

NO. 65495-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOHN BIEL,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LAURA GENE MIDDAUGH

**BRIEF OF RESPONDENT**

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**A. ISSUES**

1. When a defendant does not speak English, the trial court must appoint a competent interpreter. The interpreters used in this case had lengthy experience interpreting in the Nuer language in court. Biel never complained about the quality of the interpretation during the trial, and his answers to questions during his own testimony were understandable and appropriate. Did the trial court properly exercise its discretion in denying Biel's motion for a new trial on the basis of allegedly incompetent interpretation during trial?

2. Rulings on the admissibility of evidence are within the discretion of the trial court, and will not be reversed on appeal absent a manifest abuse of that discretion. Simon Bol had from the outset given a consistent account of the events on the night of the rape. There was no evidence that Bol had used Biel's ATM cards, left in Bol's apartment when Biel was arrested, for personal gain. The trial court found that, even if Biel's speculative allegation that Bol had used his ATM cards were true, this would not establish a motive to lie on Bol's part because any use would have occurred *after* Bol gave his account to police. Can this Court say that no reasonable trial judge would have ruled in this way?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

Defendant John Biel was charged by information and amended information with Rape in the Second Degree. The State alleged that, during the early-morning hours of August 5, 2008, Biel had forcible sexual intercourse with 14-year-old I.C. CP 106.

A jury found Biel guilty as charged. CP 28. The trial court sentenced him within the standard range. CP 32-41, 78-79.

**2. SUBSTANTIVE FACTS.**

On the night of August 4-5, 2008, 14-year-old I.C. was facing spending the night in a bus shelter. 12RP<sup>1</sup> 60, 63, 68. Kicked out by her mother, I.C. had been staying some nights with her sister, other nights with friends, and occasional nights outdoors. 12RP 59-60.

A tall, dark man with an African accent came out of a nearby gas station store. 12RP 64-65. He wore a "wife beater"<sup>2</sup> with

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<sup>1</sup> The verbatim report of proceedings consists of 17 volumes, which will be referred to in this brief as follows: 1RP (6-5-09); 2RP (6-29-09); 3RP (7-2-09); 4RP (7-13-09); 5RP (10-26-09); 6RP (10-27-09); 7RP (10-28-09); 8RP (10-29-09); 9RP (11-2-09); 10RP (11-3-09, a.m.); 11RP (11-3-09, p.m.); 12RP (11-2-09 & 11-4-09); 13RP (11-5-09); 14RP (11-9-09 & 11-12-09); 15RP (1-6-10); 16RP (4-30-10); and 17RP (5-4-10).

<sup>2</sup> A "wife beater" is a tank top. 8RP 150-51.

colors on the straps, jeans, and a black baseball cap with white dotted lines on the front. 12RP 64-65. When I.C. asked the man for a cigarette, he asked her why she was all alone outside. 12RP 66. When I.C. told the man that she didn't have anywhere else to go, he invited her back to his place to sleep, telling her that she was "family" and that she would be fine.<sup>3</sup> 12RP 66. Cold and tired, I.C. accepted the stranger's invitation, and walked with him to a nearby apartment complex. 12RP 67, 69. He asked her if she drank beer, and she told him that she liked vodka. 12RP 68. When they arrived at the apartment, there were two other men present.<sup>4</sup> 12RP 70, 75.

I.C. and her new "friend" sat in a bedroom, drinking and talking; the other two came and went from the room, getting things from a closet and a bag.<sup>5</sup> 12RP 70-73. I.C. finally said that she was tired, and the man left, turning off the light and closing the door. 12RP 73-74. I.C. immediately fell asleep. 12RP 74.

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<sup>3</sup> I.C. testified that she understood "family" to mean that she and the man were "the same color." 12RP 66.

<sup>4</sup> The other two men were Simon Bol and Andrew Rang. 9RP 116, 121.

<sup>5</sup> Andrew Rang was preparing to leave for Alaska the next morning for a job on a fishing boat. 9RP 126; 10RP 13.

I.C. was awakened by the door opening. 12RP 77.

Although the light was off, I.C. recognized her "friend" because he was still wearing his hat and the same clothes; he was also wearing a gold chain with some sort of medallion.<sup>6</sup> 12RP 82. He lay down on the bed behind her and tried to pull her close. 12RP 77. I.C. told him to stop, that she was tired. 12RP 81, 82. The man did not stop, but instead climbed on top of her, held her arms above her head, forced her legs apart, and removed her shorts. 12RP 78-79. He entered I.C.'s vagina with his penis. 12RP 79. She did not think that he ejaculated. 12RP 104. I.C. was in the midst of her menstrual period at the time.<sup>7</sup> 12RP 90.

The rape continued for about five or ten minutes. 12RP 79. Then one of the other men in the apartment knocked on the bedroom door, and the man raping I.C. got up and left the room. 12RP 80. I.C. put her shorts and her shoes on, and ran from the apartment. 12RP 80, 83.

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<sup>6</sup> At trial, I.C. identified photographs of the tank top with the black-and-red stripes and the gold chain that Biel was wearing that night. 8RP 144-45; 12RP 89-90.

<sup>7</sup> Examination of I.C. at the hospital confirmed that she was having her menstrual period, and blood was found in her urine and in her genital area. 12RP 36.

As I.C. was moving away from the apartment, crying, she ran into a girl whom she didn't know named Lacey. 9RP 81-82; 12RP 83-84. I.C. told Lacey that she had just been raped. 9RP 78, 84; 12RP 84. Lacey tried to calm I.C. down, and told I.C. that she needed to call the police; I.C. was reluctant, because she was afraid that the police would take her away, and because she thought that she was at fault in the rape. 9RP 82; 12RP 85.

The two girls walked to I.C.'s friend Sierra's house, which was nearby. 9RP 86; 12RP 84-85. They woke Sierra (it was around 3:45 or 4:00 a.m. by this time), and I.C. told her friend that she had been raped. 9RP 86, 105. Sierra and her mom and Lacey convinced I.C. that the police had to be called. 9RP 86, 88, 108; 12RP 85.

Kent Police Officer Peter Stewart responded to the call at 4:53 a.m. 9RP 16. He found I.C. with another girl in the parking lot of an apartment complex; I.C. seemed withdrawn, and had trouble focusing on Stewart's questions. 9RP 17-18. I.C. told Stewart that she had just been raped. 9RP 17.

I.C. gave Stewart a detailed description of her attacker.<sup>8</sup> 9RP 18-19. She described him as a tall, skinny black male with very dark skin, a strong African accent, and a scar on his left cheek.<sup>9</sup> 9RP 19. He wore a white tank top, and a baseball cap with white stripes. Id.

I.C. also described the other two men who were in the apartment that night. 9RP 18-19, 20-21. The second man was black, with bad teeth and deep scars and creases on his forehead. 9RP 20. He wore a yellow shirt. Id. The third man, also black, was balding, with patchy facial hair. 9RP 20-21. He wore a black t-shirt. Id.

Stewart drove I.C. to the apartment complex where the incident had occurred, and the girl pointed out the exact apartment. 9RP 22-23; 12RP 85. She recognized it by the purple curtain in the bedroom window. 9RP 31.

Stewart's knock on the door was answered by a skinny black male wearing a bright yellow t-shirt, with bad teeth, and cosmetic scarring on his forehead. 9RP 23-24. This man was identified as

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<sup>8</sup> I.C. identified Biel in court as the man who had raped her. 12RP 104.

<sup>9</sup> Biel had scars on his forehead that had cultural meaning; the scars apparently extended some way down the sides of his face. 13RP 203, 241.

Simon Bol. 9RP 25. Bol at first denied that there was anyone else in the apartment, but then allowed police to come in and look around. 9RP 26.

Stewart found Biel sleeping on the floor in the bedroom on a pile of blankets, one of which was multi-colored. 9RP 26, 35. There was a red blanket with yellow stitching on the bed. 9RP 36. There were beer bottles scattered around the bedroom, as well as a large bottle of whiskey. 9RP 28.

At this point, Stewart called Valley Medical Center, where I.C. had been taken to the emergency room, to see if she could give him any details about the room where she had been raped. 9RP 33. I.C. described the blanket on the bed as red with yellow lines, and said that there was a colorful blanket or rug on the floor. Id. I.C. also said that the room contained beer bottles and a whiskey bottle. Id.

Stewart had a hard time rousing Biel. 9RP 26-27. It appeared that Biel had been drinking. 9RP 28. Biel was skinny, and was wearing a white tank top and a black do-rag. 9RP 28. Next to him on the floor was a black baseball cap, with a pattern

that could have been described as white stripes.<sup>10</sup> 9RP 29. Biel had a strong African accent. 9RP 29. He produced a Nebraska state identification card, and said that he had moved around a lot in this country since arriving here from the Sudan; he had arrived in Seattle only a few days before. 9RP 38-39. Stewart arrested Biel. 9RP 27.

Kent Police Detective Lillian Melton went to Valley Medical Center on the morning of August 5, 2008, to meet with I.C. 8RP 137-38. I.C. told Melton that the man who raped her was wearing a gold necklace with a round pendant that had a face on it. 8RP 150. I.C. also said that the man wore a white "wife beater," or tank top, with stripes on the straps. 8RP 150-51.

Melton went from the hospital to the Kent City Jail, where she contacted Biel. 8RP 143-44. He was wearing a white tank top with black-and-red stripes.<sup>11</sup> 8RP 144-45. His jail property contained a gold chain with a pendant similar to what I.C. had described. 8RP 151.

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<sup>10</sup> Stewart did not take the hat into evidence, but photographed it. 9RP 37. When shown the photograph in court, I.C. did not recognize the hat. 12RP 89.

<sup>11</sup> Biel was still in his own clothes due to a jail policy that, when suspects are intoxicated when booked, they are not asked to change into jail clothing until they sober up; jail staff told Melton that Biel was intoxicated when booked. 8RP 150.

Melton and Biel conversed in English. 8RP 145. Biel told Melton that he could understand her. Id. Biel spoke in broken English, with a strong African accent, but Melton could understand him. Id. Biel responded promptly and appropriately to Melton's questions. 8RP 145, 154.

Biel told Melton that he had gotten drunk with his friend Simon and another man the night before. 8RP 148. Biel said that he fell asleep around 1:00 a.m., and never woke up until roused by the police. Id. Biel said that he had no idea what the police were talking about, and he denied being with any female. Id. He confirmed that the tank top that he was wearing in the jail was the same one that he had worn the night before. Id.

Simon Bol gave an account at trial of his friend John Biel's brief visit to Seattle. Bol, who is also Sudanese, had become acquainted with Biel when both were at a refugee camp in Kenya. 9RP 116-20. Like Biel, Bol's native language is Nuer. 3RP 3; 9RP 117-18. One night in the summer of 2008, Biel was staying at Bol's apartment. 9RP 119-20. Bol knew that Biel was planning to try to get a job on a fishing boat in Alaska. 10RP 13.

Andrew Rang was also at Bol's apartment that night; it was just the three of them. 9RP 121. Bol went to sleep early, because

he was working at Milgard Windows in Tacoma and had to be there at 7:00 a.m. 9RP 122-25. When Bol fell asleep in the living room, Biel and Rang were talking and drinking. 9RP 121-22, 125.

Bol woke up after a couple of hours, intending to go to sleep in his bed, and found Biel in the bedroom with a girl. 9RP 126, 128. Biel and the girl were sitting on the bed, talking and laughing and drinking beer. 9RP 127-28, 143-44. Nothing appeared to be amiss. 9RP 127. Rang was in the living room; he had been packing his clothes in preparation for an early-morning departure for a fishing job in Alaska. 9RP 126-27, 128.

Since Biel was a guest in his home, Bol was not inclined to ask Biel to vacate the bedroom. 9RP 128. Bol instead went back to sleep in the living room. Id.

When the police came the next morning, only Bol and Biel were left in the apartment. 9RP 129. Biel was asleep on the floor in the bedroom. 9RP 130. The police went to talk to Biel. 9RP 130. In Bol's opinion, Biel was drunk at that time. 9RP 131.

After the police took Biel away, all of the property Biel had with him (with the exception of any items that the police took as evidence) remained in Bol's apartment. 10RP 19-20. Bol did not

know what happened to Biel's cell phone. 10RP 18-19. Bol had kept Biel's ATM cards in his possession, and he produced them in court upon request. 10RP 20.

Jennifer Reid, a forensic scientist in the DNA section at the Washington State Patrol Seattle Crime Laboratory, examined some of the evidence collected in this case. 11RP 4-5, 16-17. No semen was found in the rape kit. 11RP 21. The male DNA was inconclusive as to Biel. 11RP 22. There was no evidence of semen or blood on a pair of gym shorts that were taken from Biel. 8RP 167; 11RP 26. There was no semen present on the sheet taken from the bed. 9RP 43; 11RP 27. Blood stains on the sheet came from neither Biel nor I.C. 11RP 28. Biel was excluded as the donor of spermatozoa found on a comforter from the bed, and I.C. was excluded from the female portion of a semen stain found there. 9RP 42; 11RP 28-29.

One item tied Biel to I.C. Brownish stains on the front of Biel's tank top near the bottom tested positive for blood. 8RP 151; 11RP 24-25. The DNA profile from that blood conclusively matched I.C.<sup>12</sup> 11RP 25.

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<sup>12</sup> The estimated probability of selecting an unrelated person at random from the U.S. population with a matching profile was 1 in 4.7 quadrillion. 11RP 25.

Biel testified in his own behalf at trial. He confirmed that he had come to the United States from Sudan by way of a refugee camp in Kenya. 13RP 153-54. He had arrived in this country in 2001, at the age of 22. 13RP 154, 157. After a series of jobs over the years in other states, Biel arrived in Seattle in early August of 2008, with the intention of getting a job in the fishing industry. 13RP 154-57. Due to a miscommunication with the friend whom Biel had intended to stay with, he ended up at Simon Bol's apartment. 13RP 159-68.

When Biel arrived at Bol's apartment, Bol introduced Andrew Rang as his roommate. 13RP 167-68. The next day, August 4<sup>th</sup>, Biel went out in the late afternoon with Rang and some others to cash Rang's check. 13RP 171, 174-75, 186-88. After they cashed the check, they bought liquor and returned to Bol's apartment. 13RP 189-91. Other people were at the apartment playing dominos. 13RP 191.

Biel said that he watched television until about 10:00 p.m., and then went to sleep on the floor in the bedroom. 13RP 196-97. He was wearing the tank top depicted in the photographs shown at trial. 13RP 199. People were still playing dominos, and coming and going from the apartment. 13RP 198.

Biel insisted that he drank very little that night. 13RP 224. He said that he never left the apartment until the police came and arrested him the next morning. 13RP 200. He denied ever seeing I.C. until she appeared in court at his trial. 13RP 200-01. Biel could not explain how I.C.'s blood came to stain his tank top. 13RP 223-25; 14RP 323.

**C. ARGUMENT**

**1. BIEL RECEIVED COMPETENT ASSISTANCE FROM THE INTERPRETERS AT HIS TRIAL.**

Biel complains that the Nuer language interpreters provided for him at trial did not perform their jobs competently. He relies on a single comment by the trial judge that she heard Biel say the word "Washington" at some point and the interpreter did not repeat that word in his translation. Biel himself never once complained of the interpretation until after his trial was over. His answers during his testimony were responsive to the questions, and perfectly understandable. The trial court properly exercised its discretion in denying Biel's motion for a new trial on this basis.

When a non-English-speaking defendant in a criminal trial needs the assistance of an interpreter, the court is required to appoint an interpreter who has been certified by the office of the administrator for the courts, unless good cause is shown to appoint a "qualified" interpreter instead. RCW 2.43.030(1)(b). A "qualified" interpreter is one who is readily able to interpret from the defendant's language into English, and from English into the defendant's language. RCW 2.43.020(2). "Good cause" for using a non-certified but nevertheless qualified interpreter includes, but is not limited to, a determination that: 1) "the services of a certified interpreter are not reasonably available to the appointing authority," or 2) "[t]he current list of certified interpreters maintained by the office of the administrator for the courts does not include an interpreter certified in the language spoken by the non-English-speaking person."<sup>13</sup> RCW 2.43.030(1)(b)(i), (ii).

There was good cause here to use interpreters who were not certified, but were nevertheless qualified. Nuer, a dialect of

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<sup>13</sup> Biel does not raise a statutory claim on appeal. Indeed, he could not, since he never raised any objection below based on the statutory requirements. See State v. Sengxay, 80 Wn. App. 11, 15-16, 906 P.2d 368 (1995) (failure to object to unsworn interpreter, in violation of RCW 2.42.050, waives claim on appeal unless defendant can show obvious error affecting the fairness of the trial).

Sudanese, is not a State-recognized language in Washington. 2RP 3. The trial court went to great lengths to obtain interpreters who could interpret from Nuer to English and vice versa. See 3RP 12-13, 27.

Moreover, there was ample evidence that the interpreters were qualified. Gach Dedoch had ten years of experience interpreting in the court system. 3RP 3. Dedoch was educated to the high school level in Nuer, and had a college degree in human services in English. 5RP 3. Nyigeelo Gon, the second interpreter at trial, was a college student; he had been interpreting in courts for almost ten years. 7RP 32. Gon was certified in Minnesota. Id.

The court gave both interpreters an opportunity in court to confer with Biel to make sure that they could interpret for him, and both reported no difficulty.<sup>14</sup> 5RP 4; 7RP 33. The trial court administered the appropriate oath to both interpreters. 2RP 3; 7RP 35; RCW 2.42.050.

Biel nevertheless claims that he did not receive competent interpreter services at his trial, and that this deficiency rendered his trial constitutionally unfair. He bases this claim on a single remark

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<sup>14</sup> Biel did not contradict the interpreters' assertions.

by the trial court, that the court heard Biel say the word "Washington" at some point, and did not hear "Washington" repeated by the interpreter. Brief of Appellant at 7-8.

A defendant has a constitutional right to a competent interpreter. State v. Ramirez-Dominguez, 140 Wn. App. 233, 243-44, 165 P.3d 391 (2007). As long as the defendant's ability to understand the proceedings and communicate with counsel is not impaired, the appropriate use of interpreters is left to the discretion of the trial court. Id. at 244. The competence of an interpreter is measured by whether the defendant's constitutional rights were protected, and not simply the quality of the interpretation itself. Id.

Biel never raised a claim of incompetent interpretation until after he was convicted, in a motion for a new trial. CP 85; 17RP 18-22, 28-29. A new trial is necessary only when the defendant has been so prejudiced that nothing short of a new trial can ensure that he will be fairly treated. State v. Hager, 171 Wn.2d 151, 156, 248 P.3d 512 (2011). The grant or denial of a new trial is a matter primarily within the discretion of the trial court, and will not be disturbed on appeal absent a clear abuse of that discretion. Id. An abuse of discretion occurs only where no reasonable judge would have reached the same conclusion. Id.

The support for Biel's claim is extraordinarily lacking and vague: "I recall a few times that [the interpreter] did not use the correct English words for what I had said, although I cannot recall the exact mistaken words."<sup>15</sup> CP 82. See also CP 85 ("one of the interpreters used during trial did not translate appropriately").

Biel also tries to glean support for this claim from his trial attorney's testimony during the motion for a new trial. He states, without citation to the record, that "Mr. Biel's trial attorney, called as a witness by the State in response to the motion for new trial, also detailed that Mr. Biel had difficulty using the interpreter." Brief of Appellant at 8. Perhaps he is referring to attorney Jerry Stimmel's comment that he somehow "got the impression" that Biel "was not particularly happy with the interpreter; with any of the interpreters." 17RP 10.

But Biel ignores much of what Stimmel said about the quality of the interpretation services. Stimmel noted that, while Biel specifically asked for Nyigeelo Gon rather than Gach Dedoch to be the interpreter at one interview, Biel never specifically complained to Stimmel about Dedoch. 17RP 10. And while Gon appeared to

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<sup>15</sup> Biel appears to be complaining of the services of Gach Dedoch, as his complaint is directed toward "[t]he first interpreter." CP 82; see 2RP 3.

Stimmel to be the more skilled interpreter, the attorney nevertheless believed that he was able to communicate effectively with Biel through Dedoch. 17RP 10, 19-21.

Biel complains primarily about the effect of the allegedly incompetent interpretation on his own testimony at trial.<sup>16</sup> Notably, he points to not a single response during his testimony where his answer was obviously inappropriate, or in any way indicated that Biel did not understand the question posed, or that his answer was incorrectly translated. Nor does the trial record reveal significant problems. See 13RP 153-258. To the contrary, the trial court and the interpreters took care to make sure that Biel could understand and be understood by using a consecutive, rather than simultaneous, interpreting technique. 13RP 176. And the court admonished Biel to wait until the interpretation of a question was complete before answering. 13RP 180-81.

In short, neither Biel's brief on appeal nor the record at trial provides a basis for this Court to conclude that Biel suffered a

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<sup>16</sup> "It is clear from the record that Mr. Biel was not receiving competent interpretation during his testimony to the jury." Brief of Appellant at 9. See also CP 85 ("Mr. Biel was prejudiced by the poor translation because it took place when he took the stand to testify.").

violation of his constitutional rights as a result of the interpreting services provided to him. This claim should be rejected.

**2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN EXCLUDING EVIDENCE OF ALLEGED BIAS ON THE PART OF SIMON BOL.**

Biel further complains of the trial court's decision to preclude him from questioning Simon Bol about any use of several ATM cards belonging to Biel that had remained at Bol's apartment after police took Biel into custody. He argues that this evidence was necessary to show that Bol was biased against him, and he implies that it would have provided a motive for Bol to accuse Biel of the rape.

This claim has two major flaws. First, the claim that Bol stole money from Biel by using Biel's ATM cards is based on nothing more than speculation, and is to some extent belied by the record. Second, as the trial court recognized, Bol's account of the incident was consistent from the start; thus, the notion of a motive to accuse Biel once Bol found that he had control of Biel's ATM cards does not hold up to scrutiny. Under these circumstances, the trial court did not abuse its discretion in precluding this line of questioning.

Questions of relevancy and the admissibility of testimonial evidence are within the discretion of the trial court, and will be reviewed on appeal only for manifest abuse of that discretion. State v. Aguirre, 168 Wn.2d 350, 361, 229 P.3d 669 (2010). An abuse of discretion occurs only where no reasonable judge would have reached the same conclusion. Hager, 171 Wn.2d at 156.

Simon Bol spoke to the responding police officers on the morning of Biel's arrest. 9RP 58. Bol also gave a taped statement to Detective Melton on August 25, 2008, and another taped statement on June 23, 2009. 8RP 160-61; Ex. 40, 41. Bol testified at trial that, when he awoke briefly after falling asleep in the living room, he saw Biel in the bedroom with a girl. 9RP 126-27. Biel and the girl were talking, laughing and drinking beer; nothing appeared to be wrong. 9RP 127.

Bol said that some of Biel's property remained in Bol's apartment after Biel's arrest. 10RP 19-20. At trial, Bol readily handed over several ATM cards of Biel's. 10RP 20; 13RP 204 (Biel said that he had two ATM cards). Biel's attorney wished to inquire of Bol whether Bol had used the ATM cards while they were in his possession. 10RP 48-49. The attorney believed that any use of

the cards by Bol for personal gain would show a bias on Bol's part to shift blame for the rape to Biel. 10RP 53.

The trial court would not allow this inquiry, finding no relevance. 10RP 61. The court first determined that Bol's statements to police about the incident had been consistent from the start. 10RP 53-54. That being the case, the court reasoned, any use by Bol of Biel's ATM cards could not have established any bias on Bol's part because the use would have occurred *after* Bol had already given his account of the evening in question. 10RP 55-56, 61. The court believed that such testimony could only be used to show that Bol was a bad person, an improper purpose.<sup>17</sup> 10RP 56.

Despite Biel's claims on appeal that Bol was guilty of theft (Brief of Appellant at 11-12), the belief that Bol used Biel's ATM cards for personal gain was never more than mere speculation. While Biel's attorney sent subpoenas to both banks requesting records, only one responded -- and that bank said that, since the date of Biel's arrest, *there had been no activity on the account*. 16RP 31.

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<sup>17</sup> The court later told the attorneys that they could interview Bol further on this so long as Bol was notified that he had a right to an attorney. 10RP 83-85. Biel's attorney declined the invitation. 10RP 88.

Under these circumstances, the trial court did not abuse its discretion in refusing to allow cross-examination of Bol about what he might have done with the ATM cards. This claim should be rejected.

**D. CONCLUSION**

For all of the foregoing reasons, the State respectfully asks this Court to affirm Biel's conviction for Rape in the Second Degree.

DATED this 21<sup>st</sup> day of June, 2011.

Respectfully submitted,

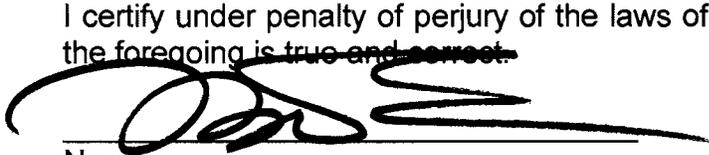
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Gregory C. Link**, the attorney for the appellant, at **Washington Appellate Project**, 1511 Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the **Brief of Respondent**, in **STATE V. JOHN BIEL**, Cause No. **65495-1-I**, in the Court of Appeals for the State of Washington, Division I.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



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