

NO. 37117-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BRANDON CARACCILO,

Appellant.

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DIVISION II
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ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 07-1-01109-7

BRIEF OF RESPONDENT

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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED September 23, 2008, Port Orchard, WA
Original AND ONE COPY filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402; Copy to counsel listed at left.

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the trial court's instructions were improper when the instructions accurately informed the jury of the requirement that the threat must be a "true threat" in the sense that the threat must be 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 an intention to harm?

2. Whether the Defendant's claim regarding the trial court's instructions to the jury must also fail when, pursuant to the invited error doctrine, the Defendant waived any claim regarding the trial court's "true threat" jury instruction because the defendant's proposed instruction on this issue contained the same language that the Defendant now alleges was improper?

3. Whether the Defendant's sufficiency of the evidence claim must fail when, viewing the evidence in a light most favorable to the State, a rational juror could have found each element of the charged offenses beyond a reasonable doubt?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The Defendant, Brandon Caracciolo, was charged by information filed in Kitsap County Superior Court with one count of threatening to bomb or injure property pursuant to RCW 9.61.160. CP 1. Following a jury trial, the Defendant was convicted as charged and the trial court imposed a standard range sentence. CP 28. This appeal followed.

B. FACTS

At approximately midnight on August 2, 2007, Alan Farmer was working as the manager at a QFC store in Bremerton when the Defendant entered the store. RP 27-28, 31. The Defendant appeared to be very intoxicated and Mr. Farmer noticed that the Defendant was not walking straight and was “fumbling in his pockets.” RP 31. The Defendant eventually attempted to purchase beer, but Mr. Farmer refused and explained to the Defendant that he could not sell him beer because he appeared to be very intoxicated and that it was against the law to sell beer to someone who was intoxicated. RP 32. The Defendant responded by telling Mr. Farmer that he was going to kick his ass. RP 32. Mr. Farmer explained that the Defendant was mad and that the Defendant was not laughing and appeared to be “serious” when he made the remark. RP 32-33, 39.

There were other customers in the store at the time, and the Defendant also taunted some of these other customers and said he was going to “kick their asses.” RP 33-34. The Defendant then walked around the checkout stand to Mr. Farmer’s side and stood a few feet behind Mr. Farmer. RP 33-34. Mr. Farmer had other customers in the check out line, but he also kept an eye on the Defendant. RP 33-34. In addition, Mr. Farmer explained that a regular customer (who worked as a bartender) came over and stood right next to Mr. Farmer and was watching out for him. RP 34. Mr. Farmer, however, explained that the Defendant’s comments escalated and became more serious. RP 34. Mr. Farmer explained the Defendant’s threats as follows:

He said that – I don’t understand what his thinking was, but he said that he was going to blow up the store, and that’s when I stopped checking and I looked at him and I said, “What did you say?” He said, “I am going to blow up the store. I am going to use the propane and fertilizer outside the store,” which is sitting right outside in front of the store, which made me think that maybe he was a little more perceptive and not as drunk as I originally thought.

RP 34. There were, in fact, a number of propane tanks in front of the store.

RP 35, 47-48.

Mr. Farmer testified that there was nothing about the manner of the Defendant’s statements that lead him to believe the Defendant was joking, and Mr. Farmer said that it appeared that the Defendant “definitely” wanted

Mr. Farmer to believe him. RP 35. Mr. Farmer was concerned for his own physical safety and was concerned for the other customers and the store. RP 41. Mr. Farmer was shocked by the Defendant's statements and told the Defendant,

I have to call the cops. I need you out of my store. I need to call the cops right now. You need to go.

RP 36. Mr. Farmer explained that he was "afraid" when the Defendant said he was going to bomb the store. RP 38.

Mr. Farmer then called 911. RP 36. There were approximately four more customers in line while Mr. Farmer was on the phone with 911 and Mr. Farmer did not want to alarm these other customers, so he "tried to downplay it a little bit" during his conversation because, as he explained, "I didn't want the customers to be as alarmed as I was at that time." RP 36-37. Mr. Farmer and the bartender watched the Defendant slowly make his way to the door while Mr. Farmer was on the phone. RP 37. As Mr. Farmer finished checking out the remaining customers, he could see that the Defendant was outside the store for approximately ten minutes. RP 37. When Mr. Farmer finished with the customers he went outside to "make sure that everything was okay outside." RP 38. At that point the Defendant was walking away. RP 38.

Officer Fatt of the Bremerton Police Department responded to the scene and spoke to Mr. Farmer. RP 43, 45-46. Officer Fatt described that Mr. Farmer was “quite concerned” and seemed “apprehensive.” RP 46. Other officers then located and arrested the Defendant. RP 46-47, 55.

Discussion regarding Jury Instructions

The State and the Defendant both submitted instructions regarding the requirement that the threat to bomb must be a “true threat.” RP 7-20, CP TBD (See State’s Supplemental Designation of Clerk’s Papers). Specifically, the Defendant submitted an instruction that stated,

A true threat is a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of an intention to inflict bodily harm upon or to take the life of another individual. A true threat is a serious threat, not one said in jest, idle talk, or political argument.

CP TBD (See State’s Supplemental Designation of Clerk’s Papers). At the hearing on the instructions, defense counsel explained that he drafted the proposed instruction from *State v. Johnston*, 156 Wn.2d 355, 361, 127 P.3d 707 (2006), which defined “true threat.” RP 14. Defense counsel stated,

It’s the most recent case on point by the Washington Supreme Court on this statute, and I think it clearly indicates at 361 what in Washington is the definition of true threat. “A statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be

interpreted as a serious expression of an intention to inflict bodily harm upon or to take the life of another individual.”

RP 14.¹ The State and the Defendant did not voice a disagreement with the basic conclusion that the court needed to instruct the jury that the threat had to be a “true threat,” but the parties initially did disagree on whether the instructions should include the actual phrase “true threat.” See RP 11-13, 15-16. The Defendant’s proposed instruction, outlined above, included the phrase “true threat,” and the State argued that this phrase should not be included because it incorrectly suggested that the defendant actually intended to carry put the threat despite the fact that the Johnston decision specifically stated that “the speaker need not actually intend to carry out this threat.” RP 11. Eventually, however, defense counsel stated,

I mean, if it’s just the word “true” that is the problem, then I don’t see why we can’t perhaps modify, maybe take the word “true” out, and you will still have a definition of threat that is consistent with *State v. Johnston*.

RP 16. Ultimately, the trial court used an instruction that incorporated the

¹ The State also incorporated this language from *Johnston* and from *State v. Williams*, 144 Wn.2d 197 (2001) into several of its proposed instructions. CP TBD (See State’s Supplemental Designation of Clerk’s Papers). Specifically the State’s proposed instructions included the following:

“The threat must be 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.”

CP TBD. (See State’s Supplemental Designation of Clerk’s Papers).

language from the Defendant's proposed instruction but eliminated the phrase "true threat" and added a clause, consistent with *Johnston*, stating that the person making the threat need not carry out the threat:

A threat is a statement meant to communicate, directly or indirectly, to another a serious expression of intent to cause bodily injury in the future to the person threatened or to any other person; or to cause physical damage to the property of a person other than the actor.

It is a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of an intention to inflict bodily harm upon or take the life of another individual, but the person making the threat need not intend to actually carry out the threat. A statement made in jest, idle talk or political argument is not a threat.

CP 20. The Defendant's only objection to the above instruction was the fact that the court included the phrase "but the person making the threat need not intend to actually carry out the threat." RP 77.

III. ARGUMENT

- A. **THE TRIAL COURT’S INSTRUCTIONS WERE NOT IMPROPER BECAUSE THE INSTRUCTIONS ACCURATELY INFORMED THE JURY OF THE REQUIREMENT THAT THE THREAT MUST BE A “TRUE THREAT” IN THE SENSE THAT THE THREAT MUST BE 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 AN INTENTION TO HARM.**

The Defendant argues that the trial court improperly instructed the jury by failing to specify that the jury was required to determine whether the threat was a true threat by examining the statement from the perspective of a reasonable person in the Defendant’s position. App.’s Br. at 7-8. This claim is without merit because the trial court’s instructions accurately informed the jury of the requirement that the threat must be a true threat as required under Washington law and the court’s instruction made it clear that the jury’s analysis was to be from the position of the speaker of the threat and not from the position of a listener.

An appellate court reviews error in jury instructions de novo. *State v. Brown*, 132 Wn.2d 529, 605, 940 P.2d 546 (1997), *cert. denied*, 523 U.S.2007 (1998). The jury instructions, taken in their entirety, must inform the jury that the State bears the burden of proving every essential element of a

criminal offense beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995) (citing *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). And the instruction must state the applicable law correctly. *State v. Benn*, 120 Wn.2d 631, 654-55, 845 P.2d 289, cert. denied, 510 U.S. 944, 114 S. Ct. 382, 126 L. Ed. 2d 331 (1993).

The specific language of an instruction is left to the court's discretion and is reviewed for abuse of discretion. *State v. Coe*, 101 Wn.2d 772, 787, 684 P.2d 668 (1984). A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds. *State v. Perrett*, 86 Wn. App. 312, 319, 936 P.2d 426, review denied, 133 Wn.2d 1019 (1997).

RCW 9.61.160 provides, inter alia, that it is unlawful for any person to threaten to bomb or otherwise injure any building or structure, or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated. In addition, pursuant to RCW 9.61.160(2), it is not a defense that the threatened bombing or injury was a hoax.

In *State v. Johnston*, 156 Wn.2d 355, 363-64, 127 P.3d 707 (2006) the Washington Supreme Court addressed the threatening to bomb statute and held that the statute must be limited to apply to only "true threats" in order

avoid being overbroad. The Court thus held that a prosecution for violating RCW 9.61.160 must be limited to true threats and jury must be instructed accordingly. *Johnston*, 156 Wn.2d at 364. The Court also stated that it had adopted an objective standard for determining what constitutes a true threat and that:

A “true threat” is a statement “in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted . . . as a serious expression of an intention to inflict bodily harm upon or to take the life of another individual.

Johnston, 156 Wn.2d at 360-61, citing *United States v. Khorrami*, 895 F.2d 1186, 1192 (7th Cir.1990) (quoting *United States v. Hoffman*, 806 F.2d 703, 707 (7th Cir.1986)); *State v. J.M.*, 144 Wn.2d 472, 478, 28 P.3d 720 (2001); *State v. Kilburn*, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004); *State v. Knowles*, 91 Wn. App. 367, 373, 957 P.2d 797 (1998). The *Johnston* Court also stated that, “A true threat is a serious threat, not one said in jest, idle talk, or political argument.” *Johnston*, 156 Wn.2d at 361, citing *Kilburn*, 151 Wn.2d at 44.

In the present case the trial court followed the “true threat” language in *Johnston* and instructed the jury as follows:

A threat is a statement meant to communicate, directly or indirectly, to another a serious expression of intent to cause bodily injury in the future to the person threatened or to any

other person; or to cause physical damage to the property of a person other than the actor.

It is a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of an intention to inflict bodily harm upon or take the life of another individual, but the person making the threat need not intend to actually carry out the threat. A statement made in jest, idle talk or political argument is not a threat.

CP 20. This instruction followed the language of *Johnston* and essentially mirrored the instruction proposed by the Defendant. CP TBD (See State's Supplemental Designation of Clerk's Papers). The Defendant's only objection to the above instruction was the fact that the court included the phrase "but the person making the threat need not intend to actually carry out the threat." RP 77.

On appeal, however, the Defendant now argues that the instruction failed to make it clear that the jury is to judge the statement from the perspective of a reasonable person in the defendant's position. App.'s Br. at 7. The Defendant's argument, however, ignores the language of the actual instruction. The trial court's actual instruction consistently addressed the threat from the perspective of the speaker and not the listener. Furthermore, the phrase "would foresee that the statement would be interpreted" makes it clear that the analysis is to be from the position of the speaker, not a listener. A speaker can *foresee how his or statement would be interpreted*. A listener

interprets. The actual language of the instruction, therefore, consistent with *Johnston*, focuses on the speaker.

If, by way of example, the instruction had stated that a “reasonable person would interpret the statements as a serious expression of an intention to harm,” then the instruction would have impermissibly focused on the listener. The court’s actual instruction, however, clearly focused on the speaker and how a reasonable speaker “would foresee that the statement would be interpreted” as a serious expression of an intention to harm. The instruction, therefore, was consistent with *Johnston* and the trial court did not err.

B. THE DEFENDANT’S CLAIM REGARDING THE TRIAL COURT’S INSTRUCTIONS TO THE JURY MUST ALSO FAIL BECAUSE, PURSUANT TO THE INVITED ERROR DOCTRINE, THE DEFENDANT WAIVED ANY CLAIM REGARDING THE TRIAL COURT’S “TRUE THREAT” JURY INSTRUCTION BECAUSE THE DEFENDANT’S PROPOSED INSTRUCTION ON THIS ISSUE CONTAINED THE SAME ALLEGED ERROR.

The Defendant’s claim regarding the trial court’s instruction is also without merit because the invited error doctrine prohibits the Defendant from complaining of the trial court’s instruction on appeal since the Defendant himself proposed the language that he now claims was inappropriate.

The invited error doctrine prohibits a party from creating an error at trial and then complaining of it on appeal, and the doctrine applies even when the error is of constitutional magnitude. *See In re Griffith*, 102 Wn.2d 100, 102, 683 P.2d 194 (1984). Thus, with respect to jury instructions, the invited error doctrine has been applied even in cases where the instructions omitted an essential element of the crime. *Seattle v. Patu*, 147 Wn.2d 717, 720-21, 58 P.3d 273 (2002), *citing State v. Henderson*, 114 Wn.2d 867, 869, 792 P.2d 514 (1990) (failing to specify the intended crime in a conviction for attempted burglary); *State v. Summers*, 107 Wn. App. 373, 380-82, 28 P.3d 780 (2001) (omitting the knowledge element of unlawful possession of a firearm). Furthermore, a defendant waives any claim of error regarding a trial court's instruction when the defendant proposed an instruction containing the same alleged error. *State v. Neher*, 112 Wn.2d 347, 352-53, 771 P.2d 330 (1989); *see also Patu*, 147 Wn.2d at 720-21 (where defendant requests defective jury instruction given, he may not complain of the error on appeal, as he invited the error); *State v. Studd*, 137 Wn.2d 533, 546-47, 973 P.2d 1049 (1999)(When defense counsel proposes an instruction that is actually given by the trial court, the invited error doctrine prohibits reversal based on an error in that jury instruction).

In the present case the Defendant's proposed instruction regarding the "true threat" requirement stated:

A true threat is a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of an intention to inflict bodily harm upon or to take the life of another individual. A true threat is a serious threat, not one said in jest, idle talk, or political argument.

CP TBD (See State's Supplemental Designation of Clerk's Papers). The trial court's actual instruction added this proposed language regarding a "true threat" requirement to the general definition of a "threat" and stated:

A threat is a statement meant to communicate, directly or indirectly, to another a serious expression of intent to cause bodily injury in the future to the person threatened or to any other person; or to cause physical damage to the property of a person other than the actor.

It is a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of an intention to inflict bodily harm upon or take the life of another individual, but the person making the threat need not intend to actually carry out the threat. A statement made in jest, idle talk or political argument is not a threat.

CP 20.

The Defendant now argues that the court's instruction failed to state that the "reasonable person" in the instruction had to be a reasonable person in the defendant place or position as opposed to a reasonable listener. App.'s Br. at 7-8. The Defendant, however, never voiced any objection below to the court's instruction in this regard and the actual instruction given incorporated

the language proposed by the Defendant himself. Thus, even if the instruction had been erroneous, the Defendant waived any claim of error regarding the instruction because the Defendant's proposed instruction (which the court essentially copied into its instruction) contained the same alleged error. *Neher*, 112 Wn.2d at 352-53; *Patu*, 147 Wn.2d at 720-21; *Studd*, 137 Wn.2d at 546-47.

C. VIEWING THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE, A RATIONAL JUROR COULD HAVE FOUND EACH ELEMENT OF THE CHARGED OFFENSES BEYOND A REASONABLE DOUBT.

The Defendant next claims that the State presented insufficient evidence that the Defendant's threat was a "true threat." App.'s Br. at 10.

Evidence is sufficient if, taken in the light most favorable to the State, it permits a rational jury to find each element of the crime beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 643, 904 P.2d 245 (1995), cert. denied, 518 U.S. 1026 (1996); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Moles*, 130 Wn. App. 461, 465, 123 P.3d 132 (2005), citing *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618

P.2d 99 (1980). Additionally, credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Accordingly, a reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). The relevant inquiry, therefore, is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358, 1362 (1991), *citing State v. Baeza*, 100 Wn.2d 487, 490, 670 P.2d 646 (1983).

RCW 9.61.160 provides, *inter alia*, that it is unlawful for any person to threaten to bomb or otherwise injure any building or structure, or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated. In addition, pursuant to RCW 9.61.160(2), it is not a defense that the threatened bombing or injury was a hoax. Furthermore, the threat had to be a “true threat” which the *Johnston* court defined as:

[A] statement “in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted . . . as a serious expression of a n

intention to inflict bodily harm upon or to take the life of another individual.

Johnston, 156 Wn.2d at 360-61

In the present case the Defendant argues that a number of Justices in the *Johnston* case concluded that the evidence in that case was insufficient and that “statements made by angry and highly intoxicated individuals are not usually considered to be serious expressions, and therefore are not statements which can be considered true threats.” App.’s Br at 12, 14. The Defendant, however, is incorrect in several respects. First, in *Johnston*, the opinion itself was authored by Justice Madsen, and seven justices concurred. *Johnston*, 156 Wn.2d at 356, 366. Justice Sanders, and only Justice Sanders, authored an opinion that concurred in part and dissented in part. *Johnston*, 156 Wn.2d at 366. No other Justices signed Justice Sanders’ opinion as claimed by the Defendant. App.’s Br. at 12. Furthermore, nothing in Justice Sanders’ opinion (which dissented on the sufficiency of the evidence issue) supports the Defendant’s claim that “statements made by angry and highly intoxicated individuals are not usually considered to be serious expressions, and therefore are not statements which can be considered true threats.” Rather, Justice Sanders’ only statement on this sufficiency of the evidence was as follows:

Based on an independent review of the record, I conclude Mr. Johnston is correct that there is insufficient evidence of a true threat and would therefore reverse and dismiss.

Johnston, 156 Wn.2d at 367. In any event, the dissent of a sole Justice is not controlling authority, and this court should decline to follow Justice Sanders' dissent in *Johnston* (even assuming, for the sake of argument, that his short conclusion is somehow applicable to the present case).

Furthermore, the Defendant's blanket claim that "statements made by angry and highly intoxicated individuals are not usually considered to be serious expressions, and therefore are not statements which can be considered true threats" is absurd. App.'s Br. at 14. While it is conceivable that some "angry and intoxicate" people make threats that may not qualify as true threats, it is unquestionably true that threats from "angry and intoxicated" persons are often true threats under the law. Common sense dictates that threats from angry person are more serious than threats from jovial persons and that threats from an intoxicated person (who might do things that he or she would never do if sober) are equally, if not more, serious than threats from a sober person. When these attributes are combined in an individual who is both "angry and intoxicated," it cannot be seriously contested that this combination cannot or does not often produce violent and even lethal results.

In any event, little more than common sense is necessary to rebut the Defendant's argument that statements from angry and intoxicated individuals

“are not statements usually considered to be serious expressions” or true threats. App.’s Br. at 14.²

The evidence in the present case showed that the Defendant was intoxicated and became angry when Mr. Farmer refused to sell him beer. RP 31-33. The Defendant responded by telling Mr. Farmer that he was going to kick his ass. RP 32. Mr. Farmer explained that the Defendant was mad and that the Defendant was not laughing when he said this and appeared to be “serious” when he made the remark. RP 32-33, 39.

The Defendant also taunted some of the other customers in the store and said he was going to “kick their asses.” RP 33-34. The Defendant then walked around the checkout stand to Mr. Farmer’s side and stood a few feet behind Mr. Farmer and the Defendant’s comments escalated and became more serious. RP 33-34. Mr. Farmer explained the Defendant’s threats as follows:

He said that – I don’t understand what his thinking was, but he said that he was going to blow up the store, and that’s when I stopped checking and I looked at him and I said, “What did you say?” He said, “I am going to blow up the store. I am going to use the propane and fertilizer outside the store,” which is sitting right outside in front of the store,

² While an angry and intoxicated person may not intend to carry out his or her threat, that is not what “true threat” means under the law. Rather, the only question is whether a reasonable person in the speaker’s position would foresee that the statement would be interpreted as a serious expression of intent to harm. Common sense dictates that a reasonable person should foresee that a threat from an angry and intoxicated person would be interpreted as a serious expression of intent to harm.

which made me think that maybe he was a little more perceptive and not as drunk as I originally thought.

RP 34. Mr. Farmer testified that there was nothing about the manner of the Defendant's statements that lead him to believe the Defendant was joking, and Mr. Farmer said that it appeared that the Defendant "definitely" wanted Mr. Farmer to believe him, and there were, in fact, a number of propane tanks in front of the store. RP 35, 47-48. Mr. Farmer was shocked by the Defendant's statements, was concerned for his own physical safety, and was concerned for the other customers and the store. RP 36, 41. Mr. Farmer explained that he was "afraid" when the Defendant said he was going to bomb the store, and Mr. Farmer responded to the Defendant's threats by telling the Defendant to leave the store and by calling 911. RP 38.

Viewing this evidence in a light most favorable to the State, the evidence was sufficient to allow a rational jury to find each element of the crime beyond a reasonable doubt. Specifically, the evidence showed that the Defendant threatened to bomb or otherwise injure a building and that the threat was 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 an intention to inflict harm.

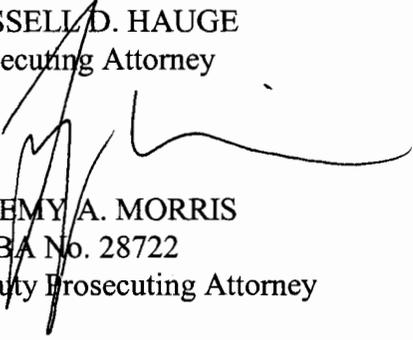
IV. CONCLUSION

For the foregoing reasons, the Defendant's conviction and sentence should be affirmed.

DATED September 23, 2008.

Respectfully submitted,

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