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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. VANESSA VALDIGLESIAS LAVALLE, Appellant.	No. 82869-0-I DIVISION ONE PUBLISHED OPINION

COBURN, J. — While it could be argued that a mother's love is priceless, does an expressed desire to be with her children forever equate to a "thing of value" to support a criminal solicitation conviction under RCW 9A.28.030(1)? We hold that it does not, because a "thing of value" must have monetary value. We reverse Vanessa Valdiglesias LaValle's conviction for solicitation to commit murder in the first degree and remand to the trial court to vacate and dismiss with prejudice but we also hold that the trial court did not err in admitting the secretly recorded conversation with Valdiglesias LaValle. Because we reverse, we need not reach whether the trial court failed to consider mitigating factors at sentencing related to Valdiglesias LaValle being a victim of domestic violence.

FACTS

Vanessa Valdiglesias LaValle was born and raised in Peru. She met Timothy Grady, who is 25 years older than her, through an online dating application. Grady brought Valdiglesias LaValle to Skagit County where they got married in 2008. During their marriage, they had two children, S.G. and J.G. By 2014, Grady and Valdiglesias LaValle no longer resided together. Grady filed for dissolution in 2015. Following the dissolution, Valdiglesias LaValle was initially awarded custody, and Grady was required to pay her child support. However, in 2019, the court awarded Grady full custody, and Valdiglesias LaValle was ordered to pay child support to Grady. Valdiglesias LaValle was granted four-hour unsupervised weekly visitation with her children.

On June 2, 2020, Grady drove 10-year-old S.G. and eight-year-old J.G. to Valdiglesias LaValle's residence for a four-hour visitation. S.G. went into Valdiglesias LaValle's bedroom because S.G. heard her and J.G. talking about "bad stuff" and "rat poison." S.G. decided to record the conversation because Grady had told S.G. previously to record things, and S.G.'s best friend, P.K., and P.K.'s mother, also gave S.G. the idea to "sometimes record things," if necessary for protection. After S.G. started the recording, while hiding the phone with a blanket, S.G. asked, "Mom, what, what did you say?" The following conversation ensued:[1]

[1] The audio recording, Exhibit 37, was admitted. The court provided the jury a transcription of the audio to review as they listened to the audio while it was played in court. That transcription is not in the record. The transcriptionist of the report of proceedings did not fully transcribe the audio. Before trial, defense had the audio transcribed and submitted that transcription to the court for a pre-trial motion. The State

[Valdiglesias LaValle]	I don't do much (inaudible) for coming to living together here in my house because I want more [children] to stay with me and (inaudible) together because I love my [children] 100 percent. I say, I love my [children]. I want my [children] together. Now, I no have custody, clear custody. He has 100 percent custody (inaudible) and you [children], and so you (inaudible), you are older, you decide, okay, I live with my mom. You decide that? You live (inaudible) mom. He (inaudible) no, tell (inaudible) you need to stay with me. No, I say (inaudible) because I just ask him, okay, [children], what do you want to be living, mom or dad? You can say mom, okay, and the judge say, [children], go, go mom, and he no can say nothing. He hate her, but (inaudible) yeah, when you (inaudible) you older, he will decide. He never more controlling to you and (inaudible) and no control [J.G.]. Never more. Bye bye, and [S.G.'s] older. They are (inaudible) to carry (inaudible).
[S.G.]	Mom. What would you do if you gave food to dad? What, did, would you, like, what would do, put like what?
[Valdiglesias LaValle]	But if, no, no, I, I never give to him nothing because I not going to do that, but you can do to him because they never know (inaudible) you're doing. Okay? I sh-, I teaching to you what you need to do. Okay?
[S.G.]	Okay.

reviewed the transcript provided by defense and concluded that the State's version and the defense's version "do not differ in any substantive way (other than the additional conversation at the beginning and the end)." To reflect what is on the admitted recording, we rely on the relevant portion of the transcription provided by defense, which we have reviewed along with the actual recording.

[Valdiglesias LaValle] For example, when you daddy's cooking, (inaudible) he explained, you know, want his own place. He, he, I don't know, but you know that. What's he drinking, and he's, and when he's sleeping, you go to bed late. In some wine, only he drinking it, and you put the (inaudible).

[S.G.] Venom?

[Valdiglesias LaValle] The, the rat.

[S.G.] Rat poison.

[Valdiglesias LaValle] Yeah.

[S.G.] Okay.

[Valdiglesias LaValle] (inaudible) and move it move it a little bit and, and (inaudible). (inaudible). Every, and the next day, you know the (inaudible). So, you be playing, you doing your stuff, what you need to do, but you never drink it. Okay. Never touching that. (inaudible).

[S.G.] (inaudible).

[Valdiglesias LaValle] He take it and drinking, and he don't know nothing, you know, so nobody's nothing. That's a secret between you and me (inaudible). You keep it forever (inaudible). When your drinking on that day, he later, in the night he pass away. He die.

[S.G.] Yeah, and then I call.

[Valdiglesias LaValle] (inaudible).

[S.G.] The police?

[Valdiglesias LaValle] You call the police.

[S.G.] Yeah. I call the police (inaudible).

[Valdiglesias LaValle]	You wait a long, long time, and you call me to me and you calling yo-, and the police.
[S.G.]	Yeah.
[Valdiglesias LaValle]	When the police coming (inaudible), you say, oh, I don't know, my da-, I don't know, my dad is in the floor. What happen? We don't know, you don't know. (inaudible) and you just say, I need my mom. You call me quickly. This is what I do is go to the place where dad living and take it to you [children].
[S.G.]	Okay.
[Valdiglesias LaValle]	They're stopping everything.
[S.G.]	Yeah.
[Valdiglesias LaValle]	And you come back (inaudible).
[S.G.]	So, that's what I would do, if I wanted to do that? Okay.
[Valdiglesias LaValle]	Mmm-hmm (affirmative). No problem (inaudible) and we are forever (inaudible) live together (inaudible).
[S.G.]	Yeah because he's old. I mean.
[Valdiglesias LaValle]	(inaudible). He's (inaudible) to pass over.
[S.G.]	You wait for him to die?
[Valdiglesias LaValle]	Yeah (inaudible).
[S.G.]	You pray every day for?
[Valdiglesias LaValle]	Yes.
[S.G.]	Him to die?

[Valdiglesias LaValle] Yeah.

[S.G.] You do?

[Valdiglesias LaValle] Mmm-hmm (affirmative).

[S.G.] Okay. Well thank you, mom, for telling me. I need to go to the bathroom.

Shortly after, Grady picked up S.G. and J.G. S.G. shared the recording with Grady when S.G. got in the car. Grady did not immediately share the recording with the police because it was S.G.'s birthday the next day, and they agreed to wait to contact the police until the day after S.G.'s birthday. However, S.G. did not wait, and on S.G.'s birthday shared the recording with S.G.'s best friend, P.K. P.K. told P.K.'s mother about the recording. She called Child Protective Services and the police department. The police contacted Grady on June 4 to discuss the recording.

The State charged Valdiglesias LaValle by second amended information with count 1, solicitation to commit murder in the first degree, and count 2, solicitation to commit assault in the first degree.

Valdiglesias LaValle made two pretrial motions relevant to this appeal. She moved to suppress the audio recording under Washington State's Privacy Act, chapter RCW 9.73, which provides that one party to a private conversation may not record the conversation without the consent of another party. The trial court agreed with the State that the recording fell within an exception in the act, which provides that conversations "which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands . . . may be recorded with the

consent of one party to the conversation." RCW 9.73.030(2)(b). The court accordingly denied the motion to suppress.

Valdiglesias LaValle also moved to dismiss under State v. Knapstad, 107 Wn.2d 346, 356, 729 P.2d 48 (1986), arguing that the facts did not support the crimes of solicitation as a matter of law because the statement "we will be together forever" did not constitute a thing of value. The court concluded that the "offer of care and being together 'forever and ever' is not money but is a 'thing of value' under RCW 9A.28.030(1)." The court denied the motion to dismiss.

At trial, S.G. testified that S.G. took what Valdiglesias LaValle said seriously. S.G. also testified that Valdiglesias LaValle never said she would give something to S.G. to poison Grady. Valdiglesias LaValle did not testify at trial.

A jury convicted her on both counts. The court dismissed count 2, solicitation to commit assault in the first degree, to prevent double jeopardy.

At sentencing, Valdiglesias LaValle requested an exceptional sentence below the minimum standard range sentence. To support her request for the court to consider mitigation, Valdiglesias LaValle summarized the domestic violence she experienced while married to Grady and submitted a psychological evaluation, along with documentation relied upon by the expert, which included police reports and witness statements dating from 2009 to 2016, medical records, and social service records relating to Valdiglesias LaValle and her children. The trial court explained that because the expert did not address Valdiglesias LaValle's mental state at the time of her criminal acts, "I don't believe I could use that in this case, even though I'm quite empathetic to her

descriptions of what happened in the marriage, but I don't believe I can use that." The trial court imposed a low-end standard range sentence of 180 months.

Valdiglesias LaValle appeals and also filed a statement of additional grounds.

DISCUSSION

Motion to Suppress

Valdiglesias LaValle first contends that the trial court erred in denying the motion to suppress the recording of Valdiglesias LaValle's conversation with S.G. We disagree.

When the issue presented is whether, as a matter of statutory interpretation, the facts are encompassed by the privacy act's protections, this court's review is de novo. State v. Kipp, 179 Wn.2d 718, 728, 317 P.3d 1029 (2014).

"Generally, the privacy act is implicated when one party records a conversation without the other party's consent. Washington's privacy act is considered one of the most restrictive in the nation." Id. at 724. Washington's privacy act prohibits recording of any "[p]rivate conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless [of] how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation." RCW 9.73.030(1)(b). "Evidence obtained in violation of the act is inadmissible for any purpose at trial." Kipp, 179 Wn.2d at 724; RCW 9.73.050. However, the statute provides an exception. RCW 9.73.030(2) provides in relevant part, "Notwithstanding

subsection (1) of this section, . . . conversations . . . (b) *which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands*, . . . may be recorded with the consent of one party to the conversation." (Emphasis added.)

Valdiglesias LaValle, citing State v. Gearhard, 13 Wn. App. 2d 554, 562, 465 P.3d 336 (2020), argues that the statute requires an explicit threat and asserts that the "request to do an act without any consideration offered is not a threat under RCW 9.73.030(2)." However, Valdiglesias LaValle misreads Gearhard. The Gearhard court explained that the State in that case argued that an "unlawful request" alone was enough for the privacy act exception to apply. Id. The court stated, "No consideration was given to whether the request was of a similar nature to a threat of extortion, blackmail or bodily harm." Id. The court did not mean "consideration" in the legal sense of the word;[2] it meant the trial court failed to consider, or in other words evaluate, whether the request was of a similar nature to a threat of extortion, blackmail, or bodily harm. The court did not hold that a request to do an act without consideration offered is not a threat.

Our Supreme Court has held that discussing a threat in the planning stages falls under the word "convey" of RCW 9.73.030(2)(b). State v. Caliguri, 99 Wn.2d 501, 507-08, 664 P.2d 466 (1983); State v. Babcock, 168 Wn. App. 598, 609, 279 P.3d 890 (2012).

[2] The legal definition for consideration is "[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promise; that which motivates a person to do something, esp. to engage in a legal act." BLACK'S LAW DICTIONARY 382 (11th ed. 2019).

In the instant case, Valdiglesias LaValle conveyed a threat of bodily harm in the planning stages. The recording portrayed Valdiglesias LaValle teaching S.G. what was needed to do to poison Grady and cause him to die. She told S.G. not to tell anyone about it and to keep it a secret between them. These statements convey a request that is of a similar nature to a threat of bodily harm—the poisoning to death of Grady.

The court properly denied the motion to suppress.

Thing of Value

Valdiglesias LaValle next contends that her statement to S.G., that following Grady's death they will be "together forever," is not a "thing of value" as provided in Washington's criminal solicitation statute. We agree.

Washington's criminal solicitation statute provides the following:

> A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he or she *offers to give or gives money or other thing of value* to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

RCW 9A.28.030(1) (emphasis added). The term "thing of value" is not defined in the statute or anywhere in Title 9A RCW.

This court reviews a question of statutory construction de novo. State v. Moreno, 198 Wn.2d 737, 742, 499 P.3d 198 (2021). "'The goal of statutory interpretation is to discern and implement the legislature's intent.'" State v. B.O.J., 194 Wn.2d 314, 323, 449 P.3d 1006 (2019) (quoting State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007)). When interpreting a statute, this

court looks first to its plain language. Armendariz, 160 Wn.2d at 110. Where the plain language of the statute is subject to more than one reasonable interpretation, it is ambiguous. Id. "A statute is ambiguous when it is 'susceptible to two or more reasonable interpretations,' but 'a statute is not ambiguous merely because different interpretations are conceivable.'" State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010) (internal quotation marks omitted) (quoting Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 498, 210 P.3d 308 (2009)). When a statutory term is undefined, the words of a statute are given their ordinary meaning, and the court may look to a dictionary for such meaning. Id.

We begin our analysis by looking at the plain language of the statute. The relevant language at issue is the requirement that a person "offers to give . . . money or other thing of value" to engage in the conduct. RCW 9A.28.030(1).

Both Valdiglesias LaValle and the State cite dictionary definitions of both "thing" and "value" in isolation. The State first relies on the dictionary definition of "thing" as including tangibles and intangibles—intangibles including an "idea, notion, deed, act, and accomplishment." (quoting MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/thing). It also contends a "thing" can be a "fact, circumstance, or state of affairs." (quoting RANDOM HOUSE UNABRIDGED DICTIONARY 1971 (2d ed. 1993). The State then relies on the definition of "value" as being "[t]he significance, desirability, or utility of something." (quoting BLACK'S LAW DICTIONARY 1864 (11th ed. 2019). Valdiglesias LaValle relies on a separate definition of "value," defining it as "[t]he

monetary worth or price of something; the amount of goods, services, or money that something commands in an exchange." (quoting BLACK'S LAW DICTIONARY 1690 (9th ed. 2009). She also argues that because money is a tangible thing, then the other "thing of value" must be tangible.

Under the principles of statutory construction, we do not simply rely on dictionary definitions. "All words must be read in the context of the statute in which they appear, not in isolation or subject to all possible meanings found in a dictionary." State v. Lilyblad, 163 Wn.2d 1, 9, 177 P.3d 686 (2008). This is consistent with the principle of noscitur a sociis, which provides that a single word in a statute should not be read in isolation and that the meaning of words may be indicated or controlled by those with which they are associated. State v. Roggenkamp, 153 Wn.2d 614, 623, 106 P.3d 196 (2005) (citing State v. Jackson, 137 Wn.2d 712, 729, 976 P.2d 1229 (1999)). Also, under the principle of ejusdem generis, general words accompanied by specific words are to be construed to embrace only similar objects. S.W. Wash. Chapter, Nat'l Elec. Contractors Ass'n v. Pierce County, 100 Wn.2d 109, 116, 667 P.2d 1092 (1983).

Here, the phrase "thing of value" is immediately preceded by the term "money." By its plain language, in context, the statute indicates that one may solicit the commission of a crime by offering to give or giving of either money or a thing of monetary value in order to induce someone to commit a crime. If the statute was meant to reach *anything* of value—which would be extremely broad[3]

[3] General criticisms of making solicitation a crime "are sometimes based upon the fear that false charges may readily be brought, either out of a misunderstanding as to what the defendant said or for purposes of harassment. This risk is inherent in the

—there would be no need to distinguish "money" separately from "other thing of value."

The State relies on State v. Soderberg,[4] an unpublished case. No. 36132-2-III, slip op. (Wash. Ct. App. July 23, 2020) (unpublished), https://www.courts.wa.gov/opinions/pdf/361322_ord.pdf. In Soderberg, the defendant argued that the court did not properly instruct the jury that it had to be unanimous as to what constituted "money or other thing of value" and that different jurors could have relied on different offers to convict Soderberg of solicitation. Soderberg, No. 36132-2-III, slip op. at 31. The court concluded that the State proved a "continuing course of conduct" during which the "promises of *money*, companionship, and a home intertwined." Id. at 32 (emphasis added). The Soderberg court was not tasked with the question of whether "companionship" alone could suffice to be a thing of value.

In response to Valdiglesias LaValle's argument that the "thing" must be tangible, the State cites to United States v. Schwartz, a Ninth Circuit case

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punishment of almost all inchoate crimes, although it is perhaps somewhat greater as to the crime of solicitation in that the crime may be committed merely by speaking." 2 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 11.1(b) at 269 (3d ed. 2018) (footnote omitted). "'[E]ven for persons trained in the art of speech, words do not always perfectly express what is in a man's mind. Thus in cold print or even through misplaced emphasis, a rhetorical question may appear to be a solicitation. The erroneous omission of a word could turn an innocent statement into a criminal one (for example, "You shoot the President" versus "Should you shoot the President?").'" Id. at 269 n.46 (alteration in original) (quoting 1 WORKING PAPERS OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 372 (1970)).

[4] GR 14.1 provides that "[u]npublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals . . . may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."

interpreting 18 U.S.C. § 1954 for the proposition that a "thing" can be intangible. 785 F.2d 673 (9th Cir. 1986). That statute prohibited "the offer, acceptance, or solicitation of 'any fee, kickback, commission, gift, loan, money, or thing of value' because of or with intent to influence the actions or duties of union benefit plan trustees." Schwartz, 785 F.2d at 679 (emphasis omitted). There, the court determined the phrase "thing of value" included the intangible thing of providing assistance in arranging the merger of two unions in exchange for influencing the actions of benefit plan trustees. Id. We note that the "intangible" thing of value in Schwartz had a monetary value—the assistance in arranging a union merger that monetarily benefited the party committing the criminal act with financial benefits. Id.

The State also cites United States. v. Zouras, where the Seventh Circuit held that the testimony of a principal government witness was a "thing of value" within the meaning of an extortion statute, 18 U.S.C. § 876. 497 F.2d 1115 (7th Cir. 1974). The Zouras court, citing United States v. Prochaska, 222 F.2d 1 (7th Cir. 1955), reasoned that it had previously suggested "that '*any* other thing of value' is to be given the broad reading its language implies." Zouras, 497 F.2d at 1121 (emphasis added). The court concluded that the "mere fact that the value could not easily be translated into a monetary figure does not affect its character for *purposes of § 876.*" Id. (emphasis added). Reliance on Zouras is inapposite.

Valdiglesias LaValle cites to People v. Becker, a Colorado Supreme Court case, to illustrate Colorado's analysis of the statutory construction of the phrase "thing of value." 759 P.2d 26 (Colo. 1988). In that case, a tavern owner

instructed employees to ask patrons to buy them glasses of orange juice for $6.00 a glass. Id. at 28. However, this practice violated a Colorado Liquor Code provision that prohibited solicitation by employees from tavern patrons "the purchase of any alcoholic beverage or any other thing of value." Id. The defendants argued the phrase "any other thing of value" was unconstitutionally overbroad and nonalcoholic drinks would not fall under it. Id. at 29. The Colorado Supreme Court engaged in a statutory construction analysis by examining the common meaning attributed to the phrase "any other thing of value" because it was not defined by the Colorado Liquor Code. Id. at 31. It explained that in common usage, the phrase "any thing of value" means anything to which an economic, monetary, or exchange of value can be attributed. Id. It also reasoned that, in the statute, the phrase "any other thing of value" appears immediately following the term "any alcoholic beverage," and in its commonly understood sense, refers to anything other than an "alcoholic beverage," which has some economic, monetary, or exchange value. Id. The court continued,

> [I]t is clear that the legislature intended to prohibit employees of a tavern from soliciting patrons to purchase for the employee or any other employee not only alcoholic beverages, which are expressly mentioned in the statute, but also any other item that has some monetary, economic, or exchange value to the tavern patron.

Id. at 32. The court also looked to another provision of the Colorado Criminal Code, which defined "thing of value" as "real property, tangible and intangible personal property, contract rights, choses in action, services, confidential information, medical records information, and any rights of use or enjoyment connected therewith." Id. at 31. The court concluded that it had no hesitation

concluding that the phrase "any other thing of value" included a nonalcoholic beverage under the statute. Id. at 32.

The analysis in Becker is instructive. Similarly, we can look outside the criminal solicitation statute to see how the Washington Legislature has defined "thing of value" in other contexts.

In Washington, the legislature has defined "thing of value" as things with monetary value. Washington's Gambling Act, chapter 9.46 RCW, defines "thing of value" as "property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge." RCW 9.46.0285. This definition exemplifies that a thing of value can include things that can have monetary value but not be tangible. Thus, we reject Valdiglesias LaValle's contention that the "thing of value" must be tangible.

At most, what Valdiglesias LaValle did was more akin to encouraging, which is what is prohibited by the Model Penal Code version of solicitation. In 1975, our legislature adopted a solicitation statute "based" on the Model Penal Code but with significant changes. See Jensen, 164 Wn.2d at 951. That code defines solicitation as:

> A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct that would constitute such crime or an attempt to commit such crime or would establish his complicity in its commission or attempted commission.

MODEL PENAL CODE § 5.02(1) (AM. L. INST. 2001). Instead of simply adopting the code, our legislature added a requirement that the solicitor offer to give or gives money or other thing of value to another to engage in specific conduct. In Washington, it is not enough to simply command, encourage, or request another person to engage in specific conduct that would constitute a crime.

In light of the above, the term "thing of value" under RCW 9A.28.030(1) contemplates things, tangible or intangible, that have monetary value. Because the evidence does not establish that Valdiglesias LaValle offered to give or gave S.G. a thing of value in exchange for poisoning Grady, as a matter of law, we reverse and remand to the trial court to vacate and dismiss with prejudice.[5]

Cobun, J.

WE CONCUR:

Andrus, C.J.

Mann, J.

[5] Because we reverse the conviction, we need not discuss further whether the trial court applied the wrong legal standard at sentencing. We do note, however, that nothing requires defendants to establish their state of mind at the time of the offense in order to present mitigating factors for consideration at sentencing.