FILED
OCT 10, 2011

Court of Appeals
Division III
State of Washington

NO. 29580-0-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

STEPHANIE STRONG,

Appellant.

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

BECAUSE THE STATE DID NOT PROVE MS. STRONG'S WORDS, OR THOSE OF HER ACCOMPLICE, CONSTITUTED A "TRUE THREAT" OR OTHERWISE LACKED CONSTITUTIONAL PROTECTION, THERE IS INSUFFICIENT EVIDENCE TO SUPPORT HER CONVICTION

Where a criminal statute reaches protected speech, the State must establish beyond a reasonable doubt that the speech at issue falls outside a protected category. Threats are a form of pure speech. State v. Williams, 144 Wn.2d 197, 206, 26 P.3d 890 (2001). Thus, any statute which seeks to criminalize threats "must be interpreted with the commands of the First Amendment clearly in mind." Id. at 207 (citing Watts v. United States, 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed. 664 (1969)).

A threat remains constitutionally protected unless the State proves it is a "true threat." State v. Kilburn, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004). 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) (Bracketed text in original, citations omitted).

The extortion statute at issue here plainly seeks to criminalize threats. RCW 9A.56.110 provides "Extortion" means knowingly to obtain or attempt to obtain by threat property or services of the owner, and specifically includes sexual favors." See also RCW 9A.04.110(25) (defining threat).

The State's response, as best as can be distilled, seems to amount to a claim that because Mr. Strong was prosecuted as an accomplice to whomever made the threats, the State need not establish the threats were not protected speech. A person is not "legally accountable" for the acts of another unless he is an accomplice. RCW 9A.08.020. A person cannot be convicted as an accomplice of a crime unless the State proves "that individual . . . acted with knowledge that he or she was promoting or facilitating *the* crime for which that individual was eventually charged." State v. Cronin, 142 Wn.2d 568, 579, 14 P.3d 752 (2000); State v. Roberts, 142 Wn.2d 471, 511, 14 P.3d 713 (2000).

If the State cannot prosecute a person for uttering constitutionally protected speech, a person cannot be convicted as an accomplice for the uttering of constitutionally protected speech. By the State's logic, while Charles Evers could not be prosecuted for declaring he would break the neck of any person found entering

a boycotted business, see, N.A.A.C.P. v. Claiborne Hardware Co., 458 U.S. 886, 902, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982), anyone who assisted him or joined in the boycott could be prosecuted. Whether Ms. Strong communicated the threat herself or whether she was convicted as an accomplice to someone who did, the fact remains that threat is constitutionally protected speech, and not criminally sanctionable, unless the State proved it was a true threat. The State did not and concedes as much in its response. Ms. Strong cannot be convicted of extortion.

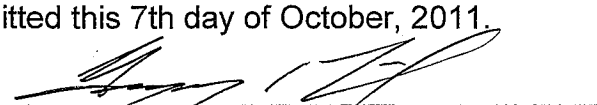
As discussed in Ms. Strong's initial brief State v. Pauling, 149 Wn.2d 381, 69 P.3d 331 (2003), does not alter the analysis. Pauling simply held the statute was not overbroad. The Court was not asked to, and thus did not, address the questions presented here - specifically whether the State may criminalize constitutionally protected speech.

Because the State failed to prove the speech at issue was unprotected, the Court must reverse Ms. Strong's conviction.

B. CONCLUSION

For the reasons above, this Court must reverse and dismiss Ms. Strong's conviction.

Respectfully submitted this 7th day of October, 2011.



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DIVISION THREE

STATE OF WASHINGTON,	)	
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RESPONDENT,	)	
	)	
v.	)	NO. 29580-0-III
	)	
STEPHANIE STRONG,	)	
	)	
APPELLANT.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7TH DAY OF OCTOBER, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] MARK LINDSEY SPOKANE COUNTY PROSECUTOR'S OFFICE 1100 W. MALLON AVENUE SPOKANE, WA 99260	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] STEPHANIE STRONG 858047 MISSION CREEK CC 3420 NE SAND HILL RD BELFAIR, WA 98528	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 7TH DAY OF OCTOBER, 2011.

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