

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION II
NO. 45501-3-II
APPEAL FROM CLALLAM COUNTY NO. 13-1-00248-4

STATE OF WASHINGTON,

Respondent,

vs.

EDWARD STEINER,

Appellant.

BRIEF OF RESPONDENT

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I. Counterstatement of the Issues

ISSUE ONE

When a jury hears evidence of three interactions between Mr. Steiner and Officer Heuett on a single day, including Mr. Steiner's act of breaking two windows, when Mr. Steiner refuses to cooperate with police so that he can be cuffed with a single cuff behind him and a more thorough weapons search can be completed, when the jury hears testimony about how arrestees can escape from cuffs in a police vehicle and assault a police officer, when the jury hears of the incessant and escalating threats made by Mr. Steiner to kill Officer Heuett before they arrived at the jail, and when the jury hears that the officer is aware of prior acts of violence and harassment by Mr. Steiner, the evidence is more than sufficient to permit a reasonable juror to conclude that Officer Heuett could reasonably feel threatened by Mr. Steiner's threats.

ISSUE TWO

When the trial court listened to Officer Heuett's knowledge of Mr. Steiner's assaultive or harassing behavior, when the court limited the testimony to acts of assaultive or harassing behavior the officer had heard of, when the court verified that it was aware that Mr. Steiner had a prior conviction for harassment and when Mr. Steiner never objected at any point to the court's analysis, the record clearly shows the trial court correctly permitted testimony about how a prior incident affected Officer Heuett.

II. Statement of the Case

On July 10, 2013, Edward James Steiner was charged with “Harassment – Threats to Kill, Malicious Mischief in the Second Degree, and Substantial Risk of Interruption or Impairment of Service” (later dismissed) (CP 80-82).

On the first day of trial, September 30, 2013, Mr. Steiner requested the Court to determine the admissibility of an alleged prior bad act by Mr. Steiner (RP 9-10). Officer Heuett testified that he had known prior to his contact with Mr. Steiner that Mr. Steiner had been kicked out of Maloney Heights (RP 27). The officer found this remarkable because “drug use and alcohol is rampant there” and “[w]e have a high call volume as far as assaults, threatening statements” (RP 27). To the officer’s knowledge, Mr. Steiner was the only person who had ever been kicked out of Maloney Heights (RP 28). Officer Heuett testified that his knowledge that Mr. Steiner had been kicked out of Maloney Heights affected his viewpoint about “what was going

on with Mr. Steiner that third contact” (RP 30). It made him concerned that “this was” consistent behavior for him (RP 31):

“It’s my perception that someone who has a history of assaultive behavior and making threats is more likely to actually take them out than someone who throws off a comment that’s out of character that they wouldn’t normally act on.”

(RP 31). Officer Heuett testified he knew that Mr. Steiner “had been assaultive towards other people, not police, and threatening towards other people, not police...” (RP 32). Mr. Steiner’s behavior, including being kicked out of Maloney Heights, was a general topic of conversation because it was newsworthy to the officers that, in spite of his aggressive behavior, he had not been kicked out of Maloney Heights (RP 37).

After Office Heuett’s testimony, the trial court decided the prior knowledge about Mr. Steiner’s behavior at Maloney Heights would be admissible “for the purpose of dealing with the issue of whether or not the fear of the victim in the harassment charge was reasonable” (RP 40). The trial court

limited the officer's testimony to his knowledge about prior harassing or assaultive behavior, referencing Mr. Steiner's "numerous convictions for harassment" and the court's recollection that it had tried a prior incident with regard to some neighbors there at Maloney Heights (RP 43). The court then ruled that the information "is certainly more probative of the issue involved than it is prejudicial to Mr. Steiner" (RP 44). No objection was made to either the court's ruling on admissibility or the court's determination about whether the evidence is more probative than prejudicial (RP 44). After a lunch break, the court provided a limiting instruction that it intended to provide to the jury:

"The testimony by Officer Heuett as to the Defendant's past behavior, is admissible only on the following issue: Is it reasonable for Officer Heuett to believe that the Defendant would carry out his threats to kill Officer Heuett, and it should be considered for no other purpose."

(RP 44). No objection was taken to the instruction (RP 45).

The instruction was given to the jury during Officer Heuett's

testimony (RP 102) and was provide to the jury in written form for use during deliberations (CP 50). No exception was taken to the instruction when the instruction was orally proposed (RP 44) or when instructions to the jury were reviewed (RP 200-203).

After other witnesses established the elements of Second Degree Malicious Mischief, Officer Heuett testified to the following:

On July 5, 2013, Officer Andrew Heuett assisted in the arrest of Edward Steiner for breaking out two United States Post Office Windows (RP 84). Mr. Steiner was compliant at first, but then attempted to pull away (RP 85). After he failed to comply with standing or kneeling without resistance, he was placed in a prone facing position (RP 86). Officer Heuett was assisted by two other officers of the Port Angeles Police Department (RP 87). Sergeant McFall was the first officer to respond to assist Officer Heuett (RP 125). Mr. Steiner was agitated and cussing and swearing; she used a hair hold

technique to get him to the ground and in compliance (RP 126). Mr. Steiner resisted to the point that Officer Heuett was unable to bring Mr. Steiner's second arm around for handcuffing (RP 126). Sergeant McFall was asked by Mr. Steiner about whether people were handcuffed in back or front, to which she responded that people were handcuffed in back for safety (RP 131). On redirect, Sergeant McFall explained to the jury the limitations to safety that cuffing provided:

“Well, often they will get their hands in front, they'll skim them over their bottom, put your legs through and bring them up in front. There's people that we have to stop the car, re-cuff them, things like that. I mean, just because they're behind their back doesn't mean they're helpless. It means they are less able to attack us in any way. They use their feet. I've had people kick my windows out, um, I've had people that are handcuffed kicked my officers before. It's an officer safety policy, it's the best we can do at that point. If we disable your hands we have much better prospects.”

(RP 132).

Once Mr. Steiner was under control, Officer Heuett began to search him. Because Mr. Steiner had been resistive, Officer Heuett had to search him in a prone position:

“In order to search him safely, instead of standing him up where he has more freedom of movement, what we do is roll someone onto one side, search that side, and roll him onto the other side and search that side. So, I first instructed him to roll on his right side and he refused. I told him again and he refused so we had to pull him up onto his right side. I search [sic] his pockets and waistline and then after that we put him back on his stomach and asked him to roll onto his left side. He was more compliant that time, although we still had to move him as I recall.

During that process, he called me names [such] as ‘a faggot,’ and also a ‘fucking rookie.’”

(RP 87). The verbal abuse escalated after the medics had attended to Mr. Steiner’s scratch (RP 88). Prior to being transported to the hospital to check his wound, Mr. Steiner told Officer Heuett that he was going to kill him and / or “shank him” (RP 88). The officer explained to the jury that a “shank” is a sharpened stick or rod that would cause harm to another person (RP 88). During the search of his clothing, Officer Heuett found two items, one that he called a “box cutter” and one which he called a “multi-tool” (RP 89).

Mr. Steiner refused orders to stand up, walk to the police

vehicle, or duck his head to enter the vehicle (RP 89). He finally complied with the officer's directions (RP 89). Mr. Steiner continued threatening the officer ("I'm going to fucking cut your throat" and that he would grab the officer's shotgun and shoot him) (RP 91).

After Mr. Steiner's cut hand was checked at the hospital, he threatened Officer Heuett as they were in the hospital parking lot or pulling out, saying, "You're not going to make it to the jail" (RP 92). At that point, Officer Heuett became concerned that the threats were real:

"Well, I started wondering how good of a search I'd done. Um, when we're out in the field we go over – okay, we're going to search their pants' pockets, we're going to search their waist band. He was handcuffed, although handcuffed with two pair because he was either not willing to bring his hand back or just didn't have the flexibility. But we primarily search the pockets of the pants, any coat/jacket pockets, waist lines, those sorts of things."

(RP 92-3). When asked what he meant when he testified about using two sets of handcuffs, Officer Heuett continued:

"What we normally do – our standard practice is you

have a single set of handcuffs to put one wrist in one side, one wrist in the other. If someone has a large frame or they're inflexible, we'll put a handcuff from one set on and then we'll attach the middle loops of the handcuffs and then attach the far [end] of the second handcuffs to the other hand."

(RP 93). When asked why he testified he began to doubt how completely he had searched Mr. Steiner, Officer Heuett explained his concerns:

"Because doing a search in the field we're not being completely thorough, we'll get the primary places of concern. Um, when we have a person that's resisting it's harder to better feel through the pockets and better feel through the waist if someone's wiggling around and resisting. And also, when someone's resisting like that, we don't want to take a whole bunch of time to pat down every little spot. You know, we have to try to get things moving and we don't want to prolong the encounter any more than necessary."

(RP 94). Officer Heuett continued his explanation about searching an individual by explaining how much more thorough the search would be at the jail (RP 95). Essentially, the search conducted at the jail explored all of a person's clothing and parts of their anatomy: "They'll have them open their mouths. They'll do a complete and thorough search." (RP 95).

Officer Heuett explained that Mr. Steiner's comment that he would not make it to the jail made him nervous (RP 97). He knew that, even with a thorough search, sometimes a weapon could still be missed (RP 97). At this time, Mr. Steiner was loud and angry and staring at him intently in the rear view mirror (RP 97). In his prior experience, other people he had placed in custody had made threatening comments, but they were just puffery (RP 98). This time, "I can't recall a time I've ever had someone very intently say I am going to do this by this means, and repeatedly and in such an intense way" (RP 99). He began to take the threats seriously, because "[a]nyone can purchase pocket knives or blades. Anyone can sharpen an object into being a shank." Officer Heuett worried that Mr. Steiner had means available to him to carry out his threat (RP 100). He was afraid that Mr. Steiner would be able to reach a weapon and that he was capable of carrying out his threat (RP 101).

Officer Heuett then testified over a hearsay objection to other information he had received from officers within the Port

Angeles Police Department (RP 101). His fear that Mr. Steiner would be able to carry out his threat was bolstered by information other officers had conveyed about Mr. Steiner's prior involvement in assaults and threatening behavior (RP 101). To Officer Heuett, Mr. Steiner's history made the threat more real (RP 102).

On cross, Officer Heuett indicated he had been nervous about Mr. Steiner's behavior even before he took him to the hospital (RP 107). It was a mounting concern; he became increasingly concerned after he was leaving the hospital that he had not thoroughly searched Mr. Steiner (RP 107). Mr. Steiner's continued threats implied to the officer "that he knew something that I did not that was very important" (RP 109):

"They were more of a concern at a later date, whereas the statements that he made from the hospital to the jail were statements that made me immediately worried."

(RP 110). Officer Heuett became concerned that Mr. Steiner may have a firearm at some hidden location on his person that the officer had missed during the field search (RP 112). Cross

examination then drifted off to whether the item in Mr. Steiner's possession was a "box cutter" or a "can opener" (RP 113; 134; 153). Later, the conversation returned to Mr. Steiner's threats and Officer Heuett's perception (RP 138). Officer Heuett testified he was becoming more concerned with whether or not he had missed something on Mr. Steiner's person due to Mr. Steiner's statements (RP 138). The officer's concern mounted as the police vehicle came closer to the jail (RP 140). He was concerned that Mr. Steiner may have something on his person with which to carry out the threats (RP 140).

On October 1, 2013, the jury found Mr. Steiner guilty of Harassment – Threats to Kill (CP 38) and Malicious Mischief in the Second Degree (CP 35). Judgment was entered on October 23, 2013 (CP 8). This appeal followed.

ISSUE ONE

When a jury hears evidence of three interactions between Mr. Steiner and Officer Heuett on a single day, including Mr. Steiner's act of breaking two windows, when Mr. Steiner

refuses to cooperate with police so that he can be cuffed with a single cuff behind him and a more thorough weapons search can be completed, when the jury hears testimony about how arrestees can escape from cuffs in a police vehicle and assault a police officer, when the jury hears of the incessant and escalating threats made by Mr. Steiner to kill Officer Heuett before they arrived at the jail, and when the jury hears that the officer is aware of prior acts of violence and harassment by Mr. Steiner, the evidence is more than sufficient to permit a reasonable juror to conclude that Officer Heuett could reasonably feel threatened by Mr. Steiner's threats.

III. Summary of Argument

All the evidence, taken together, permitted a rational person and jury to find that the threats made by Mr. Steiner created a reasonable fear in Officer Heuett's fear that he would be assaulted.

IV. Argument

Standard of Review: 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. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980).

Analysis: A recent United States Supreme Court case

reiterated that appellate review is limited to determining whether no rational trier of fact could have agreed with the jury's decision. *Coleman v. Johnson*, ___ U.S. ___, 132 S.Ct. 2060, 182 L.Ed.2d 978 (2012). The U.S. Supreme Court restated the test:

Under *Jackson*,¹ evidence is sufficient to support a conviction if, 'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' 443 U.S., at 319. (emphasis in original).

The Court went on to explain:

Under the deferential federal standard, the approach taken by the Court of Appeals was flawed because it unduly impinged on the jury's role as factfinder. *Jackson* leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors "draw reasonable inferences from basic facts to ultimate facts." *Id.*, at 319. This deferential standard does not permit the type of fine-grained factual parsing in which the Court of Appeals engaged.

The Supreme Court went on to review the evidence, taken in the light most favorable to the prosecution, and concluded the

¹ *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). *Jackson v. Virginia* was adopted in Washington State in *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980) (*Green II*).

evidence was not nearly sparse enough to sustain a due process challenge under *Jackson v. Virginia, supra*. *Jackson* stated at 443 U.S 318-9, 99 S.Ct. 2788-9:

After *Winship*² the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to “ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.” *Woodby v. INS*, 385 U.S. [276], at 282, 87 S.Ct. [483], at 486 (1966). (emphasis added). Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (footnote omitted).

In this case, the facts are all there for a jury to decide Mr. Steiner was guilty of Harassment – Threats to Kill, whether the evidence is viewed in a light most favorable to the State. A rational trier of fact could listen to Mr. Steiner’s behavior that day, his threats to kill Officer Heuett, hear the context in which the threats were made, appreciate how exposed Officer Heuett

² 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

felt because the search incident to arrest may not have been sufficient to find all the weapons, and genuinely appreciate the danger Officer Heuett perceived he was in.

Coleman once again clarifies the limitation of appellate review of a jury verdict. Whether Mr. Steiner believes Officer Heuett was unreasonable in fearing him, and whether a reviewing court is concerned that Officer Heuett may have become unreasonably fearful because of Mr. Steiner's continuous threats, is beside the point. The only question is whether twelve jurors were provided sufficient evidence to find that Officer Heuett's fear was rational and reasonable. This record fully supports the decision made by the twelve jurors.

When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992), citing to *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). In this case, the evidence is such

that the reviewing court is required to infer that Mr. Steiner intended his threats to create apprehension in Officer Heuett and that Officer Heuett's fear was reasonable.

Mr. Steiner attempts to infer that Officer Heuett was unreasonably fearful, by focusing on the fact he was handcuffed and in the rear of the patrol vehicle. The jury heard evidence that prisoners in handcuffs still attacked officers. It also heard that Mr. Steiner's handcuffs were unusually loose; rather than a single, more restrictive single handcuff, he was held with two linked cuffs.

The jury also heard the threats to kill Officer Heuett in the context they were made by Mr. Steiner. Although Mr. Steiner would testify the threats were never made and now argues they are sufficient to prove fearfulness, the jury was entitled to find the threats were made and that Officer Heuett was afraid Mr. Steiner could carry out the threats. The jury was fully entitled to accept Officer Heuett's word at face value: The threats made by Mr. Steiner caused him fear, especially in light

of the way Mr. Steiner was cuffed and the limited search the officer conducted because Mr. Steiner resisted being cuffed and searched.

The complete record provides sufficient factual evidence so that *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In this case, twelve jurors correctly determined that Mr. Steiner made threats under circumstances that caused Officer Heuett to be in reasonable fear for his life.

Mr. Steiner's reliance upon *State v. C.G.*, 150 Wn.2d 604, 80 P.3d 594 (2003) is misplaced. In *C.G.*, the evidence was insufficient because the vice-principal never testified he was in fear that he would be killed. Vice Principal Haney testified that C.G.'s threat caused him concern. *State v. C.G.*, 150 Wn.2d 607, 80 P.3d 594. The Supreme Court concluded that "proof of reasonable fear that the threat to kill will be carried out" is an aspect of the harassment statute. *State v. C.G.*, 150 Wn.2d 608, 80 P.3d 594. Finding no proof in the record

that Haney believed he was going to be killed, the Supreme Court set aside the conviction.

In C.G.'s case, it was an idle threat made by a very angry teenage female. In the present case, Officer Heuett's prior knowledge of Mr. Steiner, combined with Mr. Steiner's attitude, the tone of his threats, the difficulty in making an adequate search, the need to double-link the handcuffs, and Mr. Steiner's location behind Officer Heuett in what the jury had heard was a vulnerable place for an officer, gave the jury sufficient proof that, if they believed, met the State's burden. The evidence was sufficient for a rational jury to find beyond a reasonable doubt that Officer Heuett's fear was based on a reasonable fear of Mr. Steiner.

ISSUE TWO

When the trial court listened to Officer Heuett's knowledge of Mr. Steiner's assaultive or harassing behavior, when the court limited the testimony to acts of assaultive or harassing behavior the officer had heard of, when the court verified that it was aware that Mr. Steiner had a prior conviction for harassment and when Mr. Steiner never objected at any point to the court's analysis, the record clearly shows the trial court correctly

permitted testimony about how a prior incident affected Officer Heuett.

III. Summary of Argument

The trial court addressed each of the four requirements for admission of a prior bad act and then determined the prior bad act was more probative than prejudicial. The trial court also created a limiting instruction to help insure the jury applied the prior bad act only to whether it created fear in Officer Heuett.

IV. Argument

Standard of Review: The appellate court reviews trial court decisions on the admission of evidence for abuse of discretion. *State v. Perez-Valdez*, 172 Wn.2d 808, 812, 265 P.3d 853 (2011).

Analysis: Prior to addressing the substantive issue about whether the trial court abused its discretion in admitting the prior bad act, the question is whether any objection was raised about the admission of the 404b testimony. The colloquy began

on page 39, when the court discussed “the Bergen case.”³ Mr. Steiner objected to any testimony stating he was never “kicked out” of Maloney Heights, but that was the extent of the objection (RP 41-2). The trial court ruled in Mr. Steiner’s favor on this issue, deciding that evidence that he may have been kicked out of Maloney Heights would not be admissible (RP 43).

There was, however, no objection to admission of testimony that Officer Heuett “was aware from other officers that he has demonstrated in the past assaultive behavior and made threats to other residents at Maloney Heights” (RP 43).

Mr. Steiner may argue that he did object later, when he stated on the record: “Objection, hearsay.” (RP 101). Because the testimony was being admitted for Officer Heuett’s state of mind, the objection had nothing to do with the Court’s reason for admitting the testimony. The objection was about whether the information was “hearsay” when the reason for admission was to show Officer Heuett’s state of mind.

³ *State v. Barragan*, 102 Wn.App. 754, 9 P.3d 942 (2000).

It has long been the law in Washington that an “appellate court may refuse to review any claim of error which was not raised in the trial court.” RAP 2.5(a); *State v. Lyskoski*, 47 Wn.2d 102, 108, 287 P.2d 114 (1955). The underlying policy of the rule is to “encourag[e] the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial.” *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988). The rule comes from the principle that trial counsel and the defendant are obligated to seek a remedy to errors as they occur, or shortly thereafter. *See City of Seattle v. Harclaeon*, 56 Wn.2d 596, 597, 354 P.2d 928 (1960).

State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2010).

Because Mr. Steiner did not object to the admission of the evidence on a state of mind analysis, the issue is waived.

Even if the objection is sufficient to merit review, there is no error. *State v. Barragan*, 102 Wn.App 754, 759, 9 P.3d 942 (2000), correctly analyzed why evidence of prior threats or behavior is admissible:

In this case, the trial court found that Mr. Barragan's statements regarding other violent conflicts was relevant

to the charge of harassment. A defendant is guilty of harassment if he or she knowingly threatens to cause bodily injury or death to the person threatened. RCW 9A.46.020(1)(a)(i), (2)(b). The defendant must also place the victim in reasonable fear that the threat will be carried out. RCW 9A.46.020(1)(b). An objective standard is applied to determine whether the victim's fear is reasonable. [*State v.*] *Ragin*, 94 Wn.App. [407] at 411, 972 P.2d 519[1999]. Accordingly, the State had to prove that it was reasonable for Mr. Garcia to believe that Mr. Barragan would carry out his threats to kill or injure Mr. Garcia. *Id.* It was with that aim in mind that the prosecutor sought to admit Mr. Barragan's statements made to Mr. Garcia regarding earlier successful fights with inmates.

Thus, evidence of a similar nature known about by the victim is probative of whether Officer Heuett was reasonably fearful.

Division II arrived at the same result in 2013 in *State v. Olsen*, 175 Wn.App. 269, 309 P.3d 516 (2013) (evidence of threats by the defendant are probative upon the question of the defendant's intent, *State v. Powell*, 126 Wn.2d 244, 261, 893 P.2d 615 (1995)). Like *Olson*, the question is the defendant's intent. Here, Officer Heuett believed Mr. Steiner intended to kill him. Evidence of a prior bad act was relevant to why Officer Heuett became concerned about whether he would be

knifed prior to arriving at the jail. The trial court was well within its authority to admit the prior bad act to establish that Officer Heuett's fear of Mr. Steiner was reasonable.

Mr. Steiner objects that the record does not show that the prior bad act occurred but then claims the trial court injected its personal opinion into the record. This argument is without merit. The State must prove by a preponderance of the evidence that the prior bad act occurred. *State v. Olsen*, 175 Wn.App. at 282, 309 P.3d 516. The Court's comment that it was aware of a prior conviction established only that it was true that Mr. Steiner did have a prior conviction for assault and harassment. The comment was appropriate to its purpose; the court was not making a personal comment about Mr. Steiner. Again, however, Mr. Steiner did not object to the Court's colloquy and statements made at the trial level. The argument is waived.

The same is true about Mr. Steiner's argument that the trial court did not engage in a formal ER 403 analysis. Mr. Steiner did not object to the Court's ER 403 analysis. Mr.

Steiner indicates there is insufficient record to determine whether there is error; this is true, but it is true because Mr. Steiner did not say anything at trial. Mr. Steiner is forgetting that it is his burden to show that the trial court abused its discretion. *State v. Perez-Valdez, supra; State v. O'Hara, supra.*

ER 403 reads, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

The trial court did not abuse its discretion, here. As *State v. Powell, supra*, held, prior threatening or assaultive bad acts are highly probative. In this case, Officer Heuett's knowledge of prior assaultive or harassing behavior is highly probative about why he was fearful of Mr. Steiner. The testimony went to the heart of the issue before the trial court and was probative

about the fear that Officer Heuett felt. The trial court did not err when admitting Officer Heuett's knowledge of Mr. Steiner's behavior.

V. Conclusion:

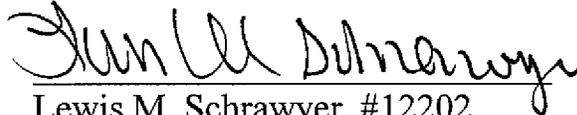
Whether any other person believes the evidence is sufficient, it is the jury which must review the relevant evidence and determine whether it finds sufficient evidence to support its decision. On review, whether the appellate court would arrive at the same conclusion is not the test; the only role of the appellate court is to determine whether the record contains evidence from which a rational trier of fact can find proof of each element. The jury had more than enough information to determine that Officer Heuett's fear of Mr. Steiner's death threat was reasonable.

There also was no error in the trial court's decision to admit prior bad acts testimony. The Court was acting fully within its discretion and, more importantly, Mr. Steiner did not object at appropriate times – or for appropriate reasons. Any

error is waived; if it is not waived, there still is no abuse of discretion. Mr. Steiner's conviction should be affirmed.

Respectfully submitted this June 18, 2014.

WILLIAM B. PAYNE, Prosecutor

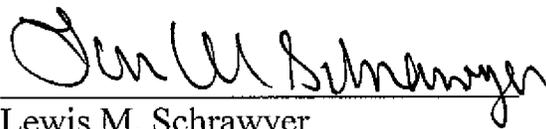


Lewis M. Schrawyer, #12202
Deputy Prosecuting Attorney
Clallam County

CERTIFICATE OF DELIVERY

Lewis M. Schrawyer, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Lise Ellner on June 18, 2014.

WILLIAM B. PAYNE, Prosecutor



Lewis M. Schrawyer

CLALLAM COUNTY PROSECUTOR

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Case Name: State v. Edward Steiner

Court of Appeals Case Number: 45501-3

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