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Division III
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III
No. 36169-1-III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JAMAICA CHRISTINA RILEY,

Defendant/Appellant

Respondent's Brief

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I. IDENTITY OF RESPONDENT

The State of Washington appears through the Kittitas County Prosecuting Attorney's Office.

II. STATEMENT OF RELIEF SOUGHT

The State respectfully requests that this Court deny the Petitioner's request to reverse and remand her convictions for felony telephone harassment/domestic violence, gross misdemeanor telephone harassment/domestic violence, and gross misdemeanor violation of protection order/domestic violence.

III. ASSIGNMENTS OF ERROR

- A. Did the court consider the necessary factors under ER 404(b) for the admission of testimony regarding prior assaultive acts by the Defendant, Jamaica Riley, against the victim, her estranged husband, John Pink? Answer: Yes.

- B. Was the court correct in denying witnesses offered by the Defendant who would have testified to 1) an incident which occurred at a restaurant in Cle Elum during an exchange of the parties' children; 2) possible motives on the part of the victim; and 3) to not having observed acts of physical aggression by the Defendant towards the victim? Answer: Yes.

IV. STATEMENT OF THE CASE

The victim, John Pink, was in a domestic relationship with the Appellant, Jamaica Riley, for thirteen years, during part of which they were married. RP 27-28. The two had two children in common. RP 27. In July of 2016, the couple separated when Ms. Riley left her husband for a high school boyfriend. RP 28. Mr. Pink left the family home, but continued to pay rent and utility bills for the couple's property at which Ms. Riley resided with her boyfriend. RP 29-30.

In September of 2016, Mr. Pink took steps to remove his name from the PUD account at the property where Ms. Riley continued to reside. According to Mr. Pink, he was told that he could remove his name from the power bill as long as it was current. RP 30.

According to Norm Hedden, who was the PUD worker who went out to the property to turn the service off, it was common practice for the PUD to call the customer ahead of time to alert them to the upcoming service. RP 116.

When Ms. Riley learned that the PUD service was going to be disconnected, she called Mr. Pink, who was outside in the parking lot at his place of employment, and told him that if he

removed his name from the bill, she would shoot him in the head. RP 31. Mr. Pink testified that Ms. Riley was screaming and very shaky, and that it was extremely scary. RP 31. Mr. Pink knew that Ms. Riley was a good shot, and took her threat to mean that she would kill him. RP 31-32. Although Ms. Riley had threatened Mr. Pink in the past, she had never before threatened to shoot him. RP 32. Mr. Pink also testified that Ms. Riley usually meant what she said. *Id.* According to Mr. Pink, he believed the defendant's threats. RP 62.

No one else heard this first call, but Mr. Pink informed his boss who told Mr. Pink to call the Sheriff's Office as he didn't want Ms. Riley coming to the workplace and potentially shooting Mr. Pink. RP 31.

Mr. Pink did call the Sheriff's Office and Kittitas County Sheriff's Office Deputy Zach Green responded. As he was contacting Mr. Pink to learn the nature of his complaint, Mr. Pink's phone rang, and Mr. Pink stated "[t]hat's her again." RP 69. Mr. Pink put Ms. Riley on speaker phone, and Deputy Green could hear a voice that he recognized as Ms. Riley's. *Id.* Deputy Green testified that there was a lot of screaming and yelling; that Ms. Riley was very upset and belligerent, yelling at

Mr. Pink about a number of things. *Id.* According to the deputy, during the course of the ensuing two to three minutes, Ms. Riley was screaming, cussing, and calling Mr. Pink names. RP 70. She told Mr. Pink, “[i]f you try to pick up my kids, I guarantee you will leave in an ambulance.” *Id.* The deputy testified that in the five to ten minutes that he had interacted with Mr. Pink prior to the above mentioned call, Mr. Pink was soft-spoken and low key, as he had been in all his prior interactions with the deputy, and as he remained during the call that Deputy Green overheard. RP 70. When Deputy Green spoke with Ms. Riley the next day, she denied having made any threats. RP 72. When the deputy confronted her with the fact that he had overheard the call, Ms. Riley told him that she didn’t remember making the threat, and that Mr. Pink had been rude and degrading. RP 73.

Ms. Riley testified that she had not threatened Mr. Pink in the course of their discussions on September 16th. RP 134. Ms. Riley also stated that she did not recall making the threat about the ambulance and that she did not believe either Mr. Pink or Deputy Green when they had testified to that information in court. RP 143-144.

Mr. Hedden, the PUD worker who was disconnecting the power, testified that in the course of performing the service call, he had heard Ms. Riley speaking to someone about not paying the power bill. RP 116-117. According to Mr. Hedden “she was cussing him pretty good.” RP 116. He heard neither a threat to kill nor a threat to shoot anyone, although he did hear Ms. Riley telling the person she was calling that she was going to “jump on a motorcycle and drive to town and –beat—beat his ass. RP 117. Mr. Hedden was unable to hear the person that Ms. Riley was speaking to, but testified that Ms. Riley was screaming, cussing, loud and mad. RP 118.

Mr. Pink testified about other threats and acts of violence that Ms. Riley had committed in the course of their relationship. He stated that she would frequently get upset while they were in the car with their children and drive at excessive speeds until he apologized. RP 32. He stated that this behavior had occurred at least a dozen times. RP 33. Mr. Pink testified that Ms. Riley would throw dinner plates, and cell phones particularly at his head; she would smack and kick him; scratch him, and in his words, was “just very aggressive.” RP 33-34. Once Ms. Riley had scratched his left forearm with four fingernails, “from the

elbow all the way to the wrist.” *Id.* According to Mr. Pink, Ms. Riley had hit him too often to recall every time. RP 50.

Mr. Pink had not called law enforcement in the past because Ms. Riley had threatened that if he did, she would take the kids where he would never find them. RP 34. After he did contact law enforcement about the two threatening phone calls, Mr. Pink also obtained a protection order. RP 40. He was instructed by law enforcement to contact them whenever Ms. Riley violated the order. RP 60, 69.

A few days after she had threatened to shoot him, Ms. Riley called Mr. Pink and told him that if Mr. Pink didn't lie about the phone call that the deputy had heard, she was going to shoot him, take the kids, and ruin Mr. Pink financially forever. RP 39. Ms. Riley was screaming and loud in the course of this call. RP 39- 40. Mr. Pink notified law enforcement of this contact. RP 40. Mr. Pink also informed law enforcement regarding a communication from Ms. Riley on December 11, 2016, which had concerned their children and which was to occur only through a third party. RP 46-47, 59-60. Ms. Riley admitted to this call, but stated that she felt it was necessary for the

protection of their children, and that she knew of no third party to contact to serve as a liaison. RP 139-141.

Mr. Pink testified that the next time that he contacted law enforcement was in November of 2017, when he “was trying to pick my kids up, and she had to come up to the window and speak her piece again before she would let me have my kids – when there was the no-contact order in place.” RP 39, 110-111.¹

On cross-examination of Mr. Pink, defense counsel elicited that the custody of the couples’ children was contested, and had been ongoing for the past two years. RP 51. However, custody had not been at issue at the time of the initial phone calls in which Ms. Riley threatened Mr. Pink, the second of which Deputy Green had heard. RP 63. Mr. Pink did not know whether or not a conviction of Ms. Riley would benefit his position in the custody dispute, but testified that was “not my intention.” RP 51. He further testified that he had reported Ms. Riley’s actions to law enforcement not in an effort to benefit himself in the custody dispute, but rather to stay safe, and

¹ This incident is referred to in a piecemeal fashion throughout the proceedings involving a November 2017, transfer of the couples’ children at the Cottage Café or Inn in Cle Elum. RP 6, 13, 17-18, 39, 110-111, CP 10.

because he had been told to do so. RP 52-53, 60, 69. Ms. Riley testified that Mr. Pink had not sought custody of their children until April 1st 2017, some six and half months after the calls in question. RP 148.

Misty Black had known Ms. Riley and Mr. Pink for about two years. RP 94. It was at the tail end of the relationship of Ms. Riley and Ms. Pink that the Black and Pink families had spent time together. RP 98-99. Ms. Riley had baby-sat for Ms. Black in the past, and Ms. Black's children had stayed the night at the Pink/Riley home. RP 101-102. Prior to her taking the stand, defense counsel renewed his objection to Ms. Black's testifying based on relevance, arguing that what Ms. Black had stated in her declaration was character evidence. RP 90-91. The State responded that the observations of the witness were relevant to show an ongoing pattern of domestic violence and the victim's subjective fear of Ms. Riley. RP 91. The Court indicated that it would allow Ms. Black to testify and then revisit the issue. *Id.* Ms. Black testified that she heard Ms. Pink "put him down for – doing something that she didn't approve of, or she would belittle him, and hit him upside the head, or – whatever she felt was necessary." RP 95-96. According to Ms. Black, Ms. Riley

would yell at Mr. Pink when he wasn't doing something the way that she wanted it done. RP 96. In addition to seeing Ms. Riley hit Mr. Pink upside the head, Ms. Black also observed Ms. Riley hit Mr. Pink on the shoulder, "like shoving him." *Id.* Ms. Black had seen this behavior "a couple of handfuls of times throughout the last couple years of going over there—" *Id.* Ms. Black never saw Mr. Pink verbally or physically respond to Ms. Riley's actions other than to hang his head, or apologize. RP 97. Defense counsel elicited that this behavior had occurred during the end of the couple's relationship, and that Ms. Black was a friend of both Mr. Pink and his current girlfriend. RP 99, 101.

Ms. Riley testified that she and Mr. Pink had "had a fairy tale relationship." RP 126. She testified that the two of them "(We) were the – role model couple. We were perfect. Everybody wanted exactly the relationship we had." *Id.* Ms. Riley testified that the custody of their two children was disputed and that Mr. Pink had obtained numerous protection orders against her on his behalf as well as their children. RP 126-127. She stated that during the last few years, things had "just got out of hand." RP 128 She testified to a loss of self-esteem caused by Mr. Pink's treatment of her. *Id.* However, Ms. Riley also testified

that there was no violence in the marriage. RP 125. Ms. Riley testified that she had never threatened Mr. Pink, but acknowledged that she had posted on Facebook that she would ruin Mr. Pink financially because she was angry. RP 137, 143.

Prior to trial, the State moved to exclude the testimony of Alyssa Kaye Turner, Joseph Riley, Rebecca Pink, Tara Krier,² and Joshua Fishnik³ in the defendant's case-in chief. According to Ms. Riley, Ms. Turner and Mr. Riley would testify about the transfer of the parties' children at the Cottage Café/Inn approximately fourteen months after the defendant's threatening phone calls, and would testify that John Pink had made a false statement to police in November, 2017, in an attempt to gain custody of his children. RP 17-18. According to counsel, Ms. Turner and Mr. Riley would dispute any allegations "that he (Mr. Pink) said that she (Ms. Riley) was yelling at him, threatening him, cursing him, and they (Ms. Turner and Mr. Riley) were right there. And know that it did not happen." RP 6, 13, 17-18, 110-111, CP 10. Rebecca Pink, Tara Krier, and Joshua Fishnik

²Ms. Krier is listed in the report of proceedings both as "Tara Crier" RP 7, as well as "Tara Cryer" CP 10, RP 9, 10, 20, 77, 78.

³ Mr. Fishnik is listed in the report of proceedings as "Joshua Fishnik" CP 11, RP 7, 20.

were offered to testify that they had never seen any acts of domestic violence between the defendant Ms. Riley, and the victim, Mr. Pink, and that “the idea that Ms. Riley was abusive or assaultive was something that they never saw, and inconsistent with what they saw.” RP 7, 77-79, 110-111, CP 10-11.

The State filed a motion *in limine* to preclude the testimony of these witnesses under ER 401, 403, 404, 404(b), 608, and 704. The Court granted the State’s motion, noting that the incident of the transfer of the parties’ children at the Cottage Café/ Inn was subsequent to the threatening calls at issue and dealt with collateral matters, and the proffered testimony of Ms. Rebecca Pink, Ms. Krier, and Mr. Fishnik would only indicate an absence of observation which did not preclude the possibility that acts of domestic violence had occurred at other times. RP 12, 15, 20.

Defendant filed a motion *in limine* to preclude the testimony of Misty Black, a woman who had known Ms. Riley and Mr. Pink during the latter part of their relationship and who, as stated *supra.*, had observed acts of domestic violence towards the victim at the hands of the defendant. RP 9, 12-13, 15-16. The State argued that Ms. Black’s testimony was relevant as she

had actually observed the defendant strike Mr. Pink. RP 14. The State cited *State v. Ragin*, 94 Wn.App. 407, 972 P.2d 519 (1999), and *State v. Barragan*, 102 Wn.App. 754, 9 P.3d 942 (2000), in support of its position. Ms. Riley renewed her objection prior to the testimony of Ms. Black. RP 90. The Court reserved ruling until after having heard her testimony RP 91, 93. At the close of the State's case (which occurred immediately after Ms. Black had testified), the Court stated (in regards to a limiting instruction):

THE COURT: And here's the other thing -- we're going to be doing -- and -- haven't seen it, but it looks like -- in his -- we're going to be telling the jury that the only reason they can consider all of those -- previous incidents between Mr. Pink and Ms. Riley -- the only thing they can consider those for is to determine whether -- Mr. Pink was -- justified in his belief, in other words, whether his belief that he was going to be harmed was reasonable.

So they're not going to be use (sic) it for any other purpose. That's the whole purpose of the limiting instruction. So it doesn't make any sense to then -- allow testimony to try to refute that type of testimony, because it's only being offered for that one purpose; it can't be used by them for any other purpose.

I'm going to stick to my original ruling, Mr. Moser. But you're making a good record. RP 15, 80, 110-113.

As an agreed limiting instruction, the Court gave jury instruction 9, which reads as follows:

Evidence regarding past interactions between the defendant and Mr. Pink may only be considered by the jury in determining whether Mr. Pink was in reasonable fear that any threat would be carried out. RP 176, 187-188, CP 32.

V. ARGUMENT

1. The issue of the admission of ER 404(b) evidence was raised as an issue pre-trial, and both addressed and satisfied throughout the course of the trial.

The defendant, Jamaica Riley, was charged with two counts of felony telephone harassment (the second count was amended to a gross misdemeanor before the State rested), one gross misdemeanor count of violation of a no-contact order, and witness tampering, all with a domestic violence allegation. RP 5, 173, CP 1-2, 19-20. Felony telephone harassment was defined in the jury instructions as follows:

A person commits the crime of felony telephone harassment when, with intent to harass or intimidate another, he or she initiates a telephone call threatening to inflict injury on the person or property of the person called and the threat was a threat to kill the person called. RP 188, CP 33.

Gross misdemeanor telephone harassment was defined in the jury instructions as follows:

A person commits the crime of telephone harassment when, with intent to harass or intimidate another person, he or she initiates a telephone call to that person threatening to inflict injury on the person or property of the person called. RP 189, CP 35.

Threat was defined in the jury instructions as follows:

Threat means to communicate, directly or indirectly, the intent to cause bodily injury in the future to the person threatened or to any other person. To be a threat, a statement or act must occur in a context or under circumstances where a reasonable person, in the position of the speaker, would foresee that the statement or act would be interpreted as a serious expression of intention to carry out the threat rather than something said in jest or idle talk. RP 187, CP 30.

Thus the history of acts of domestic violence committed by Ms. Riley against Mr. Pink were relevant to show the reasonableness of his fear of her when she threatened him on September 16, 2016. If the jury were to have heard of the two telephone calls alone, they may have believed that Mr. Pink was overreacting to Ms. Riley's threats to shoot him, kill him, and have him leave in an ambulance if he came to pick up their children. It was Mr. Pink's testimony that he had believed Ms. Riley's prior threats, and that he believed the ones made during the two phone calls as well. RP 62.

ER 404(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 or absence of mistake or accident.

In *State v. Ragin*, 94 Wn.App. 407, 972 P.2d 519 (1999), the Court held that prior to its admission, the trial court must determine that the evidence meets two distinct criteria: 1) it is logically relevant to a material issue before the jury, and 2) the probative value outweighs its prejudicial effect. In *Ragin*, the Court found that the admission of the defendant's prior bad acts towards the victim were properly admitted at trial to prove the objective reasonableness of the victim's fear of the defendant's threats. *Ragin*, 94 Wn.App. at 411. All of the acts of domestic violence at the hands of the defendant that Mr. Pink or Ms. Black testified to, occurred prior to the September 16, 2016 incident.

Although it might have been the better practice to have had a more in-depth ER 404(b) enquiry focused on at pre-trial, it is clear from the thorough pre-trial arguments of both counsel, as well as the renewed argument of defense counsel and the Court's subsequent rulings, that the Court had the requirements in mind and found that they had been met, adopting the analysis of the

State. RP 9, 12-16, 79, 90-91, 104, 110-113. The trial court's admission of evidence under ER 404(b) is reviewed for an abuse of discretion. *Ragin*, 94 Wn.App. at 411, *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). In this case, the State would argue that the trial court's exercise of its discretion was neither unreasonable nor based upon untenable grounds. In *State v. Binkin*, 79 Wn.App. 284, 902 P.2d 673 (1995), the Court found that, while a pre-trial hearing would have been preferable, the trial testimony of the victim was substantial evidence to support her assertion that Mr. Binkin had threatened her. In *Binkin*, the Court stated "[h]ad the trial court found Zena's version of the events to be uncredible, it would have reversed its ruling. When there is testimony at trial establishing the validation of the State's proffered version of the event, it would be a useless act to remand for a new trial in which the court would make the same finding after a pre-trial hearing *Binkin*, 79 Wn. App. at 290-291. In *State v. Kilgore*, 147 Wn.2d 288, 53 P.3d 974 (2002), the Washington Supreme Court disagreed with the ruling of *Binkin* in part, finding that the law does not require a separate evidentiary hearing and that under ER 404(b), evidence may be admitted solely on an offer of proof submitted by the State. It is solely within the court's discretion as to

whether or not an evidentiary hearing is necessary prior to the admission of ER 404(b) evidence. In Ms. Riley's case, the issues of relevancy and admissibility were a theme throughout her trial. Trial counsel specifically renewed his objection to Ms. Black's testimony at the time of her testimony, and the Court, aware of the issue, overruled the objection. In this case, the record as a whole is sufficient to permit appellate review.

2. The testimony of defense witnesses who "would have disputed the complaining witness's credibility and established his motive to fabricate the allegations to obtain leverage in the child custody dispute" was both inadmissible, and per the defendant's offer of proof, de minimis at best.

Defendant proffered the testimony of six witnesses, five of whom were excluded based upon the State's pre-trial motion *in limine*. The testimony of Alyssa Turner and Joseph Riley was to allege that Mr. Pink had lied to law enforcement about an interaction he had had with Ms. Riley at the Cottage Café/Inn involving the exchange of their children. According to Ms. Riley's offer of proof, Ms. Turner and Mr. Riley would dispute any allegations "that he (Mr. Pink) said that she (Ms. Riley) was yelling at him, threatening him, cursing him, and they (both Ms. Turner and

Mr. Riley) were right there. And know that it did not happen.” RP 6, 13, 17-18, 110-111, CP 10.

Defendant’s First Amended Witness List states:

Alyssa Turner [t]o testify as the designated third-party to facilitate transfer of children that John Pink has frustrated efforts by Jamaica Riley to see her children, relevant to John Pink’s motive to want Jamaica Riley to be convicted of felony charges. Also to testify that John Pink made a false report of Jamaica Riley to police in November 2017, *relevant to impeachment*. CP 10.

Joseph Riley was [t]o testify that John Pink made a false report police (sic) in November 2017 that Jamaica Riley had threatened him, *relevant to impeachment. Id. (emphasis added)*.

During trial, Mr. Pink was asked about his interactions with the defendant subsequent to the September 16, 2016, telephone calls. He specifically addressed this November exchange.

Yes. After that incident, I was trying to pick my kids up, and she had to come up to the window and speak her piece again before she would let me have my kids – when there was the no-contact order in place. RP 39.

This was the *totality* of Mr. Pink’s testimony regarding the exchange of the children. *(emphasis added)*. Other than saying

that Ms. Riley had to “speak her piece again,” there was no reference to the defendant’s demeanor or tone of voice, no allegation that she had yelled at him, threatened him, or cursed him. Dictionary.com defines rebut as a means to refute by evidence or argument; to oppose by contrary proof; to provide some evidence or argument that refutes or opposes. There simply was nothing for either Ms. Turner or Mr. Riley to rebut, refute or impeach. Furthermore transfer of the children some fourteen months after the criminal allegations would have been a collateral issue at best with no relevance. However the Court reserved its ruling on these two witnesses until it had heard John Pink’s testimony. RP 23, 110-113. The Court then indicated that it would stick to its original ruling to deny Ms. Riley’s motion for Ms. Turner and Mr. Riley to testify. RP 113.

According to Ms. Riley’s offer of proof, Rebecca Pink, Tara Krier, and Joshua Fishnik would testify that they had never seen any acts of domestic violence between the defendant Ms. Riley, and the victim, Mr. Pink, and that “the idea that Ms. Riley was abusive or assaultive was something that they never saw, and inconsistent with what they saw.” RP 7, 77-78, 110-111, CP 10-11.

As the Court noted pre-trial:

Let's say someone was accused of taking a gas pump – taking a pump out of a gas – pump – taking the nozzle and spraying gas around. I don't know that if it would be – if that was the charge, I don't think you could call in witnesses to testify about every time they saw the person go to the gas pump and not spray gas – RP 12.

The Court found that the fact that the gas pump was not sprayed every time it was used was irrelevant. RP 15, 20.

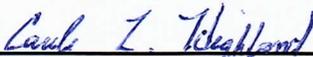
As for the witnesses testifying as to Mr. Pink's motive to fabricate allegations which pre-dated the couple's custody dispute by over six months, the testimony proffered by Ms. Riley was speculative at best. Contrary to Ms. Riley's assertion, she had full opportunity to confront and cross examine both Ms. Black and Mr. Pink, and to explore any bias, motive, or self-interest. RP 50-53, 64, 126, 148, 204, 207.

3. Recent changes in both case law and legislation lead the State to concede that the \$200 criminal filing fee should be stricken.
4. The State is not seeking appellate costs against the defendant.

VI. CONCLUSION

Evidence of other acts of domestic violence were properly admitted to show the reasonableness of Mr. Pink's fear of Ms. Riley, and his belief that her threats made to him on September 16, 2016, were real, and could be carried out. Additionally, the five witnesses proffered by Ms. Riley, whom the Court excluded, could not provide either any impeachment evidence, or relevant evidence. For the foregoing reasons, the State respectfully requests that this Court deny Appellant's motion to reverse and remand for a new trial, but agrees that the matter should be remanded solely to strike the \$200 filing fee.

Dated this 21st day of March, 2019.



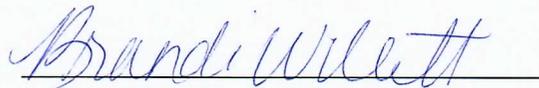
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PROOF OF SERVICE

I, Brandi Willett, do hereby certify under penalty of perjury that on 21st day of March, 2019, 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 Respondent's Brief:

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