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Washington State Supreme Court

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JAN 13 2015

Ronald R. Carpenter  
Clerk

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**NO. 90666-1**

**WASHINGTON STATE  
SUPREME COURT**

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**STATE OF WASHINGTON,**

Plaintiff,  
Respondent,

vs.

**ADRIAN BENTURA OZUNA,**

Defendant,  
Appellant.

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**SUPPLEMENTAL APPELLANT'S BRIEF**

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## ARGUMENT

The Court requested supplemental briefing on the issue of the meaning of “communication” in the intimidation of a witness statute. RCW 9A.72.110

Mr. Ozuna has not been able to locate a case in point. However, two (2) cases which address the harassment statute, RCW 9A.46.020(1), reference “communication” in passing.

In *State v. Kilburn*, 151 Wn.2d 36, 48, 84 P.3d 1215 (2004), the Court stated:

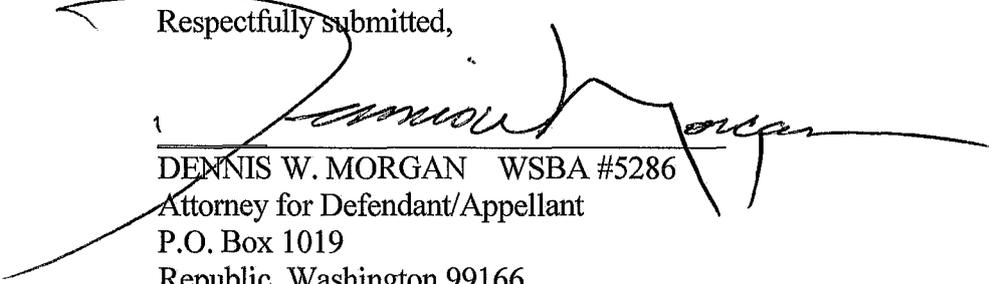
Thus, one who writes a threat in a personal diary or mutters a threat unaware that it might be heard does not knowingly threaten.

Additionally, the Court in *State v. Schaler*, 169 Wn.2d 274, 285-86, 236 P.2d 858 (2010) analyzed what it means to communicate: ... “Conduct: communicating, *i.e.*, uttering words or undertaking expressive conduct to another.”

Mr. Ozuna contends that under the facts and circumstances of his case, where he wrote a letter which was never sealed, stamped or mailed, no communication occurred.

DATED this 10<sup>TH</sup> day of January, 2015.

Respectfully submitted,



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