

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

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

KARLO D. MEDINA,

Appellant

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

NO. 17-8-00370-0

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The State concedes that the knowledge element is absent from the Findings of Facts and Conclusions of Law and that remand for entry of amended findings is appropriate.

II. STATEMENT OF FACTS

Karlo Medina was charged with one count of Felony Harassment of a Criminal Justice Participant. CP 1-2. The victim Kirk “Andy” Wellington testified at trial that on August 21, 2017 he was working in his capacity as a juvenile detention officer at the Benton Franklin Juvenile Detention Center. RP at 9. Wellington testified that Karlo Medina was in custody in juvenile detention at the time, and on that day, had been out in the recreation yard. RP at 10. Wellington testified that Medina had a history of being verbally and physically uncooperative with detention staff and on the day of the incident, Wellington had directed Medina to return to his room, but Medina refused. RP at 10-11. Wellington testified that Medina began making threatening statements to include “Try your luck.” “Andy, don’t even go there.” “Do you want to go to the dark side, Andy?” and “Let’s go, Andy.” RP at 13. Wellington testified that Medina was not retreating but rather made movements towards him, and Wellington felt that his safety was in question. RP at 13. Wellington testified that Medina

was exhibiting a confrontational posture and was facing him. RP at 13-14. Wellington explained that it was a combination of Medina's body language and previous history of defiance and uncooperativeness that made him feel threatened by the statements Medina made. RP at 14. Wellington specifically felt that the "dark side" comment was a threat to his life. RP at 13. Wellington then called for additional staff, grabbed Medina's arms, and ultimately detained him on the ground. RP at 14-15, 18. Detention Supervisor Rudy Ruelas testified next. RP at 21. Ruelas testified that he had been in master control when he heard a call for assistance over the radio. RP at 21-22. Once Ruelas entered the pod, he observed Wellington struggling with Medina on the floor. RP at 22. Ruelas testified that Medina was yelling and made a statement along the lines of, "Andy, you're going to regret this." RP at 22-23. At the conclusion of the testimony, the State argued that totality of the circumstances was sufficient to find that Medina threatened harm against Wellington. RP at 31. Defense counsel argued that the statements made by Medina were rather "idle talk" or a "poor attitude". RP at 32-34.

The Court ultimately found that all of the elements had been proven beyond a reasonable doubt, found Medina guilty of the charge of Felony Harassment of a Criminal Justice Participant, and entered written Findings of Facts and Conclusions of Law. CP 43-46.

III. ARGUMENT

A. THE STATE CONCEDES THAT THE FINDINGS OMITTED AN ESSENTIAL ELEMENT AND THE APPROPRIATE REMEDY IS REMAND.

1. Findings of Fact and Conclusions of Law

RCW 9A.46.020(1)(a)-(b) dictates the essential elements of the crime of Harassment.

- (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.

Harassment of any criminal justice participant, including staff members at a juvenile detention facility, elevates the crime to a Class C Felony. RCW 9A.46.020(2)(b), (4). Because this statute criminalizes pure speech, it must be interpreted within the commands of the First Amendment. *State v. Kilburn*, 151 Wn.2d 36, 41, 84 P.3d 1215, 1218 (2004), *as am.* (Feb. 17). As such, to avoid unconstitutional infringement of protected speech, the harassment statute must be read as prohibiting only “true threats”. *Id.* A “true threat” is a statement made in a context where a reasonable person would foresee that the statement would be interpreted as a serious expression of the intent to inflict harm or take a life. *Id.* The Washington State Supreme Court has agreed with federal courts who “have

overwhelmingly concluded that the First Amendment does not require that the speaker intend to actually carry out the threat.” *Id.* Citing E.g., *United States v. Fulmer*, 108 F.3d 1486, 1494 (1st Cir.1997) (citing *United States v. Orozco–Santillan*, 903 F.2d 1262, 1265 n.3 (9th Cir.1990)). The *Kilburn* Court held that the First Amendment does not require the speaker actually have the intent to carry out the threat in order for a communication to constitute a true threat. *Id.* at 48. However, the fact that a statement is a “true threat” is not considered an essential element of the crime of harassment. *Id.* The essential element absent from the findings is merely whether Medina “knowingly threatened” Wellington. The trial court did specifically find that given the circumstances, the statements made by Medina were in fact threats for physical confrontation by Medina towards Wellington, and that all of the elements had been proven beyond a reasonable doubt. 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.

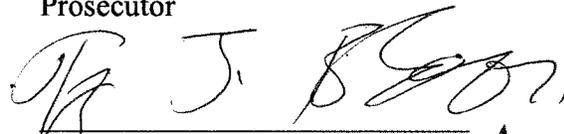
IV. CONCLUSION

The State concedes that the written findings entered by the trial court omitted the knowledge element required for a charge of Felony

Harassment, and that the appropriate remedy is remand to the trial court to enter amended findings.

RESPECTFULLY SUBMITTED on June 18, 2018.

ANDY MILLER
Prosecutor

Handwritten signature of Taylor Clark in black ink, appearing as 'T. J. Clark'.

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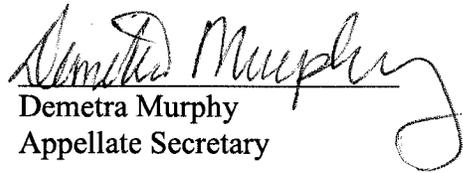
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on June 18, 2018.


Demetra Murphy
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

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