Supreme Court No. _____
COA No. 47725-4-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KYLE LIPINSKI,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Your Petitioner for discretionary review is Kyle Lipinski, the Defendant and Appellant in this case, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Kyle Lipinski seeks review of Division Two's unpublished opinion in *State v. Lipinski*, No. 47725-4-II, 2016 WL 6876510 filed November 22, 2016. No motion for reconsideration has been filed in the Court of Appeals. A copy of the unpublished opinion is attached hereto in the Appendix at A1 through A9.

C. ISSUE PRESENTED FOR REVIEW

1. Authentication is a threshold requirement designed to assure the evidence is what it purports to be. Electronic communication may be easily created through fraudulent means and therefore requires courts to carefully review authorship prior to admitting an electronic message. Did the State prove in this case that the petitioner violated a no contact order by sending text messages to the protected party where the State relied almost exclusively on text messages from an unidentified cell phone without evidence that Lipinski actually sent the text messages other than the bare assertion by the protected party that the

messages contained references that Lipinski had used during their relationship?

D. STATEMENT OF THE CASE

Aubrey Boyes dated Kyle Lipinski for five years and had a daughter with him. Report of Proceedings (RP)[1] (6/8/15) at 51. Their relationship ended and Ms. Boyes obtained a no-contact order in Thurston County District Court Cause No. 14DV-0506 TCP on June 4, 2014, with an expiration date of June 5, 2016, prohibiting Mr. Lipinski from having contact with her. RP (6/8/15) at 52.

Beginning in late 2014, Ryan Waslawski lived with Ms. Boyes and her two children in her residence in Rochester, Washington. RP (6/8/15) at 43. At approximately 9:30 p.m. on December 1, 2014, Mr. Waslawski was sleeping in Ms. Boyes' house when he heard someone knocking at the door and ringing the doorbell. RP (6/8/15) at 44. Ms. Boyes and her children were out of the state at the time. RP (6/8/15) at 46.

Mr. Waslawski got up and saw Mr. Lipinski through the window next to the front door. RP (6/8/15) at 45. Mr. Waslawski

[1] The record of proceedings is designated as follows: RP – December 18, 2014, December 22, 2014, December 30, 2014, January 28, 2015, January 29, 2015, February 4, 2015, March 12, 2015, May 13, 2015, June 3, 2015, June 8, 2015, (jury trial), June 9, 2015 (jury trial), and June 25, 2015 (sentencing).

had known Mr. Lipinski for many years and stated that he recognized him as being the person standing outside Ms. Boyes' house. RP (6/8/15) at 43, 45. He stated that Mr. Lipinski was leaning with his face against the window glass, smoking a cigarette. RP (6/8/15) at 45. He decided not to answer the door and sat in the living room. RP (6/8/15) at 45. Mr. Waslawski did not report the incident until the police contacted him on December 6, 2014 regarding text messages received by Ms. Boyes that she alleged were from Mr. Lipinski. RP (6/8/15) at 47.

The State sought to introduce two text messages that Ms. Boyes stated she had received on December 6, 2014 when she was at her parents' house. RP (6/8/15) at 53, 54. Ms. Boyes asserted that the texts were sent to her by Mr. Lipinski. Defense counsel objected, arguing that the texts be excluded because they could not be authenticated. RP (6/8/15) at 55, 56. The texts represented the evidence introduced at trial to prove that Mr. Lipinski violated the no-contact order as alleged in Count 2.

Although the messages came from a telephone number that she did not recognize and did not have the sender's name attached to it, the State argued that the messages were from Mr. Lipinski. The State asserted:

- The texts contained a reference to "Snowflake," a pet name that Mr. Lipinski used for Ms. Boyes. RP (6/8/15) at 55, 58.
- The message says that the sender loves her more than the sugar in a baby jar, and Ms. Boyes stated that when they were together, Mr. Lipinski gave her a baby jar full of sugar. RP(6/8/15) at 58.
- The message ends with the letters "PS," and she said the Mr. Lipinski signed notes to her "PS." RP(6/8/15) at 58.

After hearing argument regarding admissibility of the texts, the court overruled the defense's objection and admitted the text messages into evidence. RP (6/8/15) at 66. See Exhibits 6 and 7.

After the texts were admitted, Ms. Boyes testified that she believed that the texts were sent by Mr. Lipinski because no one else called her "Snowflake" and that it was signed "PS," which is how he signed other notes and texts to her. RP (6/8/15) at 67-69.

After receiving the text messages, Ms. Boyes returned to her house and called law enforcement. RP (6/8/15) at 69.

Deputy Lester Klene of the Thurston County Sheriff's Office was dispatched to Ms. Boyes' residence in response to a report of a violation of a no-contact order on December 6, 2014. RP (6/8/15) at 76. Deputy Klene took photos of texts on Ms. Boyes'

cell phone. He also confirmed that a domestic violence no-contact order issued June 5, 2014, prohibited Kyle Lipinski from contacting Ms. Boyes. RP (6/8/15) at 79, 80. The order expires June 5, 2016. RP (6/8/15) at 81.

E. ARGUMENT

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

1. THIS COURT SHOULD GRANT REVIEW BECAUSE THE TRIAL COURT ERRONEOUSLY ADMITTED CELL PHONE TEXT MESSAGES WITHOUT ADEQUATE FOUNDATION OR IDENTIFICATION AS REQUIRED UNDER ER 901(A).

The State failed to present an adequate foundation under ER 901, and the trial court erred by allowed the State to enter text messages sent to Boyes on December 6, 2014, from an unknown cell phone number. A trial court's admission of evidence is reviewed for abuse of discretion. *State v. Magers*, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). Abuse of discretion occurs when a trial court's decision is manifestly unreasonable or based on

untenable grounds. *Magers*, 164 Wn.2d at 181. The purpose of authentication is to establish that "the thing" authenticated is what it purports to be. *State v. Monson*, 113 Wn.2d 833, 837, 784 P.2d 485 (1989).

In this case, the trial court permitted the prosecution to present the content of two text messages received by Ms. Boyes on December 6, 2014, despite defense objection to their admission. RP (6/8/15) at 62-66; Exhibits 6 and 7. The State asserted that the texts were sent by Mr. Lipinski, in violation of the no contact order. RP (6/8/15) at 57-58. Defense counsel unsuccessfully argued that the State had not presented sufficient proof of authenticity of the texts or the identity of the sender. RP (6/8/15) at 60-62. Pursuant to ER 901(a), "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." This requirement is met "if sufficient proof is introduced to permit a reasonable trier of fact to find in favor of authentication or identification." *State v. Bradford,* 175 Wn. App. 912, 928, 308 P.3d736 (2013), review denied, 179 9Wn.2d 1010, 316 P.3d 494 (2014) (citing *State v. Danielson*, 37 Wn. App. 469, 471, 681 P.2d

260(1984)).

ER 901 was amended in 2013 to illustrate methods for authenticating emails. Regarding email messages, ER 901 (b) (10) provides:

> Testimony by a person with knowledge that (i) the e-mail purports to be authored or created by the particular sender or the sender's agent; (ii) the e-mail purports to be sent from an e-mail address associated with the particular sender or the sender's agent; and (iii) the appearance, contents, substance, internal patterns, or other distinctive characteristics of the e-mail, taken in conjunction with the circumstances, are sufficient to support a finding that the e-mail in question is what the proponent claims.

ER 901(b) (10). See, *State v. Young*, 192 Wn. App. 850, 855, 369 P.3d 205 (2016) (citing *In re Det. Of H.N.*, 188 Wn.App. 744, 759, 355 P.3d 294 (2015), rev. den., 185 Wn.2d 1005 (2016)).

Authentication is vital regarding the near ubiquitous use of e-mails, instant messages, Twitter messages, and other electronically generated and stored evidence, since the sender and recipient may not know each other and may find it hard to identify the sender and authenticate the document. 34 A.L.R.6th 253 (2008) American Law Reports ALR 6th. With electronic devices and the internet, third parties can use a sender's e-mail, other people can use the same cell phone,

and electronic records can be tampered with, so authentication is a serious issue. *Id.*

In *Bradford*, Division One of the Court of Appeals found that the State introduced sufficient evidence to support a finding that text messages read to the jury and contained in an examination report been authenticated and were what the State purported them to be, namely text messages written and sent to a stalking victim's friend by the defendant. *Bradford*, 175 Wn. App. at 928. The evidence included testimony that: for a substantial period of time, Bradford telephoned the victim and appeared at her place of employment on a frequent basis; Bradford also regularly appeared outside of the victim's house; and the content of the text messages themselves indicated that Bradford was the individual who sent them. *Bradford*, 175 Wn. App. at 928-29.

In *Young*, 192 Wn. App. at 855, Division Two relied on *Bradford* to hold that the text messages were properly authenticated where the victim had personal knowledge that the sender of the text messages was Young and the victim testified that Young forced her to participate in a fraudulent check transaction. Some of the texts corroborate this testimony. *Young*, 192 Wn.App. at 855-57.

Here, in contrast to both *Young* and *Bradford,* there was no corroborating testimony linking Lipinski to the texts in question other than the assertions by Boyes. The texts were from a phone number that Boyes did not recognize. Boyes claimed that the messages were from Lipinski because, without further corroboration, stated that he once gave her "a baby food jar full of sugar and told me he loved more than that," and that the message was signed "PS," and that he "would sign everything [']PS[']" to me during our relationship." RP (June 8, 2015) at 58-59.

Under *Young* and *Bradford*, this thin corroboration—based entirely on Boyes' self-serving recollection of communication during the relationship–did not provide sufficient supporting evidence that Lipinski was the individual responsible for sending the text messages to Boyes.

Other than Boyes' bare assertion, there is nothing exclusive or unique in the content of the messages that would independently establish that Lipinski, as opposed to some other party, was the author of the texts. Moreover, the State was unable to identify the owner of the phone.

Under these facts, there was simply insufficient evidence to establish that the text messages were actually what they

purported to be.

The Court of Appeals erred by finding that *Young* constitutes controlling authority in the present case. *Lipinski,* slip op. at 8. Unlike the facts of this case, the recipient of the messages in *Young* had personal knowledge of the defendant's phone number. *Young*, 192 Wn.App. at 857. The fact of the phone number was a fact that could be independently proven, whereas Boyes' statement about the terms or references in the messages she asserted Lipinski used was the sole basis for authenticating the messages. Accordingly, the State failed to sufficiently authenticate the text messages, and the trial court erred by admitting them.

A reviewing court will reverse an error in admitting evidence where the error is prejudicial to the defendant. *State v. Thomas*, 150 Wn.2d 821, 871, 83 P.3d 970 (2004). When the error is based on violation of an evidentiary rule rather than a constitutional mandate, the reviewing courts apply the test where evidentiary error is prejudicial when within reasonable probabilities, the trial's outcome would have differed had the error not occurred. *Thomas*, 150 Wn.2d at 871.

Here, Lipinski was prejudiced because without the texts, within reasonable probabilities, the trial's outcome would have

differed had the error not occurred because there was insufficient evidence connecting Lipinkski to the texts.

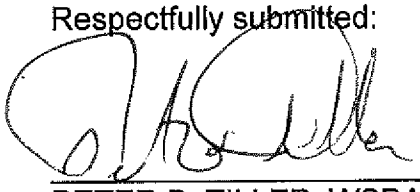
Accordingly, this Court should accept review, reverse the lower court and dismiss Lipinski's convictions.

F. CONCLUSION

This court should accept review for the reasons indicated in Part E of this petition and reverse and dismiss Lipinski's convictions consistent with the arguments presented herein.

DATED this 20th day of December, 2016.

Respectfully submitted:



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CERTIFICATE OF SERVICE

The undersigned certifies that on December 20, 2016, that this Petition for Review was by facsimile to David Ponzoha, Clerk of the Court, Court of Appeals, Division II, (and was sent by first class mail, postage pre-paid to the following:

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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 December 20, 2016.

PETER B. TILLER

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

November 22, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. KYLE DAVID LIPINSKI, Appellant.	No. 47725-4-II UNPUBLISHED OPINION

SUTTON, J. — Kyle D. Lipinski appeals his convictions for two counts of felony violation of a no-contact order, arguing that the trial court abused its discretion when it ordered him to wear a leg brace restraint during his trial and when it admitted text messages sent to Aubrey Boyes because the State did not properly authenticate the text messages. We hold that the trial court did not abuse its discretion and we affirm Lipinski's convictions.

FACTS

On June 5, 2014, a no-contact order was entered, which prohibited Lipinski from contacting Boyes "in person" or by "electronic means." VRP (June 8, 2015) at 80-81; Ex. 1. The no-contact order also prohibited Lipinski from coming within 500 feet of Boyes's residence. Boyes alleged that Lipinski came to her house on December 1 at 9:30 p.m., and knocked and rang the doorbell. Ryan Waslawski, who was living with Boyes at the time, recognized Lipinski as the person standing outside the house. Boyes also alleged that on December 6, she received text messages on her cell phone from an unknown phone number, but that she knew they were from

Lipinski "[b]y the way he talked to [her]." VRP (June 8, 2015) at 52. On December 17, Lipinski was charged with two counts of felony violations of the no-contact order.[1]

I. LEG BRACE RESTRAINT

On June 8, 2015, the morning of trial, the State moved to allow the use of a leg brace restraint on Lipinski during the trial. At the hearing, a corrections deputy testified that the leg brace restraint allows a defendant to "[walk] normally," but "as soon as you try to run or kick, it will lock in a straight position," and that it was the least restrictive device other than not using a restraint device at all. VRP (June 8, 2015) at 9-10. The corrections deputy also testified that only one deputy is required in the courtroom when the leg brace restraint is used and that two deputies would be required if the leg brace restraint is not used. The State argued that the leg brace restraint was appropriate to help the deputies keep Lipinski under control in the courtroom because he had previously had bail revoked twice and had failed a urinalysis test. Lipinski argued that he had not shown any "aggressive or threatening behavior that would lead the Court to fear that kind of behavior from [him] at the trial." VRP (June 8, 2015) at 14.

The trial court found that the physical characteristics of the courtroom, particularly its small size, and the defendant's age and physical attributes, justified restraining Lipinski during the trial. The trial court ordered that Lipinski wear the leg brace restraint. The trial court also stated that because Lipinski was sitting on the opposite side of defense counsel, it would be more difficult for the jury to see the leg brace restraint. In response to the trial court's statement that "the bottom cuff appear[ed] to be visible under the pant leg and the sock [was] not over the top of [the leg brace

[1] Count I relates to events on December 1, 2014, and Count II relates to the text messages allegedly sent by Lipinski to Boyes on December 6.

restraint]," corrections officers put an additional sock over the leg brace restraint before the jury entered the courtroom so that the restraint would not be visible. VRP (June 8, 2015) at 16, 24.

II. Admission of Text Messages

During the trial, Boyes testified that she received text messages on December 6, 2014, from Lipinski. Boyes testified that the messages were sent from a phone number that she did not recognize, but that it was not unusual for Lipinski to use a new phone number, and that she knew the text messages were from him "[b]y the way he talked to [her]." VRP (June 8, 2015) at 52.

The State moved to introduce evidence of the text messages. Lipinski objected[2] and argued that the text messages were not properly authenticated under ER 901(a). Outside the presence of the jury, the trial court allowed the State to establish a foundation to admit the text messages:

> [STATE]: And, Ms. Boyes, looking at those messages, what about the content made you believe that those messages came from Mr. Lipinski?
>
> [BOYES]: Because I was called "Snowflake." He said that--it said that there was "someone who loved me more than sugar in a baby food jar," which once Mr. Lipinski gave me a baby food jar full of sugar and told me he loved me more than that, and it was signed "PS," and we used to have on our bedroom wall, "PS, I love you," and he would sign everything "PS" to me during our relationship.
>
> [STATE]: Was there anything else in the content of those messages that made you believe it came from Mr. Lipinski?
>
> [BOYES]: He said that I may be scared, and it doesn't mean I'm in danger. Everything is going to work out, and that I may hate him, but he will love me.
>
> [STATE]: And prior to receiving text messages, had you ever talked to Mr. Lipinski about those kind of issues, the fact that you were afraid?
>
> [BOYES]: Yes.

[2] Lipinski also objected that the text messages were hearsay. Lipinski does not raise this argument on appeal; thus, we do not address it. RAP 10.3(a)(4).

> [STATE]: And had you had previous responses from Mr. Lipinski that were similar to that text message?
>
> [BOYES]: Yes.

VRP (June 8, 2015) at 58-59.

Lipinski argued that Boyes's speculation was not enough to properly authenticate the text messages because there was no additional corroborating evidence and the State could not identify the phone number as Lipinski's. Over Lipinski's objection, the court admitted the text messages:

> [THE COURT]: I am going to make the decision within my discretion that the level of detail and the uniqueness of the detail given by the witness regarding the statements is sufficient [to admit the text messages].
>
> Then the challenge that the defense has raised would certainly go to the weight of the authenticity of the document, not its admissibility, and certainly defense is not foreclosed from arguing the lack of identifying number challenges the evidence's application to the defendant, but that is an issue for the jury, not for its admissibility.

VRP (June 8, 2015) at 65.

The jury found Lipinski guilty of both charges and, found by special verdict as to each crime, that he and Boyes were family or household members. The trial court sentenced Lipinski to 27 months confinement and ordered that the sentences run concurrently. Lipinski appeals.

ANALYSIS

I. LEG BRACE RESTRAINT

Lipinski argues that the trial court abused its discretion when it ordered him to wear a leg brace restraint during trial. We disagree.

A. LEGAL PRINCIPLES

A criminal defendant has a right to appear at trial without physical restraint, except in extraordinary circumstances. *State v. Jennings*, 111 Wn. App. 54, 61, 44 P.3d 1 (2002). Restraint is disfavored because it may impact the constitutional right to the presumption of innocence as well as the right to testify on one's own behalf and the right to confer with counsel during trial. *State v. Damon*, 144 Wn.2d 686, 691, 25 P.3d 418 (2001). A restraint should only be ordered for three purposes: "'when necessary to prevent injury to those in the courtroom, to prevent disorderly conduct at trial, or to prevent an escape.'" *State v. Finch*, 137 Wn.2d 792, 846, 975 P.2d 967 (1999) (quoting *State v. Hartzog*, 96 Wn.2d 383, 398, 635 P.2d 694 (1981)).

"'A trial judge must exercise discretion in determining the extent to which courtroom security measures are necessary to maintain order and prevent injury.'" *Finch*, 137 Wn.2d at 846 (quoting *Hartzog*, 96 Wn.2d at 400). A trial court's decision "'must be founded upon a factual basis set forth in the record.'" *Finch*, 137 Wn.2d at 846 (quoting *Hartzog*, 96 Wn.2d at 400). We review a trial court's decision to order a defendant to wear a restraint during trial for abuse of discretion. *Finch*, 137 Wn.2d at 846.

Because a defendant has a federal and state constitutional right to appear free from restraints, a violation of that right is presumed prejudicial unless the State proves that the error is harmless beyond a reasonable doubt. *Damon*, 144 Wn.2d at 692. The State has the burden of showing that the restraint did not influence the jury's verdict. *Damon*, 144 Wn.2d at 692. "A constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error." *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985).

B. LEG BRACE RESTRAINT

Here, the trial court ordered that defendant wear a leg restraint given (1) the seriousness of Lipinski's no-contact order violation charge; (2) the fact that the current felony charges was a probation violation and resulted in his bail being revoked; (3) Lipinski's previous failure to provide a urinalysis test, his youthful age and able-bodied physical attributes; and (4) the physical size and layout of the small courtroom. The trial court also ordered a restraint because (5) it found that if Lipinski did not wear a restraint at trial, that one additional correctional officer would be required in the courtroom.

Lipinski contends that the jury may have seen the restraint. However, the trial court took precautions to ensure that the restraint was not visible to the jury during the trial. And there is no evidence in the record that the jury saw the restraint during trial. We hold that the court did not abuse its discretion when it ordered that Lipinski wear a leg brace restraint during the trial.

II. ADMISSIBILITY OF TEXT MESSAGES

Lipinski argues that the court abused its discretion by admitting the December 6, 2014, text messages because they were not properly authenticated. We disagree.

A. LEGAL PRINCIPLES

We review a trial court's admission of evidence for an abuse of discretion. *State v. Young*, 192 Wn. App. 850, 854, 369 P.3d 205 (2016), *review denied*, 185 Wn.2d 1042 (citing *State v. Bradford*, 175 Wn. App. 912, 927, 308 P.3d 736 (2013)). An abuse of discretion occurs when a trial court's decision is manifestly unreasonable or based upon untenable grounds. *Young*, 192 Wn. App. 854.

"The requirement of authentication . . . as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." ER 901(a). "[The] contents, substance, internal patterns, or other distinctive characteristics of [an] e-mail, taken in conjunction with the circumstances, are sufficient to support a finding that the e-mail in question is what the proponent claims." ER 901(b)(10).[3] Testimony by a witness with knowledge is sufficient for authentication. ER 901(b)(1). "'Once a prima facie showing has been made, the evidence is admissible under ER 901.'" *Young*, 192 Wn. App. at 855 (internal quotation marks omitted) (quoting *In re Det. of H.N.*, 188 Wn. App. 744, 751-52, 355 P.3d 294 (2015), *review denied*, 185 Wn.2d 1005 (2016)). Because authenticity is a preliminary determination, a trial court may consider otherwise objectionable evidence. *Young*, 192 Wn. App. at 854-55. Challenges to authenticity go to weight, not admissibility. *Young*, 192 Wn. App. at 857.

In *Young*, we held that the recipient's personal knowledge of the sender's phone number and the contents of the texts were sufficient evidence to permit a reasonable trier of fact to find that the defendant was the sender of the text messages. 192 Wn. App. at 857. The recipient of the text messages in *Young* had personal knowledge of the defendant's phone number because it was listed as a contact in the phone, and the content of the text messages corroborated the recipient's testimony describing the defendant's conduct. *Young*, 192 Wn. App. at 857.

[3] ER 901 was amended effective December 10, 2013, to illustrate methods for authenticating e-mails, which by extension applies to text messages. *See Young*, 192 Wn. App. 856 (citing *In re Det. of H.N.*, 188 Wn. App. 744, 759, 355 P.3d 294 (2015), *review denied*, 185 Wn.2d 1005 (2016)).

B. ADMISSION OF TEXT MESSAGES

Boyes testified that Lipinski did not always communicate from the same phone number but she also testified that she knew that it was him based on "the way he talked to [her]." VRP (Jun. 8, 2015) at 52. Boyes testified that the sender called her "Snowflake" and that Lipinski called her "Snowflake." VRP (Jun. 8, 2015) at 58-59. Boyes also testified that the text messages were from "someone who loved [her] more than sugar in a baby food jar," and that Lipinski had previously given her "a baby food jar full of sugar and told [her] he loved [her] more than that." VRP (Jun. 8, 2015) at 58. Boyes further testified that the text message was signed "PS," and that Lipinski "would sign everything 'PS' to [her] during [their] relationship." VRP (Jun. 8, 2015) at 58. Finally, Boyes testified that the messages stated that "[she] may be scared, and it [didn't mean] [she was] in danger" and "[she] may hate him, but he will love [her]," and that Lipinski had previously sent similar text messages to her. VRP (Jun. 8, 2015) at 58.

Like the text messages in *Young*, the content of the text messages here corroborated Boyes's testimony about Lipinski's conduct. Although Boyes did not have personal knowledge of the phone number, she testified that it was not unusual for Lipinski to contact her through an unknown phone number, that he had previously signed messages in the same manner, and that he had sent similar text messages to her in the past stating that she "[was not] in danger" and "he will love [her]." VRP (Jun. 8, 2015) at 58. Thus, we hold that the court did not abuse its discretion when it admitted the text messages under ER 901.

We affirm Lipinski's convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.

SUTTON, J.

We concur:

LEE, P.J.

Melnick, J.

MELNICK, J.

TILLER LAW OFFICE

December 20, 2016 - 3:59 PM

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