



SUPERIOR COURT OF NEW JERSEY
VICINAGE 1

Bernard E. DeLury, Jr.
Presiding Judge

Criminal Division
Criminal Court Complex
4997 Unami Boulevard
Mays Landing, N.J. 08330
609-402-0100 ext. 47360

Not for Publication Without Approval of the Committee on Opinions

April 23, 2025

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Re: **State v. Marty Small and La'Quetta Small: Motion to Dismiss Counts as a De Minimis Infractions**
Ind. No. 24-09-2951 & 24-12-3927

Dear Counselors:

INTRODUCTION

On September 17, 2024, an Atlantic County Grand Jury returned Indictment Number 24-09-2951-T, charging the Marty and La'Quetta Small (collectively, "Defendants") with second-degree endangering by abuse/neglect of a child (Count 1). Mr. Small was additionally charged with third-degree terroristic threats (Count 2) and third-degree aggravated assault (Count 3).

On December 17, 2024, an Atlantic County Grand Jury returned Indictment Number 24-12-3927, charging Mr. Small with third-degree witness tampering.

Mr. Small, through counsel, filed the instant Motions to Dismiss Count 2 of Indictment Number 24-09-2951 (terroristic threats, third-degree) and Count 1 (witness tampering, third-degree) of Indictment Number 24-12-3927 as a De Minimis Infraction. Similarly, Mrs. Small, through counsel filed a Motion to Dismiss Count 1 (child endangerment, second-degree) of Indictment Number 24-09-2951 as a De Minimis Infraction. Counsel presented oral argument on the issue before the Court on April 15, 2025. The Court has considered all matters presented.

For the reasons stated below, the Court has concluded that the Defendants have failed to show that the offenses charged warrant dismissal pursuant to the de minimis statute N.J.S.A. 2C:2-11. As such, the Court has **DENIED** the Defendants' Motion.

STATEMENT OF FACTS

The parties present substantially different accounts of the facts surrounding the alleged incidents of abuse. The facts are derived from Sergeant Ryan Ripley's Affidavit of Probable Cause dated April 15, 2024, and Statement of Probable Cause under Complaint-Warrant S-2024-004036-0102 dated November 4, 2024.

I. Indictment Number 24-09-2951

During the week of January 22, 2024, mental health training for students was held at Atlantic City High School. At the end of each session, students were provided with "exit tickets." On the front of the "exit ticket" three faces were present: happy, neutral, and sad. Each student was asked to circle one face. The ticket allowed a student a discreet way to send a request about speaking with someone at the school.

J.S., the 16-year-old juvenile daughter of the Defendants, was provided an "exit ticket" on January 22, 2024. J.S. circled the neutral face and wrote on the back of the ticket "abuse" and would "like a counselor." Atlantic County Prosecutor's Office detectives obtained a copy of this ticket at a later date

An employee at the high school was given J.S.'s ticket by one of the mental health trainers the same day. The employee told detectives that at approximately 10:00 AM he approached J.S. and pulled her from her classroom to speak with her. He stated this was the first time he met with J.S. and spoke with her for approximately 2 to 3 minutes in the hallway. He stated that it seemed like J.S. wanted to talk and told him that she had been hit with a broom and passed out. He asked if this was ongoing, and J.S. told him, "No." J.S. had told him that her dad was a big guy and she wanted to continue on with her life. J.S. told him that she had already spoken with Principal Chapman about some choices.

The employee stated that later on that same day he and another school employee discussed the matter with Principal Chapman. He stated they spoke with Principal Chapman in-person, and he told her what J.S. had told him. He stated Principal Chapman told him J.S. never mentioned the abuse to her, but that she would report the abuse DCPP. One of the employees told Principal Chapman that she would make the notification to DCPP, but Principal Chapman

insisted she would make the notification. Principal Chapman was provided a copy of the "exit ticket" from J.S. from one of the other employees.

On the same day, later in the evening, J.S., during a telehealth consultation, disclosed to a therapist that she was being physically and emotionally abused by both of her parents. The report indicated that the abuse began in the beginning of December 2023 when "a situation had happened on December 7, 2023, and it was a minor situation, it got it got escalated to where they put hands on me."

J.S. explained that sometime in the beginning of December 2023, Mr. Small, during an argument punched her in the legs and Mrs. Small had her knee on J.S.'s chest. J.S. also explained that during that same time frame, Mrs. Small during an argument "was punching me and hitting me and stuff." And in the middle of December 2023. Mrs. Small, during an argument, put all her weight on J.S. and smacked her multiple times in the face.

J.S. explained that on January 13, 2024, Mr. Small, during an argument, threw her into the shower, slammed her, and choked her. He was choking her and throwing her around everywhere. She stated that he was "trying to pick me up you know how people be picking up basketballs?" He hit her on the head with a broom. She stated she passed out when he hit her on the head with the broom and she collapsed on the floor. She stated that she had a scratch and bruises on her neck. J.S. stated that every time they hit me, I always had bruises on my body." Further, J.S. reported to the therapist that she had informed the school, and the school would be contacting the State to make a report regarding the above events. J.S. also reported to the therapist that "I was really stressed, I was crying a lot, I wasn't mentally stable, I wasn't comfortable around them, I just didn't feel safe."

Moreover, J.S. disclosed this abuse to the therapist outside the presence of both Defendants.

The therapist also spoke with Mrs. Small that night. Mrs. Small explained that J.S. was experiencing some personal issues with her parents due to a relationship with a young man they don't approve of, and it had caused some tensions in the home. She stated that J.S. was defiant at home and they told her not to talk to the young man, but she continued to sneak around and continued the relationship with him after they told her not to.

The director of the medical facility reported the above incidents of abuse to the New Jersey Department of Children and Families on January 24, 2024. During the recorded telephone conversation between the director and a representative of the New Jersey Department of Children and Families, the director told the representative that a member of the school should have already made the notification but that he was just following up. The representative stated that no one from the school had notified the department. The representative continued to do a search on their system for school disclosure while talking to the director. No disclosure from the school was located. The New Jersey Department of Children and Families notified the Atlantic County Prosecutor's Office the same day.

Later that night on January 24, 2024, a member of DCPD interviewed J.S. and her brother, M.S. These interviews took place at the Small residence. DCPD stated that when they

arrived to speak with J.S. both Defendants were home and were present during the interviews. According to DCPD, Mrs. Small knew DCPD would be reporting to her residence to speak with J.S. because Mrs. Small's "good friend" had told her about DCPD involvement. During the interviews, both J.S. and M.S. denied the abuse allegations. DCPD stated J.S. told them that she made the allegations up because she was mad at her parents for taking her phone away and neither parent agreed with the relationship J.S. had with her boyfriend. J.S. denied disclosing physical abuse to anyone at the high school two days prior. J.S. stated that the first person she disclosed to was a therapist on January 23, 2024. Mrs. Small was unaware J.S. made a disclosure to the therapist on January 23, 2024.

On January 25, 2024, detectives from the Atlantic County Prosecutor's Office reported to the Atlantic City High School to interview J.S. During the interview, J.S. told them she knew why they were at the school to speak with her. She told detectives that she was mad at her parents for not allowing her to go to Crab Du Jour, via Uber, with her friend, a few weeks ago. She stated that she made the allegations up because of this and said no physical abuse occurred. J.S. was asked if she was ever hit by her parents and she stated no.

J.S. stated that first person she talked to about the physical abuse was her therapist. J.S. denied disclosing to anyone at school about these allegations. She stated when she disclosed the abuse, she was on Zoom meeting with her therapist in her bedroom. J.S. stated no one else was in her room when she disclosed this to her therapist.

J.S. was asked if she spoke with DCPD on January 24, 2024, and she stated yes. J.S. stated that when DCPD arrived at her home, she was out with her aunt. J.S. stated her aunt received a phone call, she didn't know who called her aunt, and later told her she needed to get home because DCPD was there to speak to her. J.S. told DCPD that she made the allegations up and she was not being physically assaulted.

Detectives told J.S. that they spoke with DCPD prior to speaking with her. They asked about her relationship with the juvenile male with the initials E.L. and if her parents took her phone away due to some concerning text messages found. J.S. denied her parents took away her phone and continued to say her parents are OK with the relationship with E.L. She stated that the last time she spoke with E.L. was yesterday through Instagram.

On Friday, January 26, 2024, detectives met and interviewed E.L. He stated he had been dating J.S. for approximately 9 months and had a good relationship with J.S.'s parents until early December 2023.

E.L. stated the last time he saw J.S. in person was early December 2023. He stated sometime in early December 2023, J.S.'s parents went through her cellular phone and found out details about the relationship, which led to her cell phone being taken away from her. E.L. advised that her parents were against this and did not approve of their relationship.

E.L. also stated that J.S. was able to continue her communications with him via another cellular device she owned without her parents' knowledge. E.L. stated that these communications which were mainly via video chat like FaceTime, Instagram, etc. He also stated J.S. was being verbally, mentally, and physically abused by her parents. E.L. stated during the

week of December 10, 2023, he witnessed over the video chat on different occasions how her father screamed at her and was physically abusive specifically by choking her. He described J.S.'s clothing as being ripped, and her body bruised after the abuse incidents.

E.L. also stated that on January 13, 2024, there was a scheduled event in the early morning called a "Peace Walk," in which Mr. Small to attend. E.L. stated that J.S. did not want to attend, but her father became physically violent specifically by beating her with a broom. E.L. stated that J.S. showed him via video chat the long grayish colored broom handle used to beat her. He also stated the broom handle was bent.

E.L. further stated he has in his cellular devices and an iPad several recordings of many of those incidents mentioned above. Some of those recordings were video/audio and photographs showing J.S.'s injuries.

E.L. showed the detectives, utilizing his cellular device, several photographs of J.S.'s injuries. The photographs revealed different body parts with what appeared to be swellings, scratches, bruising, and hair loss.

E.L. told detectives that he told his mother sometime in December 2023 about J.S.'s parents being abusive towards her.

On January 26, 2024, detectives spoke with E.L.'s mother. She told them E.L. disclosed to her a few weeks ago that J.S.'s parents initially were verbally and physically abusive towards J.S. E.L. told detectives J.S.'s parents did not know that she was on the video call with E.L. when she was being abused.

On January 27, 2024, detectives extracted the contents of E.L.'s cellular phone and confirmed that those same images shown to detectives by E.L. during the interview on January 26, 2024, showing J.S.'s injuries were found in the extraction report of his cellular phone.

On January 28, 2024, detectives extracted the contents of E.L.'s iPad. Three images dated January 14, 2024, containing text messages between J.S. and E.L. were located capturing the following text message conversation:

J.S.: I didn't wan wake up so she kicked up and I fell on my face. Like my body is sore from head to toe.

E.L.: off ya bed.

J.S.: and I have bruises on my shoulders. Yes. From my dad. On each side.

Detectives located numerous video clips during the iPad extraction. These recordings appeared to be made from a screen video recording application or saved utilizing one of the devices from the video chat. The videos show a 50/50 split screen, each showing their live view of the video chat from their respective devices. Several of the video clips capture an incident around January 3, 2024, between Mr. Small and J.S. A portion of the incident is detailed below:

M.S.: She's the problem!

J.S.: (whispering to E.L. over video) I'm scared

M.S.: (J.S.'s name), don't make me hurt you.
 J.S.: Hurt me, that's all you do!
 M.S.: Don't make me hurt you.
 J.S.: That's all you do. That's all you do anyway . . .

Moments later the argument continued:

M.S.: Sit down. I said sit down!
 J.S.: Stop pushing me!
 M.S.: I'm telling you, you're going to do harm to yourself if you get in my space again.
 J.S.: You always harm me anyway. Hurt me.
 M.S.: I'm gonna hurt you.
 J.S.: Hurt me. Hurt me.
 M.S.: I'm gonna hurt you. Okay.
 J.S.: Hurt me . . . 'Go to school, what happened?
 M.S.: OK, tell them. I don't care. What are they gonna do to me? What are they gonna do to me?
 J.S.: Can you please move so I can go to school? Stop pushing me! You keep pushing me. Stop!
 M.S.: Sit down. I'll smack that weave out ya head.
 J.S.: Please stop pushing me in my chest.
 M.S.: I don't care where I push you at . . . I'm going to earth slam her down the steps! Come past this line and I'm gonna grab you by the head and throw you on the ground! Nothing is going to happen to me!

Several of the video clips capture an incident around January 7, 2024, between Mrs. Small, J.S.'s grandmother ("S.F."), and J.S. A portion of that incident is detailed below:

L.S.: You're still talking!
 J.S.: Get off of me! Get off of my neck!
 L.S.: You still talking little girl!
 J.S.: Get off of me, you hit me.
 S.F.: A little punch in the eye ain't going to stop her.
 J.S.: You punched me in my mouth . . . Get off of me!
 L.S.: who you telling to get off of you girl! You don't run me. You don't run me. And I'm gonna touch you whenever I want to touch you.

Several text messages between J.S. and E.L. were also recovered from E.L.'s iPad extraction. On January 14, 2024, at approximately 4:00 AM, the early morning after the alleged broom incident the day before, J.S. texted E.L. photographs of injuries to her forehead and cheek. She also texted E.L. a photograph of a gray broom head.

On January 24, 2024, at approximately 3:00 PM, the same day that DCPD went to interview J.S. at her home, J.S. texted E.L. that she also disclosed the abuse to "the lady in the teen center . . . Dr. Davis . . . and she's also reporting it."

Prior to the DCPD interview, at approximately 9:00 PM, J.S. texted E.L. that her parents were mad at her because of “diffvce or whatever.” DCPD was formerly known as DYFS.

J.S. continued to send a series of text messages stating that she is going to be sent “outta state in a foster home . . . with no contact with nobody” and that “Davinee took me to her house cs (because) I was arguing w (with) my dad.” And that “my dad keep blaming me, said everything is my fault.” She texted; “I’m scared what about what if I to get sent away. I just wanted all to blow over and go away.” E.L. then sent J.S. a series of ten photographs depicting injuries sustained by J.S. E.L. then texted, “and show when she pulled ya hair out.”

On January 30, 2024, detective received the medical records for J.S. when she was admitted to the hospital on Tuesday, January 16, 2024, for a head injury. Video surveillance from the hospital was also obtained. The video showed J.S. and Mr. Small arriving in what appeared to be a black SUV and then both entering the hospital at approximately 10:00 AM. The video surveillance also revealed that Mrs. Small later joined Mr. Small and J.S. at the hospital.

The medical report stated that J.S. went to the hospital for a head injury she suffered three days prior, that is, January 13, 2024, the same day J.S. told her therapist that she was knocked unconscious by her father after he hit her with her broom. J.S. had told the treating nurse at the hospital that she hit her head on a window and passed out when she was playing with her younger brother. Mr. Small was present and confirmed this version of events to the nurse. Her diagnosis from the hospital with a head injury and syncope (loss of consciousness).

On January 31, 2024, detectives reinterviewed J.S. after reviewing the text messages, photos, and videos between her and E.L. During this video recorded interview, J.S. disclosed being physically abused by her father and mother on multiple occasions during the months of December 2023 to January 2024, while inside the residence.

J.S. stated that during one of the incidents, her father hit her approximately three times on her face using a broom and as a result of this, she passed out. J.S. advised that due to losing consciousness and sustaining injuries to her face, not long after the incident her parents took her to the ARMC-City Division Hospital in Atlantic City, New Jersey to be treated.

J.S. stated on another occasion, in December 2023, her mother punched her on the chest multiple times leaving marks by her breast area as well as being struck by her mother's hands. J.S. provided detectives photos of these injuries.

J.S. stated that her boyfriend, E.L., had food delivered to her residence and her mother found out. J.S. stated her mother then threw the food outside her residence and the situation escalated. J.S. stated her mother dragged her out of her bedroom into the grandmother's bedroom by pulling her hair extensions. J.S. stated that she lost her hair because of the pulling. In addition, J.S. stated that her mother used a belt to strike her on her shoulders leaving welts. J.S. stated she was wearing a tank top during the incident. J.S. said there were photos of these injuries on her phone.

Detectives played the video clip of the incident between J.S. and Mrs. Small from January 7, 2024. J.S. told detectives that her mother hit her in the face three to five times during that incident.

J.S. stated on another occasion her father hit her on her legs with his hands leaving bruising in that area of her body while she was sitting on a barstool. This incident occurred in her father's "man cave." J.S. provided detectives photographs of her injuries using her cell phone.

J.S. stated that the videos found on E.L.'s iPad were recordings of some of those incidents mentioned. The voices of J.S.'s father, mother, grandmother, and at times her younger brother can be heard throughout the video.

J.S. stated that she not only text messaged E.L. using her current cell phone, but also shared with him via text multiple photos showing her injuries from the abuse. As J.S. was showing the images to detect his, the phone lost battery power.

J.S. stated that prior to the telehealth video chat on January 23, 2024, she disclosed the abuse to an Atlantic City High School employee.

Detectives retrieved J.S.'s cellular phone for forensic examination.

Instant messages between J.S. starting from January 23, 2024, at approximately 9:00 PM, revealed E.L. writing, "choking you," "slamming you," "and you got video evidence" and "photos" and "they tryna put you on drugs." Then the messages continued with the E.L. writing, "get off y'all phone," and "stay muted" while J.S. replied with, "I think he's coming upstairs."

On February 1, 2024, detectives met with J.S. at Atlantic City High School to return her cell phone and speak with her for clarification from her previous interview. J.S. provided a more detailed video recorded sequence of events that led to her becoming unconscious on or around January 13, 2024, as a result of her father striking her multiple times on her head/face area with a broom. J.S. stated her father found the broom in her bedroom because it was left when she was cleaning. J.S. stated she was inside her bedroom and being physically abused. J.S. further stated that when she regained consciousness, her father, her mother, and her younger brother were standing over her. J.S. stated that she heard someone saying to bring water and then in a recriminatory tone her mother told her father, "you need to stop, you're doing too much," in reference to hitting her and that it was wrong what he was doing to J.S.

On February 5, 2024, detectives interviewed Toria Young. Ms. Young works as a main office secretary at Atlantic City High School. Ms. Young is also J.S.'s older cousin. Ms. Young stated that J.S. was dealing with some major issues that have caused a conflict between her personal life, school, and her boyfriend. She confirmed that there was a lot of contention between J.S. and her parents due to their disapproval of her boyfriend.

Ms. Young stated that J.S. disclosed to her that she had been beaten by her father. Ms. Young witnessed an injury to J.S.'s face in mid-January 2024. She had also seen bruises on J.S.'s arm. She said that J.S. and her parents have been having problems like this for the past two months.

On February 16, 2024, detectives from the Atlantic County Prosecutor's Office interviewed Director Andrea Davis of the AtlantiCare Teen Center. The Teen Center is located inside of Atlantic City High School and provides support services for students. Dr. Davis explained that J.S. has been receiving services from the Teen Center within the last few months.

She stated that recently J.S. had come in on a few occasions for wellness check-ins to process some of the things she had been going through. Dr. Davis stated that in late January 2024, J.S. has told Dr. Davis that she was having problems with her parents specifically interactions with her father. She had told Dr. Davis that she had been hit by her father at home that left a mark on her face. J.S. did not go into other details about the incident. J.S. further told Dr. Davis that she disclosed this information to an Atlantic City High School employee. Dr. Davis stated that if J.S. had not already told someone else about the abuse then she would have made a report to DCPD.

On February 21, 2024, detectives reviewed the Instagram social media account records for J.S.

On December 8, 2023, J.S. had a direct message conversation on Instagram with the person later identified as a juvenile with the initials M.C. That message is below:

J.S.: can I stay w (with) you wherever you go? Cs (because) I'm not staying home.
 M.C.: I'm going w (with) my sister's boyfriend or to the movies they can get in trouble for that . . . just asked to come over.
 J.S.: Okay well I'm not going home if they ask don't tell them.
 M.C.: do not do you not know what your father is?
 J.S.: Idgaf (I don't give a fuck) is he was the president . . . shit don't phase me.
 J.S.: (later in the conversation) I live in a house not a home . . . my dad called me a nobody
 M.C.: omg
 J.S.: cs (because) I'm not cheering . . . like they physically mentally and emotionally abuse me.

On December 13, 2023, J.S. and M.C. had another direct message conversation on Instagram:

M.C.: who phone you on . . . that's a mark on your arm bru?
 J.S.: old phone I'm sneaking it got it take ts (this shit) to school tomorrow.
 J.S.: bruise . . .
 M.C.: from?!
 J.S.: mother.

On March 25, 2024, detectives obtained a sworn recorded statement from M.C. During the statement, M.C. confirmed Instagram messages as being between her and J.S.

On December 21, 2023, J.S. had direct message on Instagram with another user. A portion of that direct messages below:

J.S.: siyaa you said you wanted to ttm (talk to me) but I'm on punishment cs (because) I snuck my boyfriend in the house but they only found out cs (because) my mom went threw my phone when I was sleep and they was abusing me idc (I don't care) they dda (didn't do anything) was then didn't go to school for like 3 days had doctors appointments testing me for

everything in the book my mom don't fw (fuck with) with neither my dad they keep bashing me and I'm tired of it like they need to leave me alone . . . but my mom keeps calling me a loser and a disappointment because of it . . .

On December 22, 2023, J.S. had a direct message on Instagram with another user. A portion of that direct message is below:

J.S.: hey sister, so if you been trying to text me I haven't had my phone so basically my mom went through my phone when I was sleep and found out I snuck chummy in my house yea I was wrong for it they told me to stop talking to him and I didn't want to because he is literally my safe person and I feel safe and comfortable and happy with him so he order food cs (because) I haven't ate and she threw it in the street then she abused me her and my dad like beat me bruises all over had so many appointments lots of name calling they called the cops on me literally said I literally said can I go leave get away so recently I got suspended for defending myself cs (because) this girl came up to me popping shit and they are blaming Chummy for it and it's not his fault I just want to leave honestly don't want to stay here like I can't I don't feel safe like I've been mentally emotionally verbally and physically abused and it's a lot and I'm overwhelmed and I keep cry[ing] every night having headaches they calling me mental and crazy saying ima disappointment all this stuff sis I need help my bags is packed I'm so ready to leave just wanted to let you know what was going on . . . and it's like all the pictures and stuff but they are never there for me mentally and physically like didn't even have Thanksgiving together like this is not a family at all and ima say whatever ima say to them however they take it cs idc atp (because I don't care at this point) like take it how you like take it how they want urb (you are bad) . . . they took me to the doctor . . . ran all these tests... took mad blood out . . . they the pediatrician saying ion (I don't) love myself and I'm crazy and all this other stuff . . . trying to put me on meds . . . saying I'm dumb ima zombie i'm a disappointment . . . my dad said he wants another daughter cut me off multiple times.

On January 4, 2024, J.S. had a direct message on Instagram with another user (S.M.). A portion of that direct message is below:

S.M.: Excuse me why ian see you
 J.S.: didn't want my dad to take me to school so we was arguing . . . shit ain't sweet with him
 S.M.: What happened
 J.S.: cs (because) he said im taking you to school and I said no, I'm taking the bus and he was standing by my door and I kept pushing him so he can move and then he pushed me and I said ion wan be w you (I don't want to be with you) and he said im a nasty disgusting person and ima drop out

and he call me dumb and he gon send me away all this bs (bullshit) like then he said he was gon (going to) throw me down the steps well “earth slam” and he said I’m not taking you and I changed my clothes and layed down . . . yup ain’t playing w (with) him at all.

On March 28, 2024, detectives conducted a court approved search of the Defendants’ residence. Detectives located a handwritten letter dated December 28, 2023, from J.S. to her parents behind clothing in Mrs. Small’s bedroom closet. The beginning of the letter stated, “honestly, I’m going for peace, I keep disappointing you all, I’m just going to go. Must hate me for not being perfect. Getting called dumb, crazy, mental and sick hurts but that’s okay, I guess I’m the biggest disappointment for defending myself.”

ARGUMENTS OF THE PARTIES

I. Indictment Number 24-09-2951

A. Marty Small (Count 2 Terroristic Threats)

1. Defense’s Argument

a. The De Minimis Infraction Statute

The Defense urges the Court to dismiss Count 2 of Indictment Number 24-09-2951 charging Mr. Small with Terroristic Threats (Third Degree) in violation of N.J.S.A. 2C:12-3a as a *de minimis* infraction.

The Defense asserts that the Mr. Small’s conduct is too trivial to warrant condemnation of conviction. According to the Defense, there is no risk of harm to society as Mr. Small was attempting to control and reprimand his sixteen-year-old daughter, in his own home, who defied his every word and engaged in verbal disputes with multiple Small family members over the course of 30 minutes, and is not the conduct sought to be prevented by the terroristic threat statute.

The Defense contends that the recordings provided by the State in discovery clearly show that the January 3, 2024, incident is nothing more than Mr. Small reprimanding his daughter. The Defense notes that a recording reveals that J.S. instigates Mr. Small to “hurt her” after he “calmly” says “don’t make me hurt you.” The Defense argues that J.S. knew that Mr. Small was not going to hurt her because she brushed off his comments, and as described by the Defense, “basically told him to ‘bring it on.’”

Furthermore, the Defense argues that Mr. Small’s statements are conditional comments (i.e. that he’d “smack the weave out of [J.S.’s] head” if she did not “sit down”) that do not amount to an intent by Mr. Small to terrorize J.S. with a crime of violence. According to the Defense, it was a statement of “expressing fleeting anger” while J.S. acted out of control and argued with multiple family members in the Small household over the course of 30 minutes. The Defense argues that Mr. Small’s statements were made “merely to alarm” and that cannot lead to a conviction of a crime of violence. The Defense further states, “[h]ow many of us have had our parents threaten to pull out hair, and how many of our parents have actually pulled our hair? A weave is not even real hair, and the smacking of a weave [is] not a crime of violence.”

Lastly, the Defense argues that Mr. Small's "earth slam" comment during this multi-party argument on January 3, 2024, was not communicated directly to J.S. The Defense explains that Mr. Small made the comment to his mother-in-law in a state of "fleeting anger" half-way through the thirty-minute event. According to the Defense, Mr. Small's comment that he'd "grab [her] by the hair and throw [her]" if she "[came] past this line" was conditional; too trivial to warrant conviction; and did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense.

b. The Terroristic Threat Statute

The Defense argues that where Mr. Small was expressing "transitory anger" during an instance of parental reprimand within his own home while J.S. objected to his every instruction and verbally argued with multiple other family members on January 3, 2024, were never intended to be within the reach of criminal law. The Defense asserts that none of Mr. Small's comments amount to terroristic threats and the "true threat" fails for:

(1) J.S. was unphased by Mr. Small's comments. She argued and objected to Mr. Small's every word, no matter what he said, and repeatedly instigated Mr. Small to "hurt her." (2) Mr. Small's comments were conditional. The "smack ya weave" comment was conditioned on J.S. not complying with Mr. Small's instructions to sit down. The "grab your hair and throw you" comment was conditioned on J.S.'s walking past the line. (3) The "earth slam" comment was not even directed to J.S. (4) January 3, 2024, is the only date provided by J.S. wherein terroristic threats were allegedly made by Mr. Small—J.S. did not identify additional past dares alleging the same conduct. (5) J.S. had no reason to believe that Mr. Small had a propensity to engage in violence—in fact, her reactions to Mr. Small's comments show the opposite—she reacted the way she did because she knew Mr. Small, her father, wasn't going to do anything to hurt her.

Therefore, the Defense urges the Court to dismiss Count 2 against Mr. Small charging him with terroristic threats.

2. State's Argument

The State submits that Mr. Small's reliance on N.J.S.A. 2C:2-11 is misplaced as there is nothing trivial about an adult male threatening harm against his daughter, a harm that subsequently materialized such that dismissal would jeopardize the text and intent of the statute. The State argues that the Defense overlooks that the gravamen of the statute is to prevent absurd applications of the law for conduct that actually occurred. According to the State, Mr. Small attempts to backpedal from his activity of threatening to hurt his daughter and "earth slam" her by setting forth a favorable narrative that ultimately materialized when the Defendant struck J.S. with sufficient force to cause a concussion, then stood over his daughter when medical attention was needed as further exhibition of his control.

Additionally, the State asserts that the Defense fails to consider the risk of harm to which society is exposed by Mr. Small's conduct as required by New Jersey case law. Therefore, the State contends that Mr. Small threatened J.S. on January 3, 2024, then carried out the threat on January 13, 2024, with the use of a broom stick. According to the State, Mr. Small repeatedly

denied the use of corporal punishment to DCP, but now asserts that his comments were mere attempts to control and reprimand J.S.

As to the Defense's claim that Mr. Small's conduct was "transitory anger," the State argues that evidence of prior instances where he expressed similar anger, indicates that this anger was not fleeting, nor an instance of parental reprimand but rather a continuation of behavior. The State further contends that the Defense disregards the entire context surrounding the threats against J.S., who is less than half of his size, which would not only erode the plain text of the intent of the Terroristic Threat statute, but also give the impression that Mr. Small is entitled to a "slap on the wrist" due to his position and status, whereas others must proceed with traditional prosecution.

Therefore, the State submits that when viewed in the entirety of the factual background of this case, the reasons set forth by the Defense are not supported by the record and dismissal is not warranted as a *de minimis* offense.

B. La'Quetta Small (Count 1 Endangering the Welfare of a Child)

1. Defense's Argument

The Defense urges the Court to Dismiss Count 1 of the Indictment charging Mrs. Small with endangering the welfare of a child as *de minimis*. The Defense contends that there is no evidence of any injury to harm J.S. in early December 2023 or January 2024 and no evidence of serious or significant bodily injury to J.S. According to the Defense, the lack of documentation and the audio recording clearly reveal that this situation involves a mother trying her best to discipline a difficult and rebellious teenager. Additionally, the Defense contends that Mrs. Small's alleged actions occurred only in two brief moments of J.S.'s sixteen years, and the instances were short in duration.

The Defense provides the following evidence as reasons that this Court should dismiss the charges against Mrs. Small under the *de minimis* statute:

- These charges only allege two or possibly three instances lasting a matter of seconds.
- The incidents occurred within the confines of the family home with other family members, including the maternal grandmother and brother, present and involved.
- The incidents were fleeting moments of a heated family verbal dispute.
- Matters such as this are heard and resolved historically in the Family Part of the Superior court with the involvement of DCP.
- This matter should be resolved as a family needs services that would involve the mother, father, daughter, and son.
- Most of the arguing was verbal, with minimal physical contact
- Mrs. Small is a respected member of the community, and there have never before been any allegations of abuse or involvement of DCP with the family.

- All momentary incidents occurred within the home and did not impact the community.
- There was no “punishment” inflicted by Mrs. Small. Any verbal arguments between La’Quetta and J.S. were because a sixteen-year-old daughter was acting belligerent and rebellious and in ways that endangered her life.
- This case is politically motivated because Marty and Mrs. Small are vocal and active in the Democratic Party. The Prosecutor, William Reynolds, was appointed with the full support of a Republican State Senator.
- Mrs. Small was dealing with a teenage daughter who was acting out with a boyfriend in a variety of ways, and was skipping school. Mrs. Small’s actions toward her daughter were driven by love, concern, and the desire to protect the welfare of her child. There is no evidence of any ill intent to cause harm or impairment.

The Defense further argues that two, possibly three instances were merely a mother engaging in disciplinary action toward her daughter to protect her daughter from a dangerous, toxic relationship and Mrs. Small’s actions did not actually cause or threaten harm sought to be prevented by the law defining endangering the welfare of a child, or if it did, it was only to an extent too trivial to warrant condemnation of the conviction. Mrs. Small asserts that she is entitled to a *de minimis* dismissal under subsection (b) of the statute because the conduct ascribed to her is so minor and, even assuming it did occur, is permitted by the law and outside the scope that the legislature intended. The Defense argues that Mrs. Small’s actions were of such a minor degree and done only based on the love and concern that she has for her daughter that Mrs. Small should not suffer further criminal prosecution and be branded a child abuser.

Lastly, the Defense notes issues involving J.S.’s current living situation with her boyfriend, E.L.

2. State’s Argument

The State asserts that the court can see that the very harm sought to be prevented through the crime of endangering occurred such that the crime is not to *de minimis*, but rather worthy of criminal prosecution. The State argues that examining the circumstances surrounding the offense, Mrs. Small repeatedly engaged in assaultive behavior towards her own daughter using violence and weapons causing physical mental and emotional injury. The State contends that the allegations were corroborated by recordings of E.L. who witnessed over video chat various occasions where both defendants were physically, mentally, and emotionally abusive towards J.S. According to the State these incidents as testified in the grand jury not only should defendant knowingly caused the child harm through J.S.’s frequent protestation of harm occurring. Mrs. Small knew such conduct would cause a child harm that would make the child abused or neglected as required by the statute.

Further, the State asserts that while defendant may attempt to couch her actions as isolated and fleeting, Mrs. Small’s actions occurred over a 2-month period and simply do not

constitute the incidental contact warranting a dismissal, but rather constitute the theft of a childhood rattled with physical, mental, and emotional harm.

The State emphasizes that the Defense overlooks that the crime of endangering a child's welfare seeks to guard against harm by proscribing the offender from unreasonably inflicting or allowing to be inflicted harm or substantial risk thereof including the infliction of excessive corporal punishment. Thus, the State asserts that Defendant not only inflicted harm on J.S. by her own actions but also allowed her co-defendant to do so, thereby imposing criminal liability on multiple bases.

The State acknowledges that Mrs. Small is the Superintendent for the Atlantic City Public Schools who holds several degrees including a doctorate in educational leadership. As such, she should be well aware of the physical, mental and emotional struggles of youth. Yet, she engaged in an all-out brawl with her own daughter on multiple occasions by pulling her by the hair, grabbing her by the neck, and striking her with a belt despite numerous protests by J.S. for Defendants to stop. She therefore knew or should have known the law was being violated and was well aware of the consequences.

Moreover, the State submits that the Defendants posit that these charges are politically motivated because Defendants are members of the Democratic Party while the prosecutor is an independent nominated a by a Republican state senator. The Defense argues these circumstances tend to show political motivation.

The State, therefore, contends that when viewed in the entirety of the factual background of this case, the reason set forth by Mrs. Small simply do not support the dismissal of the charges and such action would not be warranted. Accordingly, the State asserts that the Defendant's reliance on a *de minimis* motion is misplaced, and there is nothing trivial or absurd about prosecuting an adult female who repeatedly threatens and causes harm to her 16-year-old daughter that would warrant dismissal of the indictment.

II. Indictment Number 24-12-3927

A. Marty Small (Count 1 Witness Tampering)

1. Defense's Argument

a. De Minimis Statute

The Defense asserts that Mr. Small's alleged conduct is too trivial to warrant the condemnation of conviction. The Defense notes that although there is no consistent approach to determining which factors are relevant to an analysis of the triviality aspect of the statute, the primary factor to be taken into account is the risk of harm to which society is exposed by Mr. Small's conduct. According to the Defense, there is no risk of harm to society because Mr. Small did not tell J.S. to "twist up" the details, rather that was J.S.'s rendition of her opinion after the fact and based on the questioning put to her by ACPO detectives. The Defense characterizes J.S.'s statements as an opinion that is irrelevant.

b. *The Witness Tampering Statute*

The Defense submits that no reasonable person would believe that Mr. Small's alleged conduct would cause J.S. to testify falsely. The Defense argued that (1) J.S. had no real recollection of the alleged event--she told ACPO at least 8 times that she did not remember the interaction; (2) J.S. advised ACPO of her opinion of Mr. Small's alleged conduct at least one month after the fact and was guessing as to what he said to her—there was no verbatim “twist up” statement made by Mr. Small; (3) J.S. advised ACPO that Mr. Small never threatened her; (4) J.S. advised ACPO that Mr. Small never threatened her; (5) J.S. claimed that after she told Mr. Small no, Mr. Small did nothing; (6) J.S. affirmatively told ACPO she felt safe at home; (7) the date of September 15, 2024, as to when the alleged conduct occurred was pulled out of “thin air”; and (8) in January of 2024, J.S. told medical personnel at AtlantiCare that she tripped and fell when she had already said she tripped and fell nine months earlier.

Therefore, the Defense asserts that based on all of the foregoing facts, no reasonable person could have believed that the ambiguous, unclear, zero-context interaction between Mr. Small and J.S. would have caused J.S. to testify falsely.

2. State's Argument

The State submits that Mr. Small's request for dismissal is misplaced because that statute is used when a defendant's conduct did not actually cause harm to threaten the harm sought to be prevented or did so only to an extent too trivial to warrant a conviction. The State argues that a defendant, in the midst of a pending arraignment on child endangerment, aggravated assault, and terroristic threat charges and a future criminal trial where J.S. will testify against him, significantly undermines the integrity of the criminal justice system.

The State contends that the Defense's submissions contain multiple misstatements of the facts in this case. According to the State, Mr. Small (1) asked J.S. to “do him a favor” (2) and “twist up” the story she told police about how she sustained her head injury (3) to say she ran and fell causing her own injury (4) asking “can you do that for me” (5) in the family home where the abuse occurred (6) at the same time the grand jury indictment was released to the public charging Mr. Small endangering the welfare of a child, aggravated assault, and terroristic threats, and (7) a few weeks before Mr. Small was to appear for his arraignment on those charges, this moving the case forward to trial, where (8) J.S. will testify in said trial.

In sum, the State asserts that the *de minimis* motion is not applicable because there is a harm sought to be prevented. As such, Mr. Small, knowing official court proceedings were in motion, knowingly asked his victim to “twist up” what she told police and say she tripped and fell causing her head injury “to do him a favor.” Therefore, the State urges the Court to deny Mr. Small's motion.

LEGAL ANALYSIS

Dismissal on *de minimis* grounds is based upon N.J.S.A. 2C:2-11, which states,

The assignment judge¹ may dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

- a. Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
- b. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
- c. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense. The assignment judge shall not dismiss a prosecution under this section without giving the prosecutor notice and an opportunity to be heard. The prosecutor shall have a right to appeal any such dismissal.

For the purposes of a *de minimis* motion, the court assumes that the conduct charged actually occurred. State v. Cabana, 315 N.J. Super. 84, 86 (Law Div. 1997), *aff'd*, 318 N.J. Super. 259 (1999). This means that a defendant urging *de minimis* dismissal must acknowledge that the alleged conduct does technically establish commission of the charged offense. State v. Nevens, 197 N.J. Super. 531, 538 (Law Div. 1984) (citing State v. Brown, 188 N.J. Super. 656, 671 (Law Div. 1983)).

In deciding the motion, the court should consider the nature of the defendant's conduct and the nature of the attendant circumstances. Evans, 340 N.J. Super. 244, 249 (App. Div. 2001); Cabana, *supra*, 315 N.J. Super. at 86. The Appellate Division has determined the most important factor to consider in the *de minimis* analysis is the risk of harm to which society is exposed by defendant's conduct." Evans, 340 N.J. Super. at 253 (following State v. Zarrilli, 216 N.J. Super. 231 (Law Div.), *aff'd*, 220 N.J. Super. 517 (App. Div. 1987)). The purpose of the *de minimis* statute is to "avoid an absurd application of the penal laws." Id. at 248.

I. Marty Small Indictment No. 12-09-2951 (Count Two, Terroristic Threats)

Based on the totality of the circumstances and applying the applicable legal standards set forth herein, the Court concludes that Mr. Small has failed to establish any basis to dismiss the indictment or the complaints on basis of *de minimis* grounds. Mr. Small claims that the charges should be dismissed under subsection (a) of the *de minimis* statute stating the conduct was merely a dispute between family and not actually a threat of harm toward J.S. Neither of these contentions meet the basis for a dismissal on *de minimis* grounds.

¹ The Assignment Judge has delegated his authority to the Presiding Judge of the Criminal Part to consider the instant *de minimis* application.

The First Amendment directly prohibits the federal government from infringing upon speech, and incorporated through the Fourteenth Amendment, applies to state and local governments. Gitlow v. New York, 268 U.S. 652, 666 (1925); See U.S. Const. Amend. I; U.S. Const. Amend. XIV. Threats of violence, otherwise known as “true threats,” are immune from First Amendment protection. Virginia v. Black, 538 U.S. 343, 359 (2003) (holding that states prohibiting threats directed at a person or group with the intent to cause fear of bodily harm or death is not violative of the First Amendment); See Watts v. United States, 394 U.S. 705, 708 (1969) (holding a true threat of harm, rather than political hyperbole, to inflict bodily harm upon the President of the United States is not protected free speech). In order to convict an individual for making true threats, a state must show that the speaker had a subjective understanding as to whether the person to whom his words were directed would perceive them as threatening. Counterman v. Colorado, 600 U.S. 66, 77 (2023). In Counterman, the Court further explained the *mens rea* of recklessness would suffice for this showing adding that, “[a] person acts recklessly in the most common formulation, when he ‘consciously disregard[s] a substantial [and justifiable] risk that the conduct will cause harm to another.’” Id. at 78 (quoting Voisine v. United States, 579 U.S. 686, 691 (2016)).

The New Jersey Constitution provides greater protections than its federal counterpart. State v. Fair, 256 N.J. 213, 228 (2024) (citing State v. Schmid, 84 N.J. 535, 557 (1980)). Article I, Paragraph 6 of the New Jersey Constitution provides, in relevant part:

Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

N.J. Const. Art. I para. 6. The New Jersey Constitution “goes beyond the text of the First Amendment and is ‘broader than practically all other[]’ free speech clauses ‘in the nation.’” State v. Fair, 256 N.J. at 231 (quoting Green Party v. Hartz Mountain Indus., Inc., 164 N.J. 127, 145 (2000)).

New Jersey characterizes terroristic threats as true threats immune from constitutional protection. Id. at 233. The statute provides:

(a) [a] person is guilty of a crime of the third degree if he threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in *reckless disregard* of the risk of causing terror or inconvenience . . .

(b) [a] person is guilty of a crime of the third degree if he threatens to kill another with the purpose to put him in fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out.

N.J.S.A. 2C:12-3 [emphasis added].

The Field Court adopted the U.S. Supreme Court’s decision in Counterman. Field, 256 N.J. at 233. The Court contemplated “whether a prosecution of terroristic threats under N.J.S.A. 2C:12-3(a) premised on a *mens rea* of recklessness is constitutional under the First Amendment

of the United State Constitution and Article I, Paragraph 6 of the New Jersey Constitution.” *Id.* at 219. The Court held that the understanding of recklessness in Counterman as “morally culpable conduct” in the context of true threats . . . is constitutionally sufficient for a prosecution of a threat of violence under N.J.S.A. 2C:12-3(b).” *Id.* at 234. As such, part (a) of the statute allows for a mens rea of recklessness, while part (b) requires a purposeful mental state.

In this case, the Defense has failed to show that Mr. Small’s conduct did not constitute terroristic threats or that Defendant’s conduct was too trivial to warrant conviction. As such, Count 2 of the indictment must stand and dismissal on a *de minimis* basis is not warranted. The Defense maintains that Mr. Small’s conduct was “transitory anger” expressive of a parental reprimand. However, the evidence here, giving the State the benefit of the assumption that the conduct charged actually occurred, bespeaks a palpably volatile exchange that shows more than a reckless disregard of the risk of causing terror in J.S. Mr. Small’s threats to “earth slam” a teenage girl, half his size, is not “trivial.” Mr. Small’s conduct appears clearly to have caused or threatened the harm sought to be prevented by the law prohibiting the communication of threats. Even in a domestic setting, where customary tolerance involving parental and familial interactions may admit to certain minor expressions of pique or emotion, there is nothing tolerable in making such graphic and excessive threats of violence.

II. Mrs. Small Indictment Number 24-12-2951 (Count 1, Endangering the Welfare of Children)

Pursuant to N.J.S.A. 2C:24-4(a)(2), child endangerment is defined as:

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974, c.119 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree.

[N.J.S.A. 2C:24-4(a)(2).]

A "child" is defined as "any person under 18 years of age." N.J.S.A. 2C:24-4(b)(2). The elements of endangering the welfare of a child pursuant to N.J.S.A. 2C:24-4(a)(2) requires proof that defendant: (1) had a legal duty for the care of a child, and (2) harmed the child, such that the child would qualify as an abused or neglected child under the law. N.J.S.A. 9:6-8.21, in pertinent part, defines "abused or neglected child" as including a child whose guardians inflict or allow to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ.

In the case at hand, Mrs. Small's actions are far from "trivial" as contemplated by the *de minimis* statute. The conduct captured in the video and audio recordings of the treatment of J.S. at the hands of her parents obtained by the State clearly provide a basis for a prosecution under the endangerment statute. Therefore, Mrs. Small has not established that her conduct did not constitute the offense of endangering the welfare of a child and seek dismissal on a *de minimis* basis. The evidence in this case appears to support the State's assertions that Mrs. Small engaged in aggressive physical contact with her daughter. Mrs. Small's conduct was more than "fleeting" or "trivial" and was of such a nature and degree to make J.S. an abused or neglected child. Considering the Defendant's conduct and the attendant circumstances, the Court concludes that Mrs. Small has failed to show that she is entitled to have the charge dismissed as *de minimis*. Rather, the Defendant's conduct exposed J.S., and society, to the very harm the Legislature sought to prevent by the endangering statute.

III. Mr. Small Indictment Number 24-09-3927 (Count 1 Witness Tampering)

Pursuant to N.J.S.A. 2C:28-5a(1), witness tampering is defined as:

Tampering. A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, he knowingly engages in conduct which a reasonable person would believe would cause a witness or informant to: Testify or inform falsely;

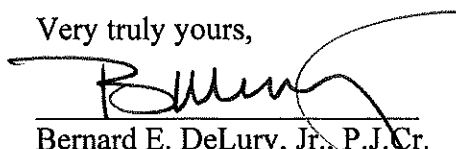
In the case at hand, Mr. Small's actions are far from "trivial" as contemplated by the *de minimis* statute. The facts alleged from the interview with J.S. indicate that Mr. Small attempted to convince J.S. to "twist up" her story. As such, Mr. Small's conduct is within the purview of the of the witness tampering statute. Therefore, Mr. Small cannot maintain that his conduct did not constitute the offense of witness tampering and seek dismissal on a *de minimis* basis.

Rather, Mr. Small's conduct, giving the State the benefit of the assumption that the conduct charged actually occurred, is precisely the conduct that the witness tampering statute seeks to proscribe. The Defendant's conduct with his daughter bespeaks a knowing engagement with J.S. to get her to change her story. Even if it is within the customary license or tolerance of society to permit very informal familial interactions, it is by no means ever proper or tolerable to use one's power and authority as a parent to interfere or attempt to thwart the criminal justice process by getting a child to "twist up" her reports of abuse to authorities.

CONCLUSION

The Court concludes that the Defendants' request to dismiss the offenses charged pursuant to the *de minimis* statute must be and hereby is **DENIED**. The Court has prepared, entered and attached an Order setting forth its decision.

Very truly yours,



Bernard E. DeLury, Jr., P.J. Cr.

BED/ep
Encl.