

No. 34635-8-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

KEITH ERIC BRIER,

Appellant

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

NO. 14-1-00701-2

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The State proved all the essential elements of the crime of felony harassment beyond a reasonable doubt.
- B. There was sufficient evidence for the finder of fact to determine the defendant's statements constituted a "true threat" as required under the Constitution.
- C. The defendant was charged with and convicted of felony harassment based on the statements he posted to Craigslist threatening the life of the next law enforcement officer he came into contact with and the information included all necessary elements of the offense.

II. STATEMENT OF FACTS

On May 24 and 26, 2014, the defendant¹ posted messages on the Tri-Cities Rants and Raves section of Craigslist. RP² at 9-10. The message posted on May 26th read in part,

Let me be clear! The next time I have a interaction with law enforcement there will be at least one dead cop. If I get the chance to take a few more I will. I know that I will die and I am ok with that, we all die it's just a matter of how. As for that one innocent cop who may get it... Well I'll give

¹ The defendant's "Statement of the Case" irrelevantly states that the defendant had "no criminal history" prior to this case, but cites to the Clerk's Papers and Report of Proceeding that only discuss the defendant's prior *felony* criminal history. Br. of Appellant at 6.

² Unless otherwise indicated, RP refers to the verbatim report of proceedings from the bench trial in this matter, held March 2, 2015.

you a break, only a gut shot instead of the head. Sound fair after the break you guys gave me?

RP at 9; Ex. 5 ~ 5:00-7:00; CP 3-4. Multiple Kennewick Police officers viewed the post on Craigslist and became immediately concerned for officer safety. RP at 13, 17-18, 21. A search warrant was obtained for Craigslist and officers located the defendant at a Kennewick residence. RP at 21-22. The defendant was interviewed at the Kennewick Police Station and admitted to posting the messages. RP at 22. The defendant was charged with one count of felony harassment after making the threat to kill the next police officer he had contact with. CP 1-2.

Defense counsel filed and argued an unsuccessful motion to dismiss based on the fact that the defendant did not specify a specific victim and/or that the threat did not qualify as a "true threat." CP 27-32.

The defendant then waived the right to a jury trial and the case was tried before Benton County Superior Court Judge Bruce Spanner. RP 01/14/2015 at 11; RP 03/02/2015. The defendant was convicted as charged after the judge found that the plain language of RCW 9A.46.020 and case law provides that there is no legal requirement that a threat be communicated directly against the victim or any particular victim. RP 03/02/2015 4:10 p.m. at 2. The court found that the language used by the defendant would place a reasonable person in fear that the threat would be

carried out. *Id.* at 3. The court found that the defendant knowingly threatened based on the language he used to make the threat. RP at 4. The court also found that the language constituted a “true threat” in that an objective person in the place of the defendant would understand that the listener would think the threat is real. *Id.* at 3. After announcing the verdict, the case was continued a couple of weeks for sentencing to April 15, 2015. *Id.* at 5. The defendant failed to appear for sentencing and a bench warrant was issued on April 21, 2015. CP 70. The defendant was subsequently charged with felony bail jumping and pleaded guilty to that charge on the same day he was sentenced for the case at bar, July 20, 2016. CP 75-76.

III. ARGUMENT

A. **The State proved all the essential elements of the crime of felony harassment beyond a reasonable doubt.**

In a criminal case, evidence is sufficient to convict if it permits a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Munoz-Rivera*, 190 Wn. App. 870, 882, 361 P.3d 182 (2015). When a defendant challenges the sufficiency of the evidence, the proper inquiry is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201,

829 P.2d 1068 (1992). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.*

In the present case, the defendant does not contest that he made the statements attributed to him, but he argues that the law enforcement witnesses did not express enough concern regarding their safety or wellbeing. In the recent Washington Supreme Court case of *State v. Trey M.*, 186 Wn.2d 884, 905, 383 P.3d 474 (2016), *cert. denied*, 16-7712, 2017 WL 416440 (2017), the three victims who were identified on a “hit list” each testified that they were “scared” when they found out about the hit list. The Court found that “scared” was sufficient to prove the victims feared the threat to kill would be carried out in light of the total context of the case. *Id.* During the bench trial in the instant case, three Kennewick Police officers testified that they were immediately concerned for officer safety after viewing the defendant’s threatening post on Craigslist. This combined with the fact that the only threat made by the defendant was a threat to kill, “. . . at least one dead cop” RP at 9; Ex. 5 ~ 5:00-7:00; CP 3-4.

B. There was sufficient evidence for the finder of fact to determine the defendant's statements constituted a "true threat" as required under the Constitution.

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 person. *Trey M.*, 186 Wn.2d at 905; *State v. Kilburn*, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004), *as amended* (Feb. 17, 2004); *see also, e.g., State v. Williams*, 144 Wn.2d 197, 208-09, 26 P.3d 890 (2001); *State v. Knowles*, 91 Wn. App. 367, 373, 957 P.2d 797 (1998); *United States v. Khorrami*, 895 F.2d 1186, 1192 (7th Cir. 1990). The defendant in this case stated in pertinent part,

Let me be clear! The next time I have a interaction with law enforcement there will be at least one dead cop. If I get the chance to take a few more I will. I know that I will die and I am ok with that, we all die it's just a matter of how. As for that one innocent cop who may get it... Well I'll give you a break, only a gut shot instead of the head. Sound fair after the break you guys gave me?

RP at 9; Ex. 5 ~ 5:00-7:00; CP 3-4. The defendant was clearly communicating a threat and even clarified for his audience that he was not boasting or jesting with his statement. The facts taken in the light most favorable to the State as required, the trial court was correct in finding that the defendant's statement constituted a "true threat" as required under the

law. A reasonable person in the defendant's position would foresee that statements made about shooting and killing the next police officer he contacted would be taken seriously.

C. The information included all necessary elements of the offense and the defendant was charged with and convicted of felony harassment based on the statements he posted to Craigslist threatening the life of the next law enforcement officer he came into contact with.

Charging documents which are not challenged until after the verdict will be more liberally construed in favor of validity than those challenged before or during trial. *State v. Kjorsvik*, 117 Wn.2d 93, 102, 812 P.2d 86 (1991). A reviewing court reads the information as a whole to determine if the elements appear in any form, or by fair construction can they be found. *Id.* The reviewing court uses common sense and facts that are implied to see if a defendant is reasonably apprised of the crime charged. *Id.* If the necessary elements are present, the defendant will only prevail if actual prejudice can be found. *Id.* In the present case, using common sense, the information fairly and plainly indicates that the defendant is charged with harassment based on his knowingly threatening to kill a person who reasonably believes the threat would be carried out. The defendant cannot show any prejudice based on the language of the information and therefore the information was sufficient to put the defendant on notice of the crime charged. The defendant fails to cite to

any legal authority for the proposition that a specific named victim must be named in order to be charged with and convicted of felony harassment under RCW 9A.46.020. The statute states in pertinent part:

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; . . .

. . . and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2) . . . (b) A person who harasses another is guilty of a class C felony if any of the following apply . . . (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person. . . .

The defendant's theory of the case and the resulting charging requirements of a specific victim would lead to absurd results. As an example, a person who posts on social media their ability and intention of going to a school, courthouse, or concert to kill as many people as possible would not be guilty of any form of harassment unless they used the name of specific victims they intended to target. Another example would be shouting into a crowded place a person's present ability and intention to shoot anyone in

sight would also prohibit criminal prosecution because the State would be unable to name a specific person threatened or intended victim. These examples are not the type of speech that is protected by the Constitution nor should it be.

As evidenced by the information, the records made during the defendant's motion to dismiss, and the trial record, the State proceeded to trial under the theory that anyone who viewed the Craigslist posts constituted a person threatened and that the "any other person" constituted law enforcement officers in the Tri-Cities area. Contrary to the defendant's argument that the court convicted based on the theory that any police officer anywhere constituted the "victim," including the Royal Canadian Mounted Police, the court's decision was based on the context of the case, the defendant's residence, and the defendant's posting in the Kennewick (commonly known as part of the Tri-Cities) area of Craigslist.

IV. CONCLUSION

For the foregoing reasons, the State requests the defendant's appeal be denied and the case affirmed. The specific facts in this case support the defendant's conviction and should not be found to be a valid expression of the defendant's free speech.

RESPECTFULLY SUBMITTED this 20th day of October, 2017.

ANDY MILLER

Prosecutor

A handwritten signature in black ink, appearing to read "B. Siefken", written over a horizontal line.

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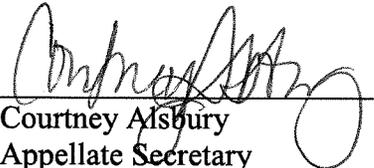
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E-mail service by agreement
was made to the following parties:
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Signed at Kennewick, Washington on October 20, 2017.



Courtney Aisbury
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

October 20, 2017 - 3:46 PM

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Appellate Court Case Title: State of Washington v. Keith Eric Brier
Superior Court Case Number: 14-1-00701-2

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