

No. 70398-6-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

JOEL C. HOLMES,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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REPLY BRIEF OF APPELLANT

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

3. The State failed to prove beyond a reasonable doubt every essential element of harassment by a threat to kill, in violation of Mr. Holmes's Fourteenth Amendment right to due process.

B. ISSUE PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR

3. A defendant may not be convicted of a crime unless the State proves every element of the crime beyond a reasonable doubt. To convict a defendant of harassment by a threat to kill, the State must prove beyond a reasonable doubt that, *inter alia*, the person threatened reasonably feared that the threat to kill would be carried out. In the absence of evidence to establish beyond a reasonable doubt that Judge Spector reasonably feared Mr. Holmes would kill her, must his conviction for harassment by a threat to kill be reversed?

C. ARGUMENT

**1. Mr. Holmes did not direct a threat to Judge Spector because of a ruling or decision made by her.**

The intimidating a judge statute, RCW 9A.72.160 criminalizes threats to a judge "only if used to attempt to influence a judge's ruling or in retaliation for a past ruling." *State v. Knowles*, 91 Wn. App. 367, 374, 957 P.2d 797 (1998). In every published case interpreting the statute, the defendant's purported threat specifically referred to a judicial ruling or

decision. *State v. Hansen*, 122 Wn.2d 712, 714-15, 862 P.2d 127 (1993); *State v. Brown*, 137 Wn. App. 587, 589-90, 154 P.3d 302 (2007); *State v. Side*, 105 Wn. App. 787, 789, 21 P.3d 321 (2001); *Knowles*, 91 Wn. App. at 370; *State v. Kepiro*, 61 Wn. App. 116, 117-19, 810 P.2d 19 (1991). By contrast here, Mr. Holmes did not refer to the 2006 conviction in the 911 call and he never disputed a ruling or decision by Judge Spector other than by challenging his conviction through the legitimate appellate process.

The State argues Mr. Holmes must have directed his invective at Judge Spector in retaliation for a past ruling on the grounds that he had no other reason to do so. Br. of Resp. at 7. This is pure conjecture. Given the scattershot nature of the purported threats, the very passing reference to Judge Spector, the lack of any reference to the 2006 trial, and Mr. Holmes's known decades-long history of placing multiple telephone calls to express his frustration with the government and the legal system, the State's assumption is unsupported by the evidence. In the absence of actual, substantial evidence, rather than mere conjecture, Mr. Holmes's conviction for intimidating a judge cannot stand.

## **2. Mr. Holmes did not utter a "true threat."**

To comport with the First Amendment, the offenses of harassment and of intimidating a judge require proof of a "true threat." *State v. Williams*, 144 Wn.2d 197, 207-08, 26 P.3d 890 (2001) (interpreting RCW

9A.46.020); *Brown*, 137 Wn. App. at 591-92 (interpreting RCW 9A.72.160). In Washington, courts adhere to an objective speaker-based test for a “true threat.”

A “true threat” is a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted . . . as a serious expression of intention to inflict bodily harm upon or to take the life of another. A true threat is a serious one, not one said in jest, idle talk, or political argument. Under this standard, whether a true threat has been made is determined under an objective standard that focuses on the speaker.

*State v. Kilburn*, 151 Wn.2d 36, 543-44, 84 P.3d 1215 (2004) (internal citations and quotations omitted); accord *State v. Allen*, 176 Wn.2d 611, 626, 294 P.3d 679 (2013); *State v. Schaler*, 169 Wn.2d 274, 287, 236 P.3d 858 (2010).

Here, a reasonable person in Mr. Holmes’s position would not foresee that his statement would be interpreted as a serious expression of intent to harm or kill Judge Spector. His reference to Judge Spector was very fleeting. He knew that Judge Spector was aware that he never acted on his purported threats that were the subject of the 2006 trial. During the years following his 2006 conviction, Mr. Holmes sporadically contacted Judge Spector’s staff, either in person or by telephone, which was annoying but never threatening. 5/9/13 RP 40, 56, 69, 105-06; CP 4.

Moreover, several days after his 911 call, Mr. Holmes sent three e-mails to Judge Spector in which he complained about the quality of his legal representation by two defense agencies, renounced his United States citizenship, seceded from the African-American race, stated he was going to commit suicide, disparaged state and federal political policies, and conditionally stated he would kill the Washington Supreme Court Commissioner, the Chief Justice, the Washington governor-elect, President Obama, and “the rest of the attorneys/judiciary.” Ex. 3.

In this context and under these circumstances, Mr. Holmes’s statements of frustration, however crude, were core hyperbolic speech protected by the First Amendment. *See Watts v. United States*, 394 U.S. 705, 708, 89 S. Ct. 1399, 22 L.Ed.2d 664 (1969) (“The language of the political arena, like the language used in labor disputes, is often vituperative, abusive, and inexact.”). In the absence of evidence to establish a reasonable person in Mr. Holmes’s position would foresee that his statement would be interpreted as a serious expression of intent to harm or kill Judge Spector, the State failed to prove he uttered a “true threat.” Mr. Holmes’s convictions for intimidating and judge and harassment must be reversed.

Although the State refers to the objective speaker-based test for a “true threat,” it does not apply that test to the facts of this case. Rather,

the State's argument raises the issue of whether Judge Spector was placed in reasonable fear that the purported threat would be carried out. Br. of Resp. at 8-9. This issue is discussed below.

**3. The State failed to produce sufficient evidence to prove beyond a reasonable doubt that Judge Spector reasonably feared Mr. Holmes would kill her.**

As charged, the crime of harassment was elevated to a felony on the grounds the threat to cause bodily injury was a threat "to kill the person threatened or any other person." CP 1-2; RCW 9A.46.020(2)(b). Thus, the State was required to prove beyond a reasonable doubt that Judge Spector was placed in reasonable fear that Mr. Holmes would actually carry out his purported threat to kill her. *See State v. Mills*, 154 Wn.2d 1, 10-11, 109 P.3d 415 (2005) (State must prove victim was placed in reasonable fear that the threat made, *i.e.*, a threat to kill, would be carried out).

The State argues Judge Spector's fear was reasonable because she had "intimate knowledge" of Mr. Holmes's prior acts and she had listened to his earlier recorded telephone calls in the 2006 trial. Br. of Resp. at 9. However, Judge Spector acknowledged that she knew Mr. Holmes had never acted on any of his alleged threats, including his purported threats to kill Tony Blair and Derek Bok, and his threats to fly an airplane into the Microsoft campus and the Space Needle. 5/9/13 RP 115, 125.



Moreover, Mr. Holmes had a well-known history of periodically placing a flurry of telephone calls purportedly threatening to kill various public figures to express his frustration with the government and the legal system, without ever following on a single purported threat. For example, while the instant charges were pending, Mr. Holmes placed a telephone call to the Washington Supreme Court, in which he inquired about a motion he filed for public funds to pay a filing fee in a civil suit. Ex. 17. When the case manager recommended that he wait for the Commissioner's ruling on his motion, Mr. Holmes became upset, compared Washington to a "third world dictatorship," and stated "Judge Spector won't be the last judge that I'm put on trial for threatening" and "I'm going to kill Barbara Madsen and the rest of the state supreme ... how do you like that?" Ex. 17.

The State also argues she knew "he could and did stalk his victims and found their homes." This is incorrect. As the presiding judge over the 2006 trial, Judge Spector was aware that Mr. Holmes appeared across the street from only one of the witnesses from that trial, he appeared only one time, and he was on a public sidewalk. 5/9/13 RP 80, 86, 113. The State's characterization of this single act as stalking and locating the homes of multiple victims is unsupported by the record.

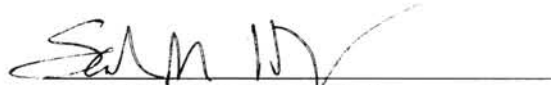
In the absence of sufficient evidence to establish that Judge Spector reasonably believed Mr. Holmes would carry out his purported threat to kill her, his convictions based on threats to kill cannot stand.

D. CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Brief of Appellant, Mr. Holmes requests this Court reverse his convictions for intimidating a judge and harassment.

DATED this 10<sup>th</sup> day of March 2014.

Respectfully submitted,

  
\_\_\_\_\_  
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DIVISION ONE**

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	)	
Respondent,	)	
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	)	
JOEL HOLMES,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 10<sup>TH</sup> DAY OF MARCH, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 10<sup>TH</sup> DAY OF MARCH, 2014.

X \_\_\_\_\_ 

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