified (two students and a teacher) were [shocked by it]."

The juvenile court's finding that J.W.'s statement was a true threat is at odds with the evidence of how the statement actually was understood by those who heard it in context. Notably, none of the witnesses to J.W.'s statement perceived it as a serious expression of

[5] As the Court of Appeals recently explained,

> In some cases, this Court has supplemented the *Jackson* [sufficiency] standard with a *de novo* review when a constitutional right is at issue. The independent examination ensures this Court's protection of fundamental rights. Our case law demonstrates the proper application of *de novo* review when the State, through action or statute, seeks to regulate or control protected speech.

State v. McGagh, ___ Md. ___, No. 12, Sept. Term 2020, 2021 WL 302805, at *12 (Jan. 29, 2021). In such cases, an appellate court reviews without deference whether the conduct at issue is entitled to constitutional protection but continues to apply the more deferential sufficiency standard to all other issues. Here, we apply the sufficiency standard to the juvenile court's finding that J.W.'s speech constituted a true threat. Because the resolution of that issue is also dispositive of the constitutional question, we have no calling to engage in a non-deferential review.

intent to harm others. The closest any of the witnesses came to such a conclusion was T.L. At the time she heard J.W.'s statement, T.L. perceived J.W. as being playful and believed that he made the comment "very jokingly." The next day, after being interviewed by the school administration and asked to provide a written statement, T.L. decided that the statement "wasn't very jokingly to me[.]" It thus appears that it was the school's request that she provide a written statement about J.W.'s remarks that made T.L. start to think about them more seriously, not the remarks themselves and not J.W.'s manner, which she consistently described as playful or joking. T.B. also did not understand J.W.'s speech as a serious expression of intent to commit a crime of violence. She testified that the statement did not make her feel threatened or scared and she did not think that he was actually going to shoot or blow up the school. **[R. 92-93]** Mr. Carter similarly testified that he never felt threatened by J.W.'s statement, and he reported the incident to the administration not because he thought it was serious, but because it was not his "job to decide if the threat was real." **[R. 109-11]**

There was ultimately no evidence that anyone viewed the statement as a serious threat. To the contrary, the school's own investigation, which involved interviews of three other students, concluded that J.W.'s statement was not a threat, and the witnesses who testified all agreed that there was no expression of fear or disturbance in response to J.W.'s statement, either contemporaneously or following the incident. **[R. 83-84, 94-95, 108-09]** In sum, the State did not produce a single witness who perceived the statement as a true threat.

The juvenile court nonetheless concluded that J.W.'s remark was a true threat. In explaining its decision, the court referenced the words J.W. uttered, testimony that he was not good friends with other students in the classroom, and its own belief that, "[i]n the modern [era] . . . you just can't" make a threat to shoot people while in a school. In light of the evidence presented at trial, none of these factors provides a sufficient basis for finding J.W. involved in the prohibited conduct. As discussed above, the words J.W. uttered must be viewed in context, not in a vacuum or against the background of different events. *See Abbott*, 190 Md. App. at 620. Here, the evidence was undisputed that, in context, those who heard J.W.'s speech did not view it as a serious threat. And although the court was correct that T.L. and T.B. were not good friends of J.W., they still viewed his comments as "playing" and joking. Thus, relying on the evidence and without resorting to speculation, all we know is that those who heard the remarks—the people who, as J.W. points out, heard the tone of his voice and saw "the expression on his face, the look in his eyes, his body language, his attitude and demeanor"—did not perceive them as a serious threat.

The court's statement that any projection of school violence should be taken seriously is undoubtedly true, but a strict liability standard for uttering words that could constitute a threat if uttered in a different context or in a different manner is inconsistent with the First Amendment and Article 40. Nothing in our opinion should be taken to minimize the horror and tragedy of school shootings or the risks posed by serious threats of school violence. Nor should anything in this opinion be understood to preclude or undermine the ability of schools to respond to such threats or impose appropriate

disciplinary measures pursuant to policies and practices for preventing school violence.[6] Here, J.W.'s school investigated his remarks, determined that they did not constitute a threat, and addressed the incident with a disciplinary sanction that is not before us.[7]

Our task here, viewing the evidence and all reasonable inferences that can be drawn from it in the light most favorable to the State, is to decide only whether the evidence was sufficient to establish beyond a reasonable doubt that J.W.'s statement was a true threat—i.e., a serious expression of an intent to commit mass violence—in violation of § 3-1001. In doing so, we focus on the evidence concerning J.W.'s remarks, including the context in

[6] *See generally* Ronna Greff Schneider, 1 Educ. Law: First Amendment, Due Process and Discrimination Litigation § 2:27, *Freedom of Expression and Violence at School* (updated Oct. 2019) ("Speech may appear to be a threat although the speaker intended it only as a joke or some form of a 'game.' Schools should take steps to make students aware of the danger of such action and that such 'jokes' will be taken seriously by school officials and will not be tolerated."); Thomas R. Young, 2 Leg. Rts. Child Rev. 3d § 17:2, *Threatening student speech* (updated Nov. 2020) ("[T]hreatening speech . . . may be restricted or altogether suppressed because of its potential impact on the functioning of a school."); *id*. at § 17:4, *School zero tolerance policies regarding drugs, guns and other weapons, contraband, and threats of mass violence* ("[Z]ero tolerance policies directed at gun violence at times have also included directives against threatening speech[.]").

[7] At least some courts have found school disciplinary sanctions to be governed by different, more lenient standards than those for criminal prosecution of true threats. *See, e.g., Wisniewski v. Bd. of Educ*., 494 F.3d 34, 38 (2d Cir. 2007) ("Although some courts have assessed a student's statements concerning the killing of a school official or a fellow student against the 'true threat' standard of *Watts*, we think that school officials have significantly broader authority to sanction student speech than the *Watts* standard allows," under the "material and substantial interference" standard established by *Tinker v. Des Moines Indep. Cmty. Sch. Distr.*, 393 U.S. 503, 509-14 (1969) (internal citation omitted)); *In re George T*., 93 P.3d 1007, 1019 (Cal. 2004) ("Minor's reference to school shootings and his dissemination of his poem in close proximity to [a] school shooting no doubt reasonably heightened the school's concern that minor might emulate the actions of previous school shooters" and "amply justified [school personnel] in taking action . . ., but that is not the issue before us. We decide here only that [the] minor's poem did not constitute a criminal threat.").

which they were communicated and "the reaction of a reasonable recipient familiar with" the circumstances. *Abbott*, 190 Md. App. at 620-21. Applying that standard, we agree with J.W. that the evidence was insufficient.

A true threat is not idle or careless talk, exaggerated statements, or statements made in a joking manner. *See id.* at 645. The First Amendment protection for statements that do not rise to the level of a true threat has been construed to encompass "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." 16A Am. Jur. 2d Constitutional Law § 526. Particularly in the school setting, "some references are just sophomoric attempts at humor" that may be "'[d]istasteful and even highly offensive communication'" but do "'not necessarily fall from [f]irst [a]mendment protection as a true threat simply because of its objectionable nature.'" *Haughwout v. Tordenti*, 211 A.3d 1, 15 n.16 (Conn. 2019) (alterations in original) (quoting *J.S. ex rel. H.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847, 860 (Pa. 2002)); *cf. Burge v. Colton Sch. Dist. 53*, 100 F. Supp. 3d 1057, 1060, 1068-69 (D. Or. 2015) (eighth grader's Facebook post about teacher, that "'[y]a haha she needs to be shot,'" "were not 'true threats'" because they "were meant and understood by his audience as a critique of [her] teaching skills and not the serious expression of intent to harm her"); *Murakowski v. Univ. of Delaware*, 575 F. Supp. 2d 571, 590 (D. Del. 2008) (college student's "racist, sexist, homophobic, insensitive, degrading" posts online, which "contain[ed] graphic descriptions of violent behavior," were "sophomoric, immature, crude and highly offensive in an alleged misguided attempt at humor or parody," but were not true threats); *C.G.M., II v. Juvenile Officer*, 258 S.W.3d

879, 880-83 (Mo. Ct. App. 2008) (12 year-old's statements to friend that "he may get dynamite from his dad for his birthday" and asking if the friend "wanted to help him blow up the school" was not a true threat when friend did not fear that threat would be carried out, and school did not consider it a threat); *J.S.*, 807 A.2d at 858-60 (middle school student's post on his "Teacher Sux" web page, asking "why [the teacher] should die, show[ing] a picture of [the teacher's] head severed from her body and solicit[ing] funds for a hitman," when "taken as a whole, was a sophomoric, crude, highly offensive and perhaps misguided attempt at humor or parody. However, it did not reflect a serious expression of intent to inflict harm").

By all accounts, J.W. spoke carelessly but not in a manner that caused witnesses to perceive his words as a serious expression of intent to inflict harm. However different individuals in a different context might have perceived the remarks, no evidence in this record supports a finding that J.W. made a true threat. Accordingly, we hold that the State failed to produce sufficient evidence to sustain beyond a reasonable doubt a finding that J.W. knowingly made a threat of mass violence in violation of Criminal Law § 3-1001.

We are not persuaded by the State's suggestion that school safety considerations or evidence that school officials treated J.W.'s statement as a potential threat requires a different analysis or result. Understandably and appropriately, authorities must be vigilant in responding to potential threats of violence in schools.[8] Recalling Justice Holmes's oft-

[8] *See generally* Sarah E. Redfield, *Threats Made, Threats Posed School and Judicial Analysis in Need of Redirection*, 2003 B.Y.U. Educ. & L.J. 663, 663-64, 721-22 (2003) (advocating analytical framework for evaluating threats made in schools based on "the vital

cited example of unprotected speech from *Schenck v. Ohio*, 249 U.S. 47, 52 (1917), the State suggests that J.W.'s remark was the equivalent of falsely yelling fire in a crowded theater. Although we do not discount the possibility that a similar statement, made in a different school context, could very well fit that analogy, the evidence here demonstrates that the comparison is inapt. J.W.'s single oral remark, although highly inappropriate and undoubtedly ill-considered, indisputably caused no fear, panic, or immediate disruption. The school appropriately took the remark seriously, even if those who directly perceived it did not, and it was not hindered in doing so.

The juvenile court perceived J.W.'s remark differently from the witnesses who heard it, apparently based at least in part on the court's concerns arising from a prior unrelated incident of school violence in a neighboring county. However, the remark was not made to or in the presence of the juvenile court and any knowledge of that other incident did not cause those who heard the remark to consider J.W.'s statement a serious threat. Here, the evidence was not sufficient to establish that J.W.'s statement was a true threat, and, therefore, cannot support the court's adjudication of involved or the related declaration of delinquency. Accordingly, we must reverse.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED. COSTS TO BE PAID BY CHARLES COUNTY.

difference between a threat made and a threat posed"); Diane Heckman, *Just Kidding: K-12 Students, Threats and First Amendment Freedom of Speech Protection*, 259 Ed. Law Rep. 381, 381 (Oct. 28, 2010) (examining "whether students at public schools have engaged in unprotected threatening speech toward fellow students, their teachers, or other school personnel").