

**FILED**  
Mar 25, 2013  
Court of Appeals  
Division III  
State of Washington

NO. 30895-2-III

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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

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**STATE OF WASHINGTON,**

**RESPONDENT,**

**v.**

**RODNEY WILLARD ANDREWS,**

**APPELLANT.**

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**RESPONDENT'S BRIEF**

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**D. ANGUS LEE  
PROSECUTING ATTORNEY**

**By: Carole L. Highland, WSBA #20504  
Deputy Prosecuting Attorney  
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**I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Grant County Prosecuting Attorney Office, is the Respondent herein.

**II. RELIEF REQUESTED**

Reversal is not warranted and Appellant's conviction must be affirmed.

**III. ISSUE**

1. Whether Appellant's threatening words and acts constituted an attempt to influence an official action of a Grant County Sheriff's Office Deputy.

**IV. STATEMENT OF THE CASE**

On November 8, 2010, at approximately 2:30-2:45 P.M., Grant County Sheriff's Office Deputy Rick Pitt and Reserve Deputy Ryan LaVergne accompanied Child Protective Services (CPS) worker Sandra North when she went to speak with Karolee Townsend about an intake involving her child. RP 45-47, 76. Ms. North testified that it was not uncommon for her to bring deputies along to such an interaction. RP 61, 62. When they arrived at Ms. Townsend's trailer, Deputy Pitt knocked on the front (or first) door

without response. RP 47. Mr. Andrews then exited the back door to come outside to speak with them. RP 48, 80, 166, 167, 173. (Both trailer doors were on the same side of the trailer.) RP 48, 165, 166. Mr. Andrews appeared upset, agitated, and disheveled. RP 48, 78, 195. He wanted to know what was going on, and why Ms. North and the deputies were there. RP 48, 49. Mr. Andrews' agitation only increased when he was told that Ms. North could not, due to confidentiality issues, speak with him about Ms. Townsend's child. RP 49, 50, 51, 79. Ms. North testified that at no time during their interaction with Mr. Andrews was he calm. RP 60.

Mr. Andrews would not tell Ms. North where Ms. Townsend was, but indicated that he would be willing to contact her and retreated back into the trailer. RP 50, 51, 80. According to Deputy Pitt, it was also towards the end of that initial contact with Mr. Andrews that he asked (them) why they were there harassing him, and asked (them) to go away. RP 80, 173, 188. Ms. North testified that she recalled telling the deputy that Mr. Andrews seemed "kind of unhinged", and agitated. RP 51. Ms. North felt that "his emotion was elevated disproportionate to the fact that I was just asking to speak to Miss Townsend." RP 71. Deputy Pitt also felt that Mr. Andrews seemed somewhat confrontational, and suggested that

the three of them back up to the edge of the property “to respect his (Mr. Andrews’) wishes and to give him some space.” RP 52, 81. Deputy Pitt did not have concerns about Mr. Andrews at this time, because in his job, he deals with agitated people all day. RP 80, 85.

While they were standing at the edge of the lawn, by Deputy Pitt’s patrol car, Ms. North noticed that Mr. Andrews opened the door a crack and then shut it when Ms. North looked at him, and then repeated his action. RP 52, 222. Deputy LaVergne also observed this behavior and testified that Mr. Andrews appeared agitated. RP 196. Deputy LaVergne was uncertain as to whether Mr. Andrews was trying to get their attention. RP 200. Deputy Pitt saw this “peeking out” twice behavior and found it to be somewhat suspicious. RP 86, 174, 86. Deputy Pitt testified that it did cause him some concern. RP 86. It caused Ms. North such concern that she moved around the edge of the trailer so that Mr. Andrews would not be able to see her. RP 53.

Deputy Pitt approached the trailer at this time and knocked in order to find out if Mr. Andrews had been able to make contact with Ms. Townsend and whether or not they should wait. RP 86,

87, 174. Mr. Andrews did not open the door, but began yelling at Deputy Pitt that they should stop harassing him and that he was going to come out and “kick our ass.” RP 88, 175, 191, 200, 228, 231. Deputy Pitt believed that Mr. Andrews said this twice. RP 89, 90. Deputy Pitt retreated to his car to attempt to locate a contact number for Ms. Townsend which he was able to do. RP 90, 200.

Approximately five minutes later, Ms. Townsend arrived. RP 92. According to Deputy Pitt, when Ms. Townsend arrived, “that’s when everything started to happen.” RP 176, 190. It was then that Deputy Pitt heard Deputy LaVergne yell “he has a bat” and his attention was drawn back to the trailer where he saw Mr. Andrews. RP 92. Deputy Pitt testified that Mr. Andrews had a large stick upright in his right hand over his head shaking it in a forward movement while he was walking quickly towards the deputies. RP 93, 96, 180, 224. Deputy LaVergne testified that Mr. Andrews was swinging it back and forth towards him in a threatening manner. RP 202. Deputy LaVergne later demonstrated that Mr. Andrews held the stick with two hands below shoulder level, and that with a forward chopping manner advanced toward the deputies. RP 202, 206, 207. According to the deputy, Mr. Andrews was holding it really tight, and his knuckles were really red. RP 206. Mr. Andrews

advanced on the deputies from roughly 25 feet away. RP 93. Mr. Andrews continued to move toward the deputies, coming within approximately 20 feet of them, and ignored the Deputy Pitt's repeated orders to drop the stick. RP 98, 99, 168, 178.

While he had the stick in his hand, Mr. Andrews told the deputies that he was going to "kick our ass." RP 99. Deputy Pitt was concerned that he was going to be assaulted. RP 99, 186. Deputy LaVergne did as well. RP 202. Both deputies drew their service weapons to protect themselves and others. RP 104, 202, 203. Mr. Andrews then dropped the stick and returned to the trailer, ignoring commands to stop and go down to his knees. RP 99, 100. Ms. North testified that after she had gone around the edge of the trailer, she was unable to see anything, but she could hear someone yelling "he's got a bat, he's got a bat". RP 53. Ms. North could hear the raised voices of the deputies in what she described as an elevated and commanding tone. RP 58. Ms. North then got into her car, locked the doors and waited. RP 59. When other officers arrived, Ms. North drove away, but returned approximately half an hour later to make contact with Ms. Townsend. *Id.* This was the first time that Ms. North had ever retreated in this fashion. RP 72.

## V. ARGUMENT

THE EVIDENCE IS SUFFICIENT TO ESTABLISH THE REQUISITE NEXUS BETWEEN MR. ANDREWS' THREATENING WORDS AND THREATENING BEHAVIOR AND THE CRIME OF INTIMIDATING A PUBLIC SERVANT.

"In reviewing the sufficiency of the evidence, the question 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." *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). However, there must be substantial evidence that supports the elements of the crime charged. *State v. Cleman*, 18 Wn.App. 495, 498, 568 P.2d 832 (1977). "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A defendant claiming insufficiency of the evidence 'admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom.'" *State v. Myers*, 133 Wn.2d 26, 37, 941 P.2d 1102 (1997).

“In determining the sufficiency of the evidence, criminal intent may be inferred from conduct, and circumstantial evidence is not to be considered any less reliable than direct evidence.” *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); *Myers*, 133 Wn.2d at 38. “A fact finder is permitted to draw inferences from circumstantial evidence so long as those inferences are rationally related to the proven fact.” *State v. Bencivenga*, 137 Wn.2d 703, 707, 974 P.2d 832 (1999). “The reviewing court defers to the trier of fact on issues of credibility, conflicting evidence, and persuasiveness of the evidence.” *State v. E.J.Y.*, 113 Wn.App. 940, 952, 55 P.3d 673 (2002), *State v. Thomas*, 150 Wn.2d 821, 874-875, 83 P.3d 970 (2004). “A challenge to the sufficiency of the evidence is reviewed to see if there was evidence from which the trier-of- fact could find each element of the offense proved beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L.Ed. 2d 560, 99 S.Ct. 2781 (1979).

Intimidating a public servant requires that the State show an attempt to influence a public servant’s vote, opinion, decision, or other official action by use of a threat. RCW 9A.76.180. The attempt to influence element requires some evidence independent

of the threat itself and the defendant's generalized anger. The defendant's anger and threats must have some specific purpose. Mr. Andrews' actions show an attempt to specifically influence Deputy Pitt's actions in remaining on the property and facilitating contact between Ms. Townsend and CPS. The evidence would suggest that Mr. Andrews' rage was purposeful when he emerged from his home with what appeared to be a bat and charged at both deputies. This was just a few minutes after Mr. Andrews had repeatedly said to Deputy Pitt that he (Deputy Pitt) had better get off of his property or he would "kick his ass". Mr. Andrews's words and actions show the connection between his threats and his purpose. Mr. Andrews' actions go beyond a display of anger, and show an attempt to influence, impel, cause, incite, induce, prompt, rouse, or spur. Moving quickly towards the deputies with an upraised stick demonstrates his attempt to communicate that Deputy Pitt take or not take a course of action, *i.e.*, remain to facilitate CPS interaction with Mr. Andrews' girlfriend. This case can be distinguished from *State v. Moncada*, 172 Wn.App. 364, 289 P.3d 752 (2012) in which the court found Mr. Moncada's words to the WSP trooper to be an expression of anger and an invitation to fight uttered by the defendant as part of his drunken tirade.

*Moncada* at 368. Similarly in *State v. Burke*, 132 Wn.App. 415, 132 P.3d 1095 (2006), the Court of Appeals found that, while Mr. Burke acted in a threatening manner towards the officer, there was no evidence that the defendant attempted to communicate a suggestion that the officer take, or not take, a course of action. Distinguishable from both *Moncada* and *Burke*, Mr. Andrews' rage in this case was clearly expressed in an effort to influence Deputy Pitt in his official capacity. More than a "do you want to fight?" Mr. Andrews communicated his intent to assault Deputy Pitt if he didn't leave Mr. Andrews' property. Appellant did not simply spew threats and anger as in the cases previously mentioned; rather, his threatening behavior was committed in a context where he had twice told the deputy that he would "come out there" and "kick his ass" if the officer did not leave, i.e., that the law enforcement officer cease in his official duty. (emphasis added). The earlier statement of this condition (twice) that he officer leave or he would "kick his ass" as a part of the same ongoing encounter is circumstantial evidence that Mr. Andrews was continuing to express the same conditional threat in his attempt to influence Deputy Pitt's official action.

**VI. CONCLUSION**

Based upon the foregoing, the State respectfully requests this Court deny Mr. Andrews' appeal and affirm his conviction.

DATED THIS 25<sup>th</sup> day of March, 2013.

Respectfully submitted:

D. Angus Lee, WSBA #36473  
Grant County Prosecuting Attorney

*Carole L. Highland*  
Carole L. Highland, WSBA #20504  
(Deputy) Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 30895-2-III
	)	
vs.	)	
	)	
RODNEY W. ANDREWS,	)	DECLARATION OF SERVICE
	)	
Appellant.	)	
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Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

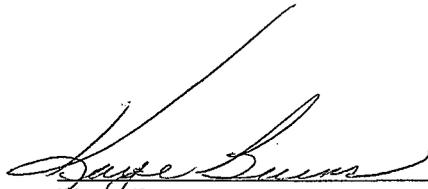
That on this day I served a copy of the Respondent's Brief in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Susan M. Gasch  
Gasch Law Office  
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That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Respondent's Brief in the above-entitled matter.

Rodney W. Andrews  
137 Quincy Place NW  
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Dated: March 25, 2013.

  
\_\_\_\_\_  
Kaye Burns