

No. 36821-1-III
State v. D.R.C.

ass.” Ex. 1. By prefacing his comment with “Haha,” Joshua unambiguously indicated he was entertaining a joke. D.R.C. then made the comment, “imma get her killed.” *Id.* At this point, Joshua did not change his joking tone. Instead he completed his comment “Woh chill just beat her ass” with the initialism “lol.” *Id.* Given the entirety of this exchange, the record simply does not suggest Joshua interpreted D.R.C. as conveying a serious threat.

Even if Joshua had been troubled by D.R.C.’s comments, the context of the text messages is still not indicative of a true threat. Immediately after Joshua’s “lol” text, D.R.C. reiterated the joking nature of the exchange by accenting her message with an emoji entitled “rolling on the floor laughing,” 🤪.⁸ Ex. 4. A reasonable person using this emoji in the context of Joshua’s “Haha” and “lol,” would not have foreseen D.R.C.’s statements as conveying a true intent to cause harm.

We next look at D.R.C.’s statements to Lexy. Unfortunately, the State’s exhibits do not provide much context for this exchange. We do not have Lexy’s response to D.R.C.’s text, “Imma fucking kill this bitch.” Ex. 2. However, D.R.C. prefaced her text with an emoji entitled “face with tears of joy,” 😂.⁹ *Id.* In addition, D.R.C. indicated she

⁸ *Full Emoji List, v11.0*, UNICODE, <http://www.unicode.org/emoji/charts-11.0/full-emoji-list.html> (last updated Dec. 19, 2018). “Unicode is the leading organization attempting to standardize emojis.” Eric Goldman, *Emojis and the Law*, 93 WASH. L. REV. 1227, 1232 (2018).

⁹ *Full Emoji List, supra.*

No. 36821-1-III
State v. D.R.C.

was upset because her mother was going to make D.R.C. live with her father. This parent-child conflict is the type of circumstance commonly associated with teenage frustration, but not homicidal ideation. Given the vagueness of D.R.C.’s statement that she wanted to kill her mother, and the other contextual indicators, the statement to Lexy is not reasonably interpreted as a true threat.

D.R.C.’s past conversation with Lexy supports D.R.C.’s testimony that she tended to use hyperbolic language with her friends. In the prior text between D.R.C. and Lexy, D.R.C. accompanied her statements about harming or killing a mutual acquaintance with “Lmfao”; the face with tears of joy emoji, 😂; a shrug emoji, 🤷; a smiling face with horns emoji, 🐉;¹⁰ a zany face emoji, 🤪; and a heart emoji, ❤️. Ex. 3. The combination of the initialism and emojis conveyed an unmistakable message of sarcasm, as opposed to a serious intent to cause harm or death.

The fact that D.R.C. repeated the statements about her mother to both Joshua and Lexy is not indicative of a serious threat to kill. Both Joshua and Lexy were known to

¹⁰ A smiling face with horns is used to convey playful mischief. *Smiling Face with Horns*, EMOJIPEDIA, <https://emojipedia.org/smiling-face-with-horns/> (last visited June 18, 2020); *Smiling Face with Horns Emoji*, DICTIONARY.COM, <https://www.dictionary.com/e/emoji/smiling-face-with-horns-emoji/> (last visited June 18, 2020).