Supreme Court No. 99732-2
(Court of Appeals No. 36432-1-III
consolidated with No. 37546-3-III)

In the Supreme Court of the State of Washington

State of Washington
Respondent

v.

Sloan P. Stanley
Petitioner

PETITION FOR REVIEW

Sloan P. Stanley, pro se
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I. Introduction

Petitioner Sloan P. Stanley acting pro se comes forth this day to ask the honorable Court to please review the issues presented here from both the Statement of Additional Grounds (SAG) that he authored for his direct appeal and from the Personal Restraint Petition (PRP) that he also authored and had consolidated with his direct appeal. These issues are of course separate from the issues his appellate attorney raised in the direct appeal. However, there is one issue raised by his attorney that he will also take this opportunity to ask this Court to review. This direct appeal Case No. 36432-1-III (consolidated with No. 37546-3-III) was heard by the Court of Appeals and an opinion was filed on March 02, 2021. Both Petitioner and the State motioned for reconsideration and both were denied with the Court filing the new opinion on April 15, 2021.

Out of an abundance of caution and in anticipation that the State will be petitioning this Court for review I have decided to bring this petition, to at the very least preserve the various issues that I will be bringing to the Court's attention. I also want to make it abundantly clear that I am not dissatisfied with the Court of Appeals decision regarding the issue they reversed the

conviction on. This was clearly a well reasoned decision guided in sound logic and good law. While I do not see a viable path forward for the State to obtain review of this well reasoned decision, I have nevertheless decided to pursue review myself, in as previously stated, an abundance of caution.

As I have just explained I am not dissatisfied with the Court of Appeals decision to reverse my conviction, for obvious reasons. However, I am a bit disapointed that the Court did not address many of the issues I raised in my SAG and PRP. These issues are not moot because they could lead to effective relief and I will be asking this Court to please review them, since the Court of Appeals would not. There are also a few issues that the Court did address, including one raised by my appellate attorney, that I will also be asking this Court to review. The issues will be presented in what follows.

II. Issues Presented for Review

•1.) Did the Appellate Court err when it decided that given their decision the remaining issues were moot when many of the issues could still lead to effective relief?

•2.) Does RCW 9A.46.020 violate the First Amendment overbreadth doctrine and is it void for vagueness,

in as much as the statute allows for convictions of mere negligent speech, and does not with clarity define what specific speech is proscribable?

•3.) Does RCW 9A.72.160 violate the First Amendment overbreadth doctrine and is it void for vagueness, in as much as the statute allows for convictions of mere negligent speech, and does not with clarity define what specific speech is proscribable?

•4.) Did the State present insufficient evidence to prove a true threat on all counts, where the evidence of threats considering the complete context and circumstances surrounding the evidence can be considered nothing more than idle talk?

•5.) Did the State present an insufficient probable cause, where their informant ultimately did not pass the veracity prong of the Aguilar-Spinelli test, and an independent investigation to corroborate the informant turned out to ultimately be unsuccessful?

•6.) Did the State engage in outrageous governmental conduct, where its informants, detective and prosecutor committed perjury; the prosecutor and detective engaged in witness tampering; the prosecutor and detective essentially engender the fear into the victims leading them to believe false facts, committing harassment themselves; and the prosecutor continued a prosecution

he knew was not supported by probable cause?

•7.) Did the State engage in governmental misconduct, where their late disclosure of not using an informant as a witness and their non-disclosure that this same informant provided false information of material facts, proving that no allegations occurred in the county the trial was about to commence in, making the Petitioner choose between his right to a proper venue, or a speedy trial and effective assistance of counsel? Does a prosecution have to be ongoing for a defendant to bring a CrR 8.3(b) claim for governmental misconduct?

•8.) Did the trial court commit err when it allowed for the State to introduce highly prejudicial ER 404(b) evidence, when the element to which the evidence was sought for required a low threshold showing, the highly prejudicial evidence tended to disprove the element, and there existed alternate evidence just as probative but substantially less prejudicial?

•9.) What is the correct standard when the prosecutor elicits false testimony? Is the claim sufficient when the prosecutor "knew or should have known" that the testimony was false, or is it only sufficient when the prosecutor "knew" precluding "should have known"?

•10.) Do the many instances of a lack of impartiality by the King County Prosecutor, and the fact that one of the victims is a King County Prosecutor, not to mention the fact King County Prosecuting Attorney's Office had already agreed to their recusal only to later renege on the agreement; require King County Prosecuting Attorney's Office to recuse themselves?

•11.) Does the trial judge's exhibited bias, with multiple occasions of an apparent bias and one conclusive instance of actual bias require the trial judge to be disqualified from any further proceedings in this case?

•12.) Were both of the sentencing aggravators applied in error, where they both encompassed elements already present in the statute of harassment, and where the egregious lack of remorse aggravator only applies to conduct in the current charge and not prior charges?

III. Statement of the Case

One misdemeanor to 15 felonies, 30 days to a 33 ½ year sentence. The extreme disparity shown here is what has occurred to me because nearly seven years ago I would not accept a misdemeanor and vehemently demanded a jury trial in my cyberstalking

case, which is directly connected to the current case. It was these actions that subsequently led to me ultimately having 15 felonies and a 33½ year sentence.

It was my strong conviction in my cyberstalking case that I was innocent, because regardless of anything I said (or wrote) I did not have any intent to intimidate, harass, embarrass or torment as the cyber-stalking statute required. Also, I had plans to take the Professional Engineers exam in the spring of 2015 (Corrginally arrested Oct. 3, 2014) and I did not want to have to list the cyberstalking conviction on the exam application, especially when I felt I was not guilty of it. So I proceeded to go to trial where I ended up representing myself pro se. In what I feel was a very unfair trial I was ultimately convicted of nine felony counts of cyber-stalking. And, make no mistake about it, it was a conviction for mere negligent speech.

Everytime I would not plea leading up to trial, the state would up the charges. One misdemeanor went to one felony count, to four felony counts, and finally to nine felony counts. Of course, everytime the charges were increased the more of a monster the state made me out to be. The State ignored the totality of the facts and pushed a false narrative. I never denied the things I said were abhorent, repugnant and inexcusable. It

was however though, my contention that I did not act with any criminal intent. And, because I held to this contention I was severely punished. While the State made me out to be such a monster and such a threat, they have continually failed to recognize even when I have pointed it out, that if it really was my goal or intent to kill anyone I would have taken the misdemeanor, gotten out to freedom and killed these people. Apparently, because I fight for my innocence that makes me more of a monster and a threat.

Because I did not bow down and do as they wanted me to do, because I dared to hold a different opinion than they, and because I fought for my innocence I have been severely punished. Seven years ago I believed in justice, I believed in the rule of law. I can't necessarily say after all I have been through since then, that I even remotely hold those same beliefs anymore. However, I still hope and pray that justice exists in accords with the rule of law. Because, if justice ceases to exist we are all doomed, so I cannot help but hope and pray that it still exists.

Originally, in my cyberstalking trial, I had thought that I could win by showing that I never had any intent to intimidate or harass anyone, but all that mattered for my conviction was that I communicated

facially threatening words (negligence) regardless of anything else. Then take into account the social and political atmosphere of this state by which this is a "woman state," whereas, as a man you have a higher burden to meet to prove your innocence when the crime victim is a woman, my chances of winning at trial were slim to none. If I'd only known all this then. In a sense this state embodies reverse-chauvinism, and I don't mean that as an affront to anyone, so please do not take offense. It is merely a fact and is actually a general consensus amongst inmates. This state in an effort to provide equality has tipped the scales against men. I have no problem with equality, and in fact I am a fervent believer in it, but the very word implies that we will all be treated the same, none above the other. And, in this state that just does not seem to be the case.

For example, the State completely ignores the fact that the victims (females) knew I was not doing good, knew I was in a bad place, knew I suffered a recent traumatic brain injury (TBI) that was central to the messaging, knew that I was having fleeting ideations of suicide and they did nothing. It is not an unreasonable inference to say that these victims, whom have exhibited an extreme dislike for myself

had wanted and hoped that I would eventually kill myself, and when I didn't they went to the police. See also RCW 9A.36.060 - Promoting a Suicide attempt. The totality of the facts reasonably suggests this, but the State cares nothing about it and continues to push the narrative of how big a monster and a threat I am, ultimately comparing me to be scarier than the state's most prolific serial killer, Gary Ridgway, see PRP pg. 10-12.

The current case's prosecutor, Gary Ernsdorf explained that the suicidal ideations made me more dangerous, see RP at 658, regardless of the fact that I couldn't kill myself, let alone anyone else. What if hypothetically I had killed myself, what then? Would the prosecutor maybe have shown a bit more empathy if I had? I can't help but wonder if the scenario were switched and I were a female and the victims male, how would this case be viewed. I can only imagine not as severe and definitely more sympathetic to the woman.

Then, it must be considered that the State took most of what I said (wrote) out of context and made everything sound much worse than it actually was. They ignored the totality of the facts, context and circumstances, which is contrary to accepted case law, and pushed their false narrative. That is not to say that there aren't some

very bad sounding messages, because there definitely is, it is just that the State purposely construes them in a way that makes me sound as bad as possible, which isn't equitable at all. There is nothing fair about misrepresenting the facts. And, most importantly, to penalize me for the way in which I express myself without any consideration to my criminal intent, that is to say, whether I meant to (intent) or knew (knowing) I would engender fear by the words I communicated, not that I meant to or knew the words I communicated were facially threatening (negligence), is to discriminate against me. To penalize negligent speech because you don't like it or agree with it, is discrimination, and the State discriminates when it penalizes negligent speech.

This State has continually failed to recognize the correct construction of its mens rea of "intent" and "knowing" in the context of threats prosecutions and has allowed for convictions of negligent speech for much too long. In a sense it is nothing more than a form of social engineering, which is wrong, and goes against First Amendment and free society principles. Because I have a very colorful imagination, albeit dark colors at times, I am discriminated against. Because I was not necessarily raised right and when I am extremely angry and frustrated I

express myself in ways that are not necessarily appropriate, but are not uncommon to me nor quite a number of people for that matter, I am discriminated against. I will admit that this form of expression I speak of exhibits a lower class mentality. Nevertheless, it is neither fair nor right to discriminate against it.

Because I have continued to fight for my innocence the State has determined to severely punish me at every turn. After I satisfied the first part of the cyberstalking's 50 month DOSA sentence- 25 months, I was released to the second part- 25 months community custody. Two months later my trial transcripts for my appeal were ready and the easiest way to get them was to have my appellate attorney email them, even though I was not supposed to be on the internet nor use any form of social media. However, and as my attorney told me, I had every right to use any tool necessary to help fight my appeal. I also needed to research caselaw so I started to use the internet for this very purpose, to fight my appeal.

I went through the transcripts and when I got to the State's rebuttal I noticed that a highly prejudicial statement made by the prosecutor was missing. I was livid to say the least. This statement discredited

me and my whole closing argument, "don't listen to Mr. Stanley, he does not know the law, he does not know what he is talking about." And, the judge had already hushed me from objecting to improper opinion during the State's closing, explaining now was not the time to object. I had stated caselaw verbatim, in my closing, in an effort to establish reasonable doubt. I'm not a lawyer so of course the jury would believe the State. It was 1½ weeks after my conviction that I wrote a post-conviction motion for prosecutorial and judicial misconduct largely based on this statement, that was now missing. I was so upset by this omission, that I went to the FBI, with this circumstantial evidence of the motion, to have them investigate. Only, they declined saying it was a matter for my appeal. However, it never did get addressed in my appeal.

Right at this same time I decided to try to get a hold of someone whom I had wanted to be a witness in my trial, but to no fault of my own I was not able to contact this person before my trial nor during it, (the private investigator assigned to me could not find her). Now that I was no longer incarcerated I could use social media to try to engage her, which I did. However, instead of answering me she talked to the victims whom then contacted the police. Next,

my community corrections officer (CCO) was contacted and I was violated for using the internet and social media, and for third party contact with the victims. Which, I never intended for any third party contact with the victims. This was my first violation as I had complied with DOC in every other way up to the point of using the internet as a tool for fighting my appeal. I had been free for nearly four months at the time and actively working on my appeal. For this first violation I was sent back to prison to do the remainder of my time (13 months with good time).

It was on the chain bus to Washington Corrections Center (WCC) that I met the State's first informant, Randy Burleson, and when we arrived at WCC we were celled together for 12 days. There are a lot of things in retrospect about Burleson that were very suspicious. In my heart I feel and know that the State planted him in the cell with me, in retaliation for going to the FBI, in an effort to set this up and to keep me quiet. Regardless of whether I could prove this or not, the facts and circumstances that were to follow should raise suspicions regarding King County's motive in all this. King County's extreme dislike for myself and their bias against me is fully demonstrated from the

totality of the facts and circumstances of this case. The PRP I authored is conclusive to this point.

The PRP demonstrates that the detective led the narrative in both the informants statements, pushing a narrative that I am crazy and scary. The State's second informant, Billy Temple, came on the scene a year after I was celled with Burleson and agreed to have the cell we occupied together recorded (bugged), which proved to be exculpatory evidence that the trial judge would not admit. Nevertheless, both of these informants committed perjury regarding material facts as the PRP conclusively shows. The PRP also shows that the detective commits perjury in the probable cause as well as on the stand. Prosecutor Ernsdorf commits perjury in his presentation of the facts as well as being fully complicit with these other acts of perjury. Both the detective and prosecutor engage in witness tampering when they lead the victims to believe that the in-cell audio recording (bug) corroborated Burleson and had me discussing a plan to kill the victims, which of course was not true as the PRP and SAG conclusively demonstrate. In this respect the detective and prosecutor engaged in felony harassment themselves, as they are the ones whom pushed a false narrative engendering substantial

fear into the victims, leading them to believe the false threats would be carried out. This conduct is truly outrageous and should shock anyones conscious. Ultimately, Prosecutor Ernsdorf engaged in a malicious prosecution, given all the facts.

I do feel I was set up by King County because I went to the FBI and because I continued to fight for my innocence. This has all been extremely stressful as I do not feel I can trust anyone, from state actors to inmates. Informants that will lie to please the State for any number of reasons are a dime a dozen, both Burleson and Temple prove this. And, state actors like the detective and prosecutor are more than happy to assist, direct and encourage their lies, often times lying themselves. Then couple that with the fact that I obviously upset some very powerful people in this state and I become extremely stressed out about what to expect next.

I just want my life back. I worked hard to become a Mechanical Engineer, paying for all my schooling myself (loans still outstanding accuring interest). I want to go back to being an engineer if I ever can. I feel the only way to do that and to get my old life back is to continue to fight for my innocence and to clear my name from the way in which the

State has painted me to be. However, and because I continue to fight for my innocence I feel I could spend the rest of my life in prison. It isn't right to severely punish someone because they fight for their innocence. I loath the day I stepped foot in this state, and dream of the day I can leave and never come back. Part of leaving this state however, is making sure the State leaves me alone for good. They trumped up these charges, what is to stop them from doing it again, especially if I continue to fight for my innocence. Needless to say, I find myself in a very precarious situation. A situation I would not wish on my worst enemy. It is truly very stressful.

IV. Argument Why Review Should Be Granted

Presented in this section are both issues that the Court of Appeals did review and mostly others that they declined to review because they determined they were moot. In the discussion for each issue I will address whether the Court reviewed the issue or not. If the Court did not review the issue, the factors listed in RAP 13.4(b) will not necessarily apply because the issue was never reviewed. Nevertheless, I ask that this Court please accept review of these

issues, as well as the other issues I have presented.

• **A.) Issues not moot-** The Court of Appeals in reaching their decision determined that the remaining issues were mooted by the reversal and remand for a new trial, so as they did not consider many outstanding issues. However, they failed to recognize that "[a] case is moot if the issues it presents are 'purely academic.' Grays Harbor Paper Co. v. Grays Harbor Cy., 74 Wn.2d 70, 73 (1968). It is not moot, however, if a court can still provide effective relief. Pentagram Corp. v. Seattle, 28 Wn. App. 219, 223 (1981)." State v. Turner, 98 Wn.2d 731, 733 (1983); see also City of Sequim v. Malkasian, 157 Wn.2d 251, 258-59 (2006). The same logic applies to a case where the court's decision on one issue has mooted the rest of the issues in the case. And, as is the case here, where all except one of the issues presented in this petition could lead to effective relief other than a remand for a new trial, the issues are not moot. The one issue that is moot, poses a question regarding its standard of review that the Court could take the opportunity to resolve, if it so saw fit to.

Therefore, for these reasons and because the Court of Appeals has passed on reviewing these particular

issues, and in accordance with fundamentals inherent in due process, I am asking that this Court please review these issues that the Court of Appeals erroneously determined were moot and would not review.

• **B.) The harassment and intimidating a judge statutes both violate First Amendment overbreadth and vagueness principles** – My Apellate Attorney had argued in my opening brief that the intimidating a judge statute criminalized pure speech without requiring a mens rea, rendering any conviction insufficient under USC Amendments 1 & 14. The Court of Appeals reviewed this issue and disagreed. To preserve this issue and because it poses a significant question of constitutional law, I am asking the Court to review it. However, I have currently framed the issue slightly different, raising it as a challenge that the statute is overbroad and vague. While this issue is now framed differently it is essentially the exact same argument implicating all the same caselaw and constitutional provisions as my attorney's argument. And, it keeps congruency with the claim of overbreadth and vagueness that I raise regarding the harassment statute, that also implicates the exact same caselaw and constitutional provisions as my attorney's argument.

I raised the issue that the harassment statute is overbroad and vague in my SAG and the Court of Appeals never reviewed it. This issue is not moot and I ask that this Court please review it, along with the intimidating a judge statute.

While the harassment statute contains a mens rea of "knowing" it might as well not. This is because like the intimidating a judge statute, that does not contain any mens rea, they both allow for convictions of mere negligent speech. They both also do not with any real specificity define what speech they do proscribe, which is why they are both overbroad and vague. This is because the way this State constructs its mens rea of "knowing" in the context of a threats prosecution is to reduce it to negligence. And, without any mens rea in a threats statute, negligence is subsumed by the objective reasonable person (negligence) standard, for what is a threat. Therefore, mens rea or no mens rea, both of these statutes produce the same result, convictions for mere negligent speech. Which is not evident to the layman and why they are both vague.

The U.S. Supreme Court in Elonis v. U.S., 575 U.S. 723, 135 S.Ct. 2001, 192 L.Ed.2d 1 (2015), determined that negligence alone was not sufficient to sustain a threats conviction. They explained that

the neeessary element required to separate innocent from criminal conduct was the intent to engender fear or knowledge one was engendering fear, not that one simply intended or knew the words they communicated were facially threatening. Thus, the Elonis Court recognized a true subjective intent requirement in the context of a threats prosecution. Which of course, directly implicated the First Amendment as well as due process principles.

In Elonis, through the caselaw that was presented, the Court implied the need for a subjective intent jury instruction. This was because the objective reasonable person (negligence) standard allowed for conclusive presumptions regarding "intent" and "knowing" to be found from the predicate fact of finding a true threat. Therefore to combat against this conclusive presumption a subjective intent jury instruction would be necessary to avoid a due process violation.

This Court, in its decision in State v. Trey M., 186 Wn.2d 884 (2016), with all due respect, missed these basic principles laid forth by the Elonis decision, and got it all wrong. This Court completely overlooked, save Justice Gordon McCloud in her lone dissent, the correct construction of the mens rea of "intent" and "knowing" in the context of a threats

prosecution, as laid forth in Elonis. And thus, continued the bad policy of allowing for convictions of mere negligent speech.

Therefore, I would ask that this Court please review this issue and adopt the correct construction regarding the harassment statute's mens rea and adopt a subjective intent jury instruction requirement for any new trial. Otherwise the harassment statute would remain overbroad and vague. This true subjective intent requirement would then give way to insufficient evidence, given the facts of the case, to sustain a conviction under the harassment statute and I would therefore ask for dismissal of all harassment charges with prejudice. As for the intimidating a judge statute it should be held void for overbreadth and vagueness until such time as the legislature can add an appropriate mens rea into this statute. I would then ask the Court for a complete dismissal of all charges with prejudice.

See also, SAG, pgs. 1-18; Motion for Reconsideration, pgs. 6-8; and Appellant's Opening Brief, pgs. 28-32.

• **C.) Insufficient evidence to prove a true threat -**

The Court of Appeals never reviewed this issue that was presented to them and not moot because it could lead to effective relief.

Even under this State's current construction of its threats prosecutions, whereby only the objective reasonable person (negligence) standard is required to be met for a conviction, the current evidence is still insufficient. The facts, context, and circumstances demonstrate, even if the allegations were true, that the evidence does not reach beyond that of idle talk. Which of course is not proscribable speech and is therefore insufficient to sustain a conviction. It would also be useful for this Court to define idle talk more complete as it is itself vague. Ultimately, I would ask for dismissal with prejudice.

See also, SAG, pgs. 23-29; Motion for Reconsideration, pgs. 8-9.

• **D.) Informant credibility was never established, therefore neither was probable cause** - The Court of Appeals never reviewed this issue that was presented to them and not moot because it could lead to effective relief.

This State recognizes the Aguilar-Spinelli test for probable cause warrants. The State recognizing that their informant, Randy Burleson suffered from a "distinct lack of credibility" sought an independent investigation using another informant, Billy Temple, along with an audio recording (bugging) to corroborate

Burleson, in an effort to establish informant credibility per Aguilar-Spinelli. Initially, through Temple's perjured statement with some help from the detective, credibility was established. However, an analysis of the audio recording (bugging) would prove that Temple in fact committed perjury in his statement and ultimately credibility and thus probable cause were not established. Therefore, I would ask for dismissal with prejudice due to a lack of informant credibility and an insufficient probable cause.

See also, PRP, pgs. 57-64; Reply to State's Response (PRP), pgs. 19-22.

E.) Outrageous governmental misconduct- The Court of Appeals briefly reviewed this issue without reaching the merits. They determined that I could not raise this claim post conviction because in order to bring a CrR 8.3(b) motion a prosecution must be ongoing, see State v. Basra, 10 Wn. App. 2d 279, 448 P.3d 107 (2019). However, and as I explained in the Addendum to Motion for Reconsideration, pgs. 1-3, I had erroneously raised this claim under CrR 8.3(b). The Court however, declined to review it.

Originally, I had conflated this issue with governmental misconduct and erroneously argued it under the umbrella

of CrR 8.3(b). This was clearly wrong because, "[b]y its plain terms, CrR 8.3(b) applies only to a claim that the right to a fair trial was compromised, whereas, an outrageous governmental misconduct claim is targeted at a different claimed evil, a deprivation of fundamental fairness." State v. Solomon, 3 Wn. App. 2d 895, 419 P.3d 436, 443 (2018). I had however, argued the correct caselaw regarding this issue. And, I made a clear showing that outrageous governmental misconduct did occur and to the level that shocks the conscious. For these reasons I ask the Court for dismissal with prejudice.

See also, PRP, pgs. 70-71 & 75-81; Addendum to Motion for Reconsideration, pgs. 1-3.

F.) Governmental misconduct- The Court of Appeals reviewed this issue without reaching the merits for the same reasons just mentioned above, in accords with Basra. However, the Basra opinion is contrary to Court rules, State Supreme Court decisions, and constitutional law. Therefore, I ask this Court to please review this issue and reach its merits.

This issue does fall under CrR 8.3(b) and implicates the right to a fair trial under USC Amendment 14 as well as WSC article 1 sections 3 & 22. Because

of the State's late disclosure of facts regarding their informant not being called as a witness and the fact he committed perjury in his statement, to which they never did concede, prejudice to my rights to a fair trial occurred. This is because there was in fact no part of the crime that had occurred in Walla Walla county and it was an improper venue. The late disclosure of this fact made me choose between my right to a proper venue, or my right to a speedy trial, and my right for effective assistance of counsel. Clearly prejudice occurred.

The State argues that in accords with State v. Basra, supra., I cannot raise this issue for the first time on appeal. This is because Basra holds that a criminal prosecution must be ongoing to bring a (CrR 8.3b) motion. However, both the Appellate Court and Basra fail to recognize that a governmental misconduct claim, being that it can be considered a manifest error affecting a constitutional right, may be raised for the first time on appeal in accords with RAP 2.5(a)(3). For this reason, I ask that the Court please reach the merits of this issue and order a dismissal with prejudice, as given the facts, the claim would warrant this relief.

See also, PRP pgs. 70-75; Reply to State's Response (PRP), pgs. 24-26; and Motion for Reconsideration, pgs. 12-14.

• G.) 404(b) evidence admitted in err - While the Court of Appeals addressed this issue in regards to my appellate attorney's argument, they never considered the supplemental argument I raised in my SAG. In this argument I bring to attention that the element for which they seek this highly prejudicial evidence for, "reasonable fear a threat would be carried out," requires a low threshold showing. As such, and given the fact that this highly prejudicial evidence of the messages from the prior cyberstalking conviction tended to prove that regardless of what words I communicated, they were just words and I would never carry out any threat, its probative value greatly weakens. Then consider [redacted] that the Court must evaluate any alternative evidence that would be just as probative yet less prejudicial. To which just the mentioning of the prior threats convictions would prove sufficient to fit this bill. It becomes very reasonable that the highly prejudicial evidence of the messages from the prior conviction would prove less probative than its risk for substantial prejudice. For these reasons I would ask that the Court please rule that this highly prejudicial evidence of the messages from the prior cyberstalking conviction to be inadmissible.

See also, SAG, pgs. 47-57; and Appellant's Opening Brief, pgs. 32-38.

H.) Eliciting false testimony - The Court of Appeals did cursorily review this issue determining it moot, because it would result in the same relief they already issued, a new trial. However, within this issue remains a question regarding the proper standard of review for this particular type of claim. The standard has not necessarily been defined with any definitiveness as to prevent confusion. While the standard clearly requires that the testimony be false and also material, it is not clear to whether the prosecutor must have "knew" or "should have known." There appears to be varying opinions, in various courts, as to what would qualify for this part of the standard. For example, the Ninth Circuit requires that the prosecutor "knew or should have known that the testimony was actually false." U.S. v. Zuno-Arce, 339 F.3d 886, 889 (9th Cir. 2003). While a few other Circuits require only that the prosecutor "knew" precluding instances where the prosecutor "should have known." Each of the three Court of Appeals divisions in this state have cited to the standard in Zuno-Arce, but none were in published opinions. This Court could take this opportunity, especially if it were to publish its opinion here, to clarify this issue if it so felt inclined to do so.

See also, PRP, pgs. 4-41; and Reply to State's Response (PRP), pgs. 1-19.

• I.) King County Prosecuting Attorney's Office should be recused- The Court of Appeals never reviewed this issue, that is not moot, because it could lead to effective relief of King County's recusal.

Initially, King County Prosecutors had agreed to their recusal, only to later renege on the agreement. They continued to prosecute me even when I moved the trial to Walla Walla county, which I had thought to be a proper venue, however, it later turned out not to be. From this renege, to the excessive one million dollar bail, to the late disclosure and non-disclosure of exculpatory evidence regarding the audio recording (bugging) that proved their informant Billy Temple committed perjury, and all the other many acts of misconduct by King County Prosecuting Attorney's Office, it is conclusive that they cannot act impartially. Thus, they must be recused from having anything more to do with this case. For these reasons I ask that this Court recuse King County Prosecuting Attorney's Office from having anything further to do with prosecuting this case.

See also, PRP, pgs. 64-70; Reply to State's Response (PRP), pgs. 22-23; and Appellant's Opening Brief, pgs. 40-47.

• J.) Trial Judge exhibited bias- The Court of Appeals never reviewed this issue, that is not moot, that could

lead to the effective relief of disqualifying this judge.

Because the trial judge M. Scott Wolfram exhibited bias as shown from the many instances of an apparent bias and the one instance of actual bias, I would ask under the appearance of fairness that he be disqualified from anything further to do with this case. Alternately, this Court could order the new trial be moved to a proper county, which I would ask for it to be moved to Mason County, where the allegations of threats stem from. This would in effect preclude Judge Wolfram from presiding over the case. Therefore, I ask that this Court please disqualify Judge Wolfram or order the trial to be held in a proper venue to which I agree upon, such as Mason county.

See also, SAG, pgs. 35-46; and Motion for Reconsideration, pgs. 15-17.

• **K.) Sentencing aggravators applied in err** – The Court of Appeals never reviewed this issue, that is not moot. While my attorney argued against one of the two aggravators the State used against me, I argued against the other. The Court however, did not review either one. I now ask that this Court please review both of them.

Both of the sentencing aggravators the State used were applied in err. They both encompassed elements

already present in the harassment statute. Further, the egregious lack of remorse aggravator is to apply to facts and circumstances contained within the current offense not prior offenses. Therefore both aggravators were erroneously applied, and I would ask that this Court please bar the State from using them in a new trial.

See also, SAG, pgs. 29-35; and Appellant's Opening Brief, pgs. 54-65.

V. Petitioner's Oath

I declare under penalty of perjury of the laws of the State of Washington that the information contained in this petition is true and correct to the best of my knowledge and abilities and has been executed on this 5th day of May, 2021 at Coyote Ridge Corrections Center in the county of Franklin, city of Connell, and the state of Washington.

Sloan P. Stanley

Sloan P. Stanley, DOC # 386799

VI. Conclusion

For the reasons set forth in this petition, the Petitioner respectfully requests that this Court grant review of the issues presented and to ultimately provide the Petitioner with the relief he seeks.

Respectfully submitted,

05/05/2021 Sloan P. Stanley

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FILED
APRIL 15, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON, Respondent, v. SLOAN PATRICK STANLEY, Appellant.	)	No. 36432-1-III (consolidated with No. 37546-3-III) UNPUBLISHED OPINION
In the Matter of the Personal Restraint of: SLOAN PATRICK STANLEY, Petitioner.	)	

LAWRENCE-BERREY, J. — Sloan Stanley appeals his convictions of five counts of felony harassment and one count of intimidating a judge. He also appeals his exceptional sentence of 402 months, which was more than five times the mid-point of his standard range sentence.

Stanley raises several arguments on direct review, by way of a statement of additional grounds for review and by way of a personal restraint petition. Many of his arguments are made moot by our decision to reverse and remand for a new trial.

We conclude the trial court violated Stanley's constitutional right to present a defense by excluding highly relevant evidence despite the evidence having little or no ability to disrupt the fairness of the fact-finding process. Because sufficient evidence supported all of Stanley's convictions, we conclude that remand, not dismissal, is the appropriate remedy.

We exercise our discretion to address an issue raised on appeal that will have a significant impact on retrial. We conclude the trial court did not abuse its discretion by allowing four women to testify thoroughly about the reasonableness of their fear, including allowing them to read to the jury old e-mails that Stanley sent them.

Finally, we dismiss his personal restraint petition.

BACKGROUND

In 2015, a jury found Stanley guilty of multiple counts of felony cyberstalking four women. King County Judge Jeffrey Ramsdell imposed a drug offender sentencing alternative (DOSA) sentence of 25 months and released Stanley on community supervision.[1] His conditions of supervision included seeking treatment, not using social media, and not contacting or attempting to contact any of the victims directly or

[1] At the time of sentencing, Stanley had already served 12.5 months.

indirectly. Within a few months, Stanley violated his DOSA by using Facebook to contact a bartender who worked with one of the victims.

While being transported to serve his sentence, Stanley met another inmate who recently violated his DOSA, Randy Burleson. Burleson and Stanley were celled together for 12 days. During that time, Stanley and Burleson talked about why their DOSAs were revoked. According to Burleson's later statements to investigators, Stanley was very angry with the criminal justice system and repeatedly threatened to kill several people involved in his 2015 trial.

About one year later, Detective Rande Christiansen of the Seattle Police Department learned that Burleson claimed Stanley had repeatedly threatened to kill several people involved in his 2015 trial. Detective Christiansen, who had been involved in the 2015 case, interviewed Burleson. Based on this interview, the State placed a confidential informant, Billy Temple, in Stanley's cell to see if he would continue making threats. Soon after, the State obtained an order allowing it to audio record the conversations in Stanley's cell.

Detective Christiansen, in the probable cause statement leading to the charges in this case, referred to several discussions he and other investigators had with Temple. In that statement, Temple said Stanley talked about his plans to "'get'" or "'handle'"

several persons involved in his 2015 case, talked about having a gun somewhere in Mukilteo where he would soon be released, and said something to the effect of, "'Those bitches should fear me,'" and "'I can't let [t]his go.'" Clerk's Papers (CP) at 2-3.

PROCEDURE

The State charged Stanley with seven counts of felony harassment and one count of intimidating a judge. The State alleged the "egregious lack of remorse" aggravator with respect to each of the four victims not associated with the criminal justice system, and alleged the "retaliation of a public official's performance" of official duty aggravator with respect to each of the public official victims.

Stanley promptly requested the audio surveillance from when he and Temple shared a cell, believing it would exonerate him. Stanley initially received only 30 hours of the recordings. He advised the court they contained nothing incriminating, proved his innocence, and said if the remaining 144 hours of recordings contained incriminating evidence, he was sure the State would have released them.

The State offered to resolve Stanley's case through a stipulated order of continuance, meaning eventual dismissal of charges if Stanley complied with agreed conditions. Stanley rejected the offer, electing for a trial to prove his innocence. The charges were brought in King County, but Stanley moved to transfer venue to Walla

Walla County and to recuse the King County Prosecutor's Office (KCPO). Whether by court order or agreement, the case was transferred to Walla Walla County.

Walla Walla County appointed Gary Ernsdorff, a King County deputy prosecutor, to prosecute Stanley. Stanley again moved to recuse the KCPO from the case. The court denied the motion.

In July 2018, the court set a trial date of September 5-13, 2018. On August 22, the State disclosed its witness list and omitted Temple, its informant. The next day, Stanley disclosed his witness list and listed Temple. When the State asked what Temple would be called to testify about, Stanley directed the State to hour 22 of the surveillance recordings.

On August 24, the State informed Stanley it would seek to admit Stanley's e-mails to the four female victims from his 2015 trial. In response, Stanley moved to stipulate to the element of reasonable fear with respect to those four women, arguing that the old e-mails should be barred under ER 404(b). The State submitted a summary of the facts relevant to each of the victims' reasonable fear. It asked that each victim be able to testify to her history with Stanley, and explain the prior threats—including some of the threatening messages—that led to his 2015 convictions.

The court denied Stanley's motion, finding the evidence admissible under ER 404(b) to prove the victims were reasonably afraid of Stanley's current charged threats. Its findings and conclusions read, in part:

> The Court finds that this evidence of prior acts is relevant for the specific purpose of proving the reasonable fear of each of the charged victims.
>
> The Court finds that the information is relevant to prove a necessary element of the crimes for which the defendant has been charged.
>
> The Court conducted an ER 403 balancing test and finds that the probative value of the evidence is not substantially outweighed by its prejudicial effect. . . . [I]n balancing the two, the Court finds that the evidence is not unfairly prejudicial. In weighing the two, the Court found that it was more probative than prejudicial. The Court will also issue any requested limiting instruction to further mitigate any prejudicial effect.

CP at 96.

On September 5, the State filed an amended information. The new information dismissed two charges of felony harassment and added a new felony harassment charge. It included six counts of felony harassment—the four earlier asserted involving the female victims in the 2015 trial, the one earlier asserted involving the King County deputy prosecutor, and a new charge involving Judge Ramsdell. The seventh count reiterated the prior intimidating a judge charge involving Judge Ramsdell.

TRIAL

Randy Burleson's testimony

Stanley told Burleson his DOSA was revoked when he tried to contact one of the witnesses from his trial. Stanley was angry about the witnesses testifying against him. He would grow agitated when talking about "how he wanted to kill these three girls, a judge and a prosecutor." 2 Report of Proceedings (RP) (Sept. 10, 2018) at 215.

The State asked Burleson whether he had heard other inmates say they would like to kill people. Burleson answered yes. Burleson could not always tell whether inmates actually intended to do the things they said, but with Stanley he testified: "I feel without a doubt that he meant every word he said." 2 RP (Sept. 10, 2018) at 216. When asked what Stanley said about the women, the judge, and the prosecutor, Burleson answered, "He wanted to fucking kill them. . . . That's his language." 2 RP (Sept. 10, 2018) at 217. He said this multiple times throughout multiple days. Burleson described Stanley's behavior as "craziness." 2 RP (Sept. 10, 2018) at 218.

When the State clarified whether Stanley talked about the women who testified against him at his trial, Burleson said, "Yeah. There were three witnesses. And one—one of the women witnesses is one that they—why they revoked his DOSA. . . . He wanted to kill them." 2 RP (Sept. 10, 2018) at 218.

The State then asked Burleson about the prosecutor from Stanley's 2015 case:

> [THE STATE:] So—And so what was the prosecutor doing with Mr. Stanley that made him mad at the prosecutor?
> [BURLESON:] I think Stanley was quoting some—some law and they were kind of just, I think, overlooking it in his eyes because he wasn't a real attorney, I'm thinking.
> [THE STATE:] And so did that make Mr. Stanley mad, what—
> [BURLESON:] Yeah.
> [THE STATE:] —what you could observe?
> [BURLESON:] That made him very mad, yes.
> [THE STATE:] What did he say he wanted to do to the prosecutor?
> [BURLESON:] He wanted to kill him.
> [THE STATE:] Did he describe how?
> [BURLESON:] Well, there was a couple of times where he made a—a gesture on what he'd just like to kill him. . . .
> . . . .
> [BURLESON:] A shooting stance, yes.

2 RP (Sept. 10, 2018) at 223. Stanley talked about a specific gun he owned that his grandfather made. Burleson said Stanley made at least 20 threats in the 12 days they were in the same cell. He did not mind being housed with Stanley at first, but he became more and more uncomfortable as Stanley's anger intensified. He described how Stanley seemed unstable and would go from 0 to 100 and back down. When asked whether he had ever felt like that before, Burleson said he had not. Burleson described how Stanley seemed to feel it was his "destiny" to kill the witnesses, judge, and prosecutor and that he felt "justified" and would have "his final satisfaction" in doing so. 2 RP (Sept. 10, 2018) at 230.

On cross-examination, the defense pressed Burleson on whether he knew anything more specific about the women Stanley allegedly threatened. Burleson stated he did not know much about Stanley's prior case. Burleson admitted that he committed numerous crimes in his life, some of which involved dishonesty. He said people who commit crimes are deceitful in some way, but that he was there testifying "because of what [Stanley] said." 2 RP (Sept. 10, 2018) at 237-38.

Prosecutor Wesley Brenner's testimony

The State called Wesley Brenner, the King County deputy prosecuting attorney who tried Stanley's 2015 case. Brenner testified to his experience in the prosecutor's office working with violent crimes, juvenile matters, domestic violence, and stalking. Brenner discussed how he was assigned to the case, and that he was "probably the first attorney to realize the scope of what had been done." 2 RP (Sept. 10, 2018) at 299-300. Brenner knew Stanley from the trial and had spoken with him on the phone after Stanley decided to represent himself. When Brenner learned of the threats he said, "I was shocked and I was afraid." 2 RP (Sept. 10, 2018) at 302. Brenner had been threatened by defendants before, but Stanley's threats were different in his mind because they sounded more like a plan. He explained:

> But I think the biggest reason was just because of the previous interactions I had with Mr. Stanley. The rage that I had seen him show toward the victims, towards the judge, towards myself. The obsessive behavior that I had seen him exhibit over four years of constant emails and Facebook messages to the women involved.
>
> And, yeah, just the ideation of violence and suicidal behavior that he described in his—in his—in those messages.

2 RP (Sept. 10, 2018) at 304. Brenner was concerned that Stanley had taken steps to find out the witnesses had moved, when their purpose for doing so was "to have some distance from this." 2 RP (Sept. 10, 2018) at 306. To Brenner, the threat "sounded believable because it was similar things that [Stanley] had said before in the past." 2 RP (Sept. 10, 2018) at 306. Defense counsel objected on grounds of relevancy, which the court overruled. Brenner also knew Stanley was originally from Idaho, he was concerned about losing his right to possess a firearm during his last trial, and he may have access to firearms in Idaho. Brenner noted that Stanley's behavior leading up to his trial "had been getting progressively worse" and "it sounded like there was a good chance he was going to take these steps to come after me and the other victims." 2 RP (Sept. 10, 2018) at 308.

Brenner described his relationship with Stanley as "very professional" until they disagreed about something. 2 RP (Sept. 10, 2018) at 309. Then "it would be like a light switch. . . . [J]ust an outburst of temper. He'd start yelling at me. Often he'd . . . scream at me and hang up the phone. . . . He called the women liars and a lot of worse things

than that as well." 2 RP (Sept. 10, 2018) at 309. Brenner then gave examples of the language Stanley used.

Brenner explained that after Stanley's sentencing he monitored Stanley because he was "concerned about what he might do when—when he was released even before I heard the threats." 2 RP (Sept. 10, 2018) at 315. Brenner had not done that before. After he learned of Stanley's revocation and subsequent threats from jail, he shopped for a home security system and left the criminal section of the prosecutor's office.

On cross-examination, Brenner acknowledged that Stanley had never threatened him nor had Stanley directly contacted him since the 2015 trial. He only learned of Stanley's threats from Detective Christiansen.

2015 cyberstalking victims' testimonies

Alyson Gray, Miriam Much, Elizabeth Bell,[2] and Leah Mesford, the victims of Stanley's 2015 cyberstalking convictions, testified at trial. Before they testified, Stanley again offered to stipulate to their reasonable fear. He argued the testimony would amount to a retrial of his prior convictions and would prejudicially influence the jury. The State argued the testimony about Stanley's prior conduct was relevant to the "reasonable fear"

[2] Ms. Bell married and changed her surname following the 2015 trial. In that proceeding she was Elizabeth Williams.

element in his felony harassment charges. The court denied Stanley's offer, allowing the victims' testimony and admitting the messages into evidence that formed the basis of the 2015 trial.

The women testified they met Stanley at a local bar around 2010 where one of them worked as a bartender. They were not friends with Stanley, had not exchanged contact information, and had never made plans to meet him at the bar or elsewhere. The State asked them to describe, in detail, what they remembered about the messages that resulted in Stanley's cyberstalking convictions. Ms. Gray remembered, "He . . . wrote things like painting with my blood on the walls and, you know, hunting us down . . . ." 2 RP (Sept. 10, 2018) at 253. She said, "I just did my best to wipe myself off of the Internet so he hopefully couldn't find me" because "I felt like my life was in danger." 2 RP (Sept. 10, 2018) at 253-54. She described some of the e-mails as "rambling" or "professing, like, love and romantic and sexual interests" but "most of them were threatening." 2 RP (Sept. 10, 2018) at 263. Ms. Much said, "I will never forget him saying that the blood will spill from the bitches who have wronged him," and that "he's never going to give it up." 3 RP (Sept. 11, 2018) at 426-27. Ms. Bell remembered: "All of the messages about, I hope you die or I hope someone shoots you are haunting." 3 RP (Sept. 12, 2018) at 498. Ms. Mesford said the messages were "too scary to read and let

sink in" and that she tried to "disassociate with it because it's so severe it's hard for me to process the content." 3 RP (Sept. 12, 2018) at 530.

The prosecutor asked each victim to read aloud several of the most violent messages they received from Stanley. Ms. Gray read from seven separate messages where Stanley said things like, "I will fucking kill you, you worthless, fucking whore." 2 RP (Sept. 10, 2018) at 265. Each of the other victims read aloud to the jury several similarly violent, threatening, and offensive messages. Copies of these messages were also admitted into evidence.

The State asked the victims about the fear Stanley instilled in them, including what steps they each took to protect themselves. It also asked how they reacted when they heard about Stanley's alleged threats from prison. Ms. Gray testified that her fear had never decreased: "In a way I'm even more nervous because obviously his fixation and his obsession has continued." 2 RP (Sept. 10, 2018) at 268. She was not surprised Stanley had been making threats from prison, because "[t]hose were the messages that he engrained in my memory over years and years and years and that was the same language I had come to expect from him." 2 RP (Sept. 10, 2018) at 270. The following exchange took place:

> [THE STATE:] Is there anything that struck you about the language?
>
> [MS. GRAY:] The fact that he said he had hidden a gun and that he was planning to find us and kill us.
>
> I mean, it was along the same lines of what he had sent me before and—Yes, I was familiar with the kind of language he had used in the past and it sounded along those same lines.
>
> [THE STATE:] From your experience it sounded like the words Mr. Stanley would use?
>
> [MS. GRAY:] Yes.
>
> [THE STATE:] Do you believe those words?
>
> [MS. GRAY:] I—I mean, yeah. I'm—I'm—Sadly, that is the kind of language that I expect from him. Those are the same kinds of threats he would use towards me repeatedly.

2 RP (Sept. 10, 2018) at 272. The State asked Ms. Bell whether the recent threats were "similar to things he said" in the past, and Ms. Bell answered, "Very, but years later." 3 RP (Sept. 12, 2018) at 509. Ms. Mesford said she was afraid when she heard about the threats "[b]ecause like I said, I knew in my heart that he wasn't going to let this go and that just proved to me that my thoughts were right." 3 RP (Sept. 12, 2018) at 525. The defense objected to the prior case being brought up, which the court overruled. Ms. Mesford continued: "I was a little bit afraid to be back in my home state . . . [b]ecause he's unpredictable and he has not made any moves to let go of harassing and threatening me and my life." 3 RP (Sept. 12, 2018) at 528.

On cross-examination, the defense asked the victims to read other messages from Stanley, where he expressed sadness, suicidal thoughts, and asked for help or clarity.

Ms. Gray read one message where Stanley asked: "How much pain do you want to cause me?" and "Why can't you do something?" 2 RP (Sept. 10, 2018) at 281-82. Ms. Bell acknowledged that his talk of self-harm "kind of pulled on my heart strings of feeling bad for him, while simultaneously being scared of him that he seems really mentally unstable." 3 RP (Sept. 12, 2018) at 510. None of the women had been contacted by Stanley at any time following the 2015 trial. They learned of the prison threats from Detective Christiansen.

Detective Christiansen's testimony

Detective Christiansen described the events leading up to the current charges. After Stanley was back in jail, Christiansen received "[i]nformation that was passed along from various agencies to myself that Mr. Stanley was making threats again towards the women." 2 RP (Sept. 10, 2018) at 339. This information came from Burleson, who Christiansen then interviewed. Following the interview, the State placed a recording device and an informant, Billy Temple, in Stanley's cell. When the State asked Christiansen what was on the recording, the defense objected: "The jury is going to hear that recording."[3] 2 RP (Sept. 10, 2018) at 347. The State rephrased, and the following

[3] As explained below, the jury did not hear the recording. Christiansen's testimony is all the information the jury received about the time Stanley and Temple were celled together.

exchange took place:

> [THE STATE:] The parts you listened to, did you hear any threats made by Mr. Stanley?
> [CHRISTIANSEN:] No.
> [THE STATE:] Did you hear any conversation that was of interest to your investigation or any statements made by Mr. Stanley that were of interest to your investigation?
> [CHRISTIANSEN:] Yes.
> [THE STATE:] What was that?
> [CHRISTIANSEN:] He talked about his firearm, that when he gets out. He talked about that he was very angry with the system, wanted to get back at, you know, them. His quote was, I want to handle them. He was talking about the—the judge and everybody.
> [THE STATE:] But no—no threats of bodily harm to them?
> [CHRISTIANSEN:] No.

2 RP (Sept. 10, 2018) at 347. Christiansen also said the tape contained conversations about Stanley's grandfather's gun, but no specifics were mentioned.

On cross-examination, the defense asked whether the informant was placed because of Burleson's "distinct lack of credibility." 2 RP (Sept. 10, 2018) at 357. Christiansen said he found Burleson very credible. On redirect, Christiansen elaborated about Burleson:

> So listening to him, his story—like I said, I didn't have preconceived ideas about him, but him coming forward and me asking him basically, what do you want out of this? Nothing. You know, doesn't want money, doesn't want good time behavior, doesn't want anything. He said he had only a few more months to be in prison and basically said he could—he was so used to it, it doesn't make a difference to get out any earlier type of thing. He

> didn't want anything. He just wanted these people not be killed. I felt that was why he was very credible when I talked to him.

2 RP (Sept. 10, 2018) at 360. On recross-examination, the defense asked Christiansen whether the affidavit he submitted with the prosecutor's office was based on Burleson's distinct lack of credibility, to which Christiansen said yes. He explained: "There would be questions whether a person that's been in prison is always going to tell the truth later on." 2 RP (Sept. 10, 2018) at 363.

Exclusion of Billy Temple's testimony

During trial, the State notified Stanley it would object to the testimonies of Temple and Brian Delano, an inmate acquaintance of Stanley's. Stanley promptly brought the issue before the trial court, and the parties debated the admissibility and relevancy of Delano's and Temple's testimonies.

The trial court asked Stanley the purpose of Delano's and Temple's testimonies. Stanley explained the purpose was to rebut Burleson's testimony that he repeatedly threatened to kill the persons involved in his 2015 trial. Burleson's testimony had spanned a 12-day period when he and Stanley had shared a cell. Delano would testify that he spent a lot of time with Stanley around that same time and never heard Stanley threaten anyone. Instead, Delano would testify that Stanley was frustrated that he did not get a fair trial and was focused on his appeal. Temple, who spent about one week in a

cell with Stanley one year later, would testify similarly. That is, Temple would testify that Stanley did not make threats against the prior trial participants, but instead felt he did not get a fair trial and was focused on his appeal. Stanley asserted that his statements to Temple were particularly important to his defense because they could be verified—they were recorded (unbeknownst to him) by the State. Stanley argued that his statements to Delano and Temple were admissible under ER 803(a)(3) to show his "then existing state of mind . . . such as intent, plan, motive, design, [and] mental feeling." 3 RP (Sept. 11, 2018) at 460.

The State argued that the statements constituted self-serving hearsay. It especially objected to Stanley's statements to Temple, which it argued were irrelevant because they were made too long after Stanley's statements (to Burleson) that formed the bases of the State's charges.

Stanley had a two-fold response. First, his later statements to Temple showed his intent closer to the time when he would be released. Second, he emphasized that his statements to Delano and Temple were consistent and if the jury believed he made these harmless statements, this significantly undercut Burleson's testimony.

The trial court permitted Delano to testify but not Temple. With respect to Temple, the trial court described the statements as "self-serving hearsay, which was one

year post Mr. Burleson's statements . . . not under the stress or the excitement . . . after the incident." 3 RP (Sept. 12, 2018) at 480.

Delano's testimony

Delano testified he knew Stanley and Burleson from their time in the Washington State Corrections Center. Burleson introduced Stanley to Delano out on the yard, which was a form of vouching for him. The defense asked Delano whether Stanley ever exhibited threatening outbursts when they were together, and Delano said no. Delano and Stanley were friends who exercised, went to the chapel service, and walked the yard together. Delano said Stanley did not frequently talk about his case, but he knew Stanley felt the system had let him down. Delano explained, "one of the reasons I liked to hang out with Mr. Stanley is because the conversation wasn't normal prison conversation, which is discussing cases, discussing who you are going to victimize next, discussing . . . how you are going to get over on the system." 3 RP (Sept. 12, 2018) at 589. Delano said Stanley did not act irrationally and, if he had, Delano would not have wanted to get to know him.

Stanley's testimony

Stanley explained he was upset that his DOSA was revoked for his first violation because he knew other people who had many more violations without revocation. He

talked to Burleson about that and how he was mad at the hearings officers. Stanley also told Burleson about his life: where he was from, his mother, and his grandfather. Stanley was upset with the overall procedure of his 2015 trial and felt evidence had been unfairly excluded. When the State asked whether he was upset with the prosecutor, Stanley said: "Not him himself, no." 4 RP (Sept. 12, 2018) at 621. He explained, "I don't think it was fair. It's not like I had anything against him. I know he's doing his job. He's trying to win." 4 RP (Sept. 12, 2018) at 621. He said he disagreed with Judge Ramsdell on some of his rulings, and although they "battled" and "butted heads" in the courtroom, he respected him. 4 RP (Sept. 12, 2018) at 621-22. He also said no single witness in his 2015 trial was "central." 4 RP (Sept. 12, 2018) at 624.

State's closing argument

The State reiterated how terrified the women, Brenner, and Judge Ramsdell were when they learned of Stanley's threats. It discussed Burleson's testimony: "One guy made him believe that he would make good on the idle threats that you hear in prison, one guy, Sloan Stanley." 4 RP (Sept. 13, 2018) at 671. The State emphasized how Burleson broke the convict code to testify against Stanley, when breaking the code "could be dangerous, it could be deadly." 4 RP (Sept. 13, 2018) at 672. It reiterated that Burleson

got no benefit, and "he came in here at his own personal peril." 4 RP (Sept. 13, 2018) at 673. The State then talked about the credibility of the threats:

> [THE STATE]: . . . When [the victims] heard the threats, why were they afraid? Because the words sounded like Mr. Stanley. They sounded like things—
>
> [THE DEFENSE]: And, your Honor—
>
> [THE STATE]: —they heard before.
>
> [THE DEFENSE]: —I'm going to object here. The State—the State is moving to essentially not follow the law in this portion of the statement. The jury has a limiting instruction saying that what was admitted from the prior trial only goes to the issue of reasonable fear, not to a propensity to convict of this crime.
>
> [THE STATE]: Part of their reasonable fear, they told you their reasonable fear was based on the consistency of the language in the current threats. They heard in those threats many of the things they heard before and it made them afraid. Every one of them came in and told you about how those threats rang true to them and made them—gave them that reasonable fear.
>
> Mr. Burleson, if he was making up threats, could have said a lot of things, but what he said, made them reasonably afraid.
>
> You can put your confidence, when you do the analysis of Randy Burleson's credibility . . . when you look at what he said and how it was corroborated by the other witnesses, you will know that it wasn't ninety-five percent true. What he said that without motivation, without really knowing this person, without getting anything, without having a motive to lie against Mr. Stanley, without having any other motivation except trying to do the right thing, trying to prevent a tragedy, you will know you can trust a hundred percent, not just the ninety-five.

4 RP (Sept. 13, 2018) at 676-77.

Jury verdict, posttrial motions, and sentencing

On September 13, 2018, the jury found Stanley guilty of six counts of felony harassment and one count of intimidating a judge. It also found Stanley demonstrated an egregious lack of remorse in the conduct constituting counts 1 through 4 of felony harassment. It further found Stanley committed felony harassment against the prosecutor and intimidated the judge in retaliation for their performance as officers of the court. The State requested an exceptional sentence based on the jury's findings of these aggravating factors.

On September 20, 2018, Stanley filed five pro se motions with the court. He moved to dismiss count 7, intimidating a judge, for lack of evidence. He also requested a new trial, asked the court to overrule the judgment notwithstanding the verdict, and sought dismissal pursuant to CrR 8.3. Stanley submitted a letter to a different prosecutor alleging—among other things—the State's witnesses committed perjury during his trial and asked the State to prosecute them. On October 15, 2018, Stanley requested the court compel his attorney to help with his five motions. On October 31, 2018, he filed another motion to dismiss count 7 and aggravating factors for counts 5 and 6. The State responded that Stanley's motions were meritless and should be denied.

The court set a hearing on Stanley's motions for November 7, 2018. At the hearing, the court vacated count 6 on grounds of double jeopardy. It then imposed an exceptional sentence of 60 months on counts 1 through 5 and 102 months on count 7, running consecutive, for a total term of 402 months of incarceration.

Stanley appealed and later filed a personal restraint petition.

ANALYSIS

A. FAIR TRIAL RIGHT TO PRESENT A DEFENSE

Stanley contends the trial court violated his constitutional right to present a defense by prohibiting him from calling Billy Temple as a witness and excluding the audio surveillance from when he and Temple shared a cell. We agree.

The right of the accused to defend against the State's accusations is guaranteed by the federal and state constitutions. U.S. CONST. amend. VI, XIV; CONST. art. I, §§ 3, 22; *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973); *State v. Hudlow*, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983). The right to present a defense is "a fundamental element of due process of law." *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).

We apply a two-step review to a defendant's claim that an evidentiary ruling violated his or her right to present a defense under the Sixth Amendment to the United

States Constitution. *State v. Arndt*, 194 Wn.2d 784, 797-98, 453 P.3d 696 (2019). We review the trial court's evidentiary ruling for abuse of discretion. *State v. Clark*, 187 Wn.2d 641, 648, 389 P.3d 462 (2017). Then, "[i]f the court excluded relevant defense evidence, we determine as a matter of law whether the exclusion violated the constitutional right to present a defense." *Id.* at 648-49.

The trial court abused its discretion by misapplying the law

At trial, Stanley argued his statements were admissible under ER 803(a)(3). Under that rule, a declarant's then existing mental state is not hearsay and is admissible to show intent or plan.

The State sought to establish that Stanley intended or planned to harm or kill six different persons. It did this through one witness—Burleson. Stanley sought to rebut Burleson's testimony by establishing that Burleson was lying and that Stanley never intended or planned to harm or kill the prior trial participants. He wanted to do this through two witnesses. The first witness, Delano, spent time with Stanley during the same time Burleson did. Delano testified that Stanley did not believe he received a fair trial but was not bitter toward any participant. The second witness, Temple, spent one week with Stanley one year later. Temple's testimony would be similar to Delano's. The obvious advantage of calling Temple was that he was the *State's* informant. In addition,

Temple prodded Stanley about his 2015 trial, yet Stanley—not knowing his conversations were being recorded—did not make threats against persons involved in that trial. The fact that Temple's testimony would be similar to Delano's served to bolster Delano's testimony and undermine Burleson's.

In addition, if the jury believed both Burleson and Temple, it might find that the fear of the alleged victims was not reasonable. When Stanley made his statements to Burleson, Stanley was several months from release and posed no immediate threat to the alleged victims. If the jury heard the later audio recordings and believed that Stanley, nearing the time of his release, had resolved to address his concerns through an appeal rather than through violence, the jury might acquit Stanley. Defense counsel hinted at this when she argued that Stanley's state of mind as he neared release was highly relevant.

A trial court abuses its discretion by misapplying the law. *State v. Pavlik*, 165 Wn. App. 645, 650-51, 268 P.3d 986 (2011). Here, the trial court abused its discretion by focusing on the wrong hearsay exception—excited utterance.

The error violated Stanley's right to a fair trial

The right to present a defense is intended to ensure "fairness and reliability in the ascertainment of guilt and innocence." *Chambers*, 410 U.S. at 302. This includes the

right to present the defendant's version of the facts. *Taylor v. Illinois*, 484 U.S. 400, 408-09, 108 S. Ct. 646, 98 L. Ed. 2d 798 (1988).

If evidence proffered by the defense is relevant, "the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial." *State v. Darden*, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002). Below and on appeal, the State has not argued the proffered evidence would disrupt the trial process. Rather, it argued and still argues that the evidence was not relevant. As explained above, we disagree. It was very relevant to Stanley's defense.[4]

Where the right to present a defense is not absolutely denied, such as here, we will not reverse if the State proves the error was harmless beyond a reasonable doubt. *State v. Coristine*, 177 Wn.2d 370, 380 n.1, 300 P.3d 400 (2013). The State argues this standard is met because Detective Christiansen testified about Stanley's statements to Temple.

The detective said that he reviewed some of the recordings. He testified, somewhat inconsistently, that Stanley threatened to get certain persons and spoke about a

[4] In addition to the reasons discussed above for why Temple's testimony would be relevant, the State opened the door to Temple testifying. It did this by having Detective Christiansen testify that Stanley told Temple he would get a gun and "handle them," referring to the judge and everybody. 2 RP (Sept. 10, 2018) at 347; *see State v. Jones*, 144 Wn. App. 284, 298, 183 P.3d 307 (2008) (irrelevant evidence may be made relevant when the other party opens the door to it).

gun, yet he did not physically threaten anyone. This ambiguous testimony significantly differed from how Temple would testify. According to Stanley's offer of proof, Temple would testify that Stanley did not threaten the 2015 trial participants. We conclude that the trial court's error was not harmless beyond a reasonable doubt.

B. SUFFICIENCY OF EVIDENCE CHALLENGES

Stanley challenges the sufficiency of the evidence by raising two arguments that implicate core First Amendment rights. If, on appeal, he wins these arguments, constitutional double jeopardy principles require these charges to be dismissed rather than retried. *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996). We, therefore, must review these arguments.

For a challenge to the sufficiency of the evidence that implicates core First Amendment rights, it is not enough to engage in the usual process of assessing whether there is sufficient evidence in the record to support the verdict. *State v. Kilburn*, 151 Wn.2d 36, 49, 84 P.3d 1215 (2004). Rather, the "rule of independent review" requires an appellate court to freshly examine "crucial facts" that bear on the constitutional question. *Id.* at 52.

Felony harassment

Stanley contends the State produced insufficient evidence that the alleged threats were made against all four female victims from the 2015 trial. He argues Burleson's allegations and testimony were too vague to support the four convictions under the felony harassment statute. We disagree.

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A sufficiency of the evidence challenge admits the truth of the State's evidence and all reasonable inferences drawn therefrom. *Id.* "Circumstantial evidence and direct evidence carry equal weight when reviewed by an appellate court." *State v. Trey M.*, 186 Wn.2d 884, 905, 383 P.3d 474 (2016). We defer to the fact finder on credibility issues, conflicting testimony, and persuasiveness of the evidence. *State v. Rodriquez*, 187 Wn. App. 922, 930, 352 P.3d 200 (2015).

A person is guilty of harassment if "the person knowingly threatens . . . [t]o cause bodily injury immediately or in the future to the person threatened . . . [and] . . . [t]he person by words or conduct places the person threatened in reasonable fear that the threat will be carried out." RCW 9A.46.020(1)(a)(i), (b). This statute criminalizes pure speech

and therefore must comport with the First Amendment. *Watts v. United States*, 394 U.S. 705, 707, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969). However, certain categories of speech, such as "true threats," are not protected by the First Amendment. *Kilburn*, 151 Wn.2d at 43; *State v. Williams*, 144 Wn.2d 197, 207-08, 26 P.3d 890 (2001). The harassment statute prohibits true threats. *Williams*, 144 Wn.2d at 208.

When determining whether the speech is a "true threat," we conduct an independent review of the record "'so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Kilburn*, 151 Wn.2d at 50 (internal quotation marks omitted) (quoting *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 508, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984)). This so-called rule of independent review "is limited to review of those 'crucial' facts that necessarily involve the legal determination whether the speech is unprotected." *Id.* at 52.

Stanley argues the rule of independent review applies here because his sufficiency challenge implicates the First Amendment. Although the harassment statute criminalizes pure speech, Stanley does not argue his threats were not "true threats." Instead, he argues the State brought insufficient evidence supporting the *identity* of the victims. The heightened standard does not apply because we are not examining whether the speech was

unprotected. As stated earlier, we review the evidence in the light most favorable to the State and accept the State's evidence as true. *Salinas*, 119 Wn.2d at 201.

The State's evidence supports felony harassment convictions against all four of the female victims from the 2015 trial. Burleson testified that Stanley threatened *three women*, the judge, and the prosecutor from his prior trial. Yet Burleson never testified which three and the inference was that Stanley harbored hate toward all of the women who had testified against him. All four women who were victims in the 2015 trial also testified at the present trial. Viewing the evidence and all inferences in the light most favorable to the State, a jury could reasonably find that Burleson meant all female victims and mistakenly believed there were three rather than four of them. We conclude the State presented sufficient evidence to sustain all five felony harassment verdicts.

Intimidating a Judge

Stanley argues his intimidating a judge conviction cannot stand because the statute criminalizes pure speech without a scienter requirement in violation of the First and Fourteenth Amendments. We disagree.

RCW 9A.72.160(1) provides: "A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in any official proceeding." Under RCW 9A.04.110(28)(a), "threat" means "[t]o communicate,

directly or indirectly, the intent . . . [t]o cause bodily injury in the future to the person threatened or to any other person." *See also* RCW 9A.72.160(2)(b).[5] As discussed above, "true threats" are not protected by the First Amendment. *Kilburn*, 151 Wn.2d at 43. "A true threat is a serious threat, not one said in jest, idle talk, or political argument." *Id.* We determine whether speech is a true threat "'in light of the entire context,'" asking "'whether a reasonable person in the defendant's place would foresee that in context the listener would interpret the statement as a serious threat or a joke.'" *Trey M.*, 186 Wn.2d at 894 (quoting *Kilburn*, 151 Wn.2d at 46).

Stanley argues the State is required to show his subjective intent to threaten under *Elonis v. United States*, 575 U.S. 723, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015). In *Elonis*, the defendant was charged under a federal statute criminalizing "'any communication containing any threat . . . to injure the person of another.'" 135 S. Ct. at 2004 (quoting 18 U.S.C. § 875(c)). Elonis challenged his conviction, arguing the jury should have been required to find he intended his communications to be threats. *Id.* at 2007. The Supreme Court explained: "Federal criminal statutes that are silent on the required mental state should be read to include 'only that *mens rea* which is necessary to separate' wrongful

[5] RCW 9A.04.110 has been amended several times. Subsection (28)(a), not (25), now contains the definition of "threat."

from innocent conduct." *Id.* at 2003 (quoting *Carter v. United States*, 530 U.S. 255, 269, 120 S. Ct. 2159, 147 L. Ed. 2d 203 (2000)). The court reasoned, "[h]aving liability turn on whether a 'reasonable person' regards the communication as a threat—regardless of what the defendant thinks—'reduces culpability on the all-important element of the crime to negligence.'" *Id.* at 2011 (quoting *United States v. Jeffries*, 692 F.3d 473, 484 (6th Cir. 2012) (Sutton, J., dubitante)).

Our Supreme Court rejected the argument that *Elonis* requires abandoning Washington's objective-person standard. *Trey M.*, 186 Wn.2d at 908. Trey M. was convicted of felony harassment, which requires the defendant "'knowingly threatens,'" or "'subjectively know[s] that he or she is communicating a threat.'" *Id.* at 895 (quoting RCW 9A.46.020(1)(a); *State v. J.M.*, 144 Wn.2d 472, 481, 28 P.3d 720 (2001)). Thus, unlike the federal statute in *Elonis*, Washington's harassment statute has a mens rea requirement. *Id.* at 897-98. *Elonis* turned on statutory construction—not the First Amendment—and was limited to the federal statute it addressed. *Id.* at 896. Therefore, *Elonis* did not control and the court declined to abandon its established First Amendment precedent.

Stanley distinguishes *Trey M.*, arguing RCW 9A.72.160 contains no mens rea requirement and therefore *Elonis* requires us to read one in. He argues that under *Trey*

M., "the lack of a *mens rea* in the intimidating a judge statute creates the 'gap' *Elonis* requires to be filled." Am. Br. of Appellant at 31. We disagree. "Importantly, *Elonis* did not mandate a scienter requirement for all offenses. Rather, *Elonis* creates a gap-filling rule that stands for the 'presumption' of a scienter requirement when the federal offense is otherwise silent." *Trey M.*, 186 Wn.2d at 897 (internal quotation marks omitted) (quoting *Elonis*, 135 S. Ct. at 2010-11). *Elonis* was a federal statutory construction case; the court did not consider First Amendment issues. 135 S. Ct. at 2012. Thus, Stanley's argument that *Elonis* and the First Amendment require us to read a mens rea requirement into RCW 9A.72.160(1) fails.

We do, however, find the statute already requires an element of conscious wrongdoing by the speaker. The threat must be communicated *because of* an official ruling by the judge threatened. Thus, the statute does not criminalize "idle talk" or "political argument." We agree this statute implies a mens rea requirement above negligence and is therefore consistent with "'the conventional requirement for criminal conduct—*awareness* of some wrongdoing.'" *Elonis*, 135 S. Ct. at 2011 (quoting *Staples v. United States*, 511 U.S. 600, 606-07, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994)). For these reasons, we reject Stanley's sufficiency challenge.

C. EVIDENTIARY ISSUE THAT WILL OCCUR ON REMAND

In the interest of judicial economy, an appellate court may address an issue that is likely to occur following remand if the parties have briefed and argued the issue in detail. *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 716, 911 P.2d 389 (1996). We exercise our discretion and address a central evidentiary issue that will occur on remand and do so to foreclose a future appeal on that issue.

Stanley argues the trial court violated ER 404(b) and ER 403 by allowing the State to introduce evidence of his conduct toward the female victims in his 2015 trial because it was propensity evidence. He further argues the court erred by allowing the e-mails from his 2015 trial to be admitted as substantive evidence. We address each argument in turn.

ER 404(b) bars the admission of evidence of prior bad acts for the purpose of proving a person's character and showing the person acted in conformity with that character. *State v. Gunderson*, 181 Wn.2d 916, 922, 337 P.3d 1090 (2014). This rule seeks to prevent a defendant from being convicted for misconduct not at issue. *See Williams v. New York*, 337 U.S. 241, 247, 69 S. Ct. 1079, 93 L. Ed. 1337 (1949). Evidence of prior bad acts may, however, "'be admissible for any other purpose, depending on its relevance and the balancing of its probative value and danger of unfair prejudice.'" *Gunderson*, 181 Wn.2d at 922 (quoting *State v. Gresham*, 173 Wn.2d 405,

420, 269 P.3d 207 (2012)). When determining whether prior bad acts are admissible, the trial court considers the purpose for which the evidence is sought, its relevancy to an element of the crime charged, and whether its probative value outweighs the danger of unfair prejudice. *State v. Vy Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002). In other words, ER 404(b) implicates ER 403. *Gunderson*, 181 Wn.2d at 923. We review ER 403 rulings for abuse of discretion. *State v. Taylor*, 193 Wn.2d 691, 697, 444 P.3d 1194 (2019). "A trial court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds or reasons." *Id.*

In harassment cases, evidence that the victim knew of the defendant's past violent acts is admissible to prove the victim's reasonable fear. *See State v. Ragin*, 94 Wn. App. 407, 411-12, 972 P.2d 519 (1999). The prior conduct permits the trier of fact to understand the context and better evaluate the reasonableness of the victim's fear. *See id.* at 411 ("If the jury were presented with evidence of [the current threats] alone, it may have believed [the victim] was overreacting."). This reasoning applies here. The details of the old e-mails were highly relevant so a jury could assess the reasonableness of each of the four women's fear upon hearing the prison threats. The greater the fear reasonably caused by the old e-mails, the more likely a prison threat would induce reasonable fear that Stanley would carry out the threat once freed.

Propensity evidence

Stanley argues the trial court erred in allowing the State to intentionally elicit propensity evidence from its witnesses. He points to several moments where the State compared Stanley's 2015 conduct to the current conduct over defense's objections. For example, the State asked Brenner if there was "anything about the . . . alleged threats . . . that didn't sound concerning or accurate?" 2 RP (Sept. 10, 2018) at 306. Brenner responded, "it sounded believable because it was similar things that he had said before in the past." 2 RP (Sept. 10, 2018) at 306. Although the State chose to ask whether the threats seemed "accurate," which did elicit a comparison, the question is clearly directed at understanding Brenner's fear.

The State asked Judge Ramsdell if there was anything "that made you believe that Stanley would continue his behavior even after conviction?" 2 RP (Sept. 11, 2018) at 395. The court overruled defense's propensity objection. The judge answered, "I could only assume that if he doesn't understand what's wrong, he's probably not going to change that behavior." 2 RP (Sept. 11, 2018) at 396. The State continued, "Did that make his threats more real, more concerning, more fearful to you?" 2 RP (Sept. 11, 2018) at 396. The judge said, "Yes, in short." 2 RP (Sept. 11, 2018) at 396. While the State could have been more careful about eliciting propensity evidence, this line of questioning

also spoke directly to Judge Ramsdell's reasonable fear that Stanley would carry out his current threats.

Stanley points to several instances where the victims compared Stanley's prior threats to the current threats during testimony. In those instances, the victims described how Stanley's language in the current threats was similar to his prior threats. The State sought to elicit testimony that the victims' fear was reasonable because Stanley continued acting in a frightening way. Again, the victims' history with Stanley places the threats in context and allows the trier of fact to determine whether their fear was reasonable. The court properly instructed the jury to consider the evidence for the sole purpose of determining whether "the alleged victims could have reasonable fear if the alleged threats were made." CP at 108. We presume the jurors followed the court's instructions. *Diaz v. State*, 175 Wn.2d 457, 474, 285 P.3d 873 (2012).

Substantive evidence

Stanley next contends the trial court erred by admitting the messages from 2015 as substantive evidence. Stanley argued the messages should only be permitted to refresh the witnesses' recollection, but the court disagreed. The witnesses read many of the most offensive messages aloud before they were admitted into evidence. Stanley argues the

probative value of these messages was outweighed by their prejudicial effect. We disagree.

A danger of unfair prejudice exists "'[w]hen evidence is likely to stimulate an emotional response rather than a rational decision . . . .'" *State v. Beadle*, 173 Wn.2d 97, 120, 265 P.3d 863 (2011) (quoting *State v. Powell*, 126 Wn.2d 244, 264, 893 P.2d 615 (1995)). Here, the messages, although graphic, were both highly relevant and potentially unfairly prejudicial. Just as Stanley was entitled to present his best case by having his best evidence considered by the jury, the State also was entitled to have its best interest considered. Our conclusion might be different but for the fact that the details of these e-mails were highly relevant for the State to meet its burden of proof.

Stipulation

Finally, Stanley mentions several times that he offered to stipulate to the element of reasonable fear. "A 'stipulation' is an express waiver that concedes, for purposes of trial, the truth of some alleged fact, with the effect that one party need offer no evidence to prove it and the other is not allowed to disprove it." *State v. Case*, 187 Wn.2d 85, 90, 384 P.3d 1140 (2016). The State is generally not required to accept a defendant's stipulation to an element of the charged crime nor is it precluded from offering evidence on the issue merely because a defendant offers to stipulate. *Taylor*, 193 Wn.2d at 697.

However, when unfair prejudice substantially outweighs the proffered evidence's relevance, ER 403 requires the State to accept the stipulation and the trial court to exclude the proffered evidence. *Id.*

Stanley argued the admission of prior messages would result in a retrial of his previous case and would unfairly prejudice the jury as to the only disputed element at trial—whether the threats were made. Stanley argues that in denying his motion to stipulate, the element of reasonable fear was explored at length and resulted in the comparison of his current charges to his prior conduct. Our Supreme Court addressed a similar issue in *Taylor* and held the defendant's no-contact order admissible in his trial for a felony violation of that order. The court held the trial court did not abuse its discretion or violate ER 403 because the order was closely related to the current charges and is evidence of multiple elements of that offense. *Id.* at 693-94. Here, Stanley's charges were elevated to felony harassment in part because of his prior threats to the victims. Surely this evidence was prejudicial to Stanley, but the victims' testimony was evidence of an element of his current charged offenses. The trial court did not err in denying his motion to stipulate.

D. PERSONAL RESTRAINT PETITION

Stanley raises three issues by way of personal restraint petition (PRP).

He first argues the State violated his due process rights by eliciting false testimony from Burleson and by giving false impressions to the jury multiple times. For the reasons noted in the State's response, these arguments are unpersuasive. Regardless, the relief he would be entitled to is the same relief we have provided by reversing his convictions and remanding for a new trial. For this reason, we need not address his first PRP argument.

He next argues he should have received a *Frank*'s[6] hearing because there were numerous inaccuracies in the certificate of probable cause. Because we are remanding for retrial, he will have the opportunity to make this request on remand.

He lastly argues the State committed outrageous governmental misconduct warranting dismissal and the trial court erroneously denied his CrR 8.3(b) motion. CrR 8.3 governs dismissal of criminal cases at various stages. Relevant here, a court may "dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial." CrR 8.3(b).

[6] *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

The State responds that Stanley cannot raise his CrR 8.3(b) claim postconviction because his criminal prosecution has terminated. We agree.

"A criminal prosecution is no longer ongoing postjudgment and therefore is not subject to dismissal under CrR 8.3(b)." *State v. Basra*, 10 Wn. App. 2d 279, 286, 448 P.3d 107 (2019), *review denied*, 194 Wn.2d 1020, 455 P.3d 133 (2020); *see also State v. Pringle*, 83 Wn.2d 188, 190, 517 P.2d 192 (1973) (holding the "criminal prosecution" terminated upon entry of a guilty plea and order of judgment and sentence).[7]

Stanley argues his CrR 8.3(b) motion is appropriate at this juncture. He cites RCW 10.73.090(3)(b) to argue his judgment is not final until this court rules on his direct appeal, which he has consolidated with his PRP. It is on these grounds that he argues his "PRP is not post-conviction, because there is still an ongoing prosecution." Pet'r's Reply to State's Response at 25. We disagree.

A PRP is a form of postconviction relief regardless of whether it has been consolidated with a direct appeal. That Stanley is in the process of appealing his

[7] Stanley could have sought relief under CrR 7.8, which provides: "On motion and upon such terms as are just, a court may relieve a party from a final judgment, order, or proceeding for . . . misconduct of an adverse party . . . [or a]ny other reason justifying relief from the operation of the judgment." CrR 7.8(b)(3), (5). But he did not present an argument on these grounds.

conviction does not make his prosecution ongoing; his prosecution terminated upon entry of judgment below.

For the reasons noted, we reverse Stanley's convictions, remand for further proceedings consistent with this opinion, and dismiss Stanley's PRP.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, J.

WE CONCUR:

Pennell, C.J.

Siddoway, J.

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CASE # 364321
State of Washington v. Sloan Patrick Stanley
WALLA WALLA CO SUPERIOR COURT No. 171003601
CASE # 375463
In re Personal Restraint Petition of Sloan Patrick Stanley
WALLA WALLA CO SUPERIOR COURT No. 171003601

Counsel:

Enclosed please find a copy of the opinion filed by the Court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or, if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

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