IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent	)	NO. 89478-7
v.	)	
	)	MOTION FOR DISCRETIONARY REVIEW
KATHY ANN HENDRICKSON Petitioner	)	-PRV-

I. IDENTITY OF MOVING PARTY

Kathy Ann Hendrickson, Petitioner, seeks the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Grant discretionary review of the order reversing only three of ten counts on Ms. Hendrickson's direct appeal. The order was filed on October 1st, 2013 and is attached as *Appendix A.* All ten counts should be reversed.

III. FACTS

A. Threat to Bomb: One count of threat to bomb, on July 31, 2008 an e-mail was sent to Richard Wernette specifically mentioned his car as the endangered object. Petitioner argues that she was not a student of nor was ever at the Walla Walla Community College during this year. Petitioner argues that she never sent an e-mail to Mr. Wernette, did not make up a fictitious e-mail, nor did she ever have an e-mail account under casablanca@yahoo.com, lovelifenow111@yahoo.com, or dianeduede@yahoo.com. Petitioner argues that

she never knew Mr. Richard Wernette or had any interest in who was elected for the judges' office.

B. Cyber Stalking: 2 counts of cyber stalking Mr. Richard Wernette and Mr. John Lohramann on July 31st and August 14th of 2008. Petitioner argues that she has never been at the Walla Walla Community College Library nor was she a student there on these dates. Petitioner did not know who these men were.

C. Harassment: 2 counts of harassment towards Mr. Richard Wernette and Mr. John Lohramann on July 31st and August 14th of 2008. Petitioner argues that she has never been at the Walla Walla Community College Library nor was she a student there on these dates. Petitioner has no knowledge of who these men were.

D. Cyber Stalking: 1 count towards former boyfriend Gregory Riordan from September 9th, 2005 through June 29th, 2009. Petitioner argues that she did not have a computer after May of 2005. There is absolutely NO EVIDENCE to substantiate Mr. Riordans claims. Petitioners computer was analyzed by a Seattle Computer Forensic Expert which can be verified that the Petitioner had before May of 2005.

E. Identity Theft in the Second Degree: 1 count towards former boyfriend Gregory Riordan, who claims that the Petitioner stole his identity by ordering Fingerhut items and his personal I.D.. Mr. Riordan claims that the Petitioner forged his name on magazine subscriptions that were later found to be *inconclusive* by Washington Sate Crime Laboratory and the Oregon State Patrol Forensic Laboratory. Petitioner argues that those incidents never happened. Petitioner did not steal his I.D.

The Petitioner will argue these issues in the Part V.

IV STATEMENT OF CASE

Petitioner met Joseph Fisk on Match.com in January of 2005. Petitioner had only three dates with Mr. Fisk and they were never in any type relationship, not even an intimate one. Petitioner informed Mr. Fisk that she did not want to see him anymore and that she had met someone else. Petitioner did not care for

Mr. Fisks' character of being obsessed and controlling. Mr. Fisk then began harassing and stalking the Petitioner and the Petitioners family, neighbors and co-workers, who were all witnesses to these actions and would have appeared in court to testify on Petitioners behalf if the Petitioners trial counsel would have called them to the witness stand. Petitioners counsel was ineffective and never called them. The only reason Petitioner pled the Alford Plea was to protect her family from Mr. Fisk. When Petitioner informed Mr. Fisk that she was going to bring harassment and stalking charges against him, Mr. Fisk had taken it upon himself to bring charges of stalking against Petitioner and then that was when the false allegations began. Petitioner was under duress after 14 months of waivers in court. Petitioner does have proof with Kennewick Sheriffs office, Kennewick Police office, Walla Walla Police and the Seattle Computer Forensic Specialist that Mr. Fisk is lying on his testimony in court. Petitioners counsel was ineffective in calling these witnesses to Petitioners trial. Mr. Fisk does not have any evidence that puts the Petitioner in the position of his allegations that he testified to. Mr. Fisk says he has a video of Petitioner trying to break into his house. Truth is, Mr. Fisk asked Petitioner to come by at a specific time to retrieve Petitioners sunglasses that she had left behind in January of 2005. Mr. Fisk told Petitioner to come in and Petitioner found the door locked. So Petitioner rang the doorbell and Mr. Fisk never came to open the door. Mr. Fisk had "set up" that incident himself, to which all the harassing and stalking began. Waiting for trial in 2005 to 2006, Mr. Fisk did not present any witnesses or factual evidence that shows the Petitioner had stalked him or caused the alleged damages that he alleges happened. The alleged stalking case **never** went to trial. Petitioner pled the Alford Plea to get rid of Mr. Fisk and to leave her family alone.

Petitioner has never had any animosity towards Diana Duede, who was at one time Petitioners daughters supervisor. Petitioner and Petitioners daughter had a great relationship with Diana Duede. The two families got along great and knew each other since High School. Petitioner did not make up a fictitious e-mail that was dianeduede@yahoo.com. For that was a misspelling of her first name, to which Petitioner knew how to correctly spell Diana's name. Petitioner was not

at the Walla Walla Community College library in 2008, nor was she a student in 2008.

Petitioner states that she has never been at the Walla Walla Community College library on July 31st or August 14th of 2008, nor was she a student during that year, which can be corroborated by the Petitioners school transcripts that were presented to her counsel. Petitioners trial counsel failed to present these records at trial to prove Petitioners innocence of 2 counts of harassment against Mr. Richard Wernette and Mr. John Lohramann.

Petitioner also states that she could not have been at the Walla Walla Community College library on July 31st or August 14th of 2008, as Petitioner was not a student that year in accordance with the 2 counts of Cyber Stalking Mr. Richard Wernette and Mr. John Lohramann. Petitioner can produce records to prove her work hours on these dates to which her trial counsel *ineffectively did not produce at trial.*

Petitioner met Gregory Riordan in January of 2005 on Date.com and soon after they began dating until later in the year of 2005. Petitioner and Mr. Riordan resumed the relationship again in the early year of 2006. During the year of 2005, while Petitioner was going through her dilemma with Mr. Fisk, Gregory Riordan supported Petitioner through her hardship and was aware of what was going on with Petitioners legal issues. Mr. Riordan accompanied Petitioner to her court dates for support and protection from Mr. Fisk. So, Mr. Riordan was well aware of the situation. While Petitioner was dating Mr. Riordan in the beginning of 2005, Mr. Riordan had already had problems with someone calling him and threatening him and other situations that are reported to the Hermiston Police Department. There is a police report that clearly shows that it was a male person threatening Mr. Riordan. This happened when Petitioner first met Mr. Riordan. Petitioner never broke into Mr. Riordans residence. When Petitioner and Mr. Riordan dated they made arrangements to stay at each others homes on weekends with each other knowledge and made it available to get into each others residence with a key. Petitioner never used Mr. Riordans computer to access anything nor had she sent any threatening e-mails to a woman that Mr. Riordan had met on a dating site. Petitioner never knew of this alleged

threatening until Mr. Riordan had called Petitioner after he got out of jail the first time explaining to the Petitioner that he never knew this woman. Hermiston Police Department said that the e-mails were exactly coming from Mr. Riordans computer on the early mornings after 6:00 a.m. Petitioner has proof of her work times and this places her at work during the time frame. Mr. Riordan has been known to clock into work and leaving work without clocking out. Other e-mails were coming from the Walla Walla Community College. Mr. Riordan has in fact been at the college, for he is an avid fan of college football and Petitioner and Mr. Riordan had frequently watched the college football games. Petitioner broke off her relationship with Mr. Riordan, because he was trying to put the blame on Petitioner who had a transcript of her hours to verify that Petitioner was at work at the time that the threat on Mr. Riordans computer was made to another woman. All the allegations that Mr. Riordan is alleging is because he wants to have a lawsuit against the City of Hermiston involving the Hermiston Police. Mr. Riordan took this to a lawsuit and I heard he lost his case because there was ***no evidence.*** Mr. Riordan could not handle his money very well, to which he borrowed money from Petitioner, His supervisor George Newman, his neighbor lady who was in her 80's, his brother along with his sister and his brother-in-law. Mr. Riordan had a spending problem. Buying or renting new furniture (couch, loveseat, coffee table, end tables and lamps), new computers, always buying Petitioner flowers and gifts from Fingerhut, buying a vehicle and many numerous items. So clearly, Mr. Riordan <u>did not</u> have any credit problems that prosecution argued on. Because of Mr. Riordans spending habits, he was always overdrawn on his account and then he would ask everyone for money to compensate for his NSF's at the bank. This was always a problem with Mr. Riordan from beginning to end. One of the reasons Petitioner called it quits with him.

When Petitioner broke off her relationship with Mr. Riordan, he continually came to her place of work and her residence. Mr. Riordan continually called her residence and work place. Petitioner was also getting calls from his housekeeper, Melissa, who was employed with Mr. Riordan for several months. Petitioner was getting threatening death threat letters in the mail from Mr. Riordan and Melissa, these the Petitioner handed over to the College Place Police

Department. The College Place Police did not do a hand analysis on either Mr. Riordan or Melissa. The police did absolutely nothing. Meanwhile Mr. Riordan was continually making false statements to the College Place Police Department against Petitioner, then turn around and continually come to Petitioners residence and sending Petitioner gifts through Fingerhut and flowers. Petitioner had called Fingerhut to put a stop to having anything sent to her from them by Mr. Riordan. Petitioner had had enough and sent the last order that Mr. Riordan had ordered himself, to be sent to the Petitioner to the College Place Police. This is where Mr. Riordan says Petitioner stole his identity to order jewelry that was way too big for Petitioner to wear. How ironic. If Petitioner stole his identity why would Petitioner take the Fingerhut items to the police and contact Fingerhut to put a stop to sending any future orders to Petitioners residence?

When Det. Roger Maidment with the college Place Police Department did a search and seizure to Petitioner's residence on September 7th, 2007, why was the Petitioner not served a search warrant, nor was there a receipt of what the police confiscated.

State v Wallin, 105 P.3d 1037, 125 Wn.App. 648 (Wash. App. Div 1 2005), "As a general rule, state constitution provides greater protection than does the federal constitution against warrantless searches and seizures. *U.S. Constitutional Amendment* 4; *RCWA Constitution Article 1 and* 7: Court of Appeals reviews de novo conclusions of law from an order pertaining to the suppression of evidence. A disturbance of a person's private affairs in violation of the constitution usually occurs when the government intrudes upon those privacy interests which citizens hold, safe from government trespass. *Coolidge v New Hampshire*, 91 S.Ct. 2022, 403 U.S, 443 (U.S. NH 1971), "It is the duty of the courts to be watchful for constitutional rights of the citizens and against any stealthy encroachments thereon. constitutional provisions for security of person and property should be liberally construed. After Petitioner broke off the relationship with Mr. Riordan before November 2006, Mr. Riordan became involved with a woman who worked part time at Wal-Mart and was a student at Walla Walla Community College between the years of 2007 through 2009. Petitioner and her co-workers, which worked at Wal-Mart, were also witnesses to

them as a couple. They would have been willing to testify if Petitioners counsel (ineffective) would have called them as witnesses.

Petitioner never cyber stalked Gregory Riordan by getting into his personal accounts, e-mails or dating web sites. Petitioner did not have a computer after May of 2005. Petitioner has never looked up Mr. Riordans site on the internet. Petitioner had broken off the relationship with Mr. Riordan and did not want anything more to do with him. Petitioner was a victim of rape by Mr. Riordan in November 2006.

Petitioner knows that she was being set up by Mr. Riordan because he became angry when Petitioner refused his marriage proposal and refusing to move to Kentucky with him. Mr. Riordan was very malevolent towards Petitioner because she notified Irrigon Police Department about Mr. Riordan's shooting at cats and dogs with his BB gun and Petitioner viewing Mr. Riordan giving minor children cigarettes. Petitioner also learned that Mr. Riordan had serveral complaints from women from the Kennewick and Richland area at the Police Departments there. With all that the Petitioner learned of Mr. Riordan and his disturbing background involving women and his troubles in the army involving women, to which Mr. Riordan had been reprimanded by the Army, its no wonder the Petitioner called off any relationship. *Rule 608; Evidence of Character and Conduct of Witnesses*: (1) Governs the impeachments of a witness by evidence of poor reputation or specific incidents in the witness's past. Mr. Riordan testified that he was arrested twice in Oregon and was being prosecuted for threatening a woman in Oregon. Petitioner also was receiving death threat letters from Mr. Riordan and was a victim of rape by Mr. Riordan in November of 2006. In September 2007, Petitioner was contacted by Margarett Johnson with the Federal Bureau of Investigation to which Petitioner has her name and phone number on the blue steno pad. Ms. Johnson was asking Petitioner questions and telling Petitioner things of Mr. Riordan to which Petitioner had copied what she said on the steno pad (exhibits 9 and 10). Petitioner had told Ms. Johnson of Mr. Riordan taking her debit card number and finding an application for life insurance with Petitioners name and information on the application. Petitioner told Ms. Johnson that Mr. Riordan was in the process of putting more life insurance on his

own mother but was afraid to. Mr. Riordan was afraid then of the police investigating him. Mr. Riordans mom soon passed away and he did not proceed with the action. Petitioner can prove that she had to change her debit card number with the bank at that time. Coincidentally! Petitioner had spoken to Ms. Johnson two days prior to September 7th, 2007, which was the last call from Ms. Johnson. Petitioners residence is seized by Det Maidment without a search warrant or receipt of what was taken, should show that Petitioner in no way had the information to do the crimes of Identity Theft and Cyber Stalking in the time frame. Petitioner did not steal anyone's identity. Petitioner merely wrote down what was said to her by Ms. Johnson to turn over to Morrow County Sheriffs office in Oregon where Mr. Riordan resided, because of his past history with the police. In *State v Summers*, 728 P.2d 613, 45 Wn.App. 761 (Wash.App. Div 1 1986), "Mere presence is insufficient to establish dominion and control over premises where stolen property is found, for purposes of establishing offense of possession of stolen property. *RWCA 9A.56.140(1)*; Defendant's mere proximity to stolen property or presence at place where it was found, without proof of dominion and control over property or premises was insufficient proof of possession and was insufficient to sustain conviction for possession of stolen property.

Mr. Maidment's lack of not seizing the computer on December 9th, 2007 at the Whitman University which showed Mr. Riordans e-mail address (earnestbasse@yahoo.com) to which proves Mr. Riordan was there. Mr. Maidments lack of not taking fingerprints off the computer that was seized, waiting until the next day to seize the computer was negligent. RP 321, lines 3-25 and RP 322, lines 1-3. Proof that Mr. Riordan was at the Whitman University with evidence of Mr. Riordans e-mails and date site names that belong to him. Proof of evidence that Petitioners e-mail was stolen by Mr. Riordan or Mr. Maidment and Petitioners information was entered into the computer to try and blame her for his identity being allegedly stolen, RP 207, lines 1-21.

Petitioner would not need to look up her attorneys name Mr. Barrett or look up a docket regarding herself. Petitioner already knows what is going on with her case by talking to her attorney. No need to look up on a computer at a college

that she has never been to. Ridiculous to say the least! Petitioner never used gregory402001@yahoo as her alternative e-mail. Proof that Mr. Riordan hacked into her e-mail or Mr. Maidment did. RP 270, lines 18-22. Petitioner also sent a five page double letter to Hermiston Police Department, Morrow County Oregon Sheriff's office (Kenneth W. Matlock) and District Attorneys office in Oregon, explaining more in depth of Mr. Riordans actions and what he has done to which they are aware of. The D.A. is also aware of the rape that Mr. Riordan had done to Petitioner in November of 2006.

When Petitioner started getting phone calls and Mr. Riordan showed up at Petitioner residence in December of 2007, Petitioner decided to keep a journal of activity that Mr. Riordan imposed on Petitioner. The College Place Police would not believe her, so she logged activity. Petitioner's ineffective assistance of counsel refused to bring that as evidence along with the tape recorded messages left by Mr. Riordan, nor the death threat letters that the Petitioner received from Mr. Riordan in 2007. Petitioner took it upon herself to log every activity knowing the police would not help her. Petitioner was also contacted by the Kentucky's Federal Bureau of Investigation in regards to Mr. Riordan. Mr. Riordan had hired someone to have Petitioner killed. Special Agent Cory King and Supervisor Greg Cox were who Petitioner had spoken to on two occasions.

Its apparent that Mr. Riordan has issues with women. Mr. Riordan is a socialpath, schemer and manipulator, who will do anything to get his revenge out on Petitioner. Petitioner knows she was set up by Mr. Riordan and his girlfriend who still resided in Walla Walla after Mr. Riordan left for Lexington Kentucky in September of 2008. Petitioner knows that either Mr. Riordan or his girlfriend set her up for the judges being threatened. If you will notice the dates that the judges were threatened and knowing Mr. Riordan didn't leave for Kentucky until after those dates of July and August of 2008. Coincidence! Mr. Riordan also had 3 computers, 2 laptops and Mr. Riordan always had one of them with him. Petitioner never used Mr. Riordans computers.

After Mr. Riordan moved to Kentucky in September of 2008, he still kept calling the Petitioner and offered to pay for a plane ticket for Petitioner to come to Kentucky to see him. Petitioner had no desire to do so.

Emily Banks, Supervisor for the Walla Walla Community College Lab also stated in the testimony that she **did not** see me in the college library where the IP's came from. The Supervisor and staff that worked in the college library also said that they had never seen the Petitioner in the library when Det. Maidment showed them my photo. Emily Banks states in her testimony that she has seen me in the lab on a daily basis and that was in 2009. Emily Banks has never seen me in the library Petitioner knows that Emily Banks is confusing seeing her in the classroom with the lab. It was the lab that she saw Petitioner in, not the classroom that she "imagines Petitioner" in. Ms. Banks testimony states that she "imagines" or "I believe". On June 23rd, 2009 Ms. Banks testifies that she saw Petitioner in a classroom on this day. There was no class on this day, actually it was a break between quarters and the classrooms are locked down during quarterly breaks. Petitioner was definitely not there at this time. Ms. Banks is not a teacher and she only works in the lab which is downstairs. Ms. Banks testifies that she saw schoolwork and then dating sites. When asked if she remembered the name on the site, she said "I don't remember". RP 128, lines 15-21 and RP 129, lines 1-4.

Petitioner also testified that her address book was stolen from her residence and she is not sure if it was taken by Mr. Riordan when he kept showing up at her place or Det. Maidment who searched Petitioners place and Petitioner was not presented with a search warrant nor did Petitioner receive a receipt of what was confiscated. Address book had the e-mail and password in it, which later Petitioner found that someone had been hacking into her e-mail and changing her information. Petitioner contacted Yahoo information on the web. You will find that information on a billing envelope that has Yahoo information and Fingerhut information on the other side, trying to put a stop to items being mailed to Petitioners address (exhibit 11).

Petitioner would like to address RP 284, lines 11-25 and RP 285, lines 1-12 - Mr. Maidment had every opportunity to take photos, fingerprints and investigate Mr. Riordans girlfriend who FBI Special Agent Cory King verified that there was a woman living in Walla Walla address and name and witnesses them together. Proof that most of the e-mails and information are Mr. Riordans, which

proves beyond a shadow of a doubt that yes, Mr. Riordan was present at all three of the computers and yes, Mr. Riordan did in fact use my daughters computer to which there are witness to. In fact, Mr. Riordans girlfriend did attend Walla Walla Community College in 2007, 2008 and 2009! This does not prove that Petitioner was at these locations even though someone hacked into her e-mail.

Mr. Maidment says that he followed the Petitioner to a Whitman University to which Petitioner has never been before. *Rule 607; Who May Impeach*: 3(a) The witness may be shown to be biased. Mr. Maidment says he seized the computer and found information of Mr. Riordans personal accounts. Petitioner was informed that Mr. Riordan knew of the Whitman College for he (Mr. Riordan) described a private room, with windows, down in the basement of the Whitman College to use his laptop computer to which Mr. Riordan always carried with him. When Petitioner and Mr. Riordan were dating, Mr. Riordan frequently used Petitioners daughters' computer, so of course Mr. Riordans information would be found on there, due to the fact that Mr. Riordan, himself, accessed this computer when he left his laptop in his vehicle when he was at Petitioners' daughters' house.

"Under the Penal Provisions" *40.160.020-40.160.030* (Injury to and Misappropriation of Record) which states: "Obliterate or falsify any record or paper appertaining to the officers office or who shall fraudulently appropriate to the officers own use or the use of another person, or secrete with intent to appropriate to such use and evidence or other property entrusted to the officer's by virtue of." Petitioner knows that the computers were only looked at for areas only that Mr. Maidment requested. Mr. Maidment guided Det. Mike Boettcher on what areas to look at. Mr. Maidment had a hand at getting other peoples e-mails on his own personal computer. You will find my e-mail address and other e-mail address pertaining to this case on Mr. Maidments home computer that he misappropriated for his own personal gain. This will prove that indeed Mr. Maidment did corrupt the judicial system for his own personal gain. Mr. Maidment already testified to using goldbadge10@yahoo.com, which was Mr. Riordans e-mail and some of his dating sites. Petitioner feels strongly that Mr. Maidment misappropriated and falsified web sites and e-mails on the computers

he seized or that he had a hand at what is on those computers. Mr. Maidment said he was at the Whitman College and Walla Walla Community College, who's to say he did not falsify or misappropriate information to gain for his career or for personal gain.

V. ARGUMENT

Contrary to Mr. Fisk's hearsay testimony - Hearsay exceptions; *Availability of Declarant Immaterial REV ER 803*. (10) Absence of Public Record or Entry. To Prove the absence of record, report, statement or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation, in any form, was regularly made and preserved by public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry. (15) Statements in Documents Affecting an Interest in Property. A statement contained in a document purportedly to establish or affect an interest in property if the matter stated was relevant to the purpose of the document unless dealings with the property since the document was made have been consistent with the truth of the Statement or the purport of the document.

Petitioner states that as she was going to school in 2009 for Medical Billing and Coding and what is taught is that if it wasn't documented it didn't happen and you cannot go by what you "believe" to have happened but by what is documented. So if the courts want to believe that Petitioner stalked Mr. Fisk, with no evidence to substantiate the claims, only an Alford Plea to protect Petitioner and her family from Mr. Fisk. *Rule 404: Character Evidence; Crimes or Other Acts*: (B)(1) Prohibited uses: Evidence of a crime, wrong or other acts is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. In terms of Mr. Fisk with no evidence to back up his hearsay. *Rule 801, 28 U.S.C.A. Federal Rules of Evidence; Definitions That Apply to This article; Exclusion from hearsay:* (A) "Statement" means a person's oral assertion, written assertion, or non verbal

conduct, if the person intended it as an assertion. (C) "Hearsay" means a statement that (1) the Declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement. Prior specific incident with Mr. Fisk of Petitioner are recognition of the axiom that Petitioner should be tried only for the offense charged. Mr. Fisk's testimony distorted the truth and he was prejudicial. Ms. Banks testifies that she did not see Petitioner in the Walla Walla Community College library. RP 120, lines 18-25, to which Mr. John Lohramann and Mr. Richard Wernette were threatened through those computers. Ms. Banks also testified to not seeing Petitioner upstairs, to which the classrooms were held. RP 124 lines 5-11, RP 126 lines 9-10. This is where Ms. Banks testimony conflicts. RP 127 lines 4-18, RP 128 lines 1-21, RP 129 lines 1-4, RP 128 lines 9-11, lines 18-21 and RP 130 lines 1-4. *Rule 804: Exceptions to the Rule Against Hearsay*; A.(3) Testifies to not remembering the subject matter. *State v Karpenski*, 971 P.2. 553, 94 Wn.App 80 (Wash.App. Div 2 1999), "The competency of a witness turns on three basic preliminary questions of fact: one is whether the witness, at the time of his or her in-court statement, i.e. his or her "testimony", is describing an event that he or she had the capacity to accurately perceive , or, in alternative terms, an event about which he or she could "receive just impressions"; another is whether the witness, at the time of his or her in-court statement, is describing an event that he or she has the capacity to accurately recall; a third is whether the witness, at the time of his or in-court statement, is describing an event at he or she has the capacity to accurately relate. *REV ER 601: General Rule of Competency*. *Rule 607; Who May Impeach*: 3(e) The witness may be shown to have made a prior inconsistent statement.

State v Austin, 831 P.2d 747, 65 Wn.App. 759 (Wash.App. Div 1 1992), "We first decide whether there was sufficient evidence to support the harassment charge. To be convicted of harassment the actor must "knowingly" threaten to cause bodily injury in the future'." Petitioner did not ever harass Richard Wernette or John Lohramann, for she did not know either man. Nor did she care about the outcome of the election between them. *RCW 9A.46.020*: (1) A person is guilty of harassment if; (a) without lawful authority, the person knowingly

threatens. Petitioner did not know Richard Wernette or John Lohramann, nor did she ever threaten them. Walla Walla Community College library staff confirmed they have never seen or witnessed the Petitioner in their library using the computers, verified by Det. Maidment when he showed the staff Petitioners photo.

Since the prosecution is accusing the petitioner of cyber stalking and harassing Mr. John Lohramann and Mr. Richard Wernette, 2 counts each and claiming that her alleged occurrences with Mr. Fisk and Mr. Riordan, that Petitioner had done these acts towards these two men. Petitioner maintains she did not do these acts, for Petitioner does not know these men nor could have cared less on the outcome of the election. Petitioner argues where is the factual evidence that Petitioner was actually present on the computer e-mailing them. Supervisor and other employees of the College library already told Mr. Maidment that they did not see Petitioner at their library ever. *Federal Rules of Evidence, Rule 404, 28 U.S.C.A.*; (A) Character Evidence. 1. Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait. (B)1. Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. *U.S. v Powell*, 105 S.Ct. 471, 469 U.S. 57 (U.S. Cal. 1984), "Sufficiency of evidence review involves assembly by courts of whether evidence adduced at trial could support any rational determination of guilt beyond reasonable doubt; this review should be independent of jury's determination that *evidence on another count was insufficient.*

On September 7th of 2007, Det. Roger Maidment came to my residence knowing Petitioner was not there. Items were taken from Petitioner home to which Petitioner is not quite sure what was taken. Petitioner is aware of the blue steno pad that she recorded what was told to her by FBI Agent Margaret Johnson on September 5th, 2007, that Ms. Johnson was questioning Petitioner. Petitioner says that what is on the steno pad is what Ms. Johnson was telling her. *Flores-Figueroa v U.S.*, 129 S.Ct. 1886, 556 U.S. 646 (U.S> 2009), Holding: The

Supreme Court, Justice Breyer, held that, in order to convict defendant of aggravated identity theft for "knowingly transferring, possessing, or using, without lawful authority, a means of identification of a person, "government must prove that defendant knew that 'means of identification' he or she unlawfully transferred, possessed, or used did, in fact, belong to another person; abrogating. *U.S. v Godin, 867 F.3d 51 (CA 2008). Search and Seizure, FRCRP; Rule 41*: (F)(1)(c) Receipt. The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property. Petitioner never did see either the warrant or receipt. Petitioner is not sure if Mr. Maidment took her address book that contained her e-mail and password, to which Petitioner soon afterwards had problems with her e-mails that someone had stolen.

United States v Cronic, 466 U.S. 648-654 (1984), "The special value of the right to the assistance of counsel explains why 'it has long been recognized that the right to counsel is the right to the effective assistance of counsel.' The text of the Sixth Amendment itself suggest as much. the amendment requires not merely the provision of counsel to the accused, but 'Assistance', which is to be 'for his defense'. Thus, 'the core purpose of the counsel guarantee was to assure 'assistance' at trial, when the accused was confronted with both the intricacies of the laws and the advocacy of the public prosecutor." *United Stated v Ash*, 413 U.S. 300-309 (1973)

If no "Assistance "for " the accused's "defense" is provided, then the constitutional guarantee ahs been violated. *Chadwick v green*, 740 F.2d at 901. "Any failure of counsel in this case to investigate and pursue all avenues of defense is best characterized as a failure by counsel in the performance of his investigatory duties, which is to be analyzed under (Strickland) rather than as a fundamental breakdown of the adversarial process such that prejudice is presumed under *Cronic*.

INEFFECTIVE ASSISTANCE OF COUNSEL

Rule 1.3: A lawyer shall act with reasonable diligence and promptness in representing a client. *RPC 1.4 Rule 1.4*: a) A lawyer shall keep a client

reasonably informed about the status of a matter and promptly comply with reasonable requests for information. b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. *United States v Cronic*, 466 U.S. 648, 654 (1984); lack to prepare for trial. *Sate v White*, 487 P.2d 243, 5 Wn.App. 283 (Wash. App. Div 1 1971), "To successfully claim denial of fair trial due to lack of effective counsel be cause of failure to submit certain defense, defendant must establish that it is submission of such defense was question of deliberate tactical choice or judgment, no reasonable lawyer would have acted as defendants counsel did or that failure to submit his defense was result of ignorance or inadequate pretrial investigation and that substantial prejudice resulted there from, which probably would have changed result of trial."

Petitioner waived her Sixth Amendment right to counsel. When Petitioner was presented with James Barrett as her counsel, Petitioner soon realized that her attorney was not representing her case to the full extent of the seriousness of her case. Petitioner and her family and friends wrote to Judge Schahts requesting for a new attorney who would represent her in a professional manner. No one received a reply or response from Judge Schahts on this matter. Petitioners counsels failure to contact witnesses and adequately investigate and prepare for trial, including his failure to examine States experts, refusing to include any evidence that Petitioner had given her counsel (transcripts from college of 2009, audio messages from Mr. Riordan, journal of Mr. Riordans visits to Petitioners, home, pictures of all the gifts received by Mr. Riordan, and work logged hours that can account for Petitioners whereabouts at the time of these allegations towards Petitioner). Most important, not presenting Petitioner to testify about Mr. Fisk and Mr. Riordan. *State v Tarica*, 798 P.2d 296, 59 Wn.App. 368 (Wash.App. Div 1 1990), "To establish ineffective assistance of counsel, defendant must show that his counsels performance was deficient, and that such deficient performance prejudiced the defense, which requires showing hat counsels errors were so egregious that the defendant was deprived of a fair trial". *U.S. Constitutional Amendment 6*. Petitioner had asked her counsel, Mr. Barrett, to please call her witnesses to testify. During trial, Mr. Barrett called no

witnesses that could corroborate the truth. *State v Visitacion*, 776 P.2d 986, 55 Wn.App. 166 (Wash.App. Div 1 1989), "Claim of ineffective assistance of counsel based on failure of trial counsel to contact witnesses satisfied first step of analysis by establishing that counsel's representation was deficient, but remand was necessary to determine whether counsel's deficient performance prejudiced defendant." *State v Lopez*, 27 P.3d 237, 107 Wn.App. 270 (Wash.App. Div 2 2001), "A defendant alleging ineffective assistance of counsel must show that; (1) counsel's representation was deficient and (2) the deficiency prejudiced the defendant; if either part of the test is not satisfied, the inquiry need go no further. *U.S. Constitutional Amendment 6*.

Petitioners counsel never rejected prosecutors' inflammatory remarks during trial or closing arguments. *State v Fuller*, 282 P.3d 126, 169 Wn.App. 797 (Wash.App. Div 2 2012), "Where a defendant meets the burden of establishing both that State committed misconduct by making inappropriate remarks, and those remarks had prejudicial effect, appellate court reverses that defendant's conviction. Appellant court reviews allegedly improper statements by state in the context of the arguments as whole, the issues involved in the case, the evidence referenced in statement, and the trial courts jury instructions. RP 285, lines 21-25 and RP 286, lines 1-11. *SUPER CT CIV CR 59; New Trial, Reconsideration, and Amendment of Judgment*: (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial. (5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice. (6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property. (7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision. or that it is contrary to law. (9) **That substantial justice has not been done**.

Petitioner argues that she ***did not*** cyber stalk or harass either of these men, Richard Wernette or John Lohramann. Petitioner also argues that she definitely did not threaten to bomb or injure property belonging to Richard Wernette. Petitioner never knew these men. Regarding Mr. Riordan and his

false allegations of Identity Theft and Cyber Stalking, Mr. Riordan is a vindictive sociopath, who manipulates and schemes to get back at Petitioner because she broke off the relationship. Petitioner was set up on these charges and would like a new trial to prove her innocence and show proof with evidence that Petitioner did not get a chance be properly represented at her previous trial.

New Trial; Reconsideration, and Amendment of Judgments; Super CT CIV CR 59. Grounds for New Trial or Reconsideration; On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties: (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial. (5) Damages so excessive or inadequate as unmistakably to indicated that the verdict must have been the result of passion or prejudice. *Gestson v Scott*, 67 P.3d 496, 116 Wn.App. 616 (Wash.App. Div 2 2003), "A much stronger showing of abuse of discretion will be required to set aside an order granting a new trial than an order denying one because the denial of a new trial concludes the parties' rights."

VI CONCLUSION

This Court should accept review of Ms. Hendrickson's Direct Appeal to reverse all charges.

Dated: 10/25/2013

Kathy Ann Hendrickson Pro se

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In the Office of the Clerk of Court
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	**No. 30437-0-III**
	)	
Respondent,	)	
	)	
v.	)	
	)	**OPINION PUBLISHED IN**
	)	**PART**
KATHY ANN HENDRICKSON	)	
	)	
Appellant.	)	

KORSMO, C.J. — Kathy Ann Hendrickson uses the internet to avenge herself on people she does not like. Her activities led to ten convictions including three counts of cyberstalking, two counts each of threatening to bomb, felony harassment, and intimidating a public servant, and a single count of second degree identity theft. Concluding that a candidate for judicial office is not a public servant and that a threat to bomb must target a location, we reverse three convictions, affirm the remainder, and remand for resentencing.

FACTS

Ms. Hendrickson took her anger out both on a former boyfriend and on her daughter's work supervisor; two judges became the primary victims of the campaign against the supervisor. Although there was some similarity of tactics and a partially overlapping time frame, the two efforts were discrete.

Ms. Hendrickson was convicted in 2006 of stalking a boyfriend, JF, whom she met online. After developing an intimate relationship, JF broke up with Ms. Hendrickson. His life became quite difficult thereafter. Ms. Hendrickson tried to break into his house. A woman who spent the night with JF at his house woke up to find her tires slashed. Another time, JF came home to find his outside water directed into and flooding a crawlspace in his house; he also found the cable to his house cut. He would get strange calls at work and strange harassing e-mails; someone stole his identity. A woman who he communicated with on a dating web site received threatening e-mails purportedly from JF, which caused him legal trouble. Phony dating accounts and e-mail addresses were set up in his name. Ms. Hendrickson was ultimately convicted of stalking JF.

GR met Ms. Hendrickson on an online dating site in 2005 and the pair developed an intimate relationship. After dating seven or eight months, GR decided to break up with Ms. Hendrickson because the relationship "wasn't really going anywhere." Report of Proceedings (RP) at 11. The break up appeared amicable and the couple remained "friends with benefits." Nonetheless, GR's life also became more difficult. He started receiving e-mails, purportedly from JF, that threatened his life. He also received phone calls from a synthesized/masked voice threatening his life. GR's tires were also slashed

on three separate occasions. Another time, he came home to find Ms. Hendrickson in his kitchen, uninvited, and believed that she had accessed his personal computer.

The police started coming to his house with audio recordings of someone purporting to be him trying to solicit sex for money. He was accused twice of being a pedophile. He almost lost his job after a woman who received threatening e-mails from a person purporting to be GR reported the incident to his employer. These allegations resulted in GR being arrested twice, including one arrest at work in front of his coworkers and friends. The charges were eventually dropped after police realized the threatening e-mails were coming from a Walla Walla IP[1] address rather than GR's Oregon IP address. Some of these e-mail accounts had Walla Walla Community College IP addresses.

Another time, GR came home to find the electric utility attempting to shut off his electricity. They had received a false report that he was moving. Similar incidents happened with his cable and Internet providers. Checks that GR wrote started bouncing because his military pension was readdressed to New York without his permission. He also started getting charges from online retailers that he did not authorize. GR had to work diligently to keep these incidents from affecting his credit.

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[1]Internet Protocol

He later got a restraining order against Ms. Hendrickson when he started to suspect that she was the cause of his problems. But, even after getting the protective order, GR would still see Ms. Hendrickson for sexual encounters. After GR moved away to Kentucky in 2008, he continued to have problems. A Facebook page was opened in his name seeking a hit man. An anonymous person also e-mailed his supervisors in Kentucky saying that he had harassment charges pending in Washington State, that he had profiles on several casual dating web sites, and that he was under investigation for child molestation.

A search of Ms. Hendrickson's apartment revealed sheets of usernames and passwords belonging to GR, his credit card information, and his Social Security number. This information also included the name and e-mail address of the woman who was purportedly harassed by GR. Police also found some mail in Ms. Hendrickson's apartment addressed to GR.

Ronald Emmons, a forensic document examiner for the Oregon State Crime Lab, testified regarding the identity of a person who filled out credit card applications in GR's

name. Mr. Emmons determined that the handwriting on the applications matched Ms. Hendrickson's handwriting.[2]

Emily Banks, supervisor of the Walla Walla Community College computer lab, regularly saw Ms. Hendrickson using the lab. On one occasion Ms. Banks viewed Ms. Hendrickson's terminal remotely and observed that she was on a dating site searching for someone in Kentucky. The police seized the computer shortly thereafter.

Although GR's departure from the state did not end Ms. Hendrickson's interest in his life, it did give her more time to target other people. She turned her attention to her daughter's supervisor at a local retail store, Ms. Diana Duede. In 2008, Judge Richard Wernette, then a municipal judge as well as a practicing lawyer, was involved in an election campaign against Judge John Lohrmann, then also a practicing lawyer, for superior court. On July 31, 2008, Judge Wernette received the following e-mail:

> So You Want To Be Elected:
>
> What a joke you have become. You think anyone really wants you to be elected to serve our community. NO. We do not. I will put a stop to all of your rediculous (sic) nonsense. YOU ARE A JOKE! I will see to it you do not become elected. Better check before you leave your home. You never know what is out there to encounter you. Maybe when you start your car, it

[2] A handwriting analysis was also done by the Washington State Crime Lab, but their result was "inconclusive."

> will go BOOM! Get the hint! Say your prayers. YOU might not see tomorrow.
>
> Diane Duede
> Washington

Ex. 8. Judge Wernette immediately interpreted it as a threat against his life and against his family; he forwarded the e-mail to law enforcement.

On August 14, 2008, Judge Wernette and Judge Lohrmann both received the following e-mail:

> Election is finally coming to a halt. Are you ready for the BIG BOOM! If elected. YOU will pay the ultimate price. Get it. You are the biggest losers to even be appointed. Life is so short. The end is near. Say your goodbyes.
>
> Diane Duede
> College Place, Washington

Ex. 7.[3] The e-mail address used to send the judicial e-mail message was dianeduede@yahoo.com. According to the State's theory of the case, *Diane* Duede was a misspelling of *Diana* Duede. Ms. Duede testified that she does not use the Internet, does not have an e-mail account, and that the e-mails misspelled her first name.

[3] The same message was also sent to Justice Debra Stephens who was on the ballot that year for the Washington Supreme Court. The message was not received due to an error in the e-mail address and the prosecutor dropped charges relating to Justice Stephens.

Police eventually connected Ms. Hendrickson to the dianeduede e-mail address through a series of other e-mail addresses. In 2009, the store received an anonymous customer complaint about Ms. Duede's treatment of Ms. Hendrickson's daughter. The complaint came from an e-mail address of lovelifenow111@yahoo.com; that address later was used to harass GR.

Police subsequently linked the lovelifenow111 account to casablanca@hotmail.com, which was the e-mail address linked to the lovelifenow111 account for password retrieval purposes. The computer lovelifenow111 accessed to send messages about GR was registered to Walla Walla Community College. Police also discovered that lovelifenow111 also was accessed on Ms. Hendrickson's daughter's computer, another machine that Ms. Hendrickson used to access the Internet. The casablanca@hotmail.com was also the password retrieval address for dianeduede@yahoo.com. The linking of all these e-mail addresses suggested that Ms. Hendrickson had control of the dianeduede address used to send the threatening messages to the judges.

Detective Richard Maidment of the College Place Police Department investigated the crimes against GR and the judges. He searched Ms. Hendrickson's daughter's computer, a computer from Whitman College, and a computer from Walla Walla

Community College. The e-mails that GR's Kentucky employer received were traced back to Walla Walla Community College. The computer seized from the college immediately after Ms. Hendrickson was seen using it contained a lot of information that was also found on her daughter's computer. It also had been used to access one of GR's personal accounts.

The computer from Whitman College was used by someone on AdultFriendFinder (a casual dating web site) going by Amyisfun2Bwith. GR suspected that this person was actually Ms. Hendrickson. Detective Maidment confirmed this suspicion when he followed her to Whitman College and observed her using the computer, which was later determined to have accessed the Amyisfun2Bwith account. It was also used to both place an order using GR's credit card and to contact a woman who thought she was being harassed by GR.

Detective Mike Boettcher of the Walla Walla Police Department testified that Ms. Hendrickson's daughter's computer was used to access an e-mail account in GR's name. Some of these e-mail accounts in GR's name and in other names were accessed on all three computers; Ms. Hendrickson's name also showed up in the three computers. GR could not have accessed any of these computers because he was in Kentucky during the relevant time period.

After completion of a very thorough investigation, the matters were referred to the prosecutor's office. Ultimately, eleven counts were heard by a jury. The July 31 e-mail was the basis for a threat to bomb count as well as harassment and intimidating a public servant charges listing Judge Wernette as the victim. The August 14 e-mail was the basis for a second threat to bomb charge as well as harassment and intimidating a public servant charges that listed Judge Lohrmann as the victim. The jury convicted on the previously noted ten offenses and acquitted on a stalking count involving GR. Ms. Hendrickson received a standard range sentence and timely appealed to this court.

ANALYSIS

Ms. Hendrickson's appeal challenges the threat to bomb conviction involving the August 14 e-mail to Judge Wernette, the two convictions for intimidating a public servant, and the trial court's decision to permit the evidence of her stalking of former boyfriend JF. She also filed a pro se statement of additional grounds (SAG). We will address the intimidating a public servant and threat to bomb convictions in the published portion of this opinion. The remaining matters will be discussed in the unpublished portion.

Intimidating a Public Servant

Ms. Hendrickson argues that the intimidating a public servant statute does not apply to candidates for public office. She also argues that while Judge Wernette was a judge during the election campaign, there was no evidence that the threat was directed at his actions as a public servant. We agree with both of her arguments and reverse these two convictions.

Evidence is sufficient to support a conviction if it permits the trier of fact to find beyond a reasonable doubt each element of the offense. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). In reviewing such challenges, an appellate court will construe the evidence in the light most favorable to the prosecution. *Id.*

In relevant portions, the intimidating a public servant statute provides:

> (1) A person is guilty of intimidating a public servant if, by use of a threat, he or she attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.
>
> (2) For purposes of this section "public servant" shall not include jurors.

RCWA 9A.76.180(1)(2).[4]

[4] Attempts to improperly influence a juror's actions are punished by RCW 9A.72.140, the jury tampering statute.

In turn, a "public servant"

> means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function.

RCW 9A.04.110(23).

Ms. Hendrickson argues that a candidate for public office is not a "public servant" to whom the intimidation statute can apply. We agree. The definition of a public servant expressly is directed to those who hold government office or employment or who have been selected to do so. A candidate for election to office has not yet assumed office nor been chosen by the electorate to do so. While the definition of a public servant includes a candidate-elect, it does not include those who have not yet been selected for the position. Accordingly, the charge of intimidating a public servant did not apply to Judge Lohrmann. While he would win the election a few short days after the August 14 e-mail, he had not yet become a public servant by virtue of the electorate's blessing at the time of the e-mail. Accordingly, the evidence does not support the intimidation count related to Judge Lohrmann.

Ms. Hendrickson also argues that Judge Wernette was not a "public servant" by nature of his superior court candidacy. While we agree that Judge Wernette did not

qualify as a public servant by nature of his candidacy, Ms. Hendrickson's argument ignores the fact that Judge Wernette was already a public servant as a result of his position as a municipal court judge. The question then becomes whether the threat was an attempt to influence Judge Wernette's "vote, opinion, decision, or other official action." An election campaign is clearly not a vote, opinion, or decision. The remaining question is whether it is an "other official action" of a public servant.

"No court has addressed what constitutes 'official action' for the purpose of this statute, and there is no need to consider it here." *State v. Montano*, 169 Wn.2d 872, 878, 239 P.3d 360 (2010). Ms. Hendrickson's argument does require us to consider "official action" for this purpose. However, we need not extensively discuss the subject.

Just as being a candidate for public office does not make one a public servant, so too candidacy for public office is not itself an "official action" under this statute. The decision to run for office is a personal choice; it is not itself a function of being a public servant. While certain offices are filled by election, and those office holders frequently run for reelection, no office requires that its holder run for election as one of the functions of the job. Thus, although Judge Wernette was a public servant, his action in running for election was personal rather than official. The July 31 e-mail was directed toward his

candidacy rather than his official actions as a municipal judge. Accordingly, there was no basis for finding that the e-mail was intended to influence the judge's official action.

We find support for this approach in an analogous phrase in our bribery statute. That statute prohibits the offer or acceptance of a benefit for the purpose of influencing a public servant's behavior in his "official capacity." RCW 9A.68.010. When construing that undefined statutory term, our court succinctly stated: "it simply means that the public servant is acting within the scope of what he or she is employed to do as distinguished from being engaged in a personal frolic." *State v. O'Neill*, 103 Wn.2d 853, 859, 700 P.2d 711 (1985). This definition is consistent with what we believe an "official action" to be—action taken within the scope of a public servant's employment or service.

Running for election is not an "official action" of a public servant. The evidence was insufficient to support the conviction for intimidating Judge Wernette.

Both convictions for intimidating a public servant—counts 8 and 9—are reversed for insufficient evidence.

Threat to Bomb

Ms. Hendrickson attacks the sufficiency of the evidence supporting count 5, the threat to bomb conviction arising from the August 14 e-mail. Because it did not target a particular location, we agree that this e-mail did not constitute a threat to bomb.

The statute at question is RCW 9.61.160(1). It provides:

> (1) It shall be unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any governmental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated.

Id.

This statute was first enacted in 1959. *See* LAWS OF 1959, ch. 141. It was initially placed in the malicious mischief—property damage chapter of the criminal code. *See* former chapter 9.61 RCW (1961). The chapter retained that title when the modern malicious mischief offenses migrated to chapter 9A.48 RCW. The only one substantive amendment to the threat to bomb statute since its adoption was a 1977 amendment that placed "government property" within its protective sphere. LAWS OF 1977, Ex. Sess., ch. 231.

Based on the clear focus of the statute on protection of property rather than people, Ms. Hendrickson persuasively argues that the August 14 e-mail did not violate the statute because it did not indicate any structure or vehicle that was endangered. Instead, that e-mail simply threatened that both judges would go "boom," unlike the July 31 e-mail that

specifically mentioned Judge Wernette's car as the endangered object. The statute expressly names a number of locations—typically structures or locations where people gather, live, or use for transportation—that a person may not threaten to bomb. Human beings are not protected under this statute, except indirectly from the protection of the structures they use. Because the e-mail that served as the basis for count 5 did not indicate that any place protected by RCW 9.61.160 was to be bombed, there was insufficient evidence to support this conviction. Count 5 is reversed.

We reverse the convictions in counts 5, 8, and 9. The case is remanded for resentencing on the remaining counts.

The remainder of this opinion has no precedential value. Therefore, it will be filed for public record in accordance with the rules governing unpublished opinions. RCW 2.06.040.

ER 404(b)

Ms. Hendrickson finally[5] argues that the trial court erred in admitting evidence relating to her stalking of former boyfriend JF. The trial court did not abuse its discretion

[5] Counsel also argues that the trial court erred by not considering the counts arising out of the two e-mails as constituting the same criminal conduct per RCW 9.94A.589(1). In light of the fact that we are remanding this case for resentencing, we do

in its handling of this issue, and the evidence also was harmless in this case since it was primarily directed to the count on which the jury acquitted.[6]

Evidence of "other bad acts" is permitted to establish specific purposes such as the identity of an actor or the defendant's intent or purpose in committing a crime. ER 404(b). Those purposes, in turn, must be of such significance to the current trial that the evidence is highly probative and relevant to prove an "essential ingredient" of the current crime. *State v. Lough*, 125 Wn.2d 847, 863, 889 P.2d 487 (1995). Evidence admitted under ER 404(b) is considered substantive evidence rather than impeachment evidence. *State v. Laureano*, 101 Wn.2d 745, 766, 682 P.2d 889 (1984), *overruled in part by State v. Brown*, 113 Wn.2d 520, 782 P.2d 1013, 787 P.2d 906 (1989); *State v. Wilson*, 60 Wn. App. 887, 891, 808 P.2d 754 (1991).

The decision to admit evidence of other bad acts under ER 404(b), as with most evidentiary rulings, is a matter within the discretion of the trial court. *State v. DeVincentis*, 150 Wn.2d 11, 17, 74 P.3d 119 (2003); *Lough*, 125 Wn.2d at 863.

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not address this argument. Ms. Hendrickson is free to bring it to the trial court if she so desires.

[6] Ms. Hendrickson also filed a SAG which we will not separately address. We have reviewed the arguments and conclude that the evidence does support the remaining convictions and that her counsel effectively represented her. Her other arguments are not supported by the record and have not been addressed.

Discretion is abused if it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Ms. Hendrickson argues that her mistreatment of JF should not have been admitted because it showed her propensity to be a bad person. In other words, she does not challenge the relevance of this evidence, but only the trial court's balancing of its value against its harm. We disagree and conclude that the trial court properly struck the balance in favor of admission.

As with JF, GR was undergoing a campaign of harassment that included slashed tires and recurring internet attacks after he broke off his relationship with Ms. Hendrickson. The identity of his harasser was at issue in the trial, and Ms. Hendrickson took great efforts to hide her identity through the use of a series of different online names and computers. The fact that she acted in a similar manner after breaking up with JF was important evidence in establishing her motive and her identity as the person harassing GR. Far from showing only that she was a bad person who behaved badly after the breakup, the evidence was highly relevant to show her identity due to the highly similar behavior used to target both men. The trial court did not abuse its discretion by concluding that the evidence was more probative than it was prejudicial.

Even if there had been error, it was harmless in light of the jury's acquittal on count 10. That count had alleged that Ms. Hendrickson stalked GR. The trial court had given a limiting instruction telling the jury that it could only consider JF's testimony for the purpose of determining whether Ms. Hendrickson had a plan of "harassment and/or stalking." Clerk's Papers (CP) at 84 (Instruction 46). That evidence was squarely directed at count 10, which required the State to prove that Ms. Hendrickson stalked GR by repeatedly harassing him. CP at 72 (Instruction 35). The jury acquitted on that count.

The court did not abuse its discretion by admitting the evidence that Ms. Hendrickson had stalked JF. The evidence went to the count on which she was acquitted, which would have made any error harmless.

Affirmed in part, reversed in part, and remanded for resentencing.

Korsmo, C.J.

WE CONCUR:

Kulik, J.

Siddoway, J.