

70398-6

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NO. 70398-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOEL C. HOLMES,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE GEORGE N. BOWDEN
JUDGE PRO TEMPORE

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

ROGER DAVIDHEISER
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

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A. ISSUES PRESENTED

On November 18, 2012, Joel C. Holmes called 911 and threatened to kill King County Superior Court Judge, Julie Spector. Holmes was motivated to make this threat because in 2006 he had been convicted of felony harassment following a trial which Judge Spector presided over and made numerous evidentiary rulings in. Holmes was also motivated to kill Judge Spector because Judge Spector had sentenced Holmes to prison for his crimes. Holmes had no other reason to make the threat against Judge Spector's life. Moreover, having presided over Holmes's 2006 trial, and being familiar with the fact that Holmes had made similar threats against others in the past and went so far as to stalk his intended target, Judge Spector was placed in reasonable fear that Holmes's threat to kill her would be carried out. When viewed in a light most favorable to the State, the evidence was sufficient to allow any reasonable trier of fact to find Mr. Holmes guilty beyond a reasonable doubt of both intimidating a judge and felony harassment as charged.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Mr. Holmes was charged with one count of Intimidating a Judge and one count of Felony Harassment stemming from a 911 phone call he made on November 18, 2012 in which he threatened to kill King County Superior Court Judge Julie Spector. CP 1-2. A jury trial was held in May 2013 before Snohomish County Superior Court Judge George N. Bowden appointed Judge Pro Tempore. On May 13, 2013 a jury convicted Holmes as charged of one count of Intimidating a Judge and one count of Felony Harassment. CP 237-238.

2. SUBSTANTIVE FACTS

On 11-18-2012 at 4:54 a.m. the defendant, Joel Christopher Holmes, used the public payphone located at 4245 University Way NE located in the City of Seattle, County of King and State of Washington to call 911 and threatened to kill King County Superior Court Judge Julie Spector. Ex. 1; RP 5/9/2013 p. 16-19, 23.

Judge Julie Spector had presided over a trial in 2006 where Holmes was charged and convicted of Telephone Harassment after he threatened to kill the former President of the University of

Washington and one of the Vice-Provosts. RP 5/9/2013 p. 74.
Judge Spector sentenced Holmes to 12 months in jail. RP
5/9/2013 p. 98-99; Ex 7. The trial before Judge Spector took place
in 2006 but Holmes continued to contact Judge Spector's court
after the trial.

All of this conduct was because of the outcome of the 2006
trial, the decisions Judge Spector had made during that trial that
contributed to Holmes's conviction, and the prison sentence Judge
Spector imposed following the 2006 trial. RP 5/9/2013 p. 95-98.
Holmes remained obsessed with Judge Spector and his case for
more than six (6) years and would call Judge Spector's public court
phone leaving rambling, nonsensical messages that were
recovered by her bailiff, Jonathan Bussey. The messages went on
and on until he filled up the courts voice mailbox. RP 5/9/2013 p.
55-60 This scenario occurred on multiple occasions and Judge
Spector became increasingly concerned that she was becoming the
focus of Mr. Holmes's anger. RP 5/9/2013 p. 80.

Even after Holmes threatened to kill Judge Spector in
November 2012, he continued to send her harassing emails that
caused Judge Spector fear that he would act on his threat to kill
her. RP 5/9/2013 p. 84. Indeed, Judge Spector felt that Holmes's

conduct toward her in the end of 2012 demonstrated a “continuing and pervasive obsession” with the fact that Judge Spector had presided over his 2006 trial, had made numerous rulings leading to a conviction, and had imposed a prison sentence on Mr. Holmes following his conviction. RP 5/9/2013 p. 85, 95-98.

Judge Spector listened to a copy of the November 18, 2012 911 call and heard clearly Holmes’s threat to kill her. After listening to the call, Judge Spector immediately recognized the distinctive voice she knew to be Joel Holmes. RP 5/9/2013 p. 79. When hearing the 911 recording Judge Spector felt very threatened by Holmes’s words and was placed in reasonable fear that the threat would be carried out. RP 5/9/2013 p. 80.

Judge Spector’s fear was based on the fact that she had intimate knowledge of Holmes’s previous acts. Judge Spector had watched Holmes’s demeanor in her court room, listened to the recorded threats he made to the former University of Washington President and Vice-Provost, and knew he could and did stalk his victims and found their homes. Judge Spector stated that hearing Holmes’s voice over 6 years later threatening to assassinate her and others named in his threats caused her concern for her safety. Holmes was obsessed with Judge Spector for a period of 6 years

and maintained an anger and hatred towards her. Based on her previous experiences with Holmes, Judge Spector believed Holmes had serious mental health issues that added to her safety concerns. RP 5/9/2013 p 79-84.

C. ARGUMENT

A challenge to the sufficiency of the evidence requires the appellate court to view the evidence in the light most favorable to the prosecution and to reverse the conviction only if it finds that no reasonable trier of fact could have found the person guilty beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). An appellant's claim of insufficient evidence admits the truth of the State's evidence. State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992). Further, "all reasonable inferences from the evidence must be drawn in favor of the State and against the defendant." State v. Gallagher, 112 Wn. App. 601, 613, 51 P.3d 100 (2002) (citing Salinas, 119 Wn.2d at 201).

In conducting a review for sufficiency, appellate courts draw no distinction between circumstantial and direct evidence presented at trial, because both are considered equally reliable. State v. Bencivenga, 137 Wn.2d 703, 711, 974 P.2d 832 (1999).

Furthermore, in determining whether sufficient evidence was presented, reviewing courts need not be convinced of the Appellant's guilt beyond a reasonable doubt, but only that a reasonable trier of fact *could* so find. Gallagher, 112 Wn. App. at 613. Finally, as in all cases on appeal, the appellate court may affirm for any basis apparent in the record. State v. Jones, 71 Wn. App. 798, 863 P.2d 85 (1993); State v. Swan, 114 Wn.2d 613, 790 P.2d 610 (1990); State v. Butler, 53 Wn. App. 214, 766 P.2d 505 (1989).

In any appeal, the credibility of witnesses and the weight to be given the evidence are matters for the finder of fact. Bender v. City of Seattle, 99 Wn.2d 582, 594-95, 664 P.2d 492 (1983); See also WPIC 1.02. Appellate courts must defer to the trier of fact to resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the evidence. State v. Gerber, 28 Wn. App. 214, 216, 622 P.2d 888 (1981); State v. Ong, 88 Wn. App. 572, 576, 945 P.2d 749 (1997).

Here, Mr. Holmes was charged with one count of intimidating a judge and one count of felony harassment. He claims that the evidence was insufficient to establish that his threat to kill judge Spector was because of the decisions she made while presiding

over his 2006 trial and the decision she made to send him to prison following that trial. However, a reading of the record in this matter reveals that Mr. Holmes had no reason but Judge Spector's decisions and sentence in his 2006 case to cause him to threaten to kill her. The evidence at trial was uncontroverted on this point; Judge Spector not only sentenced Mr. Holmes to prison following his convictions, she also made numerous rulings pre-trial and during the trial that affected the outcome. RP 5/9/2013 p. 95-98. There was no other relationship or reason for Mr. Holmes to even know of Judge Spector let alone threaten to take her life. When viewed in a light most favorable to the State, a reasonable trier of fact could have concluded that his threat to kill was because of her decisions and sentence in his 2006 case.

The defendant has also asked the court to reverse his conviction for felony harassment and intimidating a judge claiming that the first amendment to the U.S. Constitution gives him the right to threaten to kill a sitting King County Superior Court Judge. But threats to kill a sitting Judge are not constitutionally protected speech. Although the First Amendment generally prohibits government interference with speech or expressive conduct, it does not protect

certain types of speech, such as “true threats.” State v. Knowles, 91 Wn. App. 367, 373, 957 P.2d 797 (1998). 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 an intention to inflict bodily harm upon or to take the life of [another individual].’ ” State v. Johnston, 156 Wn.2d 355, 360–61, 127 P.3d 707 (2006) (quoting United States v. Khorrami, 895 F.2d 1186, 1192 (7th Cir.1990)) (internal quotation marks omitted). State v. Brown, 137 Wn. App. 587, 591, 154 P.3d 302 (2007). Moreover, in order for a threat to support a conviction for intimidation of a judge, the threat need not reach the judge; nor need the defendant actually intend to cause the judge bodily harm. All that is required is that the defendant direct a threat to a judge in which he communicates the intent to do so. State v. Side, 105 Wn. App. 787, 21 P.3d 321 (2001), review denied, 144 Wn.2d 1020, 32 P.3d 284 (2001).

Here, a reasonable person would foresee that the statements made by Mr. Holmes would be interpreted as a serious expression of an intention to inflict bodily harm upon her or to take the life of Judge Spector in the context in which the threat to kill Judge Spector was made. Judge Spector listened to a copy of the

November 18, 2012 911 call. After listening to the call, Judge Spector immediately recognized the distinctive voice she knew to be Joel Holmes. RP 5/9/2013 p. 79. When hearing the 911 recording Judge Spector felt very threatened by his words and was placed in reasonable fear that the threat would be carried out. RP 5/9/2013 p. 80. Judge Spector's fear was based on the fact that she had intimate knowledge of Holmes's previous acts. Judge Spector had watched Holmes's demeanor in her court room, listened to the recorded threats he made to the former University of Washington President and Vice-Provost, and knew he could and did stalk his victims and found their homes. Judge Spector stated that hearing Holmes's voice over 6 years later threatening to assassinate her and others named in his threats caused her concern for her safety. Holmes was obsessed with Judge Spector for a period of 6 years and maintained an anger and hatred towards her. Based on her previous experiences with Holmes Judge Spector believed Holmes had serious mental health issues that added to her safety concerns. RP 5/9/2013 p 79-84. In the context of the facts presented in this case, Holmes's threats to kill judge Spector were true threats and not speech protected by the 1st Amendment to the United States Constitution.


D. CONCLUSION

For all of the foregoing reasons, the defendant's conviction for Intimidating a Judge and for Felony Harassment should be affirmed.

DATED this 10th day of February, 2014.

Respectfully submitted,

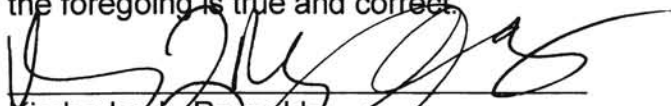
DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
ROGER DAVIDHEISER, WSBA #18638
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Sarah M. Hrobsky, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. JOEL C. HOLMES, Cause No. 70398-6-I, in the Court of Appeals, Division I, for the State of Washington.

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



Kimberley L. Reynolds
Done in Seattle, Washington

2/10/14
Date