

NO. 35988-3-III

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

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STATE OF WASHINGTON,

Respondent,

v.

PETER J. ARENDAS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF KLICKITAT COUNTY, STATE OF WASHINGTON  
Superior Court No. 17-1-00133-5

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BRIEF OF RESPONDENT

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**A. ISSUE PRESENTED**

1. Was the evidence produced at trial sufficient to show threats to kill made by defendant were true threats and did the corresponding conviction for harassment violate defendant's constitutional rights?
2. Were \$300 in legal financial obligations improperly imposed?

**B. STATEMENT OF THE CASE**

While in custody at the Klickitat County Jail and awaiting sentencing on a charge of assaulting a police officer, defendant Peter J. Arendas made statements to third parties concerning threats to kill two correctional officers. RP 458, 704-07. Defendant was charged and convicted of two counts of harassment by threats to kill. CP 44, 47.

During the trial Brandon Edgmand, another inmate housed near the defendant, testified that he heard the defendant yelling he was going to kill Tammera Anderson Russell, a Klickitat County Correctional Officer. RP 465-69. In fact, he gave details of how the defendant stated he would stab her "in the neck multiple times" with "his pencil.. or... a piece of metal." RP 465, 468. Edgmand testified about seeing a piece of "[m]etal attached to a light frame" that could be taken off and used as well as the fact the defendant had access to pencils. RP 468-69. Edgmand also testified about how inmates "all the time" manufacture weapons called "shanks" and that defendant specifically said he would "shank" Russell. RP 469. At the time of testifying Edgmand was in prison for the third time in his life, this time on a 70 month sentence on a sex offense. RP 484. Edgmand took the threats

seriously and because of his concern about the threats, Edgmand informed Russell of the statements via a note he provided to her. RP 471-72; Ex. 6. Edgmand was given no benefit whatsoever in exchange for his testimony. RP 476.

When Russell, a corrections deputy with nine years' experience, received the note from Edgmand she took it seriously and became concerned – she believed the defendant was capable of carrying out the threats based on past behavior. RP 559-63. This past behavior included a time where the defendant had told Russell he was going to buy “large weapons, large rifles, and hide them in the woods” and aim for officer’s faces given their use of chest protectors. RP 563. On a separate day Russell heard the defendant chanting “a female CO is gonna die today.” RP 577-78. Russell also testified of having personal knowledge of corrections officers being assaulted in the Klickitat County Jail and of officers having been killed in other jurisdictions. RP 599. Russell also knew that she “absolutely” would be cursed at and such in her job as a corrections officer. RP 603.

A control board operator for the Klickitat County Jail, Cassandra Christopher, also heard threats by the defendant towards other jail staff. Christopher testified at trial that the defendant stated he would kill Correctional Officer Tim Curran, that he was “so fucking dead” and that “if he was in court he didn’t care, he would stand up and he would kill him.” RP 606-08. Curran was on duty at the time serving lunch and because

Christopher was so concerned Curran was notified of the threat. RP 608. This was not the first threat Christopher heard from the defendant – he had made “multiple threats against other staff, against other inmates” and “his actions and the way he was carrying himself” gave the perception of threats. RP 609. On occasions Christopher witnessed the defendant “made his hand into a gun” and make shooting noises. RP 609.

Based on the threats Christopher heard from the defendant, Curran was notified of the threats. RP 619. Curran is a trained corrections deputy with eight years’ experience. RP 618. Curran testified that he had also heard the defendant call him names, and that he had “never met anybody quite like Mr. Arendas.” RP 620-21, 639. Curran testified that he had never had a threat on his life and he took it very seriously. RP 620. Based on these threats, Curran felt the need to purchase a firearm for his home after not having had a firearm in his home for years. RP 621-22. He obtained the firearm for home protection because of the fear of the death threat made by the defendant. RP 622, 625. Curran was also aware that the defendant was incarcerated at the time the threat was made for assaulting an officer. RP 631. Curran testified that based on his observation of the defendant, especially jumping up and down upon hearing the news of a Washington police officer being shot, the defendant had a hate for law enforcement and that the defendant was frightening and unpredictable. RP 641-42.

During the trial the defendant's behavior was consistent with his combative demeanor observed by jail staff. The judge has to repeatedly admonish the defendant for his outburst and gesturing, at one point stating "you're out of control." RP 586. The defendant repeatedly argued with the judge as to what questions were relevant – when beginning to question one witness the defendant asked her age, which the judge stated "was not relevant" to which the defendant responded "oh it is too." RP 598. This type of argumentative behavior continued throughout trial. While the defendant was allowed to proceed without handcuffs, the judge threatened to require them given his refusal to rein in his behavior. RP 652.

The defendant was convicted on both counts of harassment by threats to kill. CP 44, 47. On April 11, 2018, sentencing was completed and legal financial obligations including a court filing fee and DNA collection fee were imposed. CP 54-55.

### C. ARGUMENT

#### 1. **THE EVIDENCE PRODUCED AT TRIAL WAS SUFFICIENT TO SHOW THREATS TO KILL MADE BY DEFENDANT WERE TRUE THREATS AND THE CORRESPONDING CONVICTION FOR HARASSMENT DID NOT VIOLATE DEFENDANT'S CONSTITUTIONAL RIGHTS.**

Sufficient evidence supports the harassment conviction if, "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. Green*, 94 Wn.2d 216, 221, 616 P.2d

628 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). For this analysis, circumstantial evidence is as reliable as direct evidence. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences from that evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). The court is the trier of fact on issues of credibility or persuasiveness of the evidence. *State v. Johnston*, 156 Wn.2d 355, 365-66, 127 P.3d 707 (2006).

A statute that makes a threat a crime may proscribe only "true threats." *State v. Schaler*, 169 Wn.2d 274, 283, 236 P.3d 858 (2010); *State v. Locke*, 175 Wn. App. 779, 789, 307 P.3d 771 (2013). 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. *State v. Trey M.*, 186 Wn.2d 884, 907, 383 P.3d 474 (2016); *Locke*, 175 Wn. App. at 789. This objective standard focuses on the speaker, who need not actually intend to carry out the threat: "[i]t is enough that a reasonable speaker would foresee that the threat would be considered serious." *Schaler*, 169 Wn.2d at 283; *State v. Kilburn*, 151 Wn.2d 36, 48,

84 P.3d 1215 (2004). An indirect threat may constitute a true threat. *Locke*, 175 Wn. App. at 792 (citing *Kilburn*, 151 Wn.2d at 48). A threat is a true threat if "[c]onsidering the entire context, a reasonable speaker [in the defendant's] place would foresee that [his or her] statements . . . would be interpreted by a listener as a serious expression of intention to inflict bodily harm." *Trey M.*, 186 Wn.2d at 907.

The evidence produced at trial showed that the defendant was awaiting sentencing for assaulting a law enforcement officer and was continually upset and agitated. He made threats to kill two separate corrections officers and experienced professional corrections officers took the threats quite seriously. In fact, a career 30 year old criminal on his third stint in prison took one of the threats so seriously he immediately notified the corrections staff. The other threat was taken so seriously the threatened corrections officer bought a gun for protecting his home.

These threats were not made as part of any political discourse, labor dispute, or heated argument. Furthermore, the testimony, and behavior of the defendant at trial showed that the threats were not a joke or made in jest, especially given the fact that the defendant was upset and angry for having been convicted of assaulting a law enforcement officer. Again, the threats were made in such a way that a career criminal (and sexual offender) was sufficiently alarmed to tattle on a fellow inmate even though he was not offered or given any benefit for doing so. Another threat was made in such

a way to immediately cause alarm and transmittal of a warning to a corrections officer. Given these facts, the evidence produced at trial was sufficient to show the threats to kill were true threats. Therefore, the corresponding conviction for harassment did not violate defendant's constitutional rights.

**2. PURSUANT TO RECENT CASELAW THE \$200.00 FILING FEE AND \$100.00 DNA FEE SHOULD BE STRICKEN FROM THE DEFENDANT'S JUDGMENT AND SENTENCE.**

The state concedes that the trial court should remove both the \$200.00 filing fee and \$100.00 DNA fee. These concessions as to the defendant's legal financial obligations are made in light of recent legislative changes to sentencing of indigent defendant. *State v. Wallmuller*, 4 Wn. App.2d 698, 4 P.3d 282 (2018). However, if this is the sole issue identified as error we ask for permission to enter an order in Superior Court amending the Judgment and Sentence rather than remand for a re-sentencing hearing.

**D. CONCLUSION**

Testimony showed that the defendant was a very difficult inmate, regularly disrespecting officers and other inmates. The evidence showed that that defendant indeed often made threatening and/or rude and demeaning statements. Nonetheless, the threats underlying these two specific criminal charges were both specific and detailed in the nature of the threat and specific and detailed about who was being threatened. Defendant was not charged and put on trial for being a difficult inmate or having a

deranged sense of humor. He was charged and convicted for making two very real and serious threats to kill corrections officers. Contrary to the defendant's assertion, it is not the job or duty of corrections officers to be threatened and to be put in fear for their lives. Examining the evidence as a whole and in context, any rational trier of fact would have found the defendant guilty.

Respectfully submitted this 7th day of February, 2019.

A handwritten signature in black ink, appearing to read 'D. R. Quesnel', written in a cursive style.

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