

Supreme Court No. 89791-3  
COA No. 43727-9-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

EDWARD J. STEINER,

Petitioner.

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PETITION FOR REVIEW

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**FILED**  
JAN 21 2014  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON *CF*

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**A. IDENTITY OF PETITIONER**

Your Petitioner for discretionary review is Edward Steiner, the Defendant and Appellant in this case.

**B. COURT OF APPEALS DECISION**

The Petitioner seeks review of the order denying Motion to Modify and order affirming conviction in the Court of Appeals, Division II, cause number 43727-9-II, filed December 18, 2013, and October 25, 2013, respectively.

**C. ISSUE PRESENTED FOR REVIEW**

Whether the conviction for misdemeanor harassment should be reversed?

**D. STATEMENT OF THE CASE**

As alleged in Steiner's Brief of Appellant filed January 10, 2013, which sets out facts and law relevant to this petition and which is hereby incorporated by reference, he was convicted of harassment. On appeal, Steiner argued that the trial court erroneously admitted testimony regarding Steiner's demeanor at the time of his arrest and transport to jail, in violation of Evidence Rule 404(b), and ineffective assistance of counsel.

The Court Commissioner rejected Steiner's argument and a subsequent Motion to Modify was denied. For the reasons set forth

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below, he seeks review.

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

It is submitted that the issues raised by this Petition should be addressed by this Court because the ruling raises a significant question under the Constitution of the State of Washington, as set forth in RAP 13.4(b).

**1. WHERE THE TRIAL COURT ERRED UNDER ER 404(b) WHEN IT ADMITTED EVIDENCE OF STEINER'S DEMEANOR AT THE TIME OF ARREST AND TRANSPORT TO JAIL, DID THE COURT VIOLATE HIS RIGHT TO DUE PROCESS OF LAW.**

A defendant must only be tried for those offenses actually charged. Consistent with this rule, evidence of other bad acts must be excluded unless shown to be relevant to a material issue and more probative than prejudicial. *State v. Coe*, 101 Wn.2d 772, 777, 684 P.2d 668 (1984); *State v. Saltarelli*, 98 Wn.2d 358, 362-63, 655 P.2d 697 (1982); *State v. Goebel*, 40 Wn.2d 18, 21, 240 P.2d 251 (1952), overruled on other grounds, *State v. Lough*, 125 Wn.2d 847, 860, 889 P.2d 487 (1995).

ER 404(b) provides:

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be

admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident.

In this case, Port Angeles Police Officer Justin Leroux testified that Steiner was placed under arrest and transported to the county jail. RP at 109, 110. Officer Leroux stated that while Steiner was handcuffed and in his vehicle, Steiner swore at him and was belligerent. RP at 111. He stated that Mr. Steiner said "something to the effect of you're lucky I don't kill you, and then something to the effect of you know what I'm going to do to you, I'm going to kill you." RP at 112.

Defense counsel moved *in limine* to suppress statements made to the officers during initial contact and to Officer Leroux during transport. CP 62; RP at 54. Defense counsel argued the statements were not within the *res gestae* exception to ER 404(b) because it occurred approximately thirty minutes after the incident with the Shores. RP at 54.

The trial court erred when it admitted this highly prejudicial evidence under the *res gestae* exception to ER 404(b), because the admission of this evidence created the danger that the jury found Steiner guilty of misdemeanor harassment because it viewed him as a belligerent, volatile person deserving of punishment rather

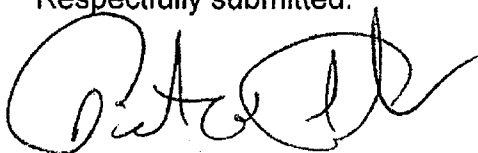
than because the State proved the charge beyond a reasonable doubt.

F. **CONCLUSION**

The Supreme Court should accept review for the reasons indicated in Part E, and reverse the Court of Appeals.

DATED this 16<sup>th</sup> day of January, 2014.

Respectfully submitted:



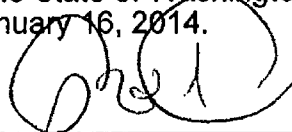
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PETER B. TILLER, WSBA #20835  
Of Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 16, 2014, that this Petition for Review was e-filed to (1) the Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and (2) Lewis M. Schrawyer, Clallam County Deputy Prosecutor, [lschrawyer@co.clallam.wa.us](mailto:lschrawyer@co.clallam.wa.us) and true and correct copies of this petition were mailed by U.S. mail, postage prepaid, to the appellant, Mr. Edward J. Steiner, Clallam County Jail, 223 East 4th Street, Suite 20, Port Angeles, WA 98362, **LEGAL MAIL/SPECIAL MAIL.**

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on January 16, 2014.



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PETER B. TILLER

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,  
Respondent,  
v.  
EDWARD J. STEINER,  
Appellant.

No. 43727-9-II

ORDER DENYING MOTION TO MODIFY

FILED  
COURT OF APPEALS  
DIVISION II  
2013 DEC 18 AM 11:10  
STATE OF WASHINGTON  
BY *[Signature]* DEPUTY

APPELLANT filed a motion to modify a Commissioner's ruling dated October 25, 2013, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 18<sup>th</sup> day of December, 2013.

PANEL: Jj. Johanson, Quinn-Brintnall, Maxa

FOR THE COURT:

*Johanson, A.C.J.*  
ACTING CHIEF JUDGE

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# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

EDWARD J. STEINER,

Appellant.

No. 43727-9-II

RULING AFFIRMING  
JUDGMENT AND SENTENCE

BY *[Signature]*  
DEPUTY

STATE OF WASHINGTON

2013 OCT 25 AM 10:24

FILED  
COURT OF APPEALS  
DIVISION II

Edward Steiner appeals from his conviction for misdemeanor harassment. He argues that the trial court abused its discretion in denying his motion to exclude testimony about his behavior during his arrest and transport. This court set Steiner's appeal as a motion on the merits to affirm under RAP 18.14. Finding that his appeal is clearly without merit, this court grants the motion on the merits and affirms Steiner's judgment and sentence.

Jerrett and Dawn Shore lived across from Steiner's apartment. At about 2:30 or 3:00 A.M. on May 8, 2012, Jerrett called the police because Steiner and a friend were playing an electric guitar very loudly. After the police arrived and spoke with Steiner, things quieted down. At about 5 P.M., Dawn told Jerrett that Steiner had yelled profanities at her. After Jerrett stepped outside, Steiner leaned out his window, said he

was going to "come over and beat [the Shores] asses" and started toward the fence separating their residences. Report of Proceedings (RP) Jul. 9, 2012 at 70. Dawn called the police, and while she was doing so, Steiner pointed at the Shores and said "that's it, tonight I'm coming over killing you, your wife." RP Jul. 9, 2012 at 71.

The State charged Steiner with felony harassment by making a threat to kill. The State asked for a CrR 3.5 hearing on the admissibility of Steiner's statements to the police. During that hearing, police officers testified that Steiner was belligerent during his arrest and while he was at the jail. After the trial court ruled that Steiner's statements were admissible, Steiner moved in limine to exclude testimony from the officers regarding his demeanor during and after arrest. The court concluded that Steiner's demeanor was relevant to show that he acted in an aggressive and threatening manner toward the Shores thirty minutes before his arrest. The court ruled that the testimony was admissible as *res gestae*:

So, taking all that into consideration, I think it is an inseparable part of the crime that provides a history of the crime, and it's relevant for the issues that I've indicated. I think it's highly probative of what was going on, and uh, it far outweighs any prejudicial effect that it could be having on Mr. Steiner.

RP Jul. 9, 2012 at 57.

Jerrett testified as described above. Dawn testified similarly to Jerrett. An aide at Steiner's apartment building testified that he saw Steiner come out of the window of his apartment "cussing and screaming and went running" toward the Shores' house. Officer Brusseau testified that when he arrived at Steiner's apartment, he was belligerent, refused to open the door, and used a continual string of profanity. Officer Leroux testified that while being transported to jail, Steiner was belligerent and swearing

at officers. Steiner testified, denying having threatened the Shores. The jury found Steiner not guilty of felony harassment but guilty of the lesser included offense of misdemeanor harassment.

Steiner argues that the trial court erred in denying his motion to exclude the testimony from the police officers about his demeanor during and after his arrest. This court reviews trial court decisions on the admissibility of evidence for an abuse of discretion. *State v. Fisher*, 165 Wn.2d 727, 745, 202 P.3d 937 (2009). While this court has rejected the view that res gestae evidence is admissible as an exception to ER 404(b), *State v. Grier*, 168 Wn. App. 635, 645-49, 278 P.3d 225 (2012), such evidence is admissible under ER 401 to "complete the story of the crime on trial by proving its immediate context of happenings near in time and place" and to depict a "complete picture . . . for the jury." *State v. Acosta*, 123 Wn. App. 424, 442, 98 P.3d 503 (2004) (quoting *State v. Brown*, 132 Wn.2d 529, 571, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007 (1998) (quoting *State v. Tharp*, 96 Wn.2d 591, 594 637, P.2d 961 (1981))). Because Steiner's behavior with the police officers during and after his arrest, which occurred within 30 minutes of his alleged threats toward the Shores, was similar to those alleged threats, the trial court did not abuse its discretion by admitting the officers' testimony about that behavior as res gestae of the crime against the Shores.

In a Statement of Additional Grounds filed under RAP 10.10, Steiner states that his counsel had time to obtain a video recording of the incident, made at his apartment building, but did not do so. But he does not present any evidence that such a recording was created or retained, and the aide at the apartment building testified that the recording system would have only captured "a little bit" of the Shores' residence. RP

Jul. 9, 2012 at 95. He also states that his counsel did not provide him with proper clothes during trial because they were wrinkled and did not fit properly. But he does not show that this is true or that it affected his trial.

An appeal is clearly without merit when the issue on review is a matter of judicial discretion and the decision was clearly within that discretion. RAP 18.14(e)(1)(c). Because the trial court clearly did not abuse its discretion in denying the motion in limine, Steiner's appeal is clearly without merit. Accordingly, it is hereby

ORDERED that the motion on the merits to affirm is granted and Steiner's judgment and sentence are affirmed. He is hereby notified that failure to move to modify this ruling terminates appellate review. *State v. Rolax*, 104 Wn.2d 129, 135-36, 702 P.2d 1185 (1985).

DATED this 25<sup>th</sup> day of October, 2013.



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Eric B. Schmidt  
Court Commissioner

cc: Peter B. Tiller  
Lewis M. Schrawyer  
Hon. George L. Wood  
Edward J. Steiner

# TILLER LAW OFFICE

## January 16, 2014 - 4:12 PM

### Transmittal Letter

Document Uploaded: 437279-Petition for Review.pdf

Case Name: State v. Edward Steiner

Court of Appeals Case Number: 43727-9

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#### The document being Filed is:

Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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#### Comments:

No Comments were entered.

Sender Name: Shirleen K Long - Email: [slong@tillerlaw.com](mailto:slong@tillerlaw.com)

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