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AUG 22, 2014  
Court of Appeals  
Division III  
State of Washington

No. 31940-7-III

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

GRANT W. SCANTLING,

Defendant/Appellant.

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Appellant's Reply Brief

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A. ARGUMENT

1. The trial court abused its discretion in allowing evidence of threats made by Mr. Scantling to Mr. Palmer.

The defendant did not “open the door” to evidence of prior threats toward Palmer as the State contends. The State mischaracterizes Appellant’s argument as stating he only opened the door to further discussions of threats in *text messages*. (Resp’t Br. at 15). To the contrary, Appellant’s argument is that he did not open the door for the State to ask Krebs if Mr. Scantling *ever* made any threats against Palmer to her by asking Krebs if Mr. Scantling threatened Palmer in text messages he sent her *around the time of the incident*. (Appellant’s Br. at 16-17). Mr. Scantling argued questioning Krebs regarding threats in text messages around the time of the incident, did not open the door to the wider question of whether Mr. Scantling had *ever* threatened Palmer. (Appellant’s Br. at 17). Since Mr. Scantling did not argue for limiting the scope of his questioning to text messages as the State suggests, *State v. Gallagher*, cited by State, is inapposite. See *State v. Gallagher*, 112 Wn. App. 601, 610, 51 P.3d 100 (2002).

The State also argues that Mr. Scantling opened the door to evidence of threats made by Mr. Scantling to Palmer, because he “sought

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specifically to create the impression that there were no prior threats to Mr. Palmer and to give the jury a false impression about the nature of their relationship.” (Resp’t Br. at 16). The State argues Mr. Scantling did this “by specifically limiting his questioning to a point in time and manner where no threats had been made.” (Resp’t Br. at 16).

The State is incorrect. Mr. Scantling did not seek to create any false impression. Rather, he sought to limit the evidence to the days surrounding the incident. (2 RP 246-248). Allowing the State to ask Krebs if Mr. Scantling *ever* made any threats against Palmer was not “within the scope of the examination in which the subject matter was first introduced[,]” i.e., whether Mr. Scantling threatened Palmer around the time of the incident. See *State v. Berg*, 147 Wn. App. 923, 939, 198 P.3d 529 (2008) (quoting *State v. Gefeller*, 76 Wn.2d 449, 455, 458 P.2d 17 (1969)). The evidence offered by the State was outside the scope of the evidence presented by the defense and the defense did not open the door to its admission. See *Berg*, 147 Wn. App. at 939 (citing *State v. Price*, 126 Wn. App. 617, 109 P.3d 27 (2005)).

2. Mr. Scantling was denied his constitutional right to effective assistance of counsel, when his attorney failed to object to the admission of the handwritten letters found in Mr. Scantling’s residence.

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The State argues the handwritten letters found in Mr. Scantling's residence were relevant to the first degree burglary charge, to prove Mr. Scantling entered Krebs' home with the intent of committing a crime inside. (Resp't Br. at 17-18); *see also* RCW 9A.52.020(1)(a) (first degree burglary).

This argument is disingenuous. There was no disputed question for the jury as to whether Mr. Scantling entered or remained unlawfully in Mr. Krebs' residence with the intent to commit a crime because Mr. Palmer's body was found inside the residence. *See* RCW 9A.52.020(1)(a) (first degree burglary). Furthermore, defense counsel even argued in closing argument that Mr. Scantling was guilty of first degree burglary. (2 RP 41).

Contrary to the State's contention, the only disputed issue at trial was whether Mr. Scantling acted with premeditated intent to cause the death of another person that resulted in Palmer's death. *See* RCW 9A.32.030(1)(a) (first degree premeditated murder). The handwritten letters were not relevant because they did not pertain to the premeditated intent element for first degree murder the State needed to prove at trial. *See* ER 401. The letters were also highly prejudicial. *See* ER 403.

Therefore, defense counsel was ineffective for failing to object to the admission of those letters.

B. CONCLUSION

For the reasons stated herein, and in appellant's opening brief, the convictions should be reversed.

Respectfully submitted on August 21, 2014,



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PROOF OF SERVICE

I, David N. Gasch, do hereby certify under penalty of perjury that on August 21, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Appellant's Reply Brief:

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