

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

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NUMBER: 2022-CF-261-A

IAN JOSEPH KING,

Defendant.

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TRANSCRIPT OF MOTION HEARING BEFORE THE
HONORABLE JOEL D. FRITTON

TAKEN AT: Citrus County Courthouse

DATE & TIME: 6 September 2022
1:29 p.m.

TRANSCRIBED BY: PAUL K. SPANGLER, RMR,
Certificates of Merit and
Proficiency, Notary Public

JOY HAYES COURT REPORTING
407 Courthouse Square
Inverness, Florida 34450
(352) 726-4451

1 APPEARANCES:

2 For the State:

3 TARA HARTMAN, ESQUIRE
4 KAITLYN MANNIS, ESQUIRE
Assistant State Attorneys

5 For the Defendant:

6 ALEXEI LIZANICH, ESQUIRE
7 Assistant Public Defender

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1 (1:29 p.m.) P R O C E E D I N G S

2 (1:29 p.m. 09-2022-CF-000261-A King, Ian Joseph
3 (Attorney Lizanich, Alexei v)

4 (1:29 p.m. Appearances: Kaitlyn Mannis/Tara
5 Hartman, ASA; PA/APD; probation; defendant/defendant
6 in custody)

7 (1:29 p.m. APD Alexei Lizanich/ASA Mannis)

8 **THE DEPUTY CLERK:** Ian King, 2022-CF-261.

9 **THE BAILIFF:** Let's go.

10 (Pause.)

11 **THE COURT:** All right, Mr. Lizanich, you ready?

12 **MR. LIZANICH:** Yes, sir.

13 **THE COURT:** Go ahead.

14 **MR. LIZANICH:** Your Honor, for the reasons set
15 forth in our motion we filed on 21 August, Mr. King
16 is asking Your Honor to grant, uh -- renews his
17 motion to grant JOA. In the alternative, he, uh,
18 requests a mistrial or a new trial.

19 **THE COURT:** Okay.

20 State?

21 **MS. MANNIS:** Judge, I would stay on the
22 original arguments we made at the first JOA, but if
23 you want more, I've got dozens of arguments I'm
24 prepared to make and I've got case law as well.

25 **THE COURT:** well, I think you should make them.

1 **MS. MANNIS:** Okay.

2 First and foremost, we can start just at the
3 top that the state didn't -- failed to exclude all
4 reasonable hypothesis of innocence. We established
5 that the statements were his, we established that it
6 was his Facebook, he made the -- he had made
7 admissions on the jail calls, and the victim
8 testified that she received the messages and that
9 she knew at least some of the messages were from
10 him.

11 Moreover, that Facebook account had his home
12 address, his credit card information, his photos,
13 and we were able to read those messages in here, and
14 talking on the jail calls, a jury was able to make
15 the -- come to the conclusion that those were
16 messages sent from him and statements made by him.

17 As far as Count Two, uh, we did establish that
18 he was arrested for, uh, the underlying offense.
19 The detective testified that he was arrested for
20 aggravated stalking.

21 Additionally, the pretrial release conditions
22 that were admitted into evidence stated at the top
23 that the pretrial release conditions were
24 specifically for an arrest for a crime of domestic
25 violence. And at the bottom, it says that that

1 piece of paper authorized a probable cause arrest
2 based on the violation of that. Those things
3 together establish that he was arrested for the
4 underlying offense of aggravated stalking.

5 Just moving through the motion. The next is
6 that author -- authorship of the Facebook writings
7 should have been put into evidence. We put the
8 evidence in through the business record exception,
9 we had the certification, everything was in order on
10 the state's part.

11 We filed a notice of intent. We had the
12 requisite, uh -- the three things we -- it was made
13 at or near the time of the event after the regularly
14 conducted course of activity, regular practice, and
15 the records custodian signed that piece of paper
16 under penalty of perjury, all authorizing that to
17 come in under the business records exception.

18 Additionally, the state filed their notice of
19 intent. It was filed more than ten days. It was
20 filed roughly 90 or so days before the trial, and no
21 written motion was filed to object to that.

22 Therefore, that should have been considered
23 waived under the Rule 90.08 -- 90.803 subsection six
24 subsection A through C.

25 Additionally, the power and control will --

1 there was a foundation laid, and he testified as to
2 what his observations were in relation to that. The
3 proper foundation was laid to discuss that.

4 Additionally, there's comments here about the
5 deputy reading the Facebook messages. He was just
6 reading the evidence to the jury. He wasn't
7 creating new evidence. He was presenting the
8 state's evidence that had already been admitted, so
9 it doesn't violate any confrontation clause or any
10 concerns that he was adding to it or anything like
11 that. He was just reading the state's evidence, so
12 the best evidence was already in evidence, which was
13 the certified business record of the defendant's
14 Facebook messages.

15 (Pause.)

16 Moving through to the jail calls. Sufficient
17 record was laid -- or a sufficient foundation was
18 laid. We established through the victim that it --
19 they were fair and accurate depictions of the phone
20 calls that she received, that they were the
21 defendant's voice. That was sufficient to admit the
22 jail calls.

23 Additionally, the jail calls were necessary to
24 establish Count Two, which was the violation of
25 pretrial release. Therefore, they were admissible

1 and relevant. Sure, they're prejudicial, but they
2 weren't overly prejudicial. They're meant to be
3 somewhat prejudicial because we need to establish
4 the evidence against him that he committed those
5 crimes. So they were admissible based on that.

6 Then we move into the -- the statement that we
7 didn't file a Williams Rule notice and that evidence
8 that stalking had been charged was evidence of
9 uncharged prior misconduct.

10 However, those were -- it was necessary to
11 establish that he had been arrested for stalking in
12 order to prove element two, which makes it directly
13 material information that's then admissible under
14 exception -- it specifically says collateral crime
15 information which would be inextricably intertwined
16 with the offense.

17 And under *Wright v. State*, the Court has -- the
18 Courts have stated that this kind of information is
19 admissible and it's not subject to Williams Rule
20 because it's not prior -- prior bad acts or anything
21 like that. It's the facts of the stalking or just
22 period the fact that he was arrested for stalking is
23 inextricably intertwined --

24 **THE COURT:** Uh-huh.

25 **MS. MANNIS:** -- with the pretrial release

1 violation as well as it's the same conduct punished
2 by the (unintelligible) to kill as what was to
3 support the stalking. So there wasn't any -- the
4 only assertion that was made was that he was
5 arrested for stalking, which was necessary for the
6 element two, and it's not subject to Williams Rule
7 based on the case law.

8 Additionally, we did discuss out of chambers --
9 or at a sidebar where Mr. Lizanich was upset that we
10 hadn't already done it before we started talking
11 about pretrial release, so we made sure to
12 immediately elicit the testimony that he was
13 arrested for stalking in order to make -- to lay the
14 further foundation to prove and establish into
15 evidence the pretrial release conditions.

16 Next we get into the true threat arguments
17 about no jury instruction for that. And the state
18 maintains that under Sadie v State and the other --
19 the Florida case law, there is no implied
20 requirement for a true threat.

21 The case law explicitly states in Sadie v State
22 which is written into the jury instructions at a
23 place that you could go for a secondary resource
24 that there are threats to kill. Similar
25 (unintelligible) this crime does not require the

1 actual intent to do the harm or illegally carry out
2 that threat.

3 Now, there's an extensive discussion of Alana v
4 State. However, that is distinguishable on multiple
5 factors, specifically distinguishable in that it is
6 the Supreme Court -- their opinion on a statute --
7 Federal statutory issue, so it's fundamentally
8 distinguishable based on this is Florida Statutes
9 versus Federal statutes.

10 Additionally, that statute in and of itself had
11 already discussion of intent, and the Court made its
12 ruling based on their history of statutory
13 interpretation which is different than Florida
14 statutory interpretation.

15 And then we move to after Sadie v State,
16 because Alana does come after as far as temporally.
17 That's 2015, whereas Sadie is 2003, but both cases
18 are mentioned together as an additional resource in
19 the jury instructions, but the jury instructions
20 don't say that we have to expressly follow what
21 Alana says because it's distinguishable and also
22 different based on Federal versus Florida Statutes.
23 It's just an additional research for first amendment
24 concerns.

25 But after Sadie v State, we have Cowart which

1 defense cites in their motion which is -- still
2 maintains the Sadie V State holding that there's no
3 threat requirement. However, they -- and in that
4 case, they upheld the -- they decided that a
5 defendant sending a picture of a gun that says show
6 and tell tomorrow was sufficient to establish a --
7 there was a prima facie case of a threat to kill or
8 do a mass shooting.

9 In that case, during the motion to dismiss, the
10 state presented evidence of the victim's response to
11 that citing that they made a prima facie showing
12 that the snap was sufficient to cause alarm in a
13 reasonable person. And they -- and they quoted that
14 again.

15 And that line comes from Smith V State.
16 However, in -- which is from 1988, but Smith V State
17 dealt with both written threats to kill and threats
18 to a public servant. And the threat to a public
19 servant statute specifically requires intent, which
20 is different from the just plain old written threats
21 to kill not involving a public servant.

22 But even still, we can distinguish the Court
23 discussing sufficient to cause alarm in a reasonable
24 person because the threat there was much more
25 veiled, so there had to be more discussion into what

1 is a threat or not a threat in the sense that that
2 was just a photo, and the defendant in that case
3 immediately after said it was a joke to one of the
4 persons that he had sent that message to, which is
5 distinguishable from here where we have clear
6 written threats, I'm going to kill you, I'm going to
7 do X, Y and Z. And no reasonable recipient of those
8 messages would not determine those to be a threat.
9 The Courts have continually established that threats
10 to kill are not protected speech.

11 Additionally, perception's not at issue like I
12 would say when it's clear that it's a threat to
13 kill. Moreover, even after all this case law, the
14 jury instructions still do not have a definition of
15 threat, they don't have any intent. The case law is
16 very clear that no intent is necessary. And it's
17 clear -- we can -- we can make the inference that by
18 not defining a threat, that's meant for the jury to
19 determine what is and is not a threat.

20 And in this case, the jury determined that he
21 had sent the written threats to kill. And based on
22 the Florida case law, there should not have been a
23 jury instruction about true threat because Florida
24 case law expressly holds that there is no need for
25 true threats.

1 And I think that brings us to the end of our
2 motion.

3 **THE COURT:** Okay.

4 All right. Taken in the light most favorable
5 to the defendant in this particular case, the
6 Court's ruling remains the same. The motion's
7 denied.

8 **MR. LIZANICH:** Thank you, Your Honor.

9 **MS. MANNIS:** Do you want copies of the case
10 law, Judge?

11 **THE COURT:** I don't think I'll need them. You
12 made them a part of the record.

13 **MS. MANNIS:** Yes.

14 **THE COURT:** I mean I've ruled.

15 **MR. LIZANICH:** And I want to apologize for
16 being upset you mentioned at bench conference. It
17 wasn't my intent. It's been stressful.

18 **THE COURT:** Okay. Who's next?

19 (End of hearing at 1:41 p.m.)
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1 STATE OF FLORIDA)

2 COUNTY OF CITRUS)

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4 I, PAUL K. SPANGLER, hereby certify that I was
5 authorized to and did transcribe the foregoing ELECTRONIC
6 RECORDING, Pages 1 through 13; that the pages contained
7 herein are a true and complete record of the proceedings,
8 transcribed to the best of my ability.

9 I FURTHER CERTIFY that I am not a relative,
10 employee, attorney or counsel of any of the parties, nor
11 am I a relative or employee of any of the parties'
12 attorneys or counsel connected with the action, nor am I
13 financially interested in the action.

14 DATED this 6th day of October, 2022, at
15 Inverness, Citrus County, Florida.

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17 S/PAUL K. SPANGLER

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JOY HAYES COURT REPORTING
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