FILED
Court of Appeals
Division III
State of Washington
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NO. 35777-5-III

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

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STATE OF WASHINGTON,

Respondent,

v.

KARLO MEDINA,

Appellant.

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

The Honorable Cameron Mitchell, Judge

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# REPLY BRIEF OF APPELLANT

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## A. ARGUMENT IN REPLY

THE STATE'S CONCESSION OF ERROR DOES NOT PRECISELY ALIGN WITH THE PROPER REQUESTED RELIEF.

As discussed in the opening brief, Judge Mitchell's written findings and conclusions do not address an essential element of the charged offense – whether Medina made a "knowing threat," meaning whether Medina subjectively knew he was communicating a threat. At trial, defense counsel argued that detention officer Wellington had not been threatened. Instead, Medina's statements and conduct were nothing more than additional examples in a long history of non-violent non-compliance. See Brief of Appellant, at 5-8.

Nor did Judge Mitchell's findings address a "true threat," meaning whether a reasonable person in Medina's position would foresee that his statements would be interpreted as a serious expression of harm. Such a finding is necessary to ensure a proper conviction under the First Amendment. See Brief of Appellant, at 5-8.

For these reasons, Medina sought remand so that – *if warranted by the evidence* – Judge Mitchell could enter the missing findings. Brief of Appellant, at 8 (citing State v. Alvarez, 128 Wn.2d 1, 904 P.2d 754 (1995); State v. Souza, 60 Wn. App. 534, 805 P.2d 237, review denied, 116 Wn.2d 1026, 812 P.2d 103 (1991)). If the

requested remedy was not already clear from Medina's argument, it was certainly clear from his conclusion:

> This case should be remanded for compliance with JuCR 7.11(d). Judge Mitchell should consider *whether* Medina knowingly threatened Wellington and then enter appropriate findings and conclusions. Moreover, to ensure compliance with the First Amendment, Judge Mitchell should also determine *whether* there was a "true threat." The failure to find either one should result in an acquittal.

Brief of Appellant, at 9 (emphasis added).

While properly conceding remand is necessary, the State adds the following:

> It does not appear that the Appellant is arguing at this time that the threat was not "knowingly" made or a "true threat", merely that this element is absent from the findings. Based on this, the State would agree with the Appellant that remand for entry of amended findings is appropriate and either party may appeal at that time.

Brief of Respondent, at 4.

While Medina's opening brief does not argue the evidence would be insufficient for any rational trier of fact to find all elements of the charged offense satisfied when considered on appeal in the light most favorable to the prosecution, the State's assertion that Medina no longer appears to be arguing the absence of a knowing threat or a true threat is incorrect. Medina maintains his position in the trial court that Judge Mitchell should acquit him based on insufficient proof

beyond a reasonable doubt of a threat. See RP 32-35. It was for this reason that he asked – in the opening brief – that the matter be remanded so that Judge Mitchell could determine whether all elements of proof have been met and, if not, enter an order of acquittal.

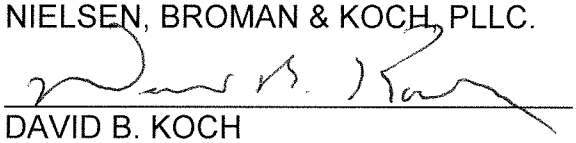
B. CONCLUSION

The State's implication (perhaps unintentional) that Medina merely seeks remand for mechanical entry of missing findings and conclusions is incorrect. Acquittal based on a failure of proof beyond a reasonable doubt remains an option.

DATED this 20th day of June, 2018.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



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