70516-4

70516-4

NO. 70516-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

JAMES M. McCLURE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Vickie Churchill, Judge
Superior Court Cause No. 13-1-00016-5

BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES

A. Whether the appellant's conviction should be upheld when the excusal of two potential jurors before the first day of trial did not infringe on his right to an open trial or his right to be present.

B. Whether the appellant's conviction should be upheld when the evidence produced at trial was sufficient to allow a reasonable trier of fact to find the appellant made a true threat to kill that placed M'Liss Hawley in reasonable fear that the threat would be carried out.

II. STATEMENT OF THE CASE

A. Substantive Facts

Between December, 2012 and January, 2013, the appellant made repeated calls to the Island County 911 dispatch center, including up to fifteen calls per night of at least six to seven minutes per call. RP 190. The appellant's calls were not to report an emergency or to request response from any service connected with the dispatch center. RP 192. Instead, he talked about his years of service, his wife, and poker. RP 192. In total, the appellant made over 100 unnecessary calls to the dispatch center during that time, straining the center's ability to respond to other calls. RP 193, 201.

On December 28, 2012, the appellant delivered a suspicious package to the dispatch center's office, prompting a bomb scare. RP 264-67. Based on that package and the continuing

calls, the dispatch center requested assistance from the Island County Sheriff's Office. RP 68, 283. Island County Sheriff's Lieutenant Mike Hawley began an investigation into the appellant's actions. RP 70. He attempted to contact the appellant, but was unable to find the appellant at home. RP 71. Finally, on January 6, 2013, Lt. Hawley was able to contact the appellant by phone and instructed him to stop calling into the dispatch center. RP 73.

The appellant then immediately called back to the dispatch center with "a message for whoever the senior bastard is, you have a Hawley that used to be sheriff." RP 104. He threatened to turn Lt. Hawley into a "smoking hole". RP 106. He stated he would "take out [Hawley's] filbert or walnut farm, his wife, his kids." RP 108.

Lt. Hawley lives with his wife, M'Liss Hawley, on a five acre property where he has planted an orchard of filberts and hazelnuts. RP 58. The farm is not advertised or open to the public, and the Hawleys do not harvest or sell the nuts. RP 119-120.

Lt. Hawley had prior contacts with the appellant in 2008, when the appellant had been arrested for brandishing a flare gun at an attorney's office. RP 64. At that time, a second attorney had taken a protection order against the appellant after he made

threatening and harassing phone calls to that attorney. RP 64. Because of the protection order, Lt. Hawley personally removed half a dozen or a dozen firearms from the appellant's house. RP 64-65. Lt. Hawley also knew the appellant had delivered a suspicious package to the dispatch center. RP 68.

Because of the specificity of the threat, the appellant's knowledge about his home, and the threat to his family, Lt. Hawley alerted his wife. RP 76, 124. He told his wife about the threat, the phone calls to the dispatch center, and the suspicious package. RP 127-28. Although Lt. Hawley had been working with the Sheriff's Department for 27 years, RP 55, this was the first time he had warned his wife of a threat to her life. RP 126. Based on that information, Mrs. Hawley believed the threat was "extremely serious" and "credible". RP 128, 136.

B. Statement of Procedural History

The appellant was charged with Harassment, Threat to Kill against Mrs. Hawley. CP 54-56. Prior to voir dire, the court informed the parties that thirteen potential jurors had not appeared, including two jurors who been excused from service. RP 30. Neither party objected to the excusals. RP 30.

At the conclusion of the evidence, the jury was given instructions that provided the legal definition of a true threat. CP 42. The instructions also defined the crime of Harassment, Threat to Kill and the lesser-included crime of Harassment. CP 35, 38. The appellant was convicted of Harassment, Threat to Kill by unanimous verdict. RP 380-83. He now timely appeals. CP 1-12.

III. ARGUMENT

A. The trial court did not affect the appellant's right to a public trial or his right to be present when it excused two potential jurors before the first day of trial.

1. The administrative excusal of two potential jurors prior to voir dire did not implicate the appellant's right to a public trial or his right to be present at critical stages of his trial.

Although the appellant did not object to the excusal of two potential jurors, the right to a public trial may be raised for the first time on appeal. *State v. Strode*, 167 Wn.2d 222, 229, 217 P.3d 310 (2009). A criminal defendant has a right to an open and public trial. U.S. CONST. amend. VI; WA CONST. art. 1 § 22. A defendant also has the right to be present at all critical stages of a trial. *State v. Irby*, 170 Wn.2d 874, 880, 246 P.3d 796 (2011) (citing *Rushen v. Spain*, 464 U.S. 114, 117, 104 S.Ct. 453, 78 L.Ed.2d 267 (1983)). However, neither right is absolute. *State v. Momah*, 167 Wn.2d 140, 148, 217 P.3d 321 (2009) (public trial); *Irby*, 170

Wn.2d at 881 (presence). In particular, "not every interaction between the court, counsel, and defendants will implicate the right to a public trial or constitute a closure if closed to the public." *State v. Sublett*, 176 Wn.2d 58, 71, 292 P.3d 715 (2012). Similarly, a defendant's right to be present extends only to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only. *Irby*, 170 Wn.2d at 889 (Madsen, C.J., dissenting) (citing *Snyder v. Massachusetts*, 291 U.S. 97, 105-06, 54 S.Ct. 330, 78 L.Ed. 674 (1934), *overruled in part on other grounds sub nom. Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964)). The appellant's conviction in this case should be upheld because the court's pre-voir dire administrative excusal of two potential jurors did not implicate either the appellant's right to a public trial or his right to be present.

Jury selection is a multi-step process that begins with the issuance of juror summons, continues with preliminary juror excusals based on issues specific to the individual jurors, and, eventually, to voir dire questioning and excusing of jurors based on their fitness to serve in a particular case. *State v. Wilson*, 174 Wn.App. 328, 338-40, 298 P.3d 148 (Div. 2, 2013) (distinguishing between "voir dire" of prospective jurors and pretrial

administrative juror excusals). Whether excusal of a potential juror implicates a defendant's right to a public trial or to be present depends on the stage of jury selection being challenged. *Id.* For instance, in-chambers questioning of individual prospective jurors about case-specific issues is a courtroom closure. *State v. Wise*, 176 Wn.2d 1, 11-13, 288 P.3d 1113 (2012); *State v. Paumier*, 176 Wn.2d 29, 34-36, 288 P.3d 1126 (2012). However, the public trial right does not apply to the entire jury selection process; rather, it applies only to that narrower, voir dire component of jury selection. *Wilson*, 174 Wn.App. at 338. In fact, the administrative excusal of potential jurors before voir dire begins does not implicate a public trial right. *Id.* at 347. Similarly, a defendant has a right to be present if jurors are being questioned about matters specific to his case, but not when a court is addressing jurors' general qualifications. *Irby*, 170 Wn.2d at 882 (citing *Wright v. State*, 688 S.2d 298, 300 (Fla. 1996); *Commonwealth v. Barnoski*, 418 Mass. 523, 530-31, 638 N.E.2d 9 (1994)).

Like *Wilson*, the excusals in this case were administrative, and were made before the start of the substantive pre-voir dire questioning. RP 30. The two excused jurors, like eleven other potential members of the jury pool, did not report for service on

the first day of trial. RP 30. Thus, no questions were asked of the excused prospective jurors about any particular issues this case.

A criminal defendant has the right to a public trial and to be present during substantive voir dire questioning, but not during pretrial, administrative screening of potential jurors. The two excusals in this case were granted administratively before the beginning of substantive jury selection. Consequently, those excusals did not infringe on the appellant's right to an open trial or to be present during critical stages of the proceeding. The appellant's conviction should, therefore, be upheld.

2. *The appellant failed to preserve any question of the basis for the excusal of two jurors.*

While the right to a public trial is a constitutional issue that may be raised on appeal for the first time, a court's discretion to administratively excuse jurors is statutory. *See* RCW 2.36.100(1). Unless a claimed error affects a constitutional right, the general rule in Washington is that a party's failure to raise an issue at trial waives that issue on appeal. *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d 74 (2011); RAP 2.5(a). Appellate courts will not sanction a party's failure to point out an error at trial which the

trial court could, given the opportunity, have been able to correct. *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988).

Prior to the beginning of voir dire, the trial court informed both parties that two potential jurors had been excused. RP 30. Neither party objected to the excusals, and no other comment was made regarding the excused potential jurors. RP 30. As such, no opportunity was provided for the trial court to correct any possible error or to supplement the record by providing additional description of the basis for the excusals. This court should, therefore, decline to consider any claim by the appellant regarding the trial court's basis for excusing two jurors before the first day of trial.

3. *The trial court did not abuse its discretion in excusing two potential jurors prior to the first day of trial.*

Even if the appellant can challenge the basis of the trial court's administrative excusal of two potential jurors, the court did not abuse its discretion. A court may excuse jurors upon a showing of undue hardship, extreme inconvenience, public necessity, or any reason deemed sufficient by the court for a period of time the court deems necessary. RCW 2.36.100(1). In addition, postponement of jury service can be granted for personal or work-related

inconvenience. GR 28(c)(1). Trial courts have wide discretion in the matter of excusing persons summoned for jury service from performance from that duty. *State v. Ingels*, 4 Wn.2d 676, 683, 104 P.2d 944 (1940). And, postponement of jury service should be liberally granted. GR 28(c)(1).

The standard of review for excusing jury venire members is abuse of discretion. *State v. Tingdale*, 117 Wn.2d 595, 599-600, 817 P.2d 850 (1991). A court abuses its discretion only when excusals are the equivalent of preemptory or for-cause juror challenges. *State v. Wilson*, 174 Wn.App. 328, 344, 298 P.3d 148 (Div. 2, 2013) (citing *State v. Rice*, 120 Wn.2d 549, 561, 844 P.2d 416 (1993); *Tingdale*, 117 Wn.2d at 599-600). The appellant's conviction should be upheld because the trial court did not abuse its discretion by administratively excusing two jurors before voir dire began.

Because the excused jurors did not report for service, they were not questioned about any specific aspect of the appellant's case. Again, because the appellant did not make an objection, the record does not fully explain the basis for the excusals. However, there is no evidence that the court based the excusal on any subjective opinion about whether the two potential jurors would be

excused for cause or by use of prejudicial challenge. *See i.e., Tingdale*, 117 Wn.2d at 599. There is also no suggestion that specific individuals who might have been favorable to the defendant were systemically excluded. *See, i.e. Rice*, 120 Wn.2d at 562.

The excusals in this case were not the equivalent of preemptory or for-cause juror challenges. Instead, they were administrative excusals consistent with the court's wide statutory discretion. The excusals were not the equivalent of for-cause or preemptory challenges. As such, the trial court did not abuse its discretion in allowing the excusals, and the appellant's conviction should be upheld.

B. The evidence produced at trial was sufficient for a reasonable jury to find the appellant made a true threat to kill M'Liss Hawley.

1. Standard of Review

Sufficient evidence supports a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime proved beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). A claim of

insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In determining the sufficiency of evidence, circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Appellant courts defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011, 833 P.2d 386 (1992). Therefore, in determining whether the necessary quantum of proof exists, the 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, *review denied*, 141 Wn.2d 1023, 10 P.3d 1074 (2000).

In this case, the jury was properly instructed on the nature of a true threat and the elements of both Harassment, Threat to Kill and the lesser-included charge of Harassment. The appellant's conviction should be upheld because the evidence presented at trial was sufficient for the jury to find the appellant's threat was made in a context where a reasonable person, in the position of the

appellant, would foresee that the statement would be interpreted as a serious expression of intent. CP 42. In addition, the evidence was sufficient to allow the jury to find the appellant knowingly threatened to kill M'Liss Hawley and the threat placed Mrs. Hawley in reasonable fear that threat to kill would be carried out. CP 35.

2. *Sufficient evidence was produced at trial to show a reasonable person in the appellant's position would foresee that his threat would be interpreted as a serious statement.*

It is well established that the First Amendment does not protect true threats. *State v. Read*, 163 Wn.App. 853, 871, 261 P.3d 207 (Div. 1, 2011) (citing *State v. Kilburn*, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004); *State v. J.M.*, 144 Wn.2d 472, 477-78, 28 P.3d 720 (2001)). A true threat is a statement 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 take the life of another person. *U.S. v. Khorrami*, 895 F.2d 1186, 1192 (7th Cir., 1990); *State v. Williams*, 144 Wn.2d 197, 207-08, 26 P.3d 890 (2001). The nature of a threat is determined under an objective standard that focuses on the speaker. *Kilburn*, 151 Wn.2d at 44.

A speaker making a true threat need not know that the threat will be communicated to the victim. *J.M.*, 144 Wn.2d at 488. In addition, because statements may connote something they do not literally say, it is not proper to limit the inquiry to a literal translation of the words spoken; instead, whether a statement is a true threat is determined in light of the entire context. *State v. Locke*, 175 Wn.App. 779, 790, 307 P.3d 771 (Div. 2, 2013). Finally, a speaker need not actually intend to carry out a threat in order for the communication to constitute a threat, as long as the speaker objectively knows that the communication constitutes a threat. *Kilburn*, 151 Wn.2d at 48.

When a sufficiency determination implicates First Amendment protections, the court independently examines the record to ensure that the judgment does not constitute a forbidden intrusion into the field of free expression. *Locke*, 175 Wn.App. at 790 (citing *Kilburn*, 151 Wn.2d at 48-51). However, that independent review extends only to crucial facts that are so intermingled with the legal question as to make their analysis necessary to pass on the constitutional question. *Id.* Even within that independent review, appellate courts continue to defer to the finder of fact on factual determinations such as credibility, weight,

and persuasiveness. *Id.* at 791. Thus, the relevant constitutional question is whether there is sufficient evidence that a reasonable person in the appellant's position would foresee that his comments would be interpreted as a serious statement of intent to inflict serious bodily injury or death. *Kilburn*, 151 Wn.2d at 48. *See also Williams*, 144 Wn.2d at 212 (case should have gone to the jury because a rational jury, considering the evidence in the light most favorable to the State, could have found a true threat). The appellant's conviction in this case should be upheld because there was sufficient evidence that a reasonable person in his position would foresee that his threat against M'Liss Hawley would be interpreted as a serious statement of intent to inflict serious bodily injury or death.

After Lt. Hawley contacted the appellant in an attempt to stop his repeated, unnecessary 911 calls, the appellant immediately re-contacted the dispatch center with "a message for whoever the senior bastard is, you have a Hawley that used to be sheriff." RP 104. He then threatened to turn the Hawley family farm into a "smoking hole". RP 106. He also reiterated his threat by referring to himself as, "U.S.S. Barque Road is ready for combat." RP 107. The appellant then made his intentions perfectly clear by stating,

"I'll take out that filbert or walnut farm, his wife, his kids. And you know what? I'll feel no sorrow tomorrow." RP 108.

The appellant's threats in this case constituted true threats because a reasonable person in the appellant's position would foresee his threat to take out Mrs. Hawley and turn the Hawley farm into a "smoking hole" would be interpreted as an expression of intent to inflict bodily harm. In *State v. Kilburn*, an eighth grade student threatened to bring gun to school and shoot everyone. *Kilburn*, 151 Wn.2d at 39. However, the classmate who heard the threat had no reason to think he would make that kind of threat and thought he might have been joking. *Id.* In fact, the defendant was laughing or giggling and acting like he was joking. *Id.* at 53. Based on the past history and relationship between Kilburn and his classmate, his treatment of her in the past, the regularity of Kilburn joking, and his giggling or laughter as he made the comments, the court concluded a reasonable person in Kilburn's position would not foresee that his classmate would interpret his statement as a serious threat. *Id.*

Unlike *Kilburn*, an email to the governor's office threatening to publicly execute her sent within five minutes of two other emails threatening the rape and murder of the governor's

family members and burning her at the stake like a heretic was a true threat. *State v. Locke*, 175 Wn.App. 779, 307 P.3d 771 (Div. 2, 2013). The court found that those messages, based on their content and context, crossed into the territory of a true threat. *Id.* at 792. The court noted the messages were sent only seventeen days after the shooting of United States Representative Gabrielle Giffords. *Id.* Also, the second and third messages showed an escalation of the violent tone and content of Locke's communications. *Id.* The specificity of details in the messages, though outlandish, heightened their menace and threw Locke's threats into higher relief. *Id.* at 793. In addition, and unlike *Kilburn*, there was no preexisting relationship or communications with the governor from which Locke might have had an expectation that she would not take his statements seriously. *Id.* Finally, the messages in Locke included none of the circumstances, such as a prior friendly relationship, earlier jokes, and giggling or laughing, that suggested the statement in *Kilburn* was joking. *Id.* at 794. Thus, though the specific threats were outlandish, their menace, specificity, and troubling explosiveness would cause them to "be taken seriously by a reasonable person." *Id.* at 793.

The facts of this case contain all the hallmarks of the true threat in *Locke* with none of the mitigating circumstances from *Kilburn*. Locke's messages were sent to the governor seventeen days after a high profile shooting of an elected official; similarly, the appellant's threat was made only nine days after his delivery to the dispatch center sparked a bomb threat. RP 73, 264-67. Like the short timeframe of the messages in *Locke*, the appellant's threat in this case was made immediately after Lt. Hawley contacted the appellant in an attempt to stop his repeated calls to 911. RP 73-75. Also like *Locke*, the appellant's threat was part of an escalation of behavior that began with repeated 911 calls and included delivery of a suspicious package to the 911 dispatch center. RP 68, 198-99. As with the threat in *Locke*, the specific threat in this case was certainly outlandish, but it was also highly detailed, referring specifically to the appellant himself ("U.S.S. Barque Road is ready for combat"), Lt. Hawley ("This is a message for whoever the senior bastard is, you have a Hawley that used to be sheriff."), and Lt. Hawley's home and family ("I'll take out that filbert or walnut farm, his wife, his kids."). RP 104-08.

And, unlike both *Kilburn*, where the defendant's prior relationship with his classmate suggested the threat wasn't serious,

and *Locke*, where there was no prior relationship between the defendant and governor to mitigate that threat, Lt. Hawley's prior contacts with the appellant in this case gave him every reason to take the appellant's threat seriously. Lt. Hawley was aware that a local attorney took out a protection order against the appellant in 2008 because of the appellant's threatening and harassing calls. RP 64. He also knew the appellant had been arrested for brandishing a flare gun in another attorney's office. RP 64. Lt. Hawley had personally removed half a dozen or a dozen firearms from the appellant's home. RP 64-65.

More recently, the appellant had left a suspicious package on the mailbox of the 911 dispatch center, sparking bomb scare. RP 68. Lt. Hawley had been unable to reach the appellant in person because he was constantly out driving around. RP 76. Most tellingly, the appellant's threat included specific, detailed, and private details of the Hawleys's home. RP 76. Given the appellant's prior behavior, his recent activity, his mobility, and his detailed knowledge of the Hawleys' residence, a reasonable person would obviously take the appellant's threat seriously.

3. *The evidence presented at trial was sufficient to allow any rational jury to find the appellant's threat placed Mrs. Hawley in reasonable fear that the threat would be carried out.*

When viewed in the light most favorable to the State, the evidence at trial also showed Mrs. Hawley was placed in reasonable fear that the appellant's threat would be carried out. A person is guilty of Harassment, Threat to Kill when he knowingly threatens to kill another person and the person threatened is placed in reasonable fear that the threat will be carried out. RCW 9A.46.020. The jury in this case was properly instructed as to the elements of both Harassment, Threat to Kill and the lesser included charge of Harassment. CP 35, 38. The jury's unanimous verdict that the appellant was guilty of Harassment, Threat to Kill was based on sufficient evidence that M'Liss Hawley was in placed reasonable that he would carry out his threat to kill her.

The appellant's threat was obviously to kill Mrs. Hawley. His statements repeatedly referred to orders from naval superiors and to military armaments, including gunships, black airplanes, and 30-caliber mini guns. RP 106-08. He claimed an Admiral ordered him to turn the Hawley farm into a "smoking hole". RP 106. And, the appellant expanded his threat beyond Lt. Hawley

when he explicitly threatened to, "take out [Lt. Hawley's] filbert or walnut farm, *his wife, his kids*." RP 108 (emphasis added).

Both Lt. Hawley and Mrs. Hawley testified that they believed the appellant's threat. Lt. Hawley clearly believed the threat was to kill him and his wife. See RP 93 (the threat, as he interpreted it, was a threat to kill); 95 (the appellant "called up ... the dispatch center, threatened my life, and my wife"). He took the appellant's threat seriously based on his prior experience with the appellant and because the appellant was spiraling out of control, had identified the Hawley's home, had already taken steps to deliver a suspicious package to the dispatch center, and was out driving all the time. RP 76, 94, 98. In Lt. Hawley's opinion, the appellant was dangerous and unpredictable. RP 100.

Mrs. Hawley also reasonably believed the appellant's threat to kill her. See RP 124 ("his life and my life and our children's life were threatened."). Knowing that the appellant had been harassing a dispatcher and had already delivered a package to the dispatch center, she considered the threat very serious and credible. RP 127-28. She was concerned for her own safety and thought the appellant was capable of doing what he said he was going to do. RP 127-28.

The actions of both Lt. and Mrs. Hawley also showed the seriousness with which they took the appellant's threat to kill them. Although Mrs. Hawley was out of town on a business trip and he had never before warned her of any threats to either himself or to her, Lt. Hawley was worried enough that he did not wait until she returned home to warn her about the threats. RP 76-77, 125. He described the threat to Mrs. Hawley as very serious and very credible. RP 127. In Mrs. Hawley's experience, Lt. Hawley "wouldn't want me to worry about something unless it was extremely serious and very possible for this individual to do something." RP 128.

Mrs. Hawley's actions showed she clearly believed the threat as well. After the threat, she no longer felt comfortable, wouldn't answer her door, and stopped walking her dogs in the orchard the appellant referenced in his threat. RP 128. She also got a concealed weapons permit. RP 129.

And, Mrs. Hawley's fear was certainly reasonable. The appellant had already been restricted by a protection order after making harassing and threatening phone calls and had brandished a weapon at an attorney's office. RP 64. Lt. Hawley had already removed at least half a dozen firearms from the appellant's home.

RP 64-65. And, the appellant had clearly done enough research to learn details about the Hawleys' home even though their filbert farm was not advertised. RP 60. '

The evidence presented at trial would allow any reasonable jury to find Mrs. Hawley was reasonably placed in fear that the appellant would carry out his threat to kill her. The threat itself was clearly to kill Mrs. Hawley. Lt. Hawley and Mrs. Hawley both testified that they believed the threat and that they changed their behavior based on that threat. Based on the appellant's prior and current behavior and his unusual and specific knowledge of the Hawley's home, Mrs. Hawley's fear was certainly reasonable. Thus, sufficient evidence supported the jury's finding that Mrs. Hawley was placed in reasonable fear that the appellant's threat to kill would be carried out. The appellant's conviction should, therefore, be upheld.

IV. CONCLUSION

The administrative excusal of two potential jurors before voir dire did not affect the appellant's right to a public trial or to be present, and the trial judge did not abuse her discretion in excusing the jurors. In addition, the evidence produced at trial showed the appellant's call to the 911 dispatcher was a true threat against

M'Liss Hawley and that Mrs. Hawley was placed in reasonable fear that the appellant would carry out his threat. The appellant's conviction should, therefore, be upheld.

Respectfully submitted this 4th day of April, 2014.

GREGORY M. BANKS
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By: _____
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COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	
Plaintiff/Respondent,	NO. 70516-4-I
vs.	DECLARATION OF SERVICE
JAMES M. McCLURE,	
Defendant/Appellant.	

I, Jennifer Wallace, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That on the 4th day of April, 2014, a copy of the Brief of Respondent and Declaration of Service was served on the parties designated below by depositing said documents in the United States Mail, postage prepaid, addressed as follows:

Sarah M. Hrobsky
Washington Appellate Project
1511 3rd Ave., Suite 701
Seattle, WA 98101

Signed in Coupeville, Washington, this 4th day of April, 2014.

Jennifer Wallace