

Justin Carter: Criminalizing Free Speech, Facebook “Terrorism” in Texas

Justin Carter Met the American Police State In Texas, Then He Was Tortured

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You Think the Wall Street Journal has No Sense of Humor? Think Again.

On the Fourth of July - Independence Day - The Journal ran a freedom-oriented story with a headline that began: “Teen Jailed for Facebook Posting....”

In Texas last winter, a working 18-year-old was jailed, and is still being held on \$500,000 bail, because a Canadian woman reported a single, frivolous Facebook post that he had marked “LOL” (laughing out loud) *and* “jk” (just kidding). Ignoring those cues, local police went ahead and charged him with “terroristic threatening” — really? That is darkly humorous even in post-terrified America.

The Journal didn’t frame the story as a First Amendment travesty, however, even though by any rational measure, a Facebook posting is speech and the Journal, like most of the rest of us, has a thing about free speech sometimes.

In all too typical mass media fashion, the Journal framed the story with an irrelevant, sensationalist, semi-hysterical reference to the real shooting of real kids half a continent away, two months earlier, in a school in Newtown, Connecticut. The Journal omitted the possibility that Justin Carter was hardly aware of Newtown, but maybe that’s more dark humor.

Maybe He Was Unaware of the News, or Maybe He Was Referring to Syria

“Justin was the kind of kid who didn’t read the newspaper. He didn’t watch television. He wasn’t aware of current events. These kids, they don’t realize what they’re doing. They don’t understand the implications. They don’t understand public space,” his father, Jack Carter, told KVUE-TV in Austin on June 24. This was the first significant news coverage of the case, which has now gone national.

To be fair to the Journal in its unfair framing and lazy journalism, the Austin Police bought into the “Newtown Massacre” framing from the start, not bothering, apparently, to investigate whether that panic-reaction had any basis in Justin Carter’s reality. Or maybe the Austin police were being darkly humorous, too, since they didn’t bother to interview their “terrorist” suspect for a month. The New Braunfels police waited about the same length of time to search his apartment, where they reportedly found no weapons or any other incriminating evidence.

This sorry story of law enforcement over-reaction and incompetence began innocently enough in February 2013, when Carter and a friend, as they often did, were playing an online video game called “League of Legends.” The game involves other online players interacting in real time. It is in the nature of the game, apparently, to talk trash to anyone involved, including strangers.

One Person’s Trash Talk Turns Out to Be Terrorist Threatening in Texas

This time the trash talk spilled over onto Facebook, where someone apparently called Carter crazy or said he was “messed up in the head.” Carter’s mother, Jennifer Carter talked about the event to the website freetoplay.tv on June 29:

“February 13th was when he was playing League of Legends and I’m not sure, and no one seems to be sure, why it spilled over into Facebook, but it did. There were a few people involved in this argument and there was some post made on the site while they were playing and so when he was on Facebook the person whose Facebook page it was said ‘Well you’re f****d in the head and crazy.’ And Justin, if you knew my son, is incredibly sarcastic.

“He has a very sarcastic, dark sense of humor and he unfortunately said the equivalent of ‘Oh yeah I’m so messed in the head I’m going to go kill a kindergarten and eat their hearts.’ Immediately after his statement he posted ‘lol’ and ‘j/k’ and the argument continued from there, but the only evidence we have from the DA’s office is a screen capture of his statement and the previous statement. Just Justin’s and the previous statement.”

Lynching Is Easier with Limited Evidence and No Context

The nature of that online exchange is all there is to this case. Facebook has removed the full exchange from public view. The police and prosecutor have chosen to cherry-pick the exchange in their court filings, omitting any context and perhaps part of the post itself.

As CNN reported it: “According to court documents, Justin wrote ‘I’m f—ed in the head alright. I think I’m a (sic) shoot up a kindergarten and watch the blood of the innocent rain down and eat the beating heart of one of them.’ “

None of this would have mattered any more that the billions of other Facebook posts except that a Canadian woman, self-described as a “concerned citizen,” launched into vigilante mode and discovered that there was apparently an elementary school close to an address in Austin where Carter once might have lived. So she called the Austin police and made her accusation.

At the time, Carter was 18, working in San Antonio, and living in with a roommate in New Braunfels.

The Authorities Arrested Him at Work, then Acted as if it Was All Over

“The next day, February 14th, he (Justin) went to work,” his mother explained. “The Sheriffs came to his job and arrested him. Then he was transported from San Antonio to Austin because the woman in Canada found his father’s address where he used to live which is 100 yards from an elementary school. At that point, he sat in jail and bond set at \$250,000. His father and I don’t have that kind of money. We thought honestly that yeah that was a pretty bad thing that he said and we can see why they would be

concerned after the shooting in Newtown happened a couple months before. So ya everyone was on edge.”

Not unreasonably, Carter’s parents expected the police to question him, investigate, figure out that their son had a smart mouth, but wasn’t a threat to anyone.

“We thought that once the police talked to him, which we thought would be that day, they would understand it was a stupid comment that he made, a dumb joke, and once they searched his home they would see there were no weapons and he wasn’t a threat.”

Why Would Anyone Expect Police to be Conscientious or Thoughtful?

Instead the police did nothing. The prosecutor did nothing. No one in the government did anything, except let an 18 year old kid sit in jail where he was frequently attacked by other prisoners.

There was only one exception to the state doing nothing according to Jennifer Carter: “They went to his father’s house [in Austin] a week after he was arrested and asked did Justin live here which his father said no, and they asked if he had any guns or permits for guns which Justin’s father said no and that was it.”

No one questioned Justin Carter at all for almost a month. He remained in jail, essentially ignored, and no one explained why. His parents advised him not to talk to the police without an attorney present, but he ignored that advice. Eventually, according to Jennifer Carter:

“On March 13th he was questioned by the detectives and he thought best thing for him to do would be to tell the truth. He told them that yes he made the statement and it was a joke and I feel terrible. It was taken badly and I’m sorry for scaring people I didn’t mean to. I didn’t think people would see it or that anyone would be afraid of it. He told them that he did not live in Austin that he lived in New Braunfels and that was it.”

Waiting a Month for a Search Warrant - Standard Police Practice?

Also on March 13, the police in New Braunfels applied for a search warrant to go into Carter’s apartment there. In the search, the police found no weapons, explosives, manifestos of violence, or anything else to support the idea that the Facebook post was a real threat. The only evidence the police took from the apartment was Carter’s computer. A week later, the Comal County Court in New Braunfels issued an arrest warrant for Carter, who was still in jail.

During that same period, the state transferred Carter from jail in Austin to jail in New Braunfels, because that’s where he lived on February 13, and that’s where he was when he made the critical post. The state also asked the court to raise Carter’s bail to \$500,000, and the court granted the increase, even though Carter’s parents were unable to raise enough to meet bail at half that level.

At some point the court appointed an attorney to represent Carter because he couldn’t

afford one. On April 10, a grand jury indicted Carter for making a “terroristic threat,” a third degree felony under Texas state statute 22.07(a)(4-6), even though there’s no credible evidence that he meets any of the law’s six criteria for intent. Without intent, as defined by law, there is no crime. The charge carries a potential penalty of 2-10 years in prison and/or fine of \$10,000.

Some Indictments, as is Well Known, are Works of Fiction

The indictment claims that Carter intended – with a trash talk Facebook post to a stranger – to “cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service; place the public or a substantial group of the public in fear of serious bodily injury; or influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.”

In May, Carter’s court-appointed lawyer waived formal arraignment and a few weeks later Carter turned nineteen.

The prosecutor in the case, the Comal County Criminal District Attorney, is Jennifer Tharp, the first female prosecutor in the county. She was elected with about 81% of the vote in an uncontested race in 2011. The second oldest of 11 children, she described herself this way in campaign literature:

“I was born and raised in Comal County, my husband Dan was raised here, and almost all our immediate family live in this county. My husband and I will raise our two sons here and I am personally vested in making sure that our county remains as safe as it was when my husband and I grew up here. We have wonderful memories of growing up enjoying the freedoms that come from living in a safe community. My mission as Criminal District Attorney will be to fight to preserve those freedoms.”

County Prosecutor Jennifer Tharp Seemed to Want to Look Tough

She has taken a hard line on the Carter case, avoiding public comment and showing little sympathy for any of the case’s anomalies. At some point she offered Carter a plea bargain: a sentence of only eight years. Carter turned it down.

Carter turned it down even though he continued to be assaulted and battered in jail. His father Jack Carter told NPR on July 3:

“Without getting into the really nasty details, he’s had concussions, black eyes, moved four times from base for his own protection. He’s been put in solitary confinement, nude, for days on end because he’s depressed. All of this is extremely traumatic to this kid. This is a horrible experience.”

Justin Carter is currently being held in solitary confinement, on suicide watch.

And Then County Prosecutor Tharp Seemed to Soften a Little

On July 3, Yahoo News reported what might be a softening in the prosecutor’s office: “District Attorney Jennifer Tharp would not comment on the details of a pending case but said in a press release that the charge carries a potential penalty of two to 10 years in

prison and a fine of up to \$10,000. A defendant never previously convicted of a felony may be eligible for 'deferred adjudication community supervision,' which, if served successfully, would not result in a criminal record."

That's better than eight years, but it's not the same as dropping charges that should never have been brought.

One apparent result of Carter's parents' efforts to publicize the case is that Justin Carter now has a new attorney, Donald H. Flanary III who has taken on the case at no charge. On his San Antonio firm's website (Goldstein, Goldstein & Hilley) Flanary's statement begins: "I believe that when a citizen is accused of a crime, the best defense is a relentless offense."

Flanary filed his notice of appearance and promptly filed six motions in the case. Two days later he made another flurry of filings, including an application for writ of habeus corpus. A hearing on that writ is scheduled for July 16 and one of Flanary's goals is to get Justin Carter released.

Flanary Might Hold the State Accountable for Excessive Charges and Bail

"I have been practicing law for 10 years, I've represented murderers, terrorists, rapists. Anything you can think of," Flanary told NPR on July 3. "I have never seen a bond at \$500,000."

New Braunfels police Lt. John Wells tried to sound sympathetic, calling the situation "unfortunate," but then went on to proclaim Carter Guilty of the terrorist threat. "We take those very seriously," he said, although the interviewer didn't ask why he hadn't taken it seriously enough to investigate it carefully.

Instead NPR's Elise Hu concluded with a comment that serves as a paradigm of the soft-headed unctuousness of most mainstream media coverage, tagging the story like this: "A painful reminder of how online comments can have real-life consequences."

At Least the National Review Showed a Bit of Moral Muscle

Getting it right was Englishman Charles C. W. Cooke writing for the National Review Online. He opened by noting that Justin Carter was "ruthlessly stripped of his freedom for making an offensive joke."

He closed with: "Carter must be set free and this insidious precedent smashed to pieces. Our liberty depends on it."

In between, he noted that "it is not the place of authority to judge what is and what is not acceptable [speech], and it is certainly not the place of the state to designate casual discussion as 'terrorism.'"

He also pointed out that the universal application of sentimentalized pathos referencing real tragedies like the Newtown killings is as specious as it is irrelevant, and "does not come close to excusing the Texas police."

Cooke's critique applies equally to the Texas prosecutor, Texas jailers, Texas lawmakers - and all their ilk in other states - as well as most of the media who can't seem to perceive injustice except, sometimes, when it happens to them.

POSTSCRIPT (July 12): On July 10, the increasing news coverage of Justin Carter’s situation prompted someone to call Attorney Don Flanary with an offer he had no desire to refuse – the caller wanted to put up the \$50,000 needed for a bail bondsman to put up Carter’s \$500,000 bail. The donor wired Flanary the money that evening and will be liable for the full amount of the bail.

“We got a cashier’s check cut this morning and got [Carter] out. He’s free,” Flanary told NPR July 11.

The donor wants to remain anonymous, Flanary explained: “He is betting \$500,000 that Justin will show up for court. At the completion of the case, the court will return the money to us, and we’ll return it to the wonderful person who sent it.”

As for Carter, his attorney said: “He’s glad he’s out. His family is ecstatic. He feels good. He is relieved. It’s been an ordeal.”

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