 74036-9

NO. 74036-9-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

Christopher Lewis Locken,

Appellant.

FILED
Oct 12, 2016
Court of Appeals
Division I
State of Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Alan R. Hancock, Judge
Superior Court Cause No. 14-1-00254-9

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

The victim, 34-year-old David Solis had known the defendant, Christopher Locken, for approximately ten years. RP 142-143. In the past they had been friends. RP 143.

In the summer of 2015, Mr. Solis began receiving threatening and violent texts from Mr. Locken regarding Mr. Solis' wife Megan McAdams. RP 143-144. Mr. Solis admitted that he sometimes responded in kind to these texts. RP 145. Mr. Solis testified that he was not worried by these texts. RP 145.

On December 6, 2015, Mr. Solis and Ms. McAdams were stranded after having car trouble and were waiting for a ride and also trying to hitchhike. RP 146-147. Mr. Solis had received a number of texts from Mr. Locken which he summarized as an invitation to fight. RP 146. Mr. Solis never figured that would happen since his communications with Mr. Locken were always via text. Id.

On direct examination, Mr. Solis testified that at some point that morning he texted Mr. Locken where he and Ms. McAdams were. RP 147. Mr. Solis stated that he figured Mr. Locken would never show up there. Id. On cross-examination, Mr. Solis testified that after months of

Mr. Locken texting him, he was sick of it. RP 173. Further, Mr. Solis testified he was not afraid of Mr. Locken or his threats. RP 173.

Mr. Solis and Ms. McAdams were at the bottom of a hill on Goss Lake Road on south Whidbey Island standing near a telephone pole when Mr. Solis saw Mr. Locken's car crest the hill going fast. RP 149-153. The car steered completely off the roadway and on to the dirt shoulder driving at Mr. Solis and Ms. McAdams. RP 151-152. The car was forced to slow down because of the terrain. RP 151. Mr. Solis saw that Mr. Locken was driving the car prior to being struck. RP 160-161. It only took the car two or three seconds after the car swerved off the road until impact. RP 174.

Mr. Solis testified that he was able to push Ms. McAdams out of the way as he was struck by the car. Mr. Solis testified the car was going 10 to 20 miles per hour when it struck him. RP 152. Mr. Locken drove over a hump of dirt forcing him to slow down and through a puddle before impacting Mr. Solis on the passenger side front. RP 160-161. Mr. Solis testified that he was jumping backward when struck and fell into the mud on his backside off to the side of the car. RP 161.

Mr. Locken then turned his car around and went back up the road the way he came. RP 162, 166. Mr. Solis then called the police. RP 162. His pants were covered with dirt, mud, and small rocks. RP 167. Mr. Solis did not seek medical attention that day, but did later. RP 167-168.

Mr. Solis testified that he was in fear when Mr. Locken veered his car off the road and drove toward Mr. Solis and Ms. McAdams and that he was in fear of being run over when the car was coming at him. RP 184. Mr. Solis testified that he tried to hide behind a power pole. RP 150-151. Further, after being struck, both Mr. Solis and Ms. McAdams hid behind a transformer box until the car drove away. RP 152, 161.

Ms. McAdams described the incident similarly to Mr. Solis including the fact that Mr. Solis was struck but that she was pushed out the way. RP 189-191, 193-194. She described the impact of the car to Mr. Solis as a "glancing blow." RP 194. Ms. McAdams described that she and Mr. Locken had a previous relationship, which mostly involved Methamphetamine use, but she ended it because Mr. Locken would call her "Denise" and was semi-delusional and "probably obsessive." RP 192. She also described how Mr. Locken continually threatened Mr. Solis and continually expressed a desire to have a relationship with Ms. McAdams. RP 191, 196-197. Ms. McAdams indicated that she experienced "shock and fear" as she saw Mr. Locken's car drive at her and Mr. Solis. RP 195.

Island County Sheriff's Deputy Leif Haugen arrived on the scene of Lone Lake and Goss Road at 11:49 a.m. RP 208. Deputy Haugen observed spattered mud droplets on the front and back of Mr. Solis. RP 209. Deputy Haugen estimated the tire marks in the dirt shoulder of the

road to be 60 feet long. RP 210. The tire marks left by Mr. Locken's car indicated that all four tires were completely off the paved roadway. RP 209.

Deputy Haugen described that the front of Ms. McAdams was covered in mud droplets which indicated they were spatter from the force of the impacted water spraying up. RP 220. Deputy Haugen described Mr. Solis as covered, front and back, with mud spatter but also sand and gravel. RP 220-221. Further, Deputy Haugen observed that Mr. Solis' rear end was wet as if he had been on the ground. RP 221. Deputy Haugen's observations of Mr. Solis were consistent with someone who had been on the ground on their back. RP 234-235.

Deputy Haugen observed at least some of the texts back and forth between Mr. Locken and Mr. Solis. RP 222-223. Mr. Solis declined an ambulance. Id. Deputy Haugen then went to Mr. Locken's grandmother's house where Mr. Locken resided. RP 223. Deputy Haugen recognized Mr. Locken's Mitsubishi Diamonte in the driveway and observed semi-dried clumps of mud and dirt on the back window, roof, and trunk lid. RP 224, 227.

Deputy Haugen contacted Mr. Locken in his grandmother's garage on the property where Mr. Locken resides. RP 229. When asked about the situation with Mr. Solis and Ms. McAdams, Mr. Locken stated that he

didn't know what Deputy Haugen was talking about. RP 229-230. After his arrest, Mr. Locken continued to deny any involvement while being driven to the jail but did say that Mr. Solis had threatening him. RP 230, 233.

At trial, the defense called Mr. Locken's friend, Jerah Gleason, who admitted that he was with Mr. Locken in the car on the day in question. RP 245-246. Mr. Gleason denied that the car hit Mr. Solis but admitted that; "we got David Solis a little bit muddy. And, hmm, that was it." RP 246. On cross-examination, Mr. Gleason testified that they drove within one foot of Mr. Solis. RP 249. Likewise, while passing within one foot of Mr. Solis that the car was traveling at 20 miles per hour. RP 250. Mr. Gleason testified that Mr. Locken's purpose in driving at and then splashing Mr. Solis with the car was to scare him. RP 250-251. Mr. Gleason testified that the reason was that Mr. Solis had made threatening texts to Mr. Locken saying Mr. Solis was going to kill Mr. Locken. RP 251.

According to Mr. Gleason, directly after the incident, Mr. Locken stated, "Now motherfucker's not going to mess with me," or similar words. RP 251-252.

Mr. Locken testified that Mr. Solis had been trying to get Mr. Locken to fight him for months prior to the incident with the car. RP 262-

263. Further, he admitted spraying mud all over Mr. Solis with his car and laughing afterwards. RP 262. Importantly, Mr. Locken admitted that his intention was to scare Mr. Solis and splash him with mud. RP 263, 266-267. Mr. Locken testified that he did not hit Mr. Solis with the car but passed by him with one to four feet to spare. RP 265. He also testified that the incident would not have happened if Mr. Solis would have stopped "egging" Mr. Locken on. RP 266. Threatening texts were sent back and forth between Mr. Solis and Mr. Locken, but according to Mr. Locken, Mr. Solis threatened him first and he responded with threats. RP 272. Mr. Locken admitted that he was upset with Mr. Solis prior to the incident and had been jealous of Mr. Solis in the past. RP 265, 274. Upon finding out via text where Mr. Solis was that day, Mr. Locken drove to the location "(t)o scare him and hopefully splash mud on him," which Mr. Locken admitted had been accomplished. RP 263, 275. Mr. Locken stated on direct examination, "(W)ell, the original intention was to scare him and then hopefully splash him, also. Which we managed to getting both done." RP 263. Further, Mr. Locken admitted that the idea was to make Mr. Solis believe that Mr. Locken was going to run him over. RP 276.

In closing arguments the State argued that the jury had heard two factual versions. RP 322-323. The defense version was that Mr. Locken

drove his car at Mr. Solis in order to scare and splash him. RP 324-325. Mr. Solis and Ms. McAdams' version was similar but Mr. Solis was struck by the car causing injury (pain). RP 319. The State argued that if the jury believed Mr. Solis' version of the facts beyond a reasonable doubt they should convict Mr. Locken of Assault in the Second Degree with a deadly weapon because Mr. Locken had struck Mr. Solis with the car and also Hit and Run Injury for striking Mr. Solis and not fulfilling his obligations after a collision. RP 324-325.[1] On the other hand, if they believed Mr. Locken's version, they should still convict Mr. Locken of Assault in the Second degree (but not Hit and Run) based on intentionally driving at Mr. Solis with a vehicle and causing a reasonable apprehension and imminent fear of bodily injury even if Mr. Locken did not strike Mr. Solis and didn't intend to strike him but only scare him. RP 324-325.

The jury found Mr. Locken guilty of Assault in the Second Degree and not guilty of Hit and Run, Injury. CP 12, 13.

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[1] Defendant incorrectly states Count 2 is a gross misdemeanor wherein it is a Class C Felony.

II. STATEMENT OF THE ISSUES

(1) Did the trial court err by making a preliminary ruling that undisclosed text messages by the complaining victim to the Defendant were inadmissible hearsay but that the Defendant could inquire about the general nature of the texts?

(2) Was the Defendant denied his rights to confront witnesses against him, to present a defense and to cross-examine, when the trial court did not abuse its discretion in making evidentiary rulings regarding witness testimony?

(3) Was any error by the trial court harmless when Mr. Locken admitted to the conduct for which he was found guilty but acquitted for conduct that he denied?

(4) Should this matter be remanded to the trial court for sentencing for the court to make inquiry as to the defendant's ability to pay legal financial obligations?

III. ARGUMENT

A. The trial court's preliminary ruling that previously undisclosed out of court text messages by the victim were inadmissible hearsay as well as other evidentiary rulings, did not violate Defendant's basic constitutional trial rights by limiting Defendant's rights to confront witnesses, to present a defense or his right to testify.

1. Trial court did not abuse its discretion in making evidentiary rulings.

The trial court did not abuse its discretion when it would not allow admission of alleged verbatim out of court text message statements allegedly authored by the victim, David Solis. The alleged texts were handwritten by the defendant and never provided to the State as part of discovery in violation of the court's omnibus order and which were only

disclosed to the State after jury selection had commenced and not through discovery in violation of CrR 4.7 (b)(1).

Charges were filed in this case December 10, 2016. CP 6. The State provided discovery to the Defendant's attorney on February 4th, 2015. RP 113. This discovery included screenshots of text or instant messages allegedly between the victim David Solis and the defendant Christopher Locken which were exchanged the day of the assault and were provided by Mr. Solis to Deputy Haugen on the day of the assault, December 6, 2014. RP 222.

On the morning of trial, after the commencement of jury selection, the defense brought to the attention of the State, handwritten notes of the Defendant which were allegedly a transcript of the December 6, 2014, texts between Mr. Solis and Defendant. RP 109-113, 135-140. These notes were not previously disclosed to the State and differed somewhat from the texts provided by the State, specifically, the notes had alleged additional statements by Mr. Solis to the Defendant. Id. Defense counsel indicated that she had never compared the handwritten materials provided by the Defendant against the texts the State provided in discovery because she figured the two were the same and therefore never provided the notes as discovery. RP 109-110. Defense counsel admitted that this failure to

provide discovery to the State violated the Court's Omnibus Order. RP 113.

The trial court made a preliminary ruling on the matter after opening statements but prior to the State calling Mr. Solis to the stand. RP 135-140. The court agreed with the State that any statements in the texts by Mr. Solis would be inadmissible hearsay and statements by the Defendant would generally be admissible as admissions by a party opponent. RP 112-115, 135-140. No objection to the Court's ruling was placed on the record by Mr. Locken. RP 135-140. The court specifically told defense counsel that she would be able to cross examine Mr. Solis regarding the nature of his texts to Mr. Locken but that preliminarily the judge was ruling that the specific things Mr. Solis allegedly stated in the texts were themselves hearsay. Id.

On cross examination, defense counsel never asked Mr. Solis if he made any threats towards Mr. Locken but only if Mr. Solis had made statements to Mr. Locken. RP 173. Mr. Solis did say that he was sick of all the threats from Mr. Locken so he did provide the location where he and Ms. McAdams were. Id. Further, Mr. Solis testified that he was not afraid of Mr. Locken. RP 173. Defense counsel did not ask any other questions of Mr. Solis on cross examination regarding his alleged threats to Mr. Locken or whether or not he was fearful of Mr. Locken either

before the incident with the car or during the incident with the car. RP 168-184. On redirect, Mr. Solis testified that he was in fear of being run over when Mr. Locken was driving his car at Mr. Solis and Ms. McAdams. RP 184. Defense counsel declined to ask any further questions on re-cross. RP 185.

"We review a trial court's evidentiary rulings for an abuse of discretion." State v. Williams, 137 Wash.App. 736, 743, 154 P.3d 322 (2007). A trial court abuses its discretion if its evidentiary ruling is " 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.' " Williams, 137 Wash.App. at 743, 154 P.3d 322 (internal quotation marks omitted) (quoting State v. Downing, 151 Wash.2d 265, 272, 87 P.3d 1169 (2004)). The party challenging an evidentiary ruling bears the burden of proving the trial court abused its discretion. Williams, 137 Wash.App. at 743. The Court of Appeals "may uphold a trial court's evidentiary ruling on the grounds the trial court used or on other proper grounds the record supports." Williams, 137 Wash. App. at 74, citing, State v. Powell, 126 Wash.2d 244, 259, 893 P.2d 615 (1995).

Mr. Locken cannot show in this case that the trial court abused its discretion. Defense counsel was never stopped from inquiring as to the nature of the texts that Mr. Solis sent to Mr. Locken. In fact, Mr. Solis

never denied sending threatening texts to Mr. Locken. On direct, Mr. Solis indicated that he did respond "in kind" to the texts received from Mr. Locken which Mr. Solis described as threatening. RP 144-146.

2. The trial court did not preclude Mr. Locken from exercising his right to confront witnesses.

Alleged Confrontation Clause violations are reviewed de novo. State v. Larry, 108 Wash.App. 894, 901, 34 P.3d 241 (2001). Under the Confrontation Clause of the Sixth Amendment and article I, § 22 of the Washington State Constitution, the defendant has the right to confront and cross-examine witnesses. U.S. Const. Amend. VI, and Wash. Const., art. I, § 22.

A defendant's right to confrontation includes the right to engage in otherwise appropriate cross-examination to show that a witness is biased. Delaware v. Van Ardsall, 475 U.S. 673, 680, 106 S.Ct. 1431 (1986); Davis v. Alaska, 415 U.S. 308, 316–18, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). Bias refers to "the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party." United States v. Abel, 469 U.S. 45, 52, 105 S.Ct. 465, 83 L.Ed.2d 450 (1984). Bias may be established through cross-examination or by introducing extrinsic evidence, including third party testimony. Abel, 469 U.S. at 49. But the right to cross-examine adverse

witnesses is not absolute. State v. Darden, 145 Wash.2d 612, 620, 41 P.3d 1189 (2002) (citing Chambers v. Mississippi, 410 U.S. 284, 295, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973)). The trial court "has discretion to control the scope of cross-examination and may reject lines of questions that only remotely tend to show bias or prejudice, or where the evidence is vague or merely speculative or argumentative." State v. Kilgore, 107 Wash.App. 160, 185, 26 P.3d 308 (2001). See also State v. Jones, 67 Wash.2d 506, 512, 408 P.2d 247 (1965). Defendants generally exercise the confrontation right by cross examining adverse witnesses. State v. Wilcoxon, 185 Wash.2d 324, 329, 373 P.3d 224 (2016). The right to cross-examine adverse witnesses is not absolute, and "the confrontation clause right and associated cross-examination are limited by general considerations of relevance." State v. Darden, 145 Wash.2d 612, 620-621, 41 P.3d 1189 (2002). A trial court's limitation on of the scope of cross-examination is reviewed for an abuse of discretion. Id, at 619.

Mr. Locken claims that the trial court violated his right to confrontation by limiting his ability to cross examine Mr. Solis with evidence of bias or motive to fabricate. (Appellant's Assignment of Error 3). Defense counsel was in fact not stopped from probing these areas with Mr. Solis.

Mr. Solis was never questioned on cross-examination if he had sent threatening texts to Mr. Locken. (Mr. Solis admitted to sending threatening texts to Mr. Locken on direct.) RP 144-146. On cross-examination Mr. Solis admitted that he was not afraid of Mr. Locken generally and was not afraid of any threats that Mr. Locken made to him, hence the reason he was not expecting Mr. Locken to actually come to his location. RP 173.

The defense's goal on cross examination appeared to be to show that Mr. Solis had a motive to fabricate the fact that he was struck and injured by the vehicle and not that any fear Mr. Solis had of being struck by the car was unreasonable. RP 176-184. In fact, in closing argument, the defense never denied that Mr. Locken drove the car at Mr. Solis in an attempt to scare him, instead, the defense argued that Mr. Solis was making up the fact that he was struck so that he could get "a big pay day at the end." The defense seemed to argue that Mr. Solis had goaded Mr. Locken into driving his car at him in order to claim he was struck so that he could get a cast on his arm that he needed. RP 329-331. The defense argued that if Mr. Solis was not struck with the car there was no assault. RP 338-339. Further, the defense argued that because there was no injury to Mr. Solis the jury should find Mr. Locken not guilty of Hit and Run Injury. RP 340-341.

Without any effort to probe Mr. Solis on cross-examination regarding alleged threats towards Mr. Locken, he cannot now claim his right to confrontation was violated by the trial court limiting the scope of the cross-examination.

3. The trial court did not violate Mr. Locken's Constitutional right to present a defense by sustaining objections to Mr. Gleason's non-responsive testimony.

Mr. Locken argues that Mr. Gleason was not allowed to explain the alleged threats by Mr. Solis to Mr. Locken because the trial court sustained objections to portions of Mr. Gleason's testimony. This is incorrect as the objections were based on other grounds, namely that Mr. Gleason's testimony was non-responsive. RP 245, 246, 251.

In any case, the State did not move to strike Mr. Gleason's testimony and he did state numerous times that Mr. Solis had threatened Mr. Locken thereby getting that evidence before the jury. This is in contradiction to Mr. Locken's arguments on appeal that the jury did not hear any evidence of Mr. Solis threatening Mr. Locken. It appears from the transcript that Mr. Gleason could barely answer any question without stating that Mr. Solis had threatened Mr. Locken. Mr. Gleason testified on direct examination;

> Q Okay. And do you recall a specific date of December 6th, 2014?

A Yes.
Q Okay. What happened that day?
A We were going down –
Q You can look at the - that map.
A -- Lone Lake Road. And on the right Goss Lake Road. **First off, Mr. Solis, he made threatening--**
MR. OHME: Objection. Nonresponsive.
THE COURT: Sustained. Nonresponsive. You have to answer only the question that's been asked of you, sir.
Let her ask it again.
THE WITNESS: Okay.
Q (By Ms. Siemers) Okay. Where - where did you go that day?
A Hmm. Like-- Ah. Chris picked me up at my house. And we were going down Lone Lake Road.
Then we went - went by Goss Lake Road, hmm, in the - in the side there, you know.
Q You can point on that map, if you'd like.
A Okay. It was about right here (indicating).
Q Mm-hmm.
A And-- Sorry.
And, **yeah, he did it because he was making threatening texts**.
Q Okay.
MR. OHME: Objection. Nonresponsive.
THE COURT: Sustained. Nonresponsive.
THE WITNESS: Sorry.
RP page 245 line 3 to RP page 246 line 7.

On cross-examination, Mr. Gleason was again non-responsive but again described threats by Mr. Solis including a threat to kill.

Q So the purpose of driving next to Mr. Solis and splashing him, that was to scare him; correct?
A Ah. **Yes. Because Mr. Solis had made threatening texts to him saying he was going to kill him**.
He wanted to beat him down and he wanted to fight him.
MR. OHME: Objection. Nonresponsive.
THE COURT: Sustained.

THE WITNESS: Okay.
Q (By Mr. Ohme) So the purpose was to scare him, however?
A Yeah.
RP page 251 line 6 through line 17.

The court did not limit Mr. Gleason based on any ruling regarding hearsay, instead the objections were sustained because Mr. Gleason was non-responsive. Nonetheless, the evidence of threats, including a threat to kill, by Mr. Solis, got on the record and was not stricken. Mr. Locken's argument that he was denied the right to present a defense is without merit.

4. The Defendant was not prevented from offering evidence regarding the relationship of the parties.

There was ample evidence presented as to the relationship of Mr. Locken and Mr. Solis. It was clear that they had once been friends but no longer were friends. Further, it was clear from all the testimony that they had both been making threatening texts. Likewise, it was clear that Mr. Solis was not in fear of Mr. Locken based on the threats. That does not mean that he would not be in fear when Mr. Locken, by his own admission tried to scare Mr. Solis by driving his car at least near Mr. Solis and splashing him. By Mr. Locken's own testimony within one to four feet and at 20 miles an hour for the purpose of scaring him. RP 263-265. This

threw up as Mr. Locken put it, "a large wall of mud coming off the car because the snow had just melted and it had rained." RP 262.

5. The trial court did not err in its evidentiary rulings concerning Mr. Locken's testimony.

Mr. Locken argues that he was prevented on direct examination to explain verbatim, alleged texts, sent to him from Mr. Solis and this violated his right to present a defense because he could not then show that any fear Mr. Solis had was unreasonable.

Mr. Locken relies on State v. Spencer, 111 Wash.2d 612, 41 P.3d 1189 (2002), for this contention, however Spencer is distinguishable.

In Spencer, when the defendant's girlfriend testified against him to discredit his alibi at the time of a drive-by shooting, the court ruled the defendant was entitled to introduce third party testimony to show that the girlfriend was motivated to testify against the defendant, because she recently learned he was dating another woman. State v. Spencer, 111 Wash.App. 401, 45 P.3d 209 (2002). Unlike the present case, in Spencer, the defendant argued to the trial court that the statements in question were not hearsay.

At no time did Mr. Locken explain to the trial court that these undisclosed and unproffered threats by Mr. Solis were nor hearsay. Mr.

Locken made no proffer regarding the alleged statements and made no objection to the court's ruling which distinguishes the present case from Spencer. Further, because Mr. Locken failed to object, the issue was not preserved for appeal. State v. Mason, 160 Wash.2d 910, 933, 162 P.3d 396 (2007), *cert. denied*, 553 U.S. 1035 (2008).

B. Harmless Error

In the alternative, if this court finds the trial court erred in limiting admission of alleged text message statements of Mr. Solis or other statements of Mr. Solis, the decision is subject to harmless error analysis. State v. Watt 160 Wash.2d 626, 633, 160 P.3d 640 (2007). It is well-established that a violation of the confrontation clause is subject to harmless error analysis. Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986) In State v. Smith, 148 Wash.2d 122, 138–39, 59 P.3d 74 (2002), the court reasoned that a "constitutional error that violates a defendant's rights under the confrontation clause may be so inconsequential that it is rendered harmless."

In the present case, any error in limiting evidence of Mr. Solis' texts to Mr. Locken was harmless. First, Mr. Locken contends that he was unable to present evidence that Mr. Solis was not placed in fear by the threats of Mr. Locken because Mr. Solis himself had made threats.

Therefore, Mr. Locken contends that he was unable to argue that Mr. Solis was not in reasonable fear when Mr. Locken's car drove at him.

Mr. Locken's argument fails. At trial, Mr. Solis never stated that the threats made by Mr. Locken placed him in fear. In fact he said the opposite. In direct examination Mr. Solis stated:

> Q All right. And have you had any communications with the Defendant regarding Megan?
> A Yes.
> Q And when did those start, roughly?
> A Hmm. About last summer.
> Q Okay. And could you generally describe the nature of the communications Mr. Locken gave to you?
> A Hmm.
> Q First of all, how did he communicate with you?
> A Text messages usually or messenger or by phone.
> Q I see.
> And what was the nature of those communications?
> A A lot of the time it was just like upset, like weird upset stuff. **And a lot of the time it was threatening or violent.** And a lot of the time it was just not sensical [sic] at all.
> Q And did those communications have to do with Megan McAdams ever?
> A Yes.
> Q In what regard?
> A That she was his wife Denise or something from the past and reincarnated into Megan's body. And that he— This weird stuff that-- And then threatening me or her, because we're married now or something. And just a lot of—
> Q Okay.
> A -- kind of crazy stuff.
> **Q And did - did you respond to these communications ever?**
> **A Yes. Sometimes I did. Sometimes I didn't. And sometimes I, you know, after months of - of texts,**

sometimes I would, you know, respond back with my own kind of crap-talking, I guess.

And we never had-- We never had seen each other throughout all these months. We just over the phone forever and ever.

Q Okay. So you responded in kind, would that be a fair statement?

A Sometimes, yeah.

Q Okay. Not all the time?

A Not all the time.

Q Okay. And who - who made the majority of the texts, you or Mr. Locken?

A He was the majority of the texts. I never really initiated contact with him in this - in the last six or eight or nine months.

It was whenever-- We'd just get a lot of texts from him after a while. I would respond after a while.

Q Okay. All right. And were you worried by these threats?

A Not really at the time. I mean...

RP page 143 at line 20 to page 145 line 19.

Further, in direct examination, Mr. Solis explained that on the day of the assault, he himself had texted Mr. Locken his location because he did not believe that Mr. Locken would actually come there. RP 145-147. Mr. Solis testified; "Yeah, I'm pretty sure at some point I had said what road we were on and – 'cause I had just figured he would never show up there." RP 147.

On cross examination, Mr. Solis again testified that he had made comments and statements back to Mr. Locken by text on the day of the assault. RP 173. Mr. Solis also stated that he gave Mr. Locken the location where Mr. Solis and Ms. McAdams were. Id.

RP 173. Further, Mr. Solis testified on cross examination that he was not afraid of Mr. Locken. RP 173. Mr. Solis testified;

> Q And at the time that you were speaking back and forth to Mr. Locken, were you—
>
> You said that you had made comments possibly or statements.
>
> A Yeah. After months of threats and all this other weird stuff from him, at that point we were just kind of, you know, sick of - sick of it.
>
> Q Why do you think you gave him a location?
>
> A Well, because several times he's told me he was going to come and assault me or fight me or do something at the – at wherever-- "I'll come to wherever you're at," da-da-da-da.
>
> And I'm like, you know, "No, you won't."
>
> And so at that point-- I - I don't even recall doing it. But at that point I must have just been thinking "Yeah, right."
>
> **Q So you told him where you were?**
>
> **A Yeah. Apparently, yes.**
>
> **Q And you did that in spite of the fact of being afraid of him?**
>
> **A I never said I was afraid of him.**
>
> **Q Oh. You're not afraid of him?**
>
> **A No, ma'am.**
>
> **Q Pardon me.**
>
> **A No, ma'am.**
>
> *RP page 173 at line 4 to page 174 at line 2.*

In this case Mr. Locken was convicted of exactly what he and his witness Mr. Gleason admitted that they had done. Mr. Locken with the intent to scare Mr. Solis drove his car off the road in the mud within one to four feet of Mr. Solis, going 20 miles per hour which resulted in a massive wall of mud covering Mr. Solis. Mr. Locken argues that further evidence

of threats by Mr. Solis via text would have shown that any alleged fear by Mr. Solis was not reasonable. This is in direct conflict with Mr. Locken's own testimony when he testified that the purpose was to scare Mr. Solis and that he had accomplished that. RP 263 Any error was harmless beyond a reasonable doubt.

C. The trial court did not inquire as to the Mr. Locken's ability pay legal financial obligations prior to their imposition.

Though Mr. Locken failed to object at the time of sentencing to the imposition of legal financial obligations without an inquiry as to Mr. Locken's ability to pay, the State concedes that the trial court should have made such an inquiry. See, State v. Blazina, 182 Wash.2d 827, 344 P.3d 680 (2015).

This matter should be remanded to the trial court for re-sentencing on the issue of Mr. Locken's ability to pay legal financial obligations.

IV. CONCLUSION

The trial court did not abuse its discretion in ruling that any undisclosed out of court text statements by Mr. Solis were inadmissible hearsay. Mr. Locken made no offer or proof and did not object to the court's ruling. Further, Mr. Locken was not deprived of his rights to confront witnesses or present a defense as the information Mr. Locken

complains did not get to the jury, in fact, did get to the jury, to wit: that Mr. Solis had threatened Mr. Locken prior to the assault, and that Mr. Solis was not afraid of Mr. Locken based on the threats. Lastly, if there was any error by the trial court, the error was harmless beyond a reasonable doubt as Mr. Locken was convicted of what he admitted to at trial and acquitted of what he denied.

Respectfully submitted this 10th day of October, 2016.

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