

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

NO. 44278-7-II

FROM CLALLAM COUNTY SUPERIOR COURT

NO. 11-1-00182-1

STATE OF WASHINGTON,

Respondent,

vs.

AMEL WILLIAM DALLUGE,

Appellant.

BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF THE ISSUES

ISSUE ONE

Did the trial court correctly address Mr. Dalluge's subjective knowledge in sending a letter containing "you're going to do something stupid and in retaliation get hit with a bio-weapon et cetera, et cetera, to give you cancer and you'll never even know/notice..." by looking at how a reasonable sender or a reasonable receiver would view the language?

STATEMENT OF THE CASE

Mr. Dalluge accurately states the fundamental background facts; Ms. Mack was retained to represent Ms. Bees, who had been sued by Mr. Dalluge. The facts supporting the trial court's finding that Mr. Dalluge sent a true threat that violated the harassment statute, RCW 9A.46.020, are a little more complicated.

Ms. Mack received a letter from Mr. Dalluge (Exhibit 8, RP 57, 59). The contents of the letter read:

"Dear Sara S. Mack,

"I must warn you I fall under international law as a not recognized sovereign but a sovereign. Because I am pro se I am not bound to ethics like you and the warning is you violate any law and more than likely the Taliban is going to run a Black Ops against those you love and then you. You need to note I do not order this and my followers act as they feel. (911 was because of me, and, I'm being investigated for counterfeiting millions to put America in recession to cause the war and send its citizens to their deaths." (smiley face)

"What I am doing right now is trying to be diplomatic to save your client's life and if she has children they will die first (I do not want that) – more than likely because you have more knowledge than me you will try to take

advantage of me and cover your client's wrongs by obfuscation. I do not advise this for the reasons stated above (see, we have robots as suicide bombers – we are not as stupid/simpleton as you think. Your country is less and has propagated you.

“My point—your client violated international law specifically war crime sub section genocide and has involved herself in the most highly classified international investigation being ran [sic] against America and the State of Washington for harboring a star-chamber to oppress struggling to [sic] establish a record and I do not need to exhaust remedies—your client's action appears to be in collusion to prevent me from ever being able to get relief in what is known as a “blue coat coverup,” et cetera, etcetera <Homeland Terrorist Programs>, and, because I have established the possibility of a conspiracy the burden shifts and your client can not prove innocent because anything said is self-serving. You have no legal standing (Defense that is just) and all I can say is you're going to do something stupid and in retaliation get hit with a bio-weapon et cetera, et cetera, to give you cancer and you'll never even know/notice (put two and two together – believe me), I was arrested and there was [sic] three bombings and sixty drive-by shootings in Moses Lake and the ATF has no suspects. I'm open to what you reasonably want. Sincerely, best wishes, Amel Dalluge.

AKA Osama Bin Laden.”

(RP 57-59). After hearing all the testimony from both the two women who became terrified by Mr. Dalluge's threats and Mr.

Dalluge's self-serving argument, the trial court determined that only the threat about a using a bioweapon to cause deadly cancer was a "true threat."

The trial court issued a lengthy oral opinion (RP 287-308) in which it discussed protected speech, harassing speech, and the objective standard and the subjective standard of review. At the end of the analysis, the trial court held:

"Here, the Defendant argues that a conditional threat does not fall under the statute, here, however, the language is phrased in the affirmative – 'you are going to do something stupid and in retaliation get hit with a bioweapon.' It does not suggest an option or condition.

"Clearly a reasonable person would see the language of Exhibit 8 as a threat. That would be whether or not that person were the sender or receiver. While the reference to Ms. Mack is to cause her cancer, the Court finds that a reasonable person would interpret the indication that she would be attacked with a bioweapon as a threat to have her death caused by a slow and lingering disease."

(RP 307). Findings of fact and Conclusions of Law were entered on December 7, 2012 (CP 7-12). The only question is a legal one: Did the trial court apply the correct standard to

determine Mr. Dalluge's subjective knowledge when he sent the threatening letter?

ARGUMENT

ISSUE ONE

Did the trial court correctly address Mr. Dalluge's subjective knowledge in sending a letter containing "you're going to do something stupid and in retaliation get hit with a bio-weapon et cetera, et cetera, to give you cancer and you'll never even know/notice..." by looking at how a reasonable sender or a reasonable receiver would view the language?

RESPONSE

I. Standard of Review: Statutory interpretation is a question of law that is reviewed *de novo*. *State v. Alvarez*, 128 Wn.2d 1, 11, 904 P.2d 754 (1995).

II. Analysis: The trial court correctly applied the definition of "subjective knowledge" from *State v. J.M.* 144 Wn.2d 472, 481, 28 P.3d 720 (2001). Mr. Dalluge was aware of facts and circumstances when he sent Ms. Mack a letter threatening her with cancer if she "did something stupid or in retaliation." The trial court correctly determined that a reasonable sender would

know Mr. Dalluge's warning is a threat.

Mr. Dalluge correctly argues that the State must prove he had knowledge he was sending a true threat—i.e., whether he subjectively intended to send a true threat. However, Mr. Dalluge is incorrect in stating that the method by which to determine whether the sender intended to send a true threat is by asking him. The test “is whether a reasonable person in the defendant's place would foresee that in context the listener would interpret the statement as a serious threat or joke.” *State v. Killen*, 151 Wn.2d 36, 46, 84 P.3d 1215 (2004). “Thus, one who writes a threat in a personal diary or mutters a threat unaware that it might be heard does not knowingly threaten.” *Id.*, at 48, quoting from *State v. J.M.* 144 Wn.2d 472, 481, 28 P.3d 720 (2001). A reasonable person in Mr. Dalluge's place would know and intend that his threats have real meaning to both Ms. Mack and Ms. Bees.

“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 individual).”

State v. Williams, 144 Wn.2d 197, 207-08, 26 P.3d 890 (2001), quoting from *State v. Khorrami*, 895 F.2d 1186, 1192 (7th Cir. 1990). A “true threat” is a “serious one, not uttered in jest, idle talk, or political argument.” *State v. J.M.* at 478, 28 P.3d 720, quoting from *United State v. Howell*, 719 F.2d 1258, 1260 (5th Cir.1983).

“Subjective knowledge” can be defined as being “aware of a fact, facts, or circumstances or result described by a statute defining an offense,...” *Id.* at 481, 28 P.3d 720. “Alternatively, ‘knowingly’ also means that a trier of fact may, but is not required to, infer actual knowledge if a reasonable person in the same circumstances would believe that facts exist which are described by statute as defining an offense.” *Id.* at 481, 28 P.3d 720. In this case, the trial court correctly analyzed the threats as a sender would see them, because Ms. Mack had personal fears arising from her presence in New York City on September 11,

2001, and because both victims had received erroneous information about Mr. Dalluge's criminal history. The trial court summed up the sender's knowledge in finding of fact 21:

A reasonable person in this context would see that [sic] language of Exhibit 8 as a threat, whether the person were the sender or the receiver. The Court finds that a reasonable person would interpret the indication that Ms. Mack would be attacked by a bioweapon as a threat to have her death caused by a slow and lingering disease, cancer, and would foresee that the statement would be interpreted as a serious expression of intention to carry out the threat, rather than as something said in jest or idle talk.

In other words, the sender would subjectively know that he had sent a true threat.

CONCLUSION

The trial court(s) took great pains to narrow the five charges down to one "true threat" and, in the process, protected Mr. Dalluge's constitutional right to prattle aimlessly. It was only when Mr. Dalluge wrote: "you're going to do something stupid and in retaliation get hit with a bio-weapon et cetera, et cetera, to give you cancer and you'll never even

know/notice..." that he crossed the line, according to the Court. The Court obviously knew the correct legal standards to determine both the sender's and the receiver's reasonable beliefs. This Court should affirm the conviction. The State also believes this appeal should be dismissed by a motion on the merits.

Respectfully submitted this

DEBORAH KELLY, Prosecutor

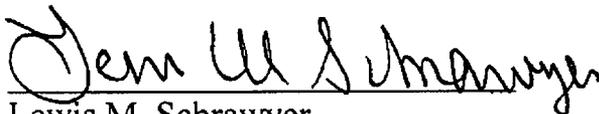


Lewis M. Schrawyer, #12202
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CERTIFICATE OF DELIVERY

Lewis M. Schrawyer, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was mailed to Jennifer L. Dobson and Dana M. Nelson on July 31, 2013.

DEBORAH KELLY, Prosecutor



Lewis M. Schrawyer

CLALLAM COUNTY PROSECUTOR

July 31, 2013 - 9:06 AM

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