

IN THE CIRCUIT COURT OF THE FIFTH  
JUDICIAL CIRCUIT, IN AND FOR  
CITRUS COUNTY, FLORIDA

CASE NO. 2022-CF-000261-A

STATE OF FLORIDA,

vs.

IAN JOSEPH KING,  
Defendant.

/

**RENEWED MOTION FOR JUDGMENT OF ACQUITTAL OR MISTRIAL AND  
MOTION FOR NEW TRIAL**

The Defendant, Ian Joseph King, through counsel, and renews his motion for judgment of acquittal or mistrial, pursuant to Mr. King's immunity from double jeopardy, and rights to due process and a fair trial guaranteed by U.S. Const. amends. I, IV-VI, XIV, and Art I, 4; 9, Fla. Const., or in the alternative to order a new trial in accordance with Fla. R. Crim. P. 3.600. As grounds, Mr. King states as follows.

**I. The verdict as to both counts of the Information was contrary to the law or the weight of the evidence, and the defendant is entitled to judgment of acquittal, mistrial, or a new trial pursuant to Fla. R. Crim. P. 3.600(A)(2).**

The weight of evidence standard permits this Court to weigh credibility of witnesses, testimony, and evidence, and to act as a seventh juror. *Ferebee v. State*, 967 So. 2d 1071 (Fla. 2d DCA 2007). Under the weight of the evidence standard, Ian King is entitled to a new trial. As to Count I of the Information, the State failed to exclude all reasonable hypotheses of innocence. It remains reasonably possible that messages were sent by someone other than Mr. King. At trial, the alleged victim testified that she received many messages from a Facebook account she knew to belong to Mr. King. She testified that some of these messages were consistent with the way he

spoke to her during their seven year relationship, but others were not. The State failed to elicit, and excluded further testimony as to which messages were consistent with Mr. King's past behavior and which were not. Thus, the State never identified the specific messages containing the alleged threats as those that were inconsistent with Mr. King's past behavior, and also where the alleged victim testified that those she could identify as his statements were not true threats but were anguish.

As to Count II of the Information, the State failed to establish that Mr. King was under arrest for a crime of domestic violence at the exact time of the alleged violations of his conditions of pretrial release. This is an undisputed element of the offense. Accordingly, the weight of the evidence or lack thereof would not permit a reasonable jury to find no reasonable doubt as to Mr. King's innocence. As such Mr. King is entitled to a new trial on both counts of the Information.

**2. The Trial Court erred in decisions of matters of law upon the Defendant's notice, objection, and motions, which cumulatively and independently deprived him of a fair trial, and Mr. King is entitled to judgment of acquittal or mistrial, or a new trial pursuant to Fla. R. Crim. P. 3.600(B)(6).**

The Trial Court erred in admitting evidence over objection where the proper foundation had not been laid, and the authorship of writings in a Facebook record, and a "Power and Control wheel" had not been established prior to introduction. A Facebook custodian of records' certification of a Facebook record was insufficient to establish authorship and authenticate the Facebook record, which was hearsay within hearsay. Witness testimony regarding contents of the Facebook record was not supported by personal knowledge and should have been excluded. The introduction of the Facebook record and the testimony of deputies regarding contents of the Facebook record were speculative, not based in personal knowledge, was hearsay not within exception, violated

the best evidence rule, and Mr. King's right to confront his accusers in violation of U.S. Const. amend. VI, and Art I, 9, Fla. Const., and should have been excluded. Foundation must be established prior to admitting the evidence. *See*, § 741.31, Fla. Stat.

Proper foundation had not been laid and evidence was admitted in error regarding jail calls, where relevance had not been established prior to introduction. Evidence was irrelevant and prejudicial and should have been excluded. Evidence that Stalking had been charged previously was evidence of uncharged prior misconduct. No *Williams*' rule notice or motion had been filed, and no prior hearing heard, and Mr. King was prejudiced. The Trial Court should have granted Mr. King's motion for Judgment of Acquittal as to Count II because no predicate offense required for a violation of § 741.31, Fla. Stat. could be proven with admissible evidence. Therefore, evidence of jail calls should not have been admitted as lacking proper foundation, and being irrelevant. Foundation must be established prior to admitting the evidence. *See*, § 741.31, Fla. Stat.

The Trial Court erred in denying requested jury instructions; that the State must prove a true threat, and the Trial Court's court's erroneous denial deprived Mr. King of his sole defense where the alleged victim testified that his statements were not true threats but were anguish. The Trial Court should have followed *Elonis v. United States*, 575 U.S. 723 (2014). *Saidi v. State*, 845 So. 2d 1022 (Fla. 5th DCA 2003), is not inconsistent with *Elonis*. Saidi argued the State should have had to prove he had the ability to carry out the threat, and the Fifth District Court disagreed. The Supreme Court of the United States held that the government should have had to prove it was *Elonis*' specific intent to speak a true threat, as a 'threat' cannot be a 'threat' absent the intent of the speaker to threaten. Here, Ian King argued the State should have had to prove it was his

intent to threaten, which is consistent with *Elonis*, the First Amendment, and is not inconsistent with *Saidi*.

The Trial Court rejected the testimony of A.J., when offered as a defense witness, improperly. An alleged victim's perception of a threat is a matter for the jury to consider in determining whether or not a reasonable person would have viewed the statement as a threat. *State v. Cowart*, 301 So. 3d 332 (Fla. 5th DCA 2020). Rejection of this essential defense evidence deprived Mr. King of a fair trial, the right to present a complete defense, his sole defense, and the effective assistance of counsel in violation of U.S. Const. amend. VI, and Art I, 9, Fla. Const..

The State's application of § 836.10, Fla. Stat. is vague and overbroad as applied and infringes upon Mr. King's right to free speech guaranteed by U.S. Const. amend. I, and Art I, 4, Fla. Const. The absence in § 836.10, Fla. Stat. of a requirement of the State to prove the specific intent of the speaker to threaten chills the public's right to free speech and the Trial Court should invalidate all enforcement of § 836.10, Fla. Stat., or impose a limiting construction.

These errors independently and cumulatively deprived Mr. King of his sole defense, the right to present a complete defense, and the effective assistance of counsel, in violation of U.S. Const. amends. V-VI, XIV, and Art I, 9, Fla. Const.

#### TIME FOR FILING

This motion comes to the Court timely. Today is the 10th day since the rendition of the verdict.

In cases in which the state does not seek the death penalty, a motion for new trial or in arrest of judgment, or both, may be made, either orally in open court or in writing and filed with the clerk's office, within 10 days after the rendition of the verdict or the finding of the court. A timely motion may be amended to state new grounds without leave of court prior to expiration of the 10-day period and in the discretion of the court at any other time before the motion is determined.

Fla. R. Crim. P. 3.590(a).

WHEREFORE, Mr. King respectfully requests this Honorable Court to grant his motion for judgment of acquittal or mistrial, or alternatively to grant the motion for a new trial, and any other relief the Court deems appropriate.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing motion has been furnished to the Office of the State Attorney, Citrus County, Florida, this 21 day of August, 2022.

**Law Offices of Michael A. Graves  
Public Defender  
Fifth Judicial Circuit**

/S

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