Supreme Court No. _____
(COA No. 58980-0-II) Case #: 1038593

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AARONDEEP JOHAL,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER.

Petitioner Aarondeep Johal, the appellant below, asks this Court to review the Court of Appeals decision referred to in Section B.

B. COURT OF APPEALS DECISION.

Pursuant to RAP 13.4 (b), Mr. Johal seeks review of the Division Two Court of Appeal's published decision in *State v. Aarondeep Singh Johal*, No. 58980-0-II, slip op. (Wash., Jan. 14, 2025). The opinion was filed on January 14, 2025, and is attached as Appendix A to this petition.

C. ISSUE PRESENTED FOR REVIEW.

Under the Sixth Amendment in conjunction with the Due Process Clause, the prosecution has the burden of proving each element of the offense beyond a reasonable doubt. *Alleyne v. United States,* 570 U.S. 99, 104, 133 S.Ct.2151, 186 L.Ed.2d 314 (2013). A person is guilty of felony harassment if he or she threatens to kill a person and the person threatened reasonably believes the threat to kill them would be carried out. In a matter of first impression, the State presented testimony that Johal threatened to kill S.J. with a hammer, presented no evidence that the target victim believed the threat would be carried out, but instead found that officers at the scene believed the threat would be

carried out. Did the State present sufficient evidence to prove that Johal was guilty of felony harassment?

D. STATEMENT OF THE CASE.

1. Trial facts. The facts are set forth in the Court of Appeals opinion, pages 2-4, and Appellant's Opening Brief ("AOB"), pages 2-17, and are incorporated by reference herein.

2. The Court of Appeals Decision. The Court of Appeals affirmed Mr. Johal's conviction. Slip op. at 1. The Court found the statutory language permits a conviction when the person threatened with injury or death is not placed in reasonable fear that the threat will be carried out, but instead can be *any other person.* Slip op. at 5. "In other words, a defendant may harass one person by threating to injure another person." *Id.* The Court cited this Court's decision in *State v. J.M,* which stated in *dicta,* "The statute also contemplates that a person may be threatened by harm to another. An example that comes readily to mind is a communication of intent to harm the child of the person threatened." Slip. Op 5, 6, citing *State v. J.M.,* 144 Wn.2d 472, 488, 28 P.3d 720 (2001). The Court also cited *dicta* from *State v. Morales,* 174 Wn.App. 370, 298 P.3d 791 (2013), which quoted *J.M.* and "noted that a person threatened under RCW 9A.46.020(1)(a) is someone who is the target of coercion,

intimidation or humiliation." Slip op. 6, citing *Morales*, 174 Wn.App. at 380. The Court recognized both this analysis was simply dicta, "as neither case involved one person witnessing a threat to injure another person." *Id.*

The Court attempted to distinguish Johal's argument that *State v. Kiehl,* in which the Court reversed a conviction of felony harassment ruling "[T]he harassment statute requires that the person threatened learn of the threat and be placed in reasonable fear that the threat will be carried out." Slip op. at 6, citing *State v. Kiehl,* 128 Wn.App. 88, 93, 113 P.3d 528 (2005). The Court found that in *Kiehl* the State elected to list only the judge as being threatened in the charging document. Slip op. at 7. "Therefore, the jury should have been instructed that the State was required to show that the judge – not the counselor – was placed in reasonable fear that the threat would be carried out." *Id.,* citing *Kiehl,* 128 Wn.App. at 93-94. Therefore, because there was no evidence concerning the judge's fear, the evidence was insufficient." *Id.*

The Court noted that unlike *Kiehl,* the information stated that officers were the victims of the harassment, and although inartfully drafted, the information can be read as stating that the officers were threatened by Johal's threat that he would kill S.J. *Id.*

Lastly, the Court rejected Johal's claim that allowing third parties to be the victims of harassment would lead to absurd results, holding its interpretation of the statute is guided by the harassment statute's legislative finding, as "RCW 9A.46.010 states that "this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim." *Id.* The Court concluded, "[a] first responder, witness, or bystander generally would not be so targeted." *Id.*

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

This Court should accept review under RAP 13.4 (b), because 1) the decision of the Court of Appeals is in conflict with a decision from this Court; 2) the decision of the Court of Appeals is in conflict with another published decision of the Court of Appeals; 3) the issues raised are significant questions of law under the Washington and Federal Constitutions; and 4) the petition involves issues of substantial public interest that must be determined by the Supreme Court.

THIS COURT SHOULD REVIEW THE COURT OF APPEALS DECISION, RULING SUFFICIENT EVIDENCE WAS PRESENTED TO PROVE THAT LAW ENFORCEMENT WERE VICTIMS OF A THREAT THAT JOHAL WOULD KILL ANOTHER

1. Insufficient evidence was presented to support a conviction for felony harassment Mr. Johal was charged with Harassment – Death Threats as follows:

> That he, AARONDEEP S JOHAL, In the County of Clark, State of Washington, on or about October 10, 2021, knowingly and without lawful authority, did threaten to kill another, immediately or in the future, to wit: S.J. (female, DOB: 8/5/2021), and/or Vancouver Police Department Corporal Gregory Catton, and/or Vancouver Police Department Corporal William Pardue, and/or Vancouver Police Department Officer Justin Reiner, or any other person; and the Defendant, by words or conduct, placed the threatened in reasonable fear that the threat would be carried out, contrary to Revised Code of Washington 9A.46.020(1)(a)(i), (1)(b), and (2)(b)(ii).

CP 4. Although Johal threatened to kill S.J., the information stated the victims also included police officers or "any other person." *Id.*

To convict a person of felony harassment, RCW 9A.46.020 provides:

> (1) A person is guilty of harassment if:
> (a) Without lawful authority, the person knowingly threatens;
> (i) To cause bodily injury immediately or in the future to the person threatened or to any other person;
> . . .
> (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.
> (2)(b) A person who harasses another is guilty of a class C felony if … (ii) the person harasses another person under

> subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person;

Accordingly, to convict Mr. Johal under the statute, the State was required to prove beyond a reasonable doubt that Mr. Johal threatened to kill S.J. (female, DOB: 8/5/2021) and S.J. was placed in reasonable fear that the threat would be carried out. Despite no evidence that S.J. knew about the threat, the trial court found that the police officers were placed in reasonable fear that Johal's threat to kill S.J. would be carried out. CP 231, 233.

The Court of Appeals ruled that case law rejects the statute's requirement that the person threatened must be placed in fear that the threat would be carried out. Slip op. at 5-6, citing *State v. J.M.,* 144 Wn.2d 472, 28 P.3d 720 (2001) and *State v. Morales,* 174 Wn.App. 370, 298 P.3d 791 (2013). Neither case is applicable and the analysis in both cases was dicta.

In *State v. J.M.,* the appellant argued that the actor must have knowledge that the threat to kill will reach the victim. 144 Wn.2d 485-86. The Court's holding was that the harassment statute's plain language does not require such knowledge. *Id.* at 487. The Court held that the harassment statute does not require a defendant know that the threat will be communicated to the victim, nevertheless the victim must actually have found out about the threat. *State v. Faford*, 128 Wn.2d 476, 482, 488, 910 P.2d 447

(1996). This makes sense that the subject person of the threat realize that a threat was made to kill them.

This Court's analysis concerning threatening a third party rather than the victim is dicta:

> The statute also contemplates that a person may be threatened by harm to another. An example that comes readily to mind is a communication of intent to harm the child of the person threatened. Again, however, the person to whom the perpetrator communicates the threat may be someone other than the person threatened.

144 Wn.2d at 488.

Similarly, *State v. Morales,* 174 Wn.App. 370, 298 P.3d 791 (2013) is dicta. Three issues were raised in *Morales*: 1) the charging document omitted an essential element of the offense charged (felony harassment); and 2) the court erred in giving jury instruction 7; and 3) the two counts of felony harassment encompassed a single course of conduct. 174 Wn.App. at 381. There is no caselaw that suggests that the person threatened to be killed never finds out about the threat, but other persons believe that the threat would be carried out.

2. *State v. Kiehl* held that the State presents insufficient evidence of harassment, when the only evidence presented is that a third person is fearful that a defendant's threat to kill another would be carried out. The only decision until Johal's case that goes

to whether a person can threaten a third party of a threat to kill another is *State v. Kiehl,* 128 Wn.App. 88, 113 P.3d 528 (2005).

But the *Kiehl* Court also found that there was insufficient evidence to convict the defendant of felony harassment. *Id.* at 94. The Court concluded that there was insufficient evidence because there was no proof that the person threatened was in reasonable fear that the threat would be carried out. *Id.* The victim never testified and no evidence was presented to prove Judge Matheson was placed in reasonable fear that the threat would be carried out. *Id.*

Here too, there was no testimony from S.J. and the evidence indicated that she never knew of the threat at all. S.J. was six weeks old. 5/24/23RP 649, 654.[1] Corporal Pardue testified that S.J. looked like she was asleep and slept through the events. 5/23/23RP 564, 566. Because the State failed to prove the person threatened, S.J., was placed in any fear at all that the threat to kill her would be carried out, the State failed to satisfy all the elements of felony harassment.

[1] For the attempted assault charge, the court found that for the means of attempted assault with a hammer, the State did not prove Johal swung the hammer or in any way motioned it toward S.J. 5/31/23RP 759.

The *J.M.* court correctly noted that generally the person threatened is the victim of the threat – the person who is threated to be killed:

> Under RCW 9A.46.020(1)(a)(i), the person threatened is generally the victim of the threat, i.e., the person against whom the threat to inflict bodily injury is made. The person to whom the threat is communicated may or may not be the victim of the threat.

J.M., 144 Wn.2d at 488. This Court should accept review because the holding in Mr. Johal's case is in conflict with the Supreme Court holding in *J.M.,* in conflict with the Court of Appeals ruling in *Kiehl,* raises a significant question of law under the Federal Constitution, and involves a substantial public interest that this Court must determine. RAP 13.4(b)(1)-(4).

3. Review should also be accepted because the Court of Appeals ruling that a first responder can be the victim of a threat to kill another leads to absurd results. The *Kiehl* decision is a correct interpretation of the statute and also makes logical sense. Permitting law enforcement and other third parties to be the victims of felony harassment rather than the person threatened with bodily injury would lead to absurd results. Under the Court of Appeals ruling, harassment could be charged in almost any case where a person not threatened with bodily injury feared that someone else might get injured.

The Court noted that unlike *Kiehl,* the information stated that officers were the victims of the harassment, and "[a]lthough inartfully drafted, the information can be read as stating that the officers were threatened by Johal's threat that he would kill S.J." Slip op. at 7.

But the amended information was much more than simply "inartfully drafted" and it did not state the officers were the victim of the harassment. Instead, the amended information concerning the harassment charged Johal with harassment and listed the victims as S.J., the officers, or "any other person:"

> **COUNT 03 – HARASSMENT – DEATH THREATS – 9A.46.020(2)(b) / 9A.46.020(2)(b)(ii)**
> That he, AARONDEEP S JOHAL, In the County of Clark, State of Washington, on or about October 10, 2021, knowingly and without lawful authority, did threaten to kill another, immediately or in the future, to wit*: S.J. (female, DOB: 8/5/2021), and/or Vancouver Police Department Corporal Gregory Catton, and/or Vancouver Police Department Corporal William Pardue, and/or Vancouver Police Department Officer Justin Reiner,* or *any other person*; and the Defendant, by words or conduct, placed the threatened in reasonable fear that the threat would be carried out, contrary to Revised Code of Washington 9A.46.020(1)(a)(i), (1)(b), and (2)(b)(ii).

(Emphasis added) CP 4.

The Court of Appeals rejected Johal's claim that allowing third parties to be the victims of harassment would lead to absurd results, holding its interpretation of the statute is guided by the harassment statute's legislative finding, as "RCW 9A.46.010 states

that "this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment *designed to coerce, intimidate, or humiliate the victim." Id.* (Emphasis added by Court). The Court concluded, "[a] first responder, witness, or bystander generally would not be so targeted." *Id.*

The holding is incorrect. When a person standing on a bridge is confronted by a police officer and the person tells the officer to step back or he will jump, he is doing so to coerce and intimidate the police officer to not moving towards him. When police are called to a domestic violence altercation, and upon arrival, the husband tells police "step back or I'll kill her," that is the same coercion and intimidation. When a hostage situation occurs, and police start to storm the building and are told "if you come any closer we will kill the hostages, that is done to coerce and intimidate. In each case, the motive of the person making the threat is to "step back." There is no risk or threat to the officer's safety. Although police have difficult jobs, it is a police officer's duty to decide what to do at that point. If the officer does not step back, the subjects targeted (attempted suicide victim, domestic violence victim, hostage victim) may be injured. Felony harassment should not be charged when officers believe a suspect may carry out their

threat to harm another. Instead, if the facts are present, the proper charge would be obstructing a law enforcement officer under RCW 9A.76.020, which occurs when a person hinders, delays, or obstructs any officer in the discharge of their duties.

Here, police entered Johal's apartment through a closed but not locked door, without a warrant, and without announcing their presence. 5/22/23RP at 306. They looked down the hallway, saw a person lying on the bed, and said, "make your presence known," … this is the police." 5/22/23RP 307. Johal, holding his baby, got up, came out of the room, towards the officers and told the officers to get out of his apartment. *Id.* Officers commanded he put the baby down, but Johal refused. *Id.* at 472, 557. With the officers near him, he walked to the kitchen area, picked up a hammer, and said he would kill his baby. *Id.* at 472. Officers instantly pulled out their rifles and guns, and Johal placed the hammer back on the counter. *Id.* at 558-59. From when police entered the apartment to when Johal was arrested was one minute, which included all the offenses charged. 1/25/23 at 44, 45. The time that Mr. Johal threatened to kill S.J. with a hammer was literally seconds.

In other jurisdictions, like California, the intent behind the felony harassment statute was never to charge a citizen with additional offenses every time a police officer is placed in fear that

the suspect might carry out a threat to harm or kill another. In California, Penal Code § 422 provides:

> Any person who willfully **threatens** to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

(Emphasis added). As noted, the person that must be reasonably placed in fear must either be the person that is the target of the threat to kill or his or her immediate family, and no one else. The Code would not apply to police officers, first responders, witnesses, and other third parties. The dicta cited in the Court of Appeals decision in *J.M.* and *Morales* also contemplate a victim of harassment being either the targeted person threatened of an immediate family member who was threatened that a family member will be injured. *J.M.,* 144 Wn.2d at 488, *Morales,* 174 Wn.App. at 380.

In *Counterman v. Colorado,* the United States Supreme Court recognized that prohibitions on speech have a potential to chill speech:

> A speaker may be unsure about the side of a line on which his speech falls. Or he may worry that the legal system will err, and count speech that is permissible as instead not. See *Philadelphia Newspapers, Inc. v. Hepps,* 475 U.S. 767, 777, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986). Or he may simply be concerned about the expense of becoming entangled in the legal system. The result is "self-censorship" of speech that could not be proscribed – a "cautious and restrictive exercise" of First Amendment freedoms.

600 U.S. 66, 75, 143 S. Ct. 2106, 2113, 216 L. Ed. 2d 775 (2023).

Here, the potential chilling effect is that individuals will think twice before calling 911. Any time a first responder heads out on an emergency call, that could lead to a felony harassment charge if any officer or 911 operator, believes that a person threatened another and the police officer or 911 operator had reasonable fear that a threat would be carried out. For the 911 operator, that is their sole job – taking emergency calls of people in danger. Most domestic violence calls, and all suicide calls, carry with them a potential felony harassment. The same is true for officers. This Court should accept review under RAP 13.4(1)(4), because allowing police officers, 911 operators, and witness must not be the victims of a threat to kill another is an issue of substantial public interest.

F. CONCLUSION.

Review should be granted because the Court of Appeals decision is in conflict with this Court's *J.M.* decision, in conflict with

the Court of Appeals *Kiehl* decision, involves a significant question under the Federal Constitution, and raises an issue of substantial public interest to be determined by the Washington Supreme Court. Mr. Johal requests this Court accept review and reverse his conviction and dismiss the case due to insufficient evidence he committed felony harassment.

In compliance with RAP 18.17, this petition contains 3,289 words.

DATED this 10th day of February, 2025.

Respectfully submitted,

s/ Jason Saunders
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CERTIFICATE OF SERVICE

I, Ellen Goncher, state that on the 10th Day of April, 2018, I caused the original **Petition for Review** to be filed in the **Washington State Supreme Court** and a true copy of the same to be served on the following in the manner indicated below:

Aaron T. Bartlett	( )	U.S. Mail
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I certify under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

Name: *s/ Ellen Goncher*_____ Date: 2/10/2025
Ellen Goncher
Legal Assistant
The Law Offices of Gordon & Saunders

EXHIBIT A

Filed
Washington State
Court of Appeals
Division Two

January 14, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. AARONDEEP SINGH JOHAL, Appellant.	No. 58980-0-II PUBLISHED OPINION

MAXA, P.J. – Aarondeep Johal appeals his conviction of felony harassment-death threats.[1] The conviction arose out of an incident in which Johal threatened to kill his six-week-old child after being confronted by officers responding to a domestic violence report. The information identified both the child and the responding officers as victims of the harassment.

After a bench trial, the trial court found that Johal's threat to kill his child placed the officers on the scene in reasonable fear the threat would be carried out. Johal argues that the evidence is insufficient to support his conviction because the harassment statute requires the State to show that Johal's child, not the officers, reasonably feared the threat would be carried out.

[1] Johal also was convicted of other offenses, but he does not appeal those convictions.

We hold that because the officers were victims of the harassment, the trial court's finding that they were placed in reasonable fear that the threat to kill SJ would be carried out supports Johal's conviction. Accordingly, we affirm the felony harassment-death threats conviction.

FACTS

Johal and his former partner Thalia Rivera dropped off their six-week-old child, SJ, with a friend. Later that night, after an apparent dispute, Rivera walked into a convenience store. Johal later entered the store and dragged Rivera out. Around 2:00 AM, Johal arrived at the friend's house and insisted on taking SJ home. Johal took the baby to his apartment.

Vancouver police were dispatched to Johal's apartment. When officers arrived, Rivera exited and they escorted her away. The officers believed that SJ still was inside the apartment.

Several officers entered the apartment. Johal was holding SJ, and using profanity he yelled for the officers to leave his apartment. Johal then picked up a hammer, drew his arm back, and said that he was going to kill SJ. Johal eventually put down the hammer, but he then started walking toward the balcony and yelled that he was going to throw SJ off the balcony. Officers stopped him from getting to the balcony and eventually removed SJ from Johal's arms.

The State charged Johal with felony harassment-death threats, felony violation of a domestic violence court order, first degree kidnapping, third degree assault, and attempted first degree assault. On the felony harassment-death threats charge, the State's information charged:

> That he, AARONDEEP S JOHAL, in the County of Clark, State of Washington, on or about October 10, 2021, knowingly and without lawful authority, did threaten to kill another, immediately or in the future, to-wit: S. J. . . . and/or *Vancouver Police Department Corporal Gregory Catton, and/or Vancouver Police Department Corporal William Pardue, and/or Vancouver Police Department Officer Justin Reiner*, or any other person; and the Defendant, by words or conduct, placed the person threatened in reasonable fear that the threat would be carried out, contrary to Revised Code of Washington 9A.46.020(1)(a)(i), (1)(b), and (2)(b)(ii).

Clerk's Papers (CP) at 66 (emphasis added).

At the bench trial, officers Roger Evans, Justin Reiner, Gregory Catton, and William Pardue testified to the facts recited above. Evans testified, "[Johal] raised the hammer. He drew it back as if he was going to swing it in a very threatening manner toward the child and said something to the effect of, 'I'm going to kill the kid.' " Rep. of Proc. at 309. Evans believed that SJ was very much in danger when Johal threatened to kill her with the hammer. Reiner testified that Johal held the hammer with the head pointed toward SJ's head and was making downward motions with the hammer. Reiner believed that Johal was going to hit SJ with the hammer. Pardue testified that he believed that Johal was attempting to kill SJ with the hammer and that SJ's life was in danger when Johal threatened to throw her off the balcony.

The trial court found Johal guilty of multiple felonies, including felony harassment-death threats. Regarding the felony harassment-death threats charge, the court orally found that Johal threatened to kill SJ and that the officers heard the threat and reasonably believed that Johal would use the hammer to kill SJ. However, the trial court did not enter written findings of fact and conclusions of law.

After Johal appealed, we stayed the appeal and remanded to the trial court for entry of written findings of fact and conclusions of law.[2] Written findings and conclusions now have been entered which follow the facts as described above.[3] The court made the following finding:

The Defendant became angry and yelled at the officers to leave. He picked up a

[2] CrR 6.1(d) states, "In a case tried without a jury, the court shall enter findings of fact and conclusions of law." The proper course when the trial court fails to comply with CrR 6.1(d) is to remand for entry of findings and conclusions, which we did. *State v. Head*, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998). We reiterate again that it is the responsibility of the trial court – generally with the assistance of the prosecutor – to ensure entry of written findings of fact and conclusions of law after a bench trial.

[3] Johal did not assign error to the trial court's findings of fact or conclusions of law after being given the opportunity after the findings were filed.

> hammer from the kitchen, drew his arm back, and said he was going to kill the baby. Corporal Pardue, Corporal Catton, and Officer Reiner heard the Defendant threaten to kill the baby and believed he would use the hammer to kill the baby. Their belief was reasonable under the circumstances.

CP at 231.

Johal appeals his conviction of felony harassment-death threats.

ANALYSIS

Johal argues that the State presented insufficient evidence to convict him of harassment-death threats because the State was required to prove that SJ, not the officers, was placed in reasonable fear that his threats would be carried out. We disagree.

A. STANDARD OF REVIEW

The test for determining sufficiency of evidence for a conviction is whether a rational trier of fact could have found the elements of the crime beyond a reasonable doubt viewing the evidence in the light most favorable to the State. *State v. Scanlan*, 193 Wn.2d 753, 770, 445 P.3d 960 (2019). For a bench trial, "appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law." *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). Unchallenged findings of fact are verities on appeal. *Id.* at 106.

B. LEGAL PRINCIPLES

Under RCW 9A.46.020(1), a person is guilty of harassment if:

> (a) Without lawful authority, the person knowingly threatens:
> (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; [and]
>
> (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

Harassment is a gross misdemeanor unless the harassment involves "threatening to kill the person threatened or any other person." RCW 9A.46.020(2)(b)(ii). Harassment involving a death threat is a class C felony. RCW 9A.46.020(2)(b).

To sustain a conviction for harassment, "RCW 9A.46.020 requires that the State prove that the person threatened was placed in reasonable fear that the threat to kill would be carried out." *State v. C.G.*, 150 Wn.2d 604, 612, 80 P.3d 594 (2003). The question here is who constitutes the "victim" of harassment for purposes of RCW 9A.46.020(1).[4]

C. VICTIM OF HARASSMENT

Johal argues that the victim of the harassment must be the person the defendant threatens to injure or kill, and that third parties who are not threatened with injury or death cannot be victims of harassment. He claims that the person threatened with injury or death – here, SJ – must be placed in reasonable fear that the threat will be carried out to support a harassment conviction.

The statutory language does not support this interpretation. RCW 9A.46.020(1)(a) expressly states that a person is guilty of harassment if they threaten to cause bodily injury to "the person threatened *or to any other person*." (Emphasis added.) This language establishes that the harassment victim and the person threatened with bodily injury need not be the same person. In other words, a defendant may harass one person by threatening to injure another person. The Supreme Court confirmed this understanding in *State v. J.M.*: "The statute also

[4] After Johal was convicted but during this appeal, the United States Supreme Court decided *Counterman v. Colorado*. 600 U.S. 66, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023). The Court held that the First Amendment requires that in order to establish a "true threat," the State must prove the defendant had a subjective understanding of the threatening nature of his statements with mental state of recklessness. *Id.* at 69. Johal cites *Counterman* in his reply brief, but only to argue that affirming his conviction may cause a "chilling effect." Reply Br. at 8. Therefore, we do not address whether Johal's statements were "true threats" under *Counterman*.

contemplates that a person may be threatened by harm to another. An example that comes readily to mind is a communication of intent to harm the child of the person threatened." 144 Wn.2d 472, 488, 28 P.3d 72[illegible] (2[illegible]1).

The court in *State v. Morales*, 174 Wn. App. 37[illegible], 298 P.3d 791 (2[illegible]13), reached the same conclusion. The court quoted the above passage from *J.M.* and then noted that a person threatened under RCW 9A.46.[illegible]2[illegible](1)(a) is someone who is the target of coercion, intimidation or humiliation. *Id.* at 38[illegible]. The court stated, "As the court's hypothetical [in *J.M.*] points out, the target of coercion or intimidation when a parent is threatened with bodily injury to a child can clearly be the parent. If so, the second element of the State's case would require proof that the parent, not the child, was reasonably placed in fear." *Id.*

We recognize that the statements in both *J.M.* and *Morales* are dicta, as neither case involved one person witnessing a threat to injure another person. But we agree with the statements in those cases.

Johal argues that *State v. Kiehl*, 128 Wn. App. 88, 113 P.3d 528 (2[illegible]5), compels a different conclusion. In that case, the defendant told his mental health counselor that he was going to kill a judge. *Id.* at 9[illegible]. The counselor called the judge and reported the threat. *Id.* at 91. However, the State presented no evidence that the judge was placed in reasonable fear that the threat would be carried out. *Id.* Although the only victim referenced in the information was the judge, the trial court instructed the jury that they could convict if the counselor was placed in reasonable fear that the threat would be carried out. *Id.* at 91-92.

The appellate court reversed the harassment conviction based on sufficiency of the evidence. *Id.* at 94. The court stated, "[T]he harassment statute requires that the person threatened learn of the threat and be placed in reasonable fear that the threat will be carried out."

Id. at 93. *As charged*, the judge was the only person threatened. Therefore, the jury should have been instructed that the State was required to show that the judge – not the counselor – was placed in reasonable fear that the threat would be carried out. *Id.* at 93-94. And because there was no evidence concerning the judge's fear, the evidence was insufficient.

Kiehl is distinguishable. The key fact in that case was that the counselor was not named as a victim of harassment in the information; only the judge was. Here, the information expressly stated that officers Catton, Pardue, and Reiner were victims of the harassment. Although inartfully drafted, the information can be read as stating that the officers were threatened by Johal's statement that he would kill SJ.

Johal also argues that allowing people other than the person threatened with bodily injury to be victims of harassment would lead to absurd results. He points out that under this interpretation, first responders, witnesses, and bystanders could be harassment victims.

But our interpretation of the RCW 9A.46.020(1) is guided by the harassment statute's legislative findings. In *J.M.*, the Supreme Court referenced RCW 9A.46.010, which is a legislative finding regarding the harassment statutes. 144 Wn.2d at 485. RCW 9A.46.010 states that "this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment *designed to coerce, intimidate, or humiliate the victim.*" (Emphasis added.) As noted above, the court in *Morales* suggested that a person threatened under RCW 9A.46.020(1)(a) is someone who is the target of coercion, intimidation or humiliation. 174 Wn. App. at 380. A first responder, witness, or bystander generally would not be so targeted.

Here, a rational trier of fact could determine that Johal's threats to kill SJ were both directed at and an attempt to coerce or intimidate the officers on the scene. He wanted the

officers to leave his apartment and to abandon their attempt to arrest him, and threatening to kill SJ was his way of accomplishing that end. Therefore, based on RCW 9A.46.010, the officers were the "person[s] threatened" under RCW 9A.46.020(1)(a).

We hold that based on the offense as charged, the officers in this case could be victims of harassment under RCW 9A.46.020(1)(b) even though Johal threatened to kill SJ. As a result, the trial court properly addressed under RCW 9A.46.020(1)(b) whether the officers were placed in reasonable feared that the threat to kill SJ would be carried out.

D. TRIAL COURT'S FINDINGS

Based on our interpretation of RCW 9A.46.020(1)(a), the only remaining issue is whether substantial evidence supports the trial court's findings that Johal threatened to kill SJ and that the officers were placed in reasonable fear that the threat would be carried out. Johal does not challenge these findings. Therefore, they are verities on appeal. *Homan*, 181 Wn.2d 102, 105-06. We hold that the State presented sufficient evidence to convict Johal of felony harassment-death threats.

CONCLUSION

We affirm Johal's conviction for felony harassment-death threats.

MAXA, P.J.

We concur:

GLASGOW, J.

PRICE, J.

LAW OFFICES OF GORDON & SAUNDERS, PLLC

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