

FILED  
Court of Appeals  
Division II  
State of Washington  
4/3/2023 12:50 PM

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/4/2023  
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CLERK

SUPREME COURT NO. 101856-8

IN THE SUPREME COURT OF THE STATE OF  
WASHINGTON

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STATE OF WASHINGTON,  
Respondent,

v.

RONALD OLSON,  
Petitioner.

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ON DISCRETIONARY REVIEW  
FROM THE COURT OF APPEALS, DIVISION TWO

Court of Appeals No. 57230-3-II  
Mason County No. 20-1-00332-23

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, RONALD OLSON, by and through his attorney, CATHERINE E. GLINSKI, requests the relief designated in part B.

B. COURT OF APPEALS DECISION

Olson seeks review of the March 7, 2023, unpublished decision of Division Two of the Court of Appeals affirming his convictions.

C. ISSUE PRESENTED FOR REVIEW

Olson was charged with three counts of felony harassment. Trial counsel did not object to testimony from a fourth person alleging Olson made similar threats to her a year after the charged incident or to further testimony disparaging Olson's character. Where no legitimate trial strategy justified the failure to object to this inflammatory and damaging propensity evidence, did Olson receive ineffective assistance of counsel?

D. STATEMENT OF THE CASE

Petitioner Ronald Olson was charged with felony harassment against Timothy Binder, Brendan Peterson, and Sandra Peterson-Binder. CP 4-6. The three alleged victims testified that they lived next door to Olson, and on August 14, 2020, Olson fired a gun while shouting that he would kill them. They took the threats seriously and called law enforcement. RP 57-59, 66-68, 74-76. Olson was arrested, and some shell casings, a gun, and ammunition boxes were located. RP 81, 85-89, 94.

A fourth neighbor, Theresa Bogue also testified. She said she lived on the other side of Olson's property, and she heard Olson screaming from across his property that he was going to kill everyone. RP 31-32. She could not see Olson, but she knew it was him. RP 32.

At the start of trial, defense counsel made a record that he anticipated the State might question Bogue<sup>1</sup> about incidents

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<sup>1</sup> The witness's name is transcribed as "Ms. Volk [phonetic]." RP 2. There is no witness by that name. It is clear from the context

occurring on other dates, and he did not intend to object to that testimony. Counsel acknowledged that the evidence could be excluded under ER 404(b), but he wanted the court to know that he would bring up the incidents if the State did not. RP 2-3.

In addition to her testimony about the date of the charged incidents, Bogue testified that Olson had threatened the Binders in the past, saying “He’s always threatening or screaming at them or – just have – there’s always been discontent between them since their children were little, so for almost eighteen years, I would say, there’s been discontent between them.” RP 32.

The State then asked Bogue about situations she has had with Olson in the time between the charged incident and trial. RP 33. Bogue testified that in July 2021, she had a survey done because she believed that part of Olson’s garden was on her property. She reported the garden to the county because she did not believe Olson was following regulations regarding gardening

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and the entirety of the transcript that counsel was referring to Theresa Bogue.

in the riverbed, and Olson received notice about her complaint. RP 33-34. Bogue testified that this led to an altercation with Olson, saying “And because he started screaming directly at me – he used my name – so this time I know it was me, and I’ve never been screamed at by him before. And he threatened to rape me, he threatened to kill my dogs.” RP 34.

Bogue said she took Olson’s threats seriously,

Because Ron tends to approach women when he’s naked, and he has stalked my daughter before, and in the incident between my neighbors when my husband was in the hospital, he has guns and he has – he shoots them off, and people have reported that he has actually shot them with a BB gun when they’re on his property in the river. And so he doesn’t display a very good control over weapons and his emotions, in my opinion.

RP 34.

Bogue testified further, that

His [Olson’s] property is -- has lots of vehicles on it. It doesn’t meet the code for the county, which we’ve addressed that with the county numerous times, both the road crew and also the people who would be responsible for removing those vehicles. He has – he doesn’t have a septic system, so he has a raised area that he collects refuse in, but he’s – as far as we know he’s never had it pumped, so the – when the county came out they said that there’s



mounds and mounds of human waste on the property, which we all have wells and we all live on this water system, and it's very uncomfortable thinking that. He has brought lots of – eighteen years' worth of human waste out there, and it collects a lot of rats, so we have had to hire private companies to come out and try and keep our rats at bay.

RP 35-36.

As promised, defense counsel did not object to any of this testimony. When the State asked whether living next door to Olson had changed how she has to live on her property, however, counsel objected that she was not a named victim, and the court sustained the objection. RP 39-40.

Then, on cross examination, defense counsel questioned Bogue further about the July 2021 incident. He asked if she remembered calling the sheriff's office, and she replied that she remembered the time that Olson was yelling that he would kill her, and she reported that he was threatening. RP 41. Bogue testified she told law enforcement she was confident Olson's threats were directed at her because he called out her name. RP 42. She admitted that she did not see Olson, but she knew where

he was because of her dogs' reactions. She heard a threat, and a few minutes later she heard her name. RP 43.

The State then asked Bogue to tell the jury exactly what happened in July 2021. RP 44. Bogue testified that she had put in a report to the county about a garden in the riverbed and her concern that it was on her property. She found out that the county had sent Olson a letter with their findings. She was outside later that week while her husband was out of town, and she heard Olson yelling. She recognized his voice, and he threatened to kill her and her dogs, and then he threatened to rape her. RP 44.

Bogue said her phone service was out, so she went to town to report what happened. RP 45. She was told that because Olson did not say her name in the same sentence as the threat, law enforcement would not investigate. She testified that she was told Olson's guns were taken away during the incident with the neighbors the year before, but she had heard him shooting guns by the river, and she told police he had at least a shotgun, if not an AK-47. RP 45.

Bogue testified further that when she returned home she heard Olson screaming again, and some neighbors came over and told her Olson was threatening to blow her head off. She reported that to the police as well. RP 45-46. Bogue then stated, “That’s not unusual for Ron to wait ‘til your man is not around to do things like that. And that’s what happened – ”. At that point defense counsel objected that Bogue’s testimony was no longer responsive to the question, and the State agreed to move on. RP 46.

Defense counsel got Bogue to reiterate that she did not hear her name until three or four minutes after the threat, but she testified that she had no doubt in her mind Olson was yelling the threat at her. RP 47.

During closing arguments, the prosecutor reminded the jury that Olson was on trial only for the events of August 14, 2020, and argued that the testimony of the three named victims established the elements of the charges. RP 116-22. Defense counsel talked about the role of the jury, the importance of the

instructions, and the State's burden of proof, but he did not address any of the evidence in the case. RP 123-27.

The jury returned guilty verdicts on all counts. RP 58-60. Olson appealed, arguing that he received ineffective assistance of counsel. The Court of Appeals affirmed, holding that assuming defense counsel's failure to object to Bogue's testimony constituted deficient performance, Olson could not show he was prejudiced. Opinion, at 5.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

WHETHER TRIAL COUNSEL'S FAILURE TO OBJECT TO AND PRESENTATION OF PROPENSITY EVIDENCE WAS SUFFICIENTLY PREJUDICIAL TO DENY OLSON EFFECTIVE ASSISTANCE OF COUNSEL IS SIGNIFICANT CONSTITUTIONAL QUESTION THIS COURT SHOULD REVIEW.

The Sixth Amendment to the United States Constitution guarantees "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense." U.S. Const. amend. VI. The Washington State Constitution similarly provides "[i]n criminal prosecutions the

accused shall have the right to appear and defend in person, or by counsel....” Wash. Const. art. I, § 22 (amend.10). This constitutionally guaranteed right to counsel is not merely a simple right to have counsel appointed; it is a substantive right to meaningful representation. *See Evitts v. Lucey*, 469 U.S. 387, 395, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) (“Because the right to counsel is so fundamental to a fair trial, the Constitution cannot tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits.”); *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (“The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ‘ample opportunity to meet the case of the prosecution’ to which they are entitled.”) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275, 276, 63 S.Ct. 236, 87 L.Ed. 268, 143 A.L.R. 435 (1942)).

A defendant is denied his right to effective representation when his attorney's conduct "(1) falls below a minimum objective standard of reasonable attorney conduct, and (2) there is a probability that the outcome would be different but for the attorney's conduct." *State v. Benn*, 120 Wn.2d 631, 663, 845 P.2d 289 (citing *Strickland*, 466 U.S. at 687-88), *cert. denied*, 510 U.S. 944 (1993). Only legitimate trial strategy or tactics constitute reasonable performance. *State v. Aho*, 137 Wn.2d 736, 745, 975 P.2d 512 (1999).

In this case, defense counsel was deficient in failing to object to and eliciting evidence of Olson's character and conduct unrelated to the charged offenses, which served no purpose other than to create the impression Olson was an unsavory character with the propensity to commit the charged crimes. Where a defendant claims ineffective assistance of counsel based on counsel's failure to challenge the admission of evidence, the defendant must show (1) the absence of a legitimate strategic reason for failing to object, (2) that an objection to the evidence

would likely have been sustained, and (3) that the result of the trial would have been different had the evidence not been admitted. *State v. Saunders*, 91 Wn. App. 575, 578, 958 P.2d 364 (1998) (citing *State v. McFarland*, 127 Wn.2d 322, 336-37, 899 P.2d 1251 (1995); *State v. Hendrickson*, 129 Wn.2d 61, 80, 917 P.2d 563 (1996)).

In this case, there was no legitimate strategic reason for trial counsel's failure to object to, and indeed intentionally elicit, irrelevant and inherently prejudicial evidence. Olson was charged with three counts of felony harassment, upon allegations that he threatened to kill three neighbors on August 14, 2020. Defense counsel announced at the start of trial that if the State did not question Bogue, a fourth neighbor who heard Olson that day, about additional incidents, he would do so on cross examination. He let the court know that the evidence he was seeking was objectionable under ER 404(b), but he was not going to object. RP 2-3.

Under ER 404(b), evidence that relies on the propensity of the defendant to commit a crime is not admissible to show the defendant acted in conformity with that propensity. Using prior acts to prove the current charge invites conviction on the inference that once a criminal, always a criminal. *State v. Wade*, 98 Wn. App. 328, 989 P.2d 576, 580 (1999). This forbidden inference erodes the presumption of innocence fundamental to our system of justice. *Id.* at 336. This propensity evidence is exactly what the jury heard from Bogue at trial, due to defense counsel's unreasonable decision.

Because of counsel's decision, the jury heard from Bogue that Olson threatened to kill and rape her a year after the charged incident. RP 34, 44. Moreover, she was permitted to make disparaging comments about Olson's property, as well as allegations that he had stalked her daughter, that he preys on women, and that he has shot people with a BB gun. RP 34-35. She also gave her opinion that Olson doesn't display very good



control over weapons and his emotions, and he is a dangerous person to live near. RP 29, 34-36, 45-46.

There is no conceivable defense strategy under which it was reasonable not to object to this testimony from Bogue. It is unclear what purpose counsel believed Bogue's testimony would serve, since he did not present any argument based on the evidence in closing. RP 123-27. Counsel seemed to want the jury to hear that law enforcement questioned the credibility of Bogue's complaint in July 2021, but there was no reason for the jury to hear about that incident in the first place. That alleged threat was not part of the charges, nor was Bogue a named victim in this case. RP 43, 47. Presenting testimony that in July 2021 Olson engaged in conduct similar to the charged offenses could not possibly have benefited the defense, and indeed, questioning Bogue about it simply led to other highly prejudicial and inflammatory testimony.

Other than Bogue's testimony that she heard Olson's threats on August 14, 2020, everything else she told the jury

served only to create the inference that Olson is an unsavory character and a dangerous person who does this kind of thing all the time and thus must be guilty of the charged crimes. As defense counsel acknowledged, an objection to the testimony under ER 404(b) most certainly would have been sustained. Counsel's inexplicable decision to present or not challenge this evidence constitutes deficient performance.

The Court of Appeals did not address whether trial counsel's performance was deficient. Instead, it held that assuming counsel was deficient, Olson's ineffective assistance of counsel claim fails because he cannot establish prejudice. The court found that the evidence against Olson was overwhelming and Olson provided no reason to doubt the credibility of the witnesses. Opinion, at 5-6.

What the court overlooked was the highly inflammatory nature of Bogue's testimony. Improper references to a defendant's prior criminal conduct tend to "shif[t] the jury's attention to the defendant's propensity for criminality, the

forbidden inference. . .”. *State v. Perrett*, 86 Wn. App. 312, 320, 936 P. 2d 426 (quoting *State v. Bowen*, 48 Wn. App. 187, 196, 738 P.2d 316 (1987)), *review denied*, 133 Wn.2d 1019 (1997).

Moreover, it was clear from the evidence that there had been disputes between Olson and the Binder-Peterson family in their long history as neighbors, and Binder appeared to hold a grudge against Olson. He testified that he has a beautiful backyard and patio on waterfront property which he cannot enjoy properly because of Olson’s behavior. RP 49, 54-55, 59. The jury could easily have questioned whether the allegations from the day of the charged incident were accurate or exaggerated and whether the witnesses truly believed Olson was threatening to kill them. Contrary to the Court of Appeals’ conclusion, there is a reasonable probability that Bogue’s unrestrained diatribe tipped the scales for the jury and led to Olson’s convictions. Counsel’s unprofessional error denied Olson effective representation, and this Court should grant review and reverse his convictions. RAP 13.4(b)(3).

F. CONCLUSION


For the reasons discussed above, this Court should grant review and reverse Olson's convictions.

I certify that this document contains 2671 words as calculated by Microsoft Word.

DATED this 3<sup>rd</sup> day of April, 2023.

Respectfully submitted,

GLINSKI LAW FIRM PLLC



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Attorney for Petitioner

March 7, 2023

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

RONALD DEAN OLSON,

Appellant.

No. 57230-3-II

UNPUBLISHED OPINION

MAXA, J. – Ronald Olson appeals his convictions of three counts of felony harassment. The convictions arose out of an incident where Olson fired multiple shots from a semi-automatic rifle while yelling threats to three people who lived next door. At trial, defense counsel did not object to testimony from Olson’s other next-door neighbor regarding a similar incident that occurred almost a year later and other disparaging information about Olson. Olson argues that defense counsel was ineffective for failing to object to this testimony.

We hold that even assuming that defense counsel’s failure to object to this testimony constituted deficient performance, Olson cannot show prejudice. Accordingly, we affirm Olson’s convictions.

**FACTS**

*Background*

On August 14, 2020, Olson yelled threats at three people who lived next door to him: Timothy Binder, Sandra Peterson-Binder, and Brendan Peterson. Olson also fired multiple shots

from a semi-automatic rifle. Officers took Olson into custody after finding him standing naked in his driveway and smelling of alcohol.

The State charged Olson with three counts of felony harassment.

*Trial Court Proceedings*

Before trial, the State filed numerous motions in limine, including a boilerplate motion to exclude any character evidence pertaining to the defendant. In response, defense counsel stated that he would not object to the testimony of Theresa Bogue, the other next-door neighbor of Olson, about a similar harassment incident that occurred almost a year after the incident giving rise to the charges. Defense counsel acknowledged that this evidence would be subject to ER 404(b), but stated that if the State did not elicit this evidence, he would.

Binder testified that he was Olson's next-door neighbor. He stated that on the day of the incident he arrived home from work when "all hell [broke] loose." 1 Report of Proceedings (RP) at 52. Olson was screaming and yelling, calling Binder names, and fired 15 rounds from his semi-automatic rifle. Binder testified that among other things, Olson yelled "I'm going to blow your head off." 1 RP at 58.

Peterson, Peterson-Binder's son, arrived home a short time later. Peterson testified that on his way home from work he heard gunshots from a rifle coming at him as he passed Olson's property. Once he arrived home, Peterson heard Olson yell "I'm going to get you all" and "come out where I could see you". 1 RP at 75.

Peterson-Binder testified that she headed home after receiving text messages from her husband about the situation. After she arrived home, she heard random gunshots and heard Olson yell, "I'm going to blow you all up." 1 RP at 68. Peterson-Binder testified that she retreated to the garage and called 911 three times.

A law enforcement officer testified that he found shell casings in the roadway in front of Olson's trailer and that they appeared to be fresh. Another officer photographed and collected shell casings from the road and from the property by the trailer. He also collected a semi-automatic rifle that was located on a stump along a pathway leading to Olson's trailer. The rifle's safety was off and a live round was in the chamber.

Bogue testified that she was Olson's next-door neighbor to the north. She testified that one afternoon in 2020 she heard Olson screaming and yelling that he was going to "kill them all." 1 RP at 31. She then reported the incident to law enforcement. Bogue testified that there had been discontent between Olson and the Binder family for around 18 years.

Bogue then testified about an incident with Olson in July 2021. Olson screamed at her and threatened to rape her and kill her dogs. Bogue stated that she took Olson's threats seriously because

[Olson] tends to approach women when he's naked, and he has stalked my daughter before, and in the incident between my neighbors when my husband was in the hospital, he has guns and he has - he shoots them off, and people have reported that he has actually shot them with a BB gun when they're on his property in the river.

1 RP at 34. Defense counsel did not object to any of this testimony.

Bogue also testified about the condition of Olson's property. She stated that the property did not meet county codes, has lots of vehicles on it, and has mounds of human waste because Olson does not have a septic system. The State introduced into evidence photographs of Olson's property that showed garbage everywhere. Defense counsel did not object to this testimony.

On cross examination, defense counsel continued to question Bogue about the July 2021 incident. In his questioning, defense counsel reiterated that Olson was yelling and screaming and saying things like "I'll kill you." 1 RP at 41. In response to further questioning by defense counsel, Bogue testified that Olson threatened to blow her head off.

On re-direct, the prosecutor asked Bogue to tell the jury exactly what happened during the July 2021 incident. Bogue testified that she went outside and heard Olson yelling that he was going to kill her and her dogs. She also testified that Olson said he was going to rape her. Bogue stated that her phones were out so she went to town to report what happened to the police. After she returned, Bogue's neighbors came over and told her that Olson was threatening to blow her head off. Defense counsel did not object to this testimony.

During closing argument, defense counsel emphasized that the jurors must independently weigh the evidence to determine whether the State has met its burden to prove each of the elements of the crime beyond a reasonable doubt. Defense counsel did not mention any of the trial testimony. Specifically, defense counsel did not refer to Bogue's testimony about the July 2021 incident.

The jury found Olson guilty of three counts of felony harassment. Olson appeals his convictions.

## ANALYSIS

### A. LEGAL PRINCIPLES

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee criminal defendants the right to effective assistance of counsel. *State v. Vazquez*, 198 Wn.2d 239, 247, 494 P.3d 424 (2021). To prevail on an ineffective assistance of counsel claim, a defendant must show both that defense counsel's performance was deficient and the deficient performance prejudiced the defendant. *Id.* at 247-48.

Representation is deficient if, after considering all the circumstances, it falls below an objective standard of reasonableness. *Id.* To rebut the strong presumption that counsel's



performance was effective, the defendant bears the burden of establishing the absence of any legitimate strategic or tactical reason explaining counsel's conduct. *Id.* at 248.

Prejudice exists if there is a reasonable probability that except for defense counsel's deficient performance, the result of the case would have been different. *Id.* " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). We consider the prejudicial effect of defense counsel's deficient performance in light of the evidence in the record. *State v. Hendrickson*, 129 Wn.2d 61, 80, 917 P.2d 563 (1996). If the remaining evidence powerfully supports a finding of guilt, the failure to object did not prejudice the defendant. *Id.*

B. LACK OF PREJUDICE

Olson argues that defense counsel was ineffective for failing to object to Bogue's testimony about a similar event that happened almost a year later and Olson's other conduct unrelated to the charged offense. We assume without deciding that the failure to object to this evidence constituted deficient performance, but we reject Olson's ineffective assistance of counsel claim because Olson cannot show prejudice.

Even without Bogue's testimony regarding the July 2021 incident, the record overwhelmingly supports a conviction for all three counts of felony harassment. Binder, Peterson-Binder, and Peterson all testified that they heard gunfire and Olson threatening to kill them. Bogue provided independent corroboration of Olson's harassment, testifying that she heard Olson yell that he would "kill them all." 1 RP at 31. Officers presented evidence of shell casings in the road in front of Olson's residence and a loaded rifle on the property. Olson presented no conflicting evidence and provided no reason to doubt the credibility of any of the

witnesses. In light of this substantial evidence, Olson cannot establish that there is a reasonable probability that he would have been acquitted in the absence of Bogue's testimony.

We conclude that defense counsel's failure to object did not prejudice Olson. Accordingly, we hold that Olson's ineffective assistance of counsel claim fails.

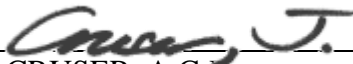
CONCLUSION


We affirm Olson'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.

  
\_\_\_\_\_  
MAXA, J.

We concur:

  
\_\_\_\_\_  
CRUSER, A.C.J.

  
\_\_\_\_\_  
VELJACIC, J.

**GLINSKI LAW FIRM PLLC**

**April 03, 2023 - 12:50 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 57230-3  
**Appellate Court Case Title:** State of Washington, Respondent v. Ronald D. Olson, Appellant  
**Superior Court Case Number:** 20-1-00332-8

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