

68629-1

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COA No. 68629-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ALFRED KIEFER,

Appellant.

2013 MAY -2 PM 4:56
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT
OF WHATCOM COUNTY

The Honorable Ira J. Uhrig

SUPPLEMENTAL REPLY BRIEF

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A. SUPPLEMENTAL REPLY ARGUMENT

MR. KIEFER'S CONVICTION FOR MISDEMEANOR HARASSMENT MUST BE REVERSED FOR INSUFFICIENCY OF THE EVIDENCE.

Mr. Kiefer's conviction for misdemeanor harassment must be reversed for insufficiency of the evidence. Pursuant to RCW 9A.46.020(1), and as the jury was instructed, a person is guilty of harassment when:

Without lawful authority, the person knowingly threatens:

- to cause bodily injury immediately or in the future to the person threatened; or
- to cause physical damage to the property of the person threatened; or
- maliciously to do any act which is intended to substantially harm the person threatened with respect to her physical health or safety;

[and] the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

See RCW 9A.46.020(1)(a)(i),(ii), (iv); see CP 34, 35 (jury instructions 11, 12). A threat is a direct or indirect communication of the intent to do the act threatened. RCW 9A.04.110(27). There must be an actual, knowing threat, and a "true threat" must be communicated to the victim. See, e.g., State v. Mills, 154 Wn.2d 1, 12, 109 P.3d 415 (2005); CP 36 (jury instruction 13).

The test for sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 61 L.Ed.2d 560, 99 S.Ct. 2781 (1979); State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980).

It is true that a challenge to the sufficiency of the evidence admits all inferences that reasonably can be drawn from the evidence adduced at trial. State v. Delmarter, 94 Wn.2d 634, 618 P.2d 99 (1980).

However, these statutory and constitutional standards are not met in this case, wherein the State's sole evidence of any communicated threats was that Mr. Kiefer threatened to kill Ms. Rawes. 1RP 44, 1RP 51-52. In this case, the jury found Mr. Kiefer not guilty of felony harassment. CP 20 (verdict form A).

There were no other physical threats communicated to Ms. Rawes by Mr. Kiefer, other than the alleged threats to kill, an allegation which the jury rejected. But the harassment statute plainly requires proof of a communicated threat. Mr. Kiefer respectfully contends that. In these circumstances, the evidence

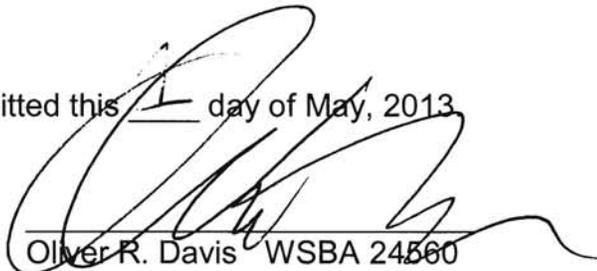
below did not support a conviction for harassment by threats to injure under RCW 9A.46.020(1)(a)(i).

Mr. Kiefer contends that a judgment of conviction was entered in the absence of sufficient evidence, which is a violation of Due Process. U.S. Const. amend. 14. Mr. Kiefer's conviction for misdemeanor harassment must be reversed. Cf. State v. C.G., 150 Wn.2d 604, 80 P.3d 594 (2003).

B. CONCLUSION

Based on the foregoing, Mr. Kiefer respectfully requests that this Court reverse his judgment and sentence and dismiss with prejudice.

Respectfully submitted this 1 day of May, 2013.



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Attorneys for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,)	
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RESPONDENT,)	
)	
v.)	NO. 68629-1-I
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ALFRED KIEFER,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 2ND DAY OF MAY, 2013, I CAUSED THE ORIGINAL **SUPPLEMENTAL 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:

<input checked="" type="checkbox"/> KIMBERLY THULIN, DPA	(X)	U.S. MAIL
WHATCOM COUNTY PROSECUTOR'S OFFICE	()	HAND DELIVERY
311 GRAND AVENUE	()	_____
BELLINGHAM, WA 98225		

SIGNED IN SEATTLE, WASHINGTON THIS 2ND DAY OF MAY, 2013.

X _____ 

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