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Court of Appeals
Division III
State of Washington
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NO. 36846-7-III

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

Respondent,

v.

ILARIO MANJARES,

Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant sets forth his issues as follows:

1. The evidence presented is insufficient to support the conviction for felony harassment.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

The State's response is as follows:

1. The evidence presented was more than sufficient to prove the two counts of Felony Harassment.

II. STATEMENT OF THE CASE

The trial court held a hearing to determine the admissibility of statements made by Appellant at the time he was arrested and during certain phone calls he place while in jail. The court ruled that statements made by Manjares at the time of his arrest were not subject to Miranda¹:

... it just sounds like Mr. Manjares was just blurting out a lot of things that were consistent with his state of mind and this actually goes to, as far as the Court's concerned, res gestae as far as the whole what was happening with the defendant under the circumstances and it goes to again, show state of mind. As far as the Court's concerned, the -- it falls within a voluntary statement. He was knowingly, intelligently and voluntarily making those statements. He didn't have to waive anything because he wasn't being questioned at that point.
RP 52-53

The court later clarified its ruling to include that the statements

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct 1602, 16 L.Ed.2d 694 (1966)

were considered under ER 403 and 404 and the court found the statements made to the officer at the time of the defendant's arrest to be admissible under ER 403 as being more probative than prejudicial and an exception to ER 404. RP 71-73

The trial court severely limited the content that it allowed into the trial from the recorded jailhouse calls. RP 53. The State agreed to produce a disc which would contain the limited content and that would then be used at trial. RP 54-55

Sergeant Cunningham of the Sunnyside Police Department testified that he entered the chase after Officer Chiprez chased the vehicle driven by the Appellant and that vehicle crashed into a canal. RP 102 The sergeant identified numerous photographs that depicted the scene of the crash (RP 103-107) as well as physical evidence items which included the defendant's hooded sweatshirt and a knife which the police located in one of the pockets of that sweatshirt. RP 107-111. The knife, which was admitted, was described as a folding knife that was silver or chrome in color with a blade length of approximately two and three quarters inches. RP 113.

Mr. Julio Ramirez was the second State's witness. He identified the defendant as the person who "...did like what he did that night..." He testified that his looks were different than at the time of the incident RP

118-19.

Mr. Ramirez testified that he and his girlfriend, Daisy Perez, were sitting in Ms. Perez's car in the parking lot of the Jack in the Box restaurant late at night eating. When they pulled out from the lot, he noticed there was a white SUV which was following them. He and his girlfriend discussed whether the SUV was actually following them or not as they made their way home. RP 120. He testified that the drive home to the apartment took approximately five minutes. PR 121, 129. Ms. Perez was the driver of the vehicle and Mr. Ramirez was sitting in the front passenger seat. RP 121-22. They pulled into the apartment complex and parked, the SUV parked nearby. RP 122

Soon after parking someone wearing a "hoodie" came walking from that vehicle towards the car occupied by Ms. Perez and Mr. Ramirez. RP 122, 130. Mr. Ramirez identified the "hoodie" as looking like the one worn by the defendant on that night. RP 122. Mr. Ramirez had his window down in the car because he thought perhaps the person had confused them. He became scared when he saw that this person had their hand inside their sweater. RP 123, 124. Mr. Ramirez asked the defendant "why he came up and...what was wrong or what happened..." after which the defendant "...said something about you have Hailey." Mr. Ramirez told the defendant that he must be confusing them and at that time the

defendant pulled out a knife from the pocket of his hoodie. RP 123, 131. On cross examination Mr. Ramirez clarified that the defendant "...said something like you have fucking this Hailey or do you know where she is at..." RP 130.

Mr. Ramirez told the defendant he had confused them, the defendant got aggressive saying some bad words then he began to swing the knife towards Mr. Ramirez. Mr. Ramirez put the car window up so the defendant could not reach him or actually do something to him with the knife. He testified when the defendant was swinging the knife he was "not so far" from the car window. Mr. Ramirez testified that he was scared from before he saw the knife. RP 125, 132-33.. He testified that his window was down when the defendant began to swing the knife and that the knife was perhaps an arm's length away when it was being swung at Mr. Ramirez. He testified that the defendant continued to swing the knife at them even as they reversed the car and left. RP 126-27, 130-31, 135-36.

Mr. Ramirez testified the maybe the knife had entered inside the passenger compartment, but he was not sure, he said it was close. He identified the knife as being silver or gray in color. RP 136-39 Mr. Ramirez confirmed the defendant continued to swing the knife he had in his hand at the car even after it was reversing away from the defendant. RP 141-42, 144-46. Mr. Ramirez testified that the entire encounter took

place over five to ten minutes, but he was not sure. RP 147. Mr. Ramirez was shown Exhibit 1 which was the knife seized from the defendant, he identified the knife he was shown as being the knife or like the knife the defendant was swinging at him on the night of November 30, 2018. RP 149-50, 152-53.

Ms. Daisy Perez testified that she and Mr. Ramirez were eating in the parking lot of the Jack in the Box, that she was driving the car and Mr. Ramirez was seated in the front passenger seat. She stated that when they left the lot Mr. Ramirez noticed that there was a car following them and that vehicle continued to follow them into the parking lot of Ramirez's apartment complex. RP 163-4, 177-78. She testified this all occurred late at night, that the vehicle following them was a white SUV. RP 164. She testified that she pulled up sideways behind other cars and that the SUV pulled into a parking spot. She testified that within a minute the person from the SUV started walking towards the passenger side of her car. RP 165, 178-80. She identified the defendant both from the picture taken the night of the assault and also as the person seated in the courtroom. RP 166. She stated that Manjares had one hand in his pocket in his "hoodie." RP 167, 180-81

She testified that Ramirez had his door partially open and he asked the defendant "...can I help you." The defendant's response was

“...where’s Hailey at?” They told the defendant that he must be confused and she turned on the interior light so that she could show him there was no one in the car and told the defendant there was no Hailey. RP 181, 183. Manjares continued to ask about Hailey he continued to have his hand in his pocket and then he got aggressive. He then swung a knife at them and that is when Mr. Ramirez got back into the car and she locked the doors. RP 167-8, 182-3, 187-88

She testified that even as he approached the car he was walking fast and aggressive along with the way he was taking about Hailey and he was really mad. RP 169. She testified that Manjares was only two or three feet away when she saw the knife. She stated the knife was pointy and sharp and was grayish, silverish in color. And when shown a picture of the knife seized from the defendant that night, she indicated it was similar. RP 185-6. She started backing the car up and during that maneuver Manjares ended up on her side of the car and he was still swinging the knife. At that time the defendant was two or three feet from the side of the car. RP 170-71, 172, 183-84, 189

She testified the knife came pretty close to the car and that as this occurred, she was really scared. She testified that after she reversed and left the parking lot the defendant was behind them again in his SUV. That shortly thereafter they “lost” him when he turned. RP 173. She testified

she had never met Manjares before and she did not know anyone who was named Hailey. She testified this all occurred on November 30, 2018 and that the entire incident took place over about a five-minute time span. RP 176.

Alexandra Morfin Ixtas testified that the person depicted in Exhibit 4, the photograph of Manjares from the day he was arrested was the same person he saw on the day of the incident and he identified Manjares in the courtroom. PR 195. Ms. Morfin testified she had contact with the defendant at about 9:30 PM on an evening when she had plans to go out and meet some friends at a bar, Eggley's. She was intending to drive her Lancer to that location. RP 196-97, 209-211. She arrived at the bar and as was her routine she went to the back of the establishment to park. There were no cars in back of the bar and it was very dark. Ms. Morfin testified that as she put her vehicle into park she felt someone staring at her on her driver's window. She stated she turned and the defendant was there asking for Hailey. RP 197, 209-210. She testified the windows were up in the car but she could hear what the defendant was saying. She stated that he was "[s]uper close...almost touching my window." She testified the defendant was asking for Hailey and for his two daughters. Ms. Morfin told the defendant she was sorry, but she did not know any Hailey. RP 197, 210

She then pulled off the back lot and drove around to the front to find parking because there were people outside. She testified she did not find parking out in front and then noticed that a white SUV was following her, every turn she would take the SUV would follow. She went around the block to see if this person was in fact following her and the vehicle continued to follow her, turn by turn. RP 199, 210.

She testified that she became scared and started crying. She called a friend and asked him to come out because someone was following her explaining to him that she was scared. She stated that as she was driving the white SUV was tailgating her, came along the side of her car and tried to run (her) over that they almost hit and that his actions caused her to almost hit some cars in a car lot. RP 199-200, 211. The person she called, Hector, lived about a mile from the bar. She had Hector on the phone and was updating him as to where she was and telling him please, please come out because she thought that if she pulled over somewhere the SUV would not stop, it would keep going but as she pulled into Hector's house the SUV parked right behind her. Hector was at that time standing outside his residence. RP 200-201, 212, 234.

She testified that Hector was near where the SUV stopped and as she put her car into park the person in the white SUV, Manjares, got out of his SUV, leaving it running, and jumped off his car. RP 202, 212. She

testified that initially she was still in her car. She testified:

I heard him and he was telling me --asking me for Hailey and he was saying he was telling Hector I know you're the fat fuck that is fucking Hailey, that she thinks she's -- she's -- sorry, that she thinks that I can hide behind all this makeup. RP 202

...

he started pointing at Hector saying that he knows he's the fat fuck that I've been fucking and he -- and that I'm just hiding in all this makeup and he knows I'm Hailey. RP 212

Manjares was accusing Hector of sleeping with Hailey. Ms.

Morfin told the defendant she didn't know Hailey and to leave her alone.

RP 203. Manjares was wearing a hoodie as depicted in Exhibit 3 and that he had a silver knife in his left hand. She identified the knife, which was later seized from the defendant, in the courtroom indicating that was the weapon Manjares had in his hand when he stopped and confronted her. She stated during the confrontation the defendant was maybe two feet away. RP 204.

Ms. Morfin testified that during the confrontation she called 911. Stating the defendant noticed she was on the phone calling 911 and it was at that time "...he said that he was gonna come back and shoot us up." She testified that she believed Manjares was serious when he stated that he was going to come back and shoot them. Testifying that this belief was based the defendant being "...very aggressive, being very angry. He did

look like he was on drugs.” RP 205.

She was asked by the 911 operator to come in and make a statement. Ms. Morfin’s testimony is as follows:

Q. And -- and so what did -- I guess after he left, what -- how were you feeling?

A. I was very scared. I closed all the blinds to the house. I ran into the room, I was crying. They actually had told me if I can go in and write a statement and I told him yes. So, about twenty minutes later they called me again and asked if I was on my way and I told them no, because I was scared to go outside, because I was scared he was gonna come back and I didn’t feel comfortable.

Q. And so when you say they, is that the -- the folks at 9-1-1, the police?

A. No, the -- the man was gonna come back.

Q. Oh, no, but the -- when you said they wanted you to come in and write a statement.

A. Yes, the -- the officer.

Q. Okay, but you were scared that --

A. That he was gonna be outside.

Q. -- this gentleman was gonna come back?

A. Yeah, after he said he was gonna shoot us up.

Q. Alright, so you didn’t want to leave your house?

A. Yes, I was scared. RP 206.

Ms. Morfin reiterated the statement made by the defendant, that he was “gonna come back and shoot us all up...” when questioned by defense counsel. Ms. Morfin was very specific that the statement made was that the defendant was going to come back and shoot them up not the house or anything else. RP 217.

On cross examination Ms. Morfin clarified when it was that she observed Manjares with a knife. She testified that when she was

confronted by Manjares in the dark parking lot at the bar he had this same knife in his hand. And that this was the same knife he had in his hand when he again confronted her and Mr. Gallardo at Mr. Gallardo's home. RP 218. She testified that the blade was open during the confrontation at Mr. Gallardo's home and at the bar. RP 219

Hector Gallardo testified that Ms. Morfin was his girlfriend. That the person depicted in Exhibit 4, the picture of Manjares on the date he was arrested, was the person threatening Ms. Morfin and him. RP 224. He testified that Ms. Morfin got to his house crying and screaming. He also stated she was crying and screaming when she was on the phone with him before she arrived at his house. He stated that Manjares got out of his vehicle cussing and saying stuff. That Manjares was calling out the name Hailey and he was wearing the clothing set out in Exhibit 4. Mr. Gallardo testified that when Ms. Morfin was out of her car, Manjares was threatening her and he had a silver knife in his hand. RP 226. 236. He identified the knife in Exhibit 1 as being the knife Manjares had displayed. RP 227. He testified the defendant was accusing Ms. Morfin of being Hailey and that he, Mr. Gallardo, had been sleeping with Hailey. Mr. Gallardo indicated that he was telling the defendant to back off and that during the encounter Manjares came within five feet of Mr. Gallardo. He stated that Manjares threatened to come back and shoot up his house. Mr.

Gallardo believed this threat to be real because of the way Manjares was acting. RP 228, 238-39. Mr. Gallardo did not know the defendant, nor anyone named Hailey. RP 229.

Officer Chiprez testified extensively regarding the fifth count charged against Manjares, Attempting to Elude a Pursuing Police Vehicle. CP 6, RP 256-81 (The State will not set forth most of the testimony from this officer because the Appellant has not challenged his conviction for this charge). Officer Chiprez eventually chased the defendant who crashed his white SUV into a canal. RP 262. After the crash Manjares came out of the vehicle which has on its side at the bottom of the canal and began to yell at this officer that he was going to “fucking kill him”. RP 265. Manjares continued to yell at the officer that he was going to kill him and made statements about a person named Hailey. RP 266.

Officer Chiprez also testified that he had listened to the recording which was on a CD that he was proffered. He indicated that on that disc the defendant identified himself and that the office recognized the voice on the CD to be that of the defendant. RP 267-70.

Sergeant Merriman was the final State’s witness. He testified regarding the telephone system in the Yakima County Jail. This system is set so that each inmate has a specific pin number that allows them access to this phone system and also allows the jail to track phone calls made by

each inmate. He also testified that each phone call is recorded. RP 285-87.

The State subsequently moved for and was granted permission to enter Exhibit 13 into the record. This was copy of certain recorded phone calls made by the defendant. RP 290. The court also allowed admission of Exhibit 13-A which was an edited CD which was played to the jury. RP 290-91.

At the close of the State's case the defendant moved for dismissal of the charges against the defendant. He argued the there was insufficient evidence to support all of the charges. He argued regarding the harassment charges there was no threat to kill, which is needed to support the felony version of this count. RP 296-98.

The trial court ruled:

Well, looking at the evidence that's presented in the light -- the evidence, as well as all reasonable inferences in favor of the State, given these motions.

...

With regard to the felony harassment claims, I tend to agree that the State, the fact that there was one person that testified, it was Ms. Morfin, who testified that he --he basically offered to shoot us up and that was different than Mr. Gallardo's testimony, but there it lies, and so from that standpoint I think there's sufficient evidence that that would be an intent to kill and I think that's particularly true when I do take that in a light most favorable to the State, which does include that last clip on the jail call, which indicates that he misses the old Yakima where

you just shoot -- shoot people and it's basically done
RP 311. 313

The defendant testified in his defense stating that he was married to and at the time, in the process of divorcing his wife, Hailey. RP 319. Manjares claimed he was at the Eggleys' bar because someone who he could not remember texted him and told him that his soon to be ex-wife was there. RP 319, 347 He was trying to find her because he said, she was in violation of an order allowing him visitation with his two children. He testified when he arrived at the bar he did not go in to find his wife but asked four men standing out front whom he assumed were bouncers or "just gang bangers" if his wife was there and they became angry with him for some reason and eventually threatened to shoot him. RP 319-20, 321-22, 346 He theorizes as to why this occurred included the fact that these four were wearing gang colors and may have thought he was gang affiliated because his brother was a gang member. RP 346-7

After this altercation he drove to the back of the bar to see if Hailey's car was there. When he got back there he observed Ms. Morfin's car, which he said was a black Mitsubishi that was really familiar to him as belonging to a person who worked with Hailey. His theory was this person was with Hailey and so that is why he got out and questioned Ms. Morfin. He was not certain who the person was who knew his wife. RP

321-22. He stated that when he questioned Ms. Morfin she looked crazy, like she was offended, that she was trying not to tell him where his wife was. His assumption was that when Ms. Morfin drove off to the front of the building, she was going there so that Hailey could run out of the bar and jump into that car. RP 323 His testimony was he was a safe distance from Ms. Morfin's car when he was following her. RP 324.

His testimony was that when he got to Mr. Gallardo's residence, he parked near but not too close to Ms. Morfin's car and that he left his vehicle running, that he was never very close to either Mr. Gallardo or Ms. Morfin about five feet in case he had to take off. RP 328. He stated he confronted Ms. Morfin about Hailey and where his kids were, that he "...was a little irritated." That he sounded offended. RP 325. He stated that Mr. Gallardo just happened to look like another person who goes over to where his wife worked. His assumption was that Mr. Gallardo was the person who visited his wife's work and that Ms. Morfin worked with her and the two knew where Hailey or his kids were. RP 325

He testified that at this point "(he) got more like irritated...we kind of argued a little bit..." He stated that Gallardo and Morfin were persistent in their denial so he just basically drove off. RP 326-27. He also admitted that at the time he confronted Ms. Morfin in the back parking lot and when he confronted Mr. Gallardo and Ms. Morfin at

Gallardo's home he had a knife in his hand. The reason he had this knife in his hand was due to the altercation at the bar. RP 329.

When asked about the testimony of Ms. Morfin that he had threatened to come back and shoot them up his response was:

Yeah, I really don't even remember saying that at all. Plus, I didn't have nothing to shoot them up with and I mean even the cops searched the vehicle, there was no gun in the vehicle, nothing like that. So, that -- I don't know -- I don't even know where that came up from, but I did hear I said something stupid like that in the -- in the audio, so I'm guessing I don't know if that was just my thoughts or where I came up with that stupidity, but there was no gun with me, I never had one. I don't know if that was just me because -- because they told me that at the club that just stuck in my mind, I just spit it out, or what, but I was actually threatened to be shot at that club. RP 329-30

When similarly asked about Mr. Gallardo stating Manjares said he was going to come back and shoot up his house the defendant stated:

To be honest, I don't think I would have been able to find that place. I've never even been there before, but no I don't -- I don't remember. I don't remember -- I don't remember saying anything about a gun to them.

Q Are you saying you don't remember what happened or are you saying to your recollection you never said that?

A To my recollection, I didn't say that to them. On the phone call obviously I did, but to them, I don't recall saying that to them.

Manjares stated that Gallardo and Morfin were really offended,

weren't going to tell him anything, were real closed and stand offish, that they weren't just sitting there like they said they were. RP 331.

Later in his testimony Manjares addressed the recordings of his jailhouse phone calls that had been admitted. He addressed the fact that he was recorded saying he missed the old days when you could just kill someone as follows:

- Q. Do you recall saying something about you missed the old Yakima where you can just kill somebody and be done or –
- A. No, I don't understand kill somebody. I remember the audio saying that I remember the old Yakima where you could shoot somebody and they'd be done or something like that.
- Q. What did you mean when you said that?
- A. I don't know. I think it was more a reference to like in the old days if something happened you would take care of it like either physically or however you -- basically you deal with it on your own and not have all this outside --like to me, I feel like these charges have been way exaggerated. So, -- so to me, it's like back in the old days we could have gotten in a fist fight and it'd been done, it'd have been over. Like it was, it's a done deal.
- Q. Did you mean that as any sort of threat to Ms. Morfin or Mr. Gallardo?
- A. No, I didn't plan on really doing anything like that. I think it's just a spur of the moment, I'm angry, I'm just ranting, raving, just kind of cussing just saying --just saying stupidity to be honest.

On cross examination Manjares again indicated the beginning of the series of incidents was the confrontation with the bouncers or gang

bangers in front of the bar. He testified “[t]hat was the beginning of like this whole rage and anger thing...” RP 346. He confirmed he had confronted Ms. Morfin asking her where Hailey was, at the time he was demanding to know where Hailey was, he had the knife in his hand, but he stated it was pointed down. RP 351-2 Manjares testified “I honestly don’t remember if I threatened anyone or not.” RP 354.

Manjares testified further about the confrontation with Mr. Ramirez and Ms. Perez and about the allegation that he was fleeing the police when he crashed his SUV. The State is not setting that forth because the defendant has not challenged those charges.

III. ARGUMENT

Response assignment of error 1. – Testimony elicited from witnesses and other evidence presented at trial were sufficient to prove Felony Harassment beyond a reasonable doubt.

Manjares’ only challenge in this appeal is to the sufficiency of the evidence presented to prove the two counts of Felony Harassment. RCW 9A.46.020 was charged in counts 3 and 4 as follows:

Count 3 • FELONY HARASSMENT OF ANOTHER -
THREAT TO KILL RCW 9A.46.020(1)(a)(i)(b) and
(2)(b)(ii)

CLASS C FELONY -The maximum penalty is 5 years
imprisonment and/or a \$10,000.00 fine.

On or about November 30, 2018, in the State of
Washington, without lawful authority, you knowingly
threatened to cause bodily injury immediately or in the
future to Alejandra Morfin and the threat to cause bodily

injury consisted of a threat to kill Alejandra Morfin or another person, and did by words or conduct place the person threatened in reasonable fear that the threat would be carried out. CP 6, RP 427-28.

Count 4 is identical except it names the second victim, Hector Gallardo.

Evidence is sufficient if, after viewing it in the light most favorable to the State, a rational trier of fact could find each element of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)); see also State v. Witherspoon, 180 Wn.2d 875, 883, 329 P.3d 888 (2014). A defendant challenging sufficiency of the evidence at trial admits the truth of the State's evidence and all reasonable inferences therefrom. Witherspoon, 180 Wn.2d at 883.

This court defers to the fact finder's determination of the persuasiveness of the evidence. State v. Davis, 176 Wn.App. 849, 861, 315 P.3d 1105 (2013), rev'd on other grounds. A verdict may be supported by either circumstantial or direct evidence, as both may be equally reliable. State v. Brooks, 45 Wn. App, 824, 826, 727 P.2d 988 (1986).

A jury may draw inferences from evidence so long as those inferences are rationally related to the proven facts. State v. Jackson, 112

Wn.2d 867, 875, 774 P.2d 1211 (1989). A rational connection must exist between the initial fact proven and the further fact presumed. Jackson, 112 Wn.2d at 875. An inference should not arise when other reasonable conclusions follow from the circumstances. State v. Bencivenga, 137 Wn.2d 703, 711, 974 P.2d 832 (1999). The jury may infer from one fact the existence of another essential to guilt, if reason and experience support the inference. Tot v. United States, 319 U.S. 463, 467, 63 S.Ct. 1241, 87 L.Ed. 1519 (1943). Nevertheless, essential proofs of guilt cannot be supplied by a pyramiding of inferences. State v. Bencivenga, 137 Wn.2d at 711; State v. Weaver, 60 Wn.2d 87, 89, 371 P.2d 1006 (1962).

A person is guilty of harassment if, without lawful authority, he knowingly threatens to cause bodily injury immediately or in the future to the person threatened; and the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. RCW 9A.46.020(a)(i)(b). A person who harasses another is guilty of a class C felony if the person harasses another person by threatening to kill the person threatened. RCW 9A.46.020(b)(ii).

In order to convict an individual of felony harassment based upon a threat to kill, an element of the offense, the State must prove if the person threatened was placed in reasonable fear that the threat to kill would be carried out. State v. C.G., 150 Wn.2d 604, 612, 80 P.3d 594

(2003).

The testimony of Ms. Morfin and Mr. Gallardo clearly set forth that they were both felt threatened and that they believed that threat was not just some passing statement but an actual threat against their lives.

While the primary piece of testimony discussed was the specific threat to come back and shoot these two people or shoot up their house this piece of evidence is not looked at in isolation.

Ms. Morfin had been sitting in her car in a dark parking lot behind the bar when suddenly Manjares was standing at the window of her car in a dark parking lot yelling at her about a person she did not know all the while holding a knife in his hand.

Next, as she flees this parking lot for the safety of her boyfriend's home a car follows her at a dangerously close distance and even tries to ram her or move her off the street on one occasion. Finally reaching the safety of Mr. Gallardo's home she is again confronted by this man she does not know ranting and raving about a person she does not know, who jumps out of his still running vehicle and threatens both Ms. Morfin and her boyfriend Mr. Gallardo. All the while still having the sharp pointy silver knife in his hand. This all takes place in the dead of the night. This man is identified in trial as the defendant.

When Ms. Morfin calls 911, suddenly Manjares determines it is

time to go but before he leaves, he threatens to come back and shoot up the victims or the victims and/or Mr. Gallardo's home.

Manjares cites to a study which discusses the lethality of being shot. No reasonable person is going to think during a terrifying confrontation with an unknown man at night who threatens to come back and shoot you or your house, well most people don't die when they get shot so it is not really a threat.

When someone threatens to shoot someone or their home with a gun, which is a lethal weapon, that reasonable person is going to be put in fear for their life. Manjares' claim that he did not have a gun so he could not carry out this threat and his citation to this study regarding the lethality of guns is not useful in this type of case. Again, in order to convict an individual of felony harassment based upon a threat to kill, the State must prove that **the person threatened was placed in reasonable fear that the threat to kill would be carried out** as an element of the offense. State v. C.G., 150 Wn.2d 604, 612, 80 P.3d 594 (2003). (Emphasis added,)

Manjares alleges the evidence was insufficient to prove either Ms. Morfin or Mr. Gallardo reasonably feared he would carry out the threat to kill them. The trier of fact uses an objective standard to determine whether the victim's fear that the threat will be carried out is reasonable. State v. Alvarez, 74 Wn.App. 250, 260-61, 872 P.2d 1123 (1994).

Importantly, "the nature of a threat depends on all the facts and circumstances." State v. C.G., 150 Wn.2d 604, 611, 80 P.3d 594 (2003).

As C.G. makes clear the one "threat" which the parties focused on, the threat to come back and shoot up the house or the people, was not made in a void. This was the final act of a man who by his own words while armed with a knife and angry, confronted Ms. Morfin late at night in a dark secluded location followed this female victim home and continued to be angry at people who did not know who he was.

Manjares' belief that these people knew Hailey and they were the cause of his anger and of the confrontation is not the point of view the jury looks at to determine if the victims believed this threat was real. He says he did not have a gun on him, however, the wording of the threat was he would come back later.

Mr. Gallardo's point of reference in this confrontation was not just from the actions of Manjares directly in front of him but were grounded on his girl friend crying and screaming over the phone as she raced to his home so she would be safe, then seeing this unknow person pull up behind Ms. Morfin, jump out of his still running vehicle with a knife in his hand and start to rage about the fact fuck and Hailey. Manjares final words, I am coming back and shooting up your house, as heard by Mr. Gallardo, were clearly taken by Mr. Gallardo as a true threat to his life.

The threat by Manjares was not limited to just the final threat before he drove off. As stated throughout this brief the jury was tasked to look at the totality of his actions. State v. Pinkney, 2 Wn.App.2d 574, 411 P.3d 406 (2018) addressed what a threat was:

We hold that the plain meaning of "threaten" as used in RCW 9A.46.020 includes all threats, whether or not verbalized. As relevant, RCW 9A.04.110(28) defines "threat" in the context of RCW 9A.46.020 in the following terms: "[t]hreat' means to communicate, directly or indirectly the intent: (a) To cause bodily injury in the future to the person threatened or to any other person." In turn, the plain meaning of "communicate" includes non-verbal conduct. For example, State v. Toscano held that "[c]ommunication' is '[t]he expression or exchange of information by speech, writing, gestures, or conduct ; the process of bringing an idea to another's perception.'" held that defendant's physical behavior of taking a "fighting stance" met the statutory definition of "threat" under RCW 9A.76.180. (Citations omitted.)

In Mr. Manjares own words on that day he was "...foaming out the mouth and like spewing like a rabid dog..." RP 363

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. Kilburn, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004) (internal quotation marks

omitted) (citations omitted).

"The speaker of a 'true threat' need not actually intend to carry it out. It is enough that a reasonable speaker would foresee that the threat would be considered serious." State v. Schaler, 169 Wn.2d 274, 283-84, 236 P.3d 858 (2010) (Citation omitted.)

Here there were two versions of what occurred. The jury chose to believe the facts presented by the State and found the defendant guilty. Manjares stated he did not remember threatening to shoot up anyone, his recollection of the entire night matches what others testified to except, when it comes to facts which prove his guilt. Viewed in the light most favorable to the State, this evidence is sufficient to support Manjares' felony harassment convictions.

IV. CONCLUSION

For the reasons set forth above this court should deny this appeal.

Respectfully submitted this day of March 2020,

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DECLARATION OF SERVICE

I, David B. Trefry state that on March 6, 2020 emailed a copy of the

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I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 6th day of March 2020 at Spokane, Washington.

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