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70740-0

NO. 70740-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KEITH RATLIFF,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE MONICA BENTON

**BRIEF OF RESPONDENT**

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COURT OF APPEALS DIV I  
STATE OF WASHINGTON

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## TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. PROCEDURAL FACTS .....	2
2. SUBSTANTIVE FACTS .....	2
C. <u>ARGUMENT</u> .....	4
D. <u>CONCLUSION</u> .....	10

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

United States v. Khorrami, 895 F.2d 1186  
(7th Cir.1990) ..... 5

Washington State:

Bender v. City of Seattle, 99 Wn.2d 582,  
664 P.2d 492 (1983)..... 7

State v. Bencivenga, 137 Wn.2d 703,  
974 P.2d 832 (1999)..... 6

State v. Brown, 137 Wn. App. 587,  
154 P.3d 302 (2007)..... 5

State v. Butler, 53 Wn. App. 214,  
766 P.2d 505 (1989)..... 7

State v. Gallagher, 112 Wn. App. 601,  
51 P.3d 100 (2002)..... 6

State v. Gerber, 28 Wn. App. 214,  
622 P.2d 888 (1981)..... 7

State v. Green, 94 Wn.2d 216,  
616 P.2d 628 (1980)..... 6

State v. Johnston, 156 Wn.2d 355,  
127 P.3d 707 (2006)..... 5

State v. Jones, 71 Wn. App. 798,  
863 P.2d 85 (1993)..... 7

State v. Knowles, 91 Wn. App. 367,  
957 P.2d 797 (1998)..... 4

<u>State v. Ong</u> , 88 Wn. App. 572, 945 P.2d 749 (1997).....	7
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992).....	6
<u>State v. Swan</u> , 114 Wn.2d 613, 790 P.2d 610 (1990).....	7

Other Authorities

WPIC 1.02.....	7
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**A. ISSUES PRESENTED**

On November 15, 2012 Keith Ratliff threatened to kill Janet Cavallo by stating plainly, clearly, and in a menacing voice that was captured on tape, "You're dead bitch." At the time of this threat against her life, Ms. Cavallo was actively representing Mr. Ratliff in a criminal proceeding in the Seattle Municipal court as a staff attorney for the Associated Counsel for the Accused. While Ms. Cavallo initially felt safe even in the face of this clear and unequivocal threat, she was immediately placed in fear that the threat would be carried out when Mr. Ratliff punched Ms. Cavallo in her face with such force that it broke teeth and misaligned Ms. Cavallo's jaw causing substantial and long lasting bodily harm that still affects Ms. Cavallo to this day. The First Amendment to the United States Constitution does not protect such a threat to kill and there existed substantial evidence from which a reasonable trier of fact could find beyond a reasonable doubt that Ms. Cavallo reasonably feared that Mr. Ratliff would carry out this threat in the future.

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

Mr. Ratliff was charged with one count of Assault in the Second Degree and one count of Felony Harassment stemming from the November 15, 2012 incident in which Mr. Ratliff threatened to kill his appointed criminal defense attorney, Janet Cavallo, and followed it almost immediately with a violent assault that left Ms. Cavallo with substantial and long lasting injury to her face and jaw and in fear that the next time she had contact with Mr. Ratliff he would carry out his stated threat to kill her. CP 37-38. A jury trial was held in June 2013 before King County Superior Court Judge Monica Benton. On June 28, 2013 a jury convicted Mr. Ratliff as charged of one count of Assault in the Second Degree and one count of Felony Harassment. CP 39-40.

**2. SUBSTANTIVE FACTS.**

On November 15, 2012, Janet Cavallo was working in the capacity of a court-appointed criminal defense attorney representing the defendant, Mr. Keith Ratliff, in a hearing in open court before Seattle Municipal Court Judge Bonner. RP 263-64.

Mr. Ratliff became disgruntled with Ms. Cavallo's representation and at one point leaned over to her and in a clear, unequivocal and menacing and angry manner directly threatened Ms. Cavallo by stating, "You're dead bitch." RP 265-66. Mr. Ratliff's threat against his defense attorney, Ms. Cavallo, was captured on the official court taped recording of the proceedings and admitted into evidence for the jury to listen to. RP 269.

Ms. Cavallo testified that her first reaction to Mr. Ratliff's threat was that she would not react to it because she felt she was in the safety of an open courtroom with guards present. RP 272-73. However, Mr. Ratliff followed this threat within moments by a violent punch directly to Ms. Cavallo's face, which caused a sickening thud captured on the tape recording followed by the sounds of Ms. Cavallo wincing in pain. This brutal blow caused substantial injuries including broken teeth and a misaligned jaw that plagues Ms. Cavallo to this day. RP 272-79.

Though Ms. Cavallo testified that she initially was not frightened by Mr. Ratliff's threat to kill her because, as she put it, she was in the safest place where she could be, an open court room with guards, RP 273, Mr. Ratliff's act of punching her in that safe place made her fearful that he could reach her and hurt her in

the future. RP 273. Indeed, Based upon Mr. Ratliff's conduct, Ms. Cavallo remains fearful that he will carry out his threat against her. RP 289.

**C. ARGUMENT**

Here, Mr. Ratliff challenges his conviction on Count II, Felony Harassment, claiming that his threat to kill Ms. Cavallo is speech-protected by the First Amendment to the United States Constitution. Mr. Ratliff also challenges his conviction on Count II claiming that there was insufficient evidence for a jury to conclude beyond a reasonable doubt that Ms. Cavallo reasonably feared that Mr. Ratliff would carry out his threat in the future. Both of these arguments should be rejected.

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).

Here, a reasonable person would foresee that the threat made by Mr. Ratliff would be interpreted as a serious expression of an intention to inflict bodily harm upon Ms. Cavallo or to take the life of Ms. Cavallo in the context in which the threat to kill her was made. While the initial threat was made in what Ms. Cavallo felt was the safest place in the world, it was followed almost immediately by a brutal blow to Ms. Cavallo’s face that left her with substantial and lasting injury. Indeed Ms. Cavallo testified that she remained in fear of Mr. Ratliff precisely because of this brutal attack that followed on the heels of his threat. RP 289. Mr. Ratliff’s threat to kill Ms. Cavallo was a true threat and not speech-protected by the First Amendment to the United States Constitution.

Next Mr. Ratliff challenges the sufficiency of the evidence arguing that there was insufficient evidence to support the jury’s finding that Ms. Cavallo reasonably feared that Mr. Ratliff would carry out his threat in the future. This argument should also be rejected.

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. Ratliff was charged in Count II with Felony Harassment. CP 37-38. He claims that the evidence was insufficient to prove the element of that charge that "the words or conduct of the defendant placed Janet Cavallo in reasonable fear that the threat would be carried out and the fear from the threat was a fear that a reasonable criminal justice participant would have under all the circumstance." CP 59.

Here the evidence presented proves this element beyond a reasonable doubt. Ms. Cavallo was working in the capacity of a court-appointed criminal defense attorney representing the defendant, Mr. Keith Ratliff, in a hearing in open court before Seattle Municipal Court Judge Bonner. RP 263-64. Mr. Ratliff became disgruntled with Ms. Cavallo's representation and at one point leaned over to her and in a clear, unequivocal and menacing and angry manner directly threatened Ms. Cavallo by stating, "You're dead bitch." RP 265-66. Mr. Ratliff's threat against his defense attorney, Ms. Cavallo, was captured on the official court taped recording of the proceedings and admitted into evidence for the jury to listen to. RP 269.

Ms. Cavallo testified that her first reaction to Mr. Ratliff's threat was that she would not react to it because she felt she was in the safety of an open courtroom with guards present. RP 272-73. However, Mr. Ratliff followed this threat within moments by a violent punch directly to Ms. Cavallo's face the caused a sickening thud captured on the tape recording followed by the sounds of Ms. Cavallo wincing in pain. The brutal blow to Ms. Cavallo caused substantial injuries including broken teeth and a misaligned jaw that plagues Ms. Cavallo to this day. RP 272-79.

Though Ms. Cavallo testified that she initially was not frightened by Mr. Ratliff's threat to kill her because, as she put it, she was in the safest place where she could be, an open court room with guards, RP 273, Mr. Ratliff's act of punching her in that safe place made her fearful that he could reach her and hurt her in the future. RP 273. Indeed, based upon Mr. Ratliff's conduct, Ms. Cavallo remains fearful that he will carry out his threat against her. RP 289.

No criminal defense attorney expects to encounter this type of threat and physical violence as a matter of routine in our courtrooms. Nor should we be surprised or think it unreasonable when a criminal defense attorney who suffers this type of threat and physical violence in an open courtroom is fearful that the threat will be carried out in the future. In this case, the evidence supports the conclusion reached by the jury, and any reasonable trier of fact would conclude the same.

**D. CONCLUSION**

For all of the foregoing reasons, the defendant's conviction on Count II Felony Harassment should be affirmed.

DATED this 25<sup>th</sup> day of April, 2014.

Respectfully submitted,

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By:   
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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 Jan Trasen, 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. KEITH RATLIFF, Cause No. 70740-0-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.

Sandra Altkamp  
Name  
Done in Seattle, Washington

April 28, 2014  
Date

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