

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY [Signature] NO. [court of appeals case number]

48619-9-II

SUPREME COURT OF THE STATE OF WASHINGTON

94814-3

FILED
AUG 02 2017
WASHINGTON STATE
SUPREME COURT

STATE OF WASHINGTON,

Respondent,

vs.

Gerald Cameron
[your name]

Petitioner.

PETITION FOR REVIEW

Gerald Cameron
[your name], Petitioner
[your address]

Airway Heights Correction Center
P.O. Box 2049
Airway Heights, WA 99001

48619-9-II

A. IDENTITY OF PETITIONER

[your name] asks this court to accept review of the decision designated in Part B of this motion.

B. DECISION

Petitioner seeks review of the entire decision of the Court of Appeals affirming petitioner's conviction and sentence entered in the Superior Court of Washington for ^{Clark}~~county~~ County. A copy of the Court of Appeals decision is attached to this Motion. **[Attach a copy]**

C. ISSUES PRESENTED FOR REVIEW

[In this place write out the issues that you think the Supreme Court should review]

D. STATEMENT OF THE CASE

[In this place write out those portions of your case that will help the Court understand the issues you have presented for review]

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

[In this place write out your argument as to why the Supreme Court should accept your case]

F. CONCLUSION

For the reasons set out in this motion, this court should accept review of this case and reverse petitioner's conviction.

DATED this 19 day of June 2017, [year].

Gerald Cameron

[your name], Petitioner

①

D. Statement of the case

NO: 1/court erred: When it allowed Deana Lentz to testify that Cameron allegedly threatened her. It violated my rights to a fair trial.

Officer Ripp on page ^{RP}(117) said no scratches on face or neck maybe redness on neck. On page ^{RP}(5) Lentz interview with state's investigator conducted a recorded interview. Lentz said Cameron assaulted her strangled her blacked her eyes bruising on her neck allegedly. Page ^{RP}(6) Police had contact with her before and after incident and documented "no" such injuries. In that interview lentze said she scratched Cameron's "face and neck", not true. Pictures were taken of Cameron, no scratches on face or neck. Vaughn: the state said on page ^{RP}33 agrees that lentz (did not) say anything to police about the ~~the~~ alleged assault and threat, Page 21 court talks about (403) how it works in self-defence claims, ~~subsequent~~ subsequent injuries, then there's a subsequent fight or subsequent incident, that's clearly probative. It goes on to say, when you balance the prejudice versus the probative value, does it create a situation where we have a unfair trial. I guess that's what it really boils down to. The court said that. On page ^{RP}23 under 404(b) said on page ^{RP}24 the court would have to hear from lentz before I poison the jury, or give the jury unknown issues. →

②

RP

Page 255 Line 14 Question did Mr Cameron ask Sommerville to "leave us alone" only is that correct. Answer (Yeah) Dean Lentz never once stated Cameron allegedly threatened Sommerville. ER⁴⁰³ in weighing in the admissibility of evidence under ER 403 to determine whether the danger of unfair prejudice substantially outweighs probative value, a court should consider the importance of the fact that the evidence is intended to prove, the strength of the chain of inferences necessary to establish the fact, whether the fact is disputed, the availability of alternative means of proof and the potential effectiveness of a limiting Instruction.

State v. Kendrick, 47 Wn App 620, 736 P.2d 1079 (1987)
An abuse of discretion occurs when the trial court exercises of discretion is manifestly unreasonable or based upon untenable grounds or reason

State v. Neal, 144 Wn 2d 600, 30 P.3d 1255 (2001)
There were no facts or proof that any alleged conflict happen with Cameron and Lentz. In addition, it is fundamental under our adversarial system of criminal justice that "propensity" evidence, usually offered in the form of prior convictions or prior bad acts, is not admissible to prove the commission of a new offense.

see 5 Karl B Tegland, Washington practice, evidence § 119 at 383 (3d ed, 1989). This is common law rule has been codified in ER 404(b) where it states that "evidence

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of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. Also in 404(b) it says The rule excludes prior crimes, regardless of whether they resulted in conviction. I was not even charged for Lentz's allegation. Deana Lentz's allegations were highly prejudicial to my case with Somerville. Mr. Somerville stated Deana Lentz was present when the allegation were made. As such, despite the court's admonition, it would be extremely difficult, if not impossible, in this close case for the jury undoubtedly would use it for its most improper purpose, that is, to conclude Cameron acted on this occasion in conformity with the assaultive character he demonstrated ~~was~~ allegedly in the past. In the case at bar, the trial court erred when it denied the defendant's motion in limine and allowed the state to ~~elicit~~ elicit evidence that white hours of allegedly assaulting and threatening to kill Somerville, he allegedly assaulted and threatened ~~to~~ Deana Lentz. The state presented the latter evidence of threats on redirect during the following exchange: Q. is it fair to say you were shaken up by events that night? A. (very) Q. When the defendant attacked you in the tent later that night, did he tell not to talk to the police about this. A. yes Q. Okay A. He said if I did he would kill me Mr. Pasco: Objection leading, I'd ask to move to strike

(4)

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Court: Overruled

Lentz statement influenced the jury, and was "Extremely serious" in the light of the fact that it was inadmissible under ER 404B or ER 609, and particularly in light of the paucity of credible evidence against the defendant.

NO:2/ The Elements of the crime was not meet.

To prove Felony Harassment, (1) That on or about June 17th 2015 the defendant knowingly threatened to Kill Gary James Sommerville immediately or in the future. (2) That the words or conduct of the defendant placed Gary James Sommerville in reasonable fear that the threat to kill would be carried out. (3) That the defendant acted with out lawful authority. (4) That the threat was made or received in the state of Washington. Sommerville statement on the stand.

↓

↓

Transcrip Page 192 - line 16 Q. And so as you guys lentz, Sommerville continue walking, at some point you claim that he Cameron threatened to Kill you; is that correct?

Line-18 A. Yeah, twice

line-19 Q. Two times?

line-20 A. yes

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line-21 Q. and you continue walking to Fred Meyer; is that correct?

22 - A. yes, yes

23 Q. you and Deana (did not) run at that point

24 A. we -- no

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2. Q. so when he first said it, you didn't believe him that he was going to

4. A. no.

5. Q. do anything, right?

6. A. no

now where in his tesamoney does it say that the allegation ~~was~~ threat was made one minute then 1, 2, 3 or more minutes later threat allegation was made, (no) Sommerville also has crimes of dishonesty as well. My attorney Todd Pacoe did try and bring in that Sommerville has (2) Felony crimes in 2015 for crimes of dishonesty. Sommerville's motive was to say anything because he was the one that was swinging his hoe handel first at Cameron. So in an interview with Sommerville said yes I had a knife and he would cut his wrists and arms before you'd go back to jail. He Sommerville would do anything or say anything to keep from going back to jail.

Transcrip:

Page 182 line: 10 Q. All right. And you arm yourself

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with this hoe handle because you anticipated a confrontation with Gerald later that evening is that correct?

13. A. yes

Page: ~~186~~ 187

16. Q. Okay. When you invite her, "Come on D let's go" where you standing

18. A. We were both -- I was already past here.

Page: 188

16. Q. Okay. And approximately how long before you say, "Come on, D, let's go" do you actually see him? Simultaneously? Five steps? Thirty steps?

19. A. Simultaneously. He Cameron was sitting right next to her.

Sommerville said lentz was there when Cameron allegedly threatened him. lentz said all I said on the trail was "leave us alone". So the alleged threat never happen. And the victim Sommerville (did not) feel threatened. So the crime was not proven, the element of the crime was not proven. The court of Appeals agrees with me for the most part.

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I'm asking for the charge of
Felony Harrassment to be reversed with
prejudic, and the time I had on ~~community~~
community coustly be droped on the
2012 case, And an emedeat release.

F. ARGument why Review should be Accepted
are listed above

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Gerald Cameron AOC # 758028



F. Conclusion - see attached page.

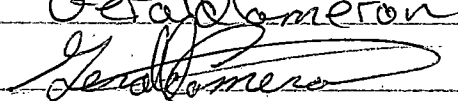
PS. I'm not an attorney at all but
I know wright from wrong and I was wronged
forgive me for my slopy hand writing and
miss spellings. I think I pointed out my
case and proved my case. Please consider
my case.

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F. Conclusion

My rights were violated, the court abused it's discretion on more than one occasion, just to get a guilty verdict. I pointed out every thing word for word from the transcripts not my word there words. My attorney trial, Todd Pasco did try and get medical records, the ~~the~~ court turned him down, tried to keep Lentz from testifying the court turned him down, that is only part of it I was wronged and (do not) deserve to seet in prison for some thing I am not guilty for. Thank you for your time and for considering my case. I'm sorry I don't know how to do proper format court stuff. I'm in the hole.

Gerald Cameron


DAC # 758028

Case: NO, 48619-9-I

May 31, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

GERALD LEE CAMERON JR.,

Appellant.

No. 48619-9-II

UNPUBLISHED OPINION

JOHANSON, J. — Gerald Lee Cameron Jr. appeals his jury trial conviction for felony harassment-death threats.¹ He argues that the trial court erred when it allowed a witness to testify that Cameron had also threatened to kill her. In his statement of additional grounds for review² (SAG), Cameron also argues that there was insufficient evidence to support the felony harassment conviction. Because Cameron failed to preserve his evidentiary argument³ and the grounds alleged in his SAG have no merit, we affirm.⁴

¹ Cameron was also convicted of fourth degree assault. He does not challenge that conviction on appeal.

² RAP 10.10.

³ RAP 2.5(a).

⁴ Cameron also asks that we decline to impose appellate costs. The State responds that it does not intend to seek costs. We accept the State's representation, and we do not address appellate costs further.

FACTS

I. BACKGROUND

In June 2015, Deana Lentz and Gary James Sommerville were living in neighboring tents on state property located next to a highway. Lentz and Sommerville had known each other for more than two years, and they had recently engaged in sexual relations while Lentz's then-boyfriend Cameron was in jail.

On June 17, Sommerville approached Lentz's tent intending to borrow a wrench. Lentz came out of her tent and told Sommerville that Cameron had returned. Sommerville returned to his tent and decided to walk to the nearby Fred Meyer's store.

As Sommerville approached Lentz's tent, he heard Lentz yelling at Cameron and telling him to pack his belongings and leave because their relationship was over. Lentz and Cameron then walked out of the tent. Concerned that Lentz "was going to be in trouble," Sommerville approached Lentz and Cameron and told Lentz, "[L]et's go." 2 Report of Proceedings (RP) at 149. Lentz went to Sommerville and took his hand.

According to Sommerville, Cameron responded, "Do you mind? I'm talking to my old lady." 2 RP at 150. Sommerville told Cameron that Lentz was now with him and that she had been with him while Cameron was in jail. Cameron responded, "I'm going to kill you." 2 RP at 151.

Cameron then asked Sommerville if he and Lentz had been having sex. When Sommerville said they had and gave some graphic detail, Cameron again threatened to kill Sommerville. Believing Cameron's threat, Sommerville told Lentz that they needed to go to Fred Meyer's and call 911. Sommerville and Lentz started walking down the trail towards the store.

As they walked down the trail, Sommerville looked back and saw a flashlight coming toward him and Lentz. When he realized that Cameron was following them, Sommerville told Lentz to run. Cameron caught up with Sommerville, and Sommerville turned and tried to keep Cameron away from him by swinging the hoe handle he had been using as a walking stick. Cameron used a steel bar to knock the hoe handle out of Sommerville's hands. Cameron then struck Sommerville in the head several times with the bar. Sommerville managed to get away and find help on a road near the camp.

When the police officers arrived, Sommerville told them that Cameron had assaulted him with a long steel bar used to lift weights. Sommerville was then transported to the hospital. He suffered injuries to his head and a broken hand.

City of Vancouver Police Officer Zachary P. Ripp arrested Cameron the next day. Cameron provided Officer Ripp with oral and written statements. In both of these statements, Cameron admitted to having been in an altercation with Sommerville, but he asserted that he had acted in self-defense when he came to Lentz's defense and that Sommerville attacked him with a stick or a shovel. Cameron also asserted that he was injured in the altercation and that he "went out in a seizure" when Sommerville struck him in the head. 2 RP at 110. The injuries Cameron noted included an injured hand, blood near his ear, and scratch marks.

II. PROCEDURE

A. MOTION IN LIMINE

The State charged Cameron with first degree assault while armed with a deadly weapon and felony harassment.

During the investigation, Lentz revealed in an interview that after the police left, Cameron had returned to her tent and assaulted and raped her. Cameron moved in limine to restrict the State's use of this information. Cameron argued that the evidence of the alleged assault or rape was inadmissible under ER 404(b) and because it was unfairly prejudicial and that there was insufficient proof that the rape and assault had occurred, but he did not mention an additional threat to kill.

The State responded that the evidence about the assault and rape of Lentz was relevant because Lentz asserted that she injured Cameron during his altercation with her, which would rebut Cameron's claim that he sustained injuries during his altercation with Sommerville. The trial court ruled that Lentz could testify about the injuries she claimed to have inflicted on Cameron during the assault but that she could not testify about the rape. At no point during this hearing did anyone mention Cameron threatening to kill Lentz.

B. TESTIMONY

The State presented testimony from the officer who first contacted Sommerville, Officer Ripp, Sommerville, and Lentz. Cameron's sole witness was a physician's assistant who testified about Cameron's hand injury.

In addition to the facts set out above, Sommerville testified that although he swung the hoe handle when Cameron confronted him, he was just trying to keep Cameron away from him and he did not strike Cameron. In addition, Sommerville testified that the first time Cameron threatened him, he did not believe Cameron. But the second time Cameron threatened him, Sommerville took the threat seriously and told Lentz that they needed to call 911.

Lentz also testified that Sommerville had been trying to help her when Cameron came after them with a “60-pound weight bar.” 3 RP at 247. Her testimony about the physical confrontation between Cameron and Sommerville was generally consistent with Sommerville’s.

The State then questioned Lentz about Cameron assaulting her after the police had departed. Lentz testified that Cameron had returned to her tent and assaulted her and that she had punched and scratched him.

During redirect, the State asked Lentz if after Cameron attacked her, he told her not to talk to the police about the incident. Lentz responded that Cameron had told her not to talk to the police. She then stated, “He said because if I did, he’d kill me.” 3 RP at 263. Defense counsel objected based on “[l]eading” and asked the trial court to strike the response. 3 RP at 263. The trial court overruled the objection.

The jury found Cameron guilty of felony harassment and the lesser included offense of fourth degree assault. Cameron appeals his felony harassment conviction.

ANALYSIS

Cameron argues that the trial court erred when it allowed Lentz to testify that Cameron had threatened to kill her.⁵ In his SAG, he further contends that the evidence was insufficient to convict him of felony harassment. Cameron has failed to preserve his evidentiary arguments, and his SAG issues have no merit.

⁵ Cameron argues that the trial court erred by denying the defense motion in limine to exclude this evidence. But the motion in limine did not address this evidence, it addressed only Lentz’s allegations of assault and rape.

I. EVIDENTIARY ERRORS NOT PRESERVED

Cameron argues that the trial court erred when it allowed Lentz to testify that Cameron had threatened to kill her because this testimony was unfairly prejudicial under ER 403 and was improper propensity evidence under ER 404(b). The State responds that Cameron failed to preserve this argument for appeal. We agree with the State.

A nonconstitutional evidentiary error cannot be raised for the first time on appeal. RAP 2.5(a); *see also State v. Mason*, 160 Wn.2d 910, 933, 162 P.3d 396 (2007), *abrogated in part on other grounds by Giles v. California*, 554 U.S. 353, 128 S. Ct. 2678, 171 L.Ed.2d 488 (2008). Here, Cameron objected to Lentz's testimony about Cameron threatening her on grounds of "leading" the witness, not because of undue prejudice under ER 403 or because it was improper propensity evidence under ER 404(b).⁶ And the evidentiary errors alleged here do not fall under the manifest constitutional error exception to RAP 2.5(a)(2). *State v. Everybodytalksabout*, 145 Wn.2d 456, 468-69, 39 P.3d 294 (2002) (evidentiary errors, such as erroneous admission of ER 404(b) evidence, are not of constitutional magnitude). Accordingly, Cameron has not preserved his ER 403 and ER 404(b) arguments, and we decline to address these arguments.

II. SUFFICIENT EVIDENCE

In his SAG, Cameron contends that the evidence was insufficient to support the felony harassment conviction. We disagree.

⁶ We note that although an objection based on prejudice would have been sufficient to preserve both the ER 403 and ER 404(b) issues for appeal, Cameron did not object based on prejudice. *Mason*, 160 Wn.2d at 933.

When an appellant challenges the sufficiency of the evidence supporting his conviction, we must view the evidence in the light most favorable to the State and determine whether any rational jury could have found the essential elements of the crime beyond a reasonable doubt. *State v. Farnsworth*, 185 Wn.2d 768, 775, 374 P.3d 1152 (2016). The appellant admits the truth of all the State's evidence in making such a challenge. *Farnsworth*, 185 Wn.2d at 775. We "defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence." *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014).

To prove felony harassment, the State had to prove that Cameron, acting without lawful authority, knowingly threatened to kill Sommerville and that Cameron's words or conduct placed Sommerville in reasonable fear that Cameron would carry out this threat. RCW 9A.46.020(1)(a)(i), (1)(b), (2)(b)(ii). Cameron contends that the evidence was insufficient to prove that (1) his actions placed Sommerville in reasonable fear that the threat to kill would be carried out and (2) he (Cameron) acted without lawful authority.

Cameron asserts that the evidence did not establish that Sommerville feared that Cameron would carry out the threat to kill because Sommerville testified that when Cameron first threatened him, he (Sommerville) did not believe Cameron would carry out the threat. But Cameron ignores part of Sommerville's testimony. Although Sommerville testified that he did not believe Cameron would follow through on his first threat, Sommerville also testified that he believed that Cameron would carry out the threat after Cameron threatened him a second time. Although Sommerville's testimony would not have supported a conviction based on the first threat alone, we hold that,

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taking the evidence in the light most favorable to the State, a reasonable jury could conclude beyond a reasonable doubt that Sommerville feared that Cameron would carry out the second threat based on Sommerville's testimony.⁷ Accordingly, the evidence is sufficient to support this element.

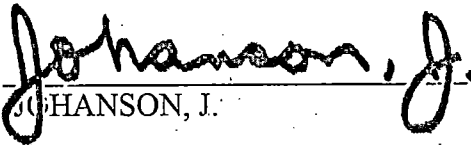
Cameron next appears to assert that the evidence was insufficient to show that he acted without lawful authority because he acted in self-defense, he was not the first aggressor, and he had no obligation to retreat. To act with lawful authority, Cameron would have to show that he was about to be injured by Sommerville and that he (Cameron) responded with no more force than necessary. RCW 9A.16.020(3) (defining lawful use of force); *State v. Smith*, 111 Wn.2d 1, 9, 759 P.2d 372 (1988) ("Threats of bodily injury also lawfully may be made when circumstances justify violent action in self defense."). Here, Sommerville testified that Cameron threatened to kill him a second time after Sommerville revealed he had been having sexual relations with Lentz. At that point, there was no evidence that Sommerville had threatened to harm Cameron. This evidence, taken in the light most favorable to the State, is sufficient to allow a jury to find that Cameron was not acting with lawful authority. Accordingly, Cameron's sufficiency of the evidence claims fail.

⁷ Cameron does not argue that if Sommerville was afraid, Sommerville's fear was not reasonable.

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Because Cameron failed to preserve his evidentiary argument and the evidence is sufficient to support the felony harassment conviction, we affirm.

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.




JOHANSON, J.

We concur:



BERGER, C.J.



WORSWICK, J.