

FILED
Court of Appeals
Division III
State of Washington
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NO. 36821-1-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

D.R.C.,

Respondent/Appellant.

REPLY BRIEF

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ARGUMENT

Clearly this case is a sufficiency of the evidence case. The argument previously presented in the respective briefs distinctly outlines what is necessary in order to constitute a true threat.

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. *Williams* [*State v. Williams*, 144 Wn.2d 197, 26 P.3d 890 (2001)] at 208-09 (quoting *State v. Knowles*, 91 Wn. App. 367, 373, 957 P.2d 797 (1998) (quoting *United States v. Khorrami*, 895 F.2d 1186, 1192 (7th Cir. 1990)))... A true threat is a serious threat, not one said in jest, idle talk, or political argument. [Citations omitted.] Under this standard, whether a true threat has been made is determined under **an objective standard that focuses on the speaker.**

State v. Kilburn, 151 Wn.2d 36, 43-44, 84 P.3d 1215 (2004). (Emphasis supplied).

QUERY: What was D.R.C.’s state of mind at the time that she was sending the text messages?

The State focuses on D.R.C.’s mother’s response to the text messages. Her mother’s response is just one aspect of whether or not a true threat was made.

Toddlers throw tantrums.

Older children argue with their parents.

Teens engage in conversations outside the presence of their parents that would be shocking to them.

An angry person often says things they do not mean and regrets it later.

If people are not allowed to vent their feelings, whether verbally, in writing, or by texting, they are being deprived of an outlet for their emotional turmoil.

Not every expression of “I’m going to kill you” during an argument is meant to convey the intent to kill.

As recognized in *State v. Kohonen*, 192 Wn. App. 567, 580, 370 P.3d 16 (2016):

... [I]n true threat cases, it is not just the words and phrasing of the alleged threat that matter, but also the larger context in which the words were uttered, including the identity of the speaker, the composition of the audience, the medium used to communicate the alleged threat, and the greater environment in which the alleged threat was made. Herein, the combined high school and social media context in which the alleged threats were made further supports the conclusion that J.K.’s tweets did not constitute true threats.

(Emphasis supplied.)

It is D.R.C.'s position that this is where the State failed to meet its constitutional requirement of proof beyond a reasonable doubt.

It is this aspect of the case that the trial court did not consider *in toto*.

There is no background of other threats to her mother.

The venting is with her social equals.

Texting is the method of choice for most teens to vent.

The words were uttered following the argument. They were not directed at her mother during the argument.

There can be no doubt that when her mother learned of the text that she was concerned and acted according to her fears. However, a full comprehensive analysis of what actually occurred calls into question whether the reaction was totally reasonable.

Law enforcement was called. They did not effect an arrest of D.R.C. Her mother did not know of the text messages at that time. Yet, her mother did not place a second call to law enforcement.

The State correctly points out that there was a misstatement in D.R.C.'s original brief concerning the ruling in *State v. Locke*, 175 Wn. App. 779, 307 P.3d 771 (2013).

There were three messages in the *Locke* case. The Court determined that the first message was not a true threat.

The Court also determined that the second message would not have constituted a true threat with the exception that the third message was a true threat. When the two messages were viewed together, then the true threat burden was met.

D.R.C. otherwise relies upon the argument contained in her original brief.

DATED this 24th day of March, 2020.

Respectfully submitted,

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NO. 36821-1--III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)
) YAKIMA COUNTY
 Plaintiff,) NO. 19 8 00048 2
 Respondent,)
) **CERTIFICATE OF SER-**
) **VICE**
 v.)
)
 D.R.C.,)
)
 Respondent,)
 Appellant.)
 _____)

I certify under penalty of perjury under the laws of the State of Washington that on this 24th day of March, 2020, I caused a true and correct copy of the *REPLY BRIEF* to be served on:

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Transmittal Information

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