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I. ASSIGNMENT OF ERROR

Assignment of Error

The trial court commissioner erred when she issued a protection order against Appellant Jonathan Bullis (“Bullis”) because there was insufficient evidence to support the trial court commissioner’s findings and conclusions that he engaged in domestic violence against his former girlfriend, Allyah Ayesh (“Ayesh”).

Issues Pertaining to Assignment of Error

1. Whether there was sufficient evidence of domestic violence when Bullis removed a firearm from his person during the course of undressing while in the middle of an argument with Ayesh; he did not point the firearm at Ayesh or anywhere in her direction; he did not make any verbal or non-verbal threats to harm Ayesh; and Ayesh initiated the struggle by running to Bullis and grabbing for the firearm, thereby putting them both in danger of physical harm;

2. Whether there was sufficient evidence of domestic violence when Bullis, during the course of an argument with Ayesh wherein he made no verbal or non-verbal threats to harm her, knocked his own Christmas tree to the floor and not in any direction toward Ayesh; and

3. Whether there was sufficient evidence of domestic violence, when during the course of one night, Bullis sent Ayesh numerous text messages in an attempt to get her to respond to him so he could make a decision regarding living arrangements and none of the text messages by Bullis threatened in any way to harm Ayesh.

II. STATEMENT OF THE CASE

Bullis and Ayesh were involved in a romantic relationship from July 2012 through December 2013. CP 13.

At all times during their relationship, Bullis was a full-time student at Embry Riddle Aeronautical University Worldwide (“Embry Riddle”). CP 13. Prior to Bullis’s enrollment as a full-time student with Embry Riddle, he applied for employment with the Washington State Patrol (“WSP”) in 2010. CP 13. He passed all of the required testing phases, including a written exam, a physical exam, a board interview, and a polygraph exam. CP 13. His final scores qualified him to be placed on an employment register with other WSP qualified candidates. CP 13. Ultimately, Bullis was not selected for the Trooper Cadet Basic Course due to budget cuts during that period and due to his ranking on the qualified candidates list. CP 13. His ranking on the list was lower than other qualified candidates because he did not have prior military experience; he did not have a lengthy employment history; and he did not have a college degree. CP 13. During his application process with the WSP, Bullis disclosed that he took prescribed medication for anxiety and for Attention Deficit Disorder (“ADD”), which he had been prescribed since high school. CP 13. Such a disclosure did not affect his application status. CP 13.

While attending Embry Riddle, Bullis applied to the University of Washington’s (“UW”) Air Force Reserve Officer Training Program

("AFROTC"). CP 13. After a screening process, which included a personal interview, he was accepted into the AFROTC program as a cross-school candidate (a student who attended another educational institution but only attended UW for AFROTC). CP 13. During the application process, Bullis disclosed to AFROTC that he took prescribed medication for anxiety and for ADD. CP 13. Such a disclosure did not affect his application status. CP 13.

In August 2012, Bullis took a Basic Firearms Safety course and thereafter applied for and received a Concealed Carry Permit. CP 13.

In September 2012, Bullis signed a lease contract for an apartment in Tukwila, WA, so that he could be close to the Embry Riddle campus in Renton and to UW in Seattle. CP 13. Bullis was the only party to the lease, however, his father was a co-signor to the lease. CP 13. Bullis's parents paid the entire rent on the apartment. CP 13.

When Bullis moved into the Tukwila apartment, Ayesh gradually moved in with him. CP 13. However, Ayesh was never a party to the lease, nor did she make any financial contributions toward the lease. CP 13. Throughout Bullis's relationship with Ayesh, it was always an overriding concern of hers that she had a place to live, although she had various family members with whom she could reside, but she did not want to. CP 13.

Subsequently, Bullis left AFROTC because as a cross-school candidate, the times of his classes with Embry Riddle coincided with

certain obligations he was required to participate in with AFROTC. CP 13. Bullis's parents asked him to move back home to DuPont due to the expenses involved with maintaining a separate household for him. CP 13. At the time, Bullis's parents were paying for his tuition, books, uniforms, and UW parking; paying for the Tukwila apartment; and paying for all of his expenses. CP 13.

Bullis was torn by his parents' request to move back to the family home because Ayesh was worried about not having a place to live. CP 13. To keep the Tukwila apartment, Bullis got a job at U-Haul in Seattle to help with living expenses and he reached an agreement with his parents whereby they would continue to pay his rent, utilities, cable, phone, and insurance while he would pay for his tuition. CP 13. Bullis relied upon student loans to pay for his tuition, for some of his and Ayesh's living expenses, and for some of Ayesh's personal debts. CP 13.

Shortly before Bullis and Ayesh became romantically involved, Ayesh obtained employment as an Optometric Technician with National Vision, located on McChord, Joint Base Lewis-McChord. CP 13. On February 27, 2013, Ayesh resigned her position with National Vision. CP 13. During her employment with National Vision, she was accused of falsifying her time-sheet; falsely stating her wages to several employees; and theft of money. CP 13. Ayesh justified her resignation from her job based upon the multiple personal conflicts she was involved in at work with numerous co-workers and with her superiors. CP 13.

After Ayesh resigned her position with National Vision, she sought unemployment benefits. CP 13. She discovered that given the nature of her resignation, she was ineligible for unemployment benefits. CP 13. In May 2013, Ayesh appealed the unfavorable determination. CP 13. In her appeal, Ayesh accused her supervisors and her co-workers of harassing, intimidating, and bullying her, among other things. CP 13. When asked by an unemployment representative as to whether Ayesh had ever reported her allegations of harassment, intimidation, and bullying to any supervisor or to human resources, Ayesh stated that she had not. CP 13.

Weeks prior to becoming romantically involved with Ayesh, Bullis ended a long-term engagement with his ex-fiancée. CP 13. His ex-fiancée returned to him her engagement ring, a 1 ½ carat round solitary diamond in a white gold setting valued at over \$5,000. CP 13. In or around May 2013, Bullis discovered that Ayesh had, without his knowledge or consent, taken the engagement ring from its secure location in his apartment and paid to have it resized to fit her finger. CP 13. It was never his intention to give Ayesh the ring. CP 13. The ring had great sentimental value to Bullis and to his parents. CP 13.

Approximately a week after Ayesh resized the ring, Bullis's father demanded that he return the ring to his parents, who had paid for the ring. CP 13. Ayesh refused to give the ring to Bullis, begging to keep it. CP 13. Bullis was torn between his father's demands to return the ring to him and Ayesh's pleadings to keep it. CP 13. Subsequently, Bullis's father gave

him an ultimatum that either he returned the ring or his parents would no longer pay his rent or any of his other expenses. CP 13. It was only then that Ayesh gave the ring to Bullis and he gave it to his father. CP 13.

During their relationship, Ayesh would frequently call and text Bullis throughout the day. CP 13. If he was not quick to return her calls or texts, she would become upset. CP 13. Additionally, Ayesh demanded the passwords to all of Bullis's online accounts, which he refused to give her, with the exception of his Facebook account. CP 13. Bullis relented on the Facebook password because Ayesh would accuse him of cheating on her or of having a secret life. CP 13. As Bullis rarely used Facebook, he logged into his account sometime in June 2013. CP 13. Since he rarely used Facebook, he did not have many friends, but the ones he did have were friends from high school, from Embry Riddle, or from work. CP 13. When Bullis viewed his page, he discovered that Ayesh had deleted nearly all of his friends who were girls. CP 13.

In September 2013, Bullis came home from work and Ayesh began to yell at him, demanding to know where he had been and who he had been with. CP 13. Bullis was confused because he had come home straight from work and told her so. CP 13. Ayesh told him that he had clocked out from work nearly two hours prior and she demanded to know where he had been since that time. CP 13. Bullis asked her how she knew that he had clocked out two hours prior and she told him that she had accessed his time sheet from U-Haul on his personal computer. CP 13. Since Bullis had

not given Ayesh his U-Haul password, he asked her how she had been able to log into his time sheet. CP 13. She told him that she had been able to do so by using his social security number, which she had obtained from a document she found in his apartment. CP 13.

Bullis discovered that Ayesh would go through his phone while he was sleeping and then she would return the phone to its original position after she did so. CP 13. Bullis used to keep his email on his phone with open access, however, one day, Ayesh accused him of joining a Christian dating group. CP 13. Bullis told Ayesh that the Christian dating group email was spam and that he was not, nor had he ever been, a member of such a dating site. CP 13. After that time, Bullis secured access to his emails on his phone. CP 13.

In August 2013, Bullis and Ayesh went to his parents' home because Bullis's grandparents were visiting from Michigan. CP 13. Ayesh became upset with Bullis and with his parents when she found out that they had not informed Bullis's grandparents that he was no longer engaged to his ex-fiancée and that he was now in a relationship with her. CP 13.

About a week thereafter, Bullis and Ayesh again visited with Bullis's grandparents at his parents' home. CP 13. During that visit, Ayesh told Bullis that Bullis's grandfather had stabbed her in the shoulder with his insulin needle. CP 13, 14, 15, 17. Bullis told his parents about Ayesh's accusation against his grandfather. CP 13. Bullis's parents were angered

by her accusation. CP 13. Bullis's grandfather was shocked by Ayesh's allegations against him and he denied stabbing her with his insulin needle. CP 15.

Throughout the relationship, Ayesh would express her desire for marriage and for a family, but Bullis told her at that point in their lives, he was in no position to support them, much less a family. CP 13. Ayesh then tried to convince him into becoming "Islamically married." CP 13. According to Ayesh, becoming "Islamically married" meant that the parties declare themselves married. CP 13. Bullis told her that the only way he would get married was under the laws of Washington state. CP 13.

Since Bullis began work at U-Haul, Ayesh would get upset with him for his long work hours and the time he spent on school work because he did not spend much time with her. CP 13.

On October 31, 2013, Bullis went to his parents' house because his father was helping him with school work. CP 13, 17. Ayesh texted him multiple times. CP 13. Finally, Ayesh called Bullis and demanded that he return to the Tukwila apartment. CP 13. Ayesh told Bullis that there was a fire in the park outside of his apartment started by 2-3 dark figures that had made eye contact with her. CP 13. Bullis told Ayesh that she needed to get off of the phone with him and that she needed to call 911. CP 13. Ayesh told Bullis that she was afraid to call 911 because she was not on the lease. CP 13. Bullis told her that he did not care and that due to the seriousness of the situation, she needed to immediately call 911 because

the fire department could get there quicker than he could and that it would prevent the fire from spreading to the surrounding apartments. CP 13. Bullis told Ayesh to call 911, that he would drop what he was doing, and he would immediately return to the apartment. CP 13. Instead of calling 911, Ayesh left the apartment and went to a nearby Starbucks for safety. CP 13. When Ayesh and Bullis returned to the apartment, Bullis checked the park. CP 13. He did not see any indications of a fire, nor did he see any suspicious individuals. CP 13.

Ayesh frequently begged Bullis to get a puppy, but he steadfastly refused. CP 13. In the early fall of 2013, Bullis was scheduled to work on a Saturday and Ayesh was upset that she would have to spend the day alone. CP 13. She demanded that Bullis speak to his supervisor to cut his hours. CP 13. Ayesh told Bullis that if he went to work that day, when he came home, she would have a puppy. CP 13. Bullis told her that she could not bring a puppy to the apartment and another argument broke out between them. CP 13.

During their arguments, Ayesh would tell Bullis that he was crazy because he took prescribed medication for anxiety and for ADD. CP 13. Also during their arguments, Ayesh would often scream at him and Bullis would tell her to keep her voice down because they had neighbors. CP 13. During their arguments, Ayesh would go up to Bullis in an “in-your-face” stance and he had to tell her to back off and keep some personal space between them. CP 13. She would also shove him and slap his arms. CP 13.

In November 2013, Ayesh began another argument with Bullis after he returned home from work. CP 13. She walked into the apartment at the same time as Bullis. CP 13. She was carrying some glassware she had just purchased. CP 13. Two of the glassware items were coffee mugs. CP 13. During the argument, she threw the mugs to the floor, but Bullis was able to catch them before they hit. CP 13.

On December 1, 2013, Bullis stayed at work two hours longer than his shift so that he could help hang Christmas decorations. CP 13. When Bullis returned home that night, Ayesh was seething. CP 13. Ayesh began to yell at him for spending too much time at work; that he did not include her in his work; and that he had a “secret” life. CP 13. Ayesh continued to scream at Bullis. CP 13. Out of frustration and fatigue, he pushed his Christmas tree toward the floor. CP 13.

After continual screaming on Ayesh’s part, Bullis went into the bedroom, flopped on to the bed, and began to cry out of frustration, stress, and exhaustion. CP 13. He then got up and began to remove his work clothes so that he could go to bed. CP 13. Ayesh then called her sister on the phone. CP 13. In the process of removing his work clothes, Bullis unholstered his firearm from his belt. CP 13. Bullis routinely carried a firearm to work for personal protection ever since he had a firearm pointed at him while on the job. CP 13. He pointed the gun upward because in case it accidentally discharged, there were no neighbors above them. CP 13. Meanwhile, Ayesh was on the phone with her sister, conveying her

opinion regarding all of Bullis's shortcomings. CP 13. Bullis did not want to hear what she had to say, so he covered up his ears with his hands. CP 13. He was still holding on to his firearm at the time. CP 13. Ayesh then ran over to him and grabbed for the firearm. CP 13. Bullis was able to toss the gun away from them, but he saw that during the struggle, the safety had been knocked off, putting Bullis in fear for both of his and Ayesh's safety. CP 13. Thereafter, Bullis went to bed, upset about all that had occurred since he got home from work. CP 13. He quickly fell asleep. CP 13.

Later on the evening of December 1, 2013, Bullis was awakened by a call from his father informing Bullis that Ayesh's sister called and advised him that Bullis had put his gun to his head and he had threatened to commit suicide. CP 13. Bullis denied that he threatened to commit suicide and told his father he would talk to his parents the following day. CP 13. Bullis realized that Ayesh had left the apartment and assumed she went out for food. CP 13. Bullis went back to bed and fell asleep. CP 13.

In the morning, Bullis discovered that Ayesh had not returned to the apartment. CP 13. Bullis discovered that Ayesh had taken without his knowledge and consent two loaded handguns. CP 13. Ayesh had also taken her loaded .22 automatic rifle from the apartment. CP 13. Bullis discovered that Ayesh had transported in her car from Tukwila to Lacey the loaded handguns and the loaded .22 automatic rifle. CP 13. Ayesh did

not possess a Concealed Carry Permit. CP 13. Ayesh had recently been denied a Concealed Carry permit. CP 13.

On December 8, 2013, Bullis discovered that if he intended to break his apartment lease, he would have to give notice not later than December 10, 2013. CP 13. Throughout the night of December 8 and the early morning of December 9, 2013, Bullis texted Ayesh to see whether or not their relationship was over so that he would know what to do about the apartment. CP 13. Ayesh did not respond to his numerous texts, so in frustration, Bullis texted something to the effect that maybe he should have done what she accused him of and shot himself because he knew that the extreme language would get her attention and get her to respond to him. CP 13. Ayesh finally responded to his text messages with a request for him to stop contacting her. CP 13 In response, Bullis then sent several follow up text messages asking that she return to him his registered firearms. CP 13.

Later on December 9, 2013, out of liability concerns and the fact that Ayesh did not possess a Concealed Carry Permit, Bullis went to Ayesh's sister's house in Lacey to retrieve the firearms registered to him. CP 13 At the residence, Bullis spoke with Ayesh's brother-in-law and asked for the return of the handguns. CP 13. Bullis was told to leave by Ayesh's brother-in-law. CP 13. Bullis complied with the request, leaving the residence to his truck parked on a public street. CP 13. In his truck, Bullis attempted to look up the non-emergency number for the Lacey

Police Department to report that his legally registered firearms were being withheld from him without his consent. CP 13 Before Bullis could make the call after locating the number, he was approached by a Lacey police officer in an unmarked vehicle as Ayesh had called 911. CP 13.

Bullis was advised by the police officer that it was reported that Bullis was attempting to retrieve his firearms and that he had previously threatened to commit suicide, which Bullis denied. CP 13. The police officer told Bullis that Ayesh reported that he sent over 150 texts to her the previous night. CP 13. Bullis was not sure how many texts were sent back and forth. CP 13. Based upon the officer's review of the text messages, Bullis was told by the police officer that had it not been for the issue of the involvement of a firearm, he would have been free to go, but that the officer decided to err on the side of caution by deciding to detain him for a three hour psychiatric hold. CP 13, 14.

Bullis was taken to St. Peters in Olympia on a three hour hold for a mental evaluation. CP 13. Bullis was examined by an ER doctor and two mental health professionals. CP 13. Bullis was found not to present any threats of harm to himself or to others and he was released without conditions. CP 13.

After Bullis's release from St. Peters, his parents took away his phone and his computer. CP 13, 14. Bullis told his parents that there was a Find My iPhone app on both his phone and on Ayesh's phone that permitted them to track the location of each other's iPhones. CP 13.

Before turning his phone over to his parents, Bullis deleted the app from his phone that permitted it to track Ayesh's phone. CP 13.

On December 10, 2013, Bullis went to work. CP 13. Bullis signed in at 11:57 a.m. and signed out at 8:33 p.m. CP 13, 16. Without traffic, it took Bullis over an hour to drive from his job in Seattle to his home in DuPont. CP 13. On the way home from work that night, Bullis stopped at a Wendy's restaurant in Tacoma. CP 13, 14.

On December 11, 2013, at approximately 1:30 a.m., Bullis received a call from a police officer with the Lacey Police Department. CP 13. Ayesh alleged that at approximately 9:30 p.m., Bullis had remotely accessed her phone, which was in her possession. CP 13. Bullis denied that he accessed Ayesh's phone and informed the police officer that he was traveling in his vehicle at the time Ayesh alleged he had done so and that he did not have a phone or a computer with him in his vehicle to remotely access Ayesh's phone. CP 13, 14. Bullis produced a receipt from the Tacoma Wendy's restaurant to prove that he was making a purchase at the time Ayesh alleged that he accessed her phone. CP 13, 14.

On the afternoon of December 11, 2013, Ayesh moved the trial court ex parte for an order of protection, which was granted. CP 2, 3, 6. Additionally, Ayesh moved the trial court ex parte for an order to have Bullis surrender his firearm when she knew that she had surrendered the handgun to the Lacey Police Department. CP 7, 13, 14.

Prior to Ayesh's allegations against Bullis in her petition for an order of protection, Bullis had never been involved in any domestic violence proceedings, any criminal proceedings, nor had he ever received any civil traffic infractions. CP 13.

After a series of continuances in which the order reissuing the temporary protection order was extended, the trial court commissioner heard testimony from the parties on January 10 and February 28, 2014. RP 1.

On February 28, 2014, the trial court commissioner issued a protective order against Bullis, from which Bullis timely appealed. CP 27.

III. STANDARD OF REVIEW

An appellate court reviews a trial court's decision to grant or deny a protection order for abuse of discretion. *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

IV. ARGUMENTS

THE TRIAL COURT COMMISSIONER ERRED WHEN SHE ISSUED A PROTECTION ORDER AGAINST BULLIS BECAUSE THERE WAS INSUFFICIENT EVIDENCE THAT BULLIS ENGAGED IN DOMESTIC VIOLENCE AGAINST AYESH

The appellate court determines whether the trial court's findings are supported by substantial evidence in the record, and, if so, whether

those findings support the conclusions of law. *Scott v. Trans-Sys.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003) (citing *Willener v. Sweeting*, 107 Wn.2d 388, 393, 730 P.2d 45 (1986)). Substantial evidence is that sufficient to persuade a fair-minded person of the truth of the asserted premise. *Pilcher v. Dep't of Revenue*, 112 Wn. App. 428, 435, 49 P.3d 947 (2002).

A protection order is a civil remedy. *City of Tacoma v. State*, 117 Wn.2d 348, 351-52, 816 P.2d 7 (1991). Civil cases require proof of the statutory elements by a preponderance of the evidence. *Reese v. Stroh*, 128 Wn.2d 300, 312, 907 P.2d 282 (1995). After notice and a hearing, RCW 26.50.060 authorizes the court to issue a protection order. *Spence v. Kaminski*, 103 Wn. App. 325, 331, 12 P.3d 1030 (2000). A party seeking a protection order must allege the existence of domestic violence and declare the specific facts and circumstances from which relief is sought. RCW 26.50.030(1). Domestic violence is defined as: (a) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 or one family or household member by another family or household member. RCW 26.50.010(1).

In Ayesh's petition for an order of protection and an order to surrender weapon, Ayesh alleged that Bullis:

1. On December 1, 2013, threatened suicide by putting a gun to his head;
2. On December 9, 2013, sent Ayesh an excessive amount of text messages and phone calls;
3. On December 9, 2013, showed up at where she was staying and refused to leave;
4. On December 12, 2013, accessed Ayesh's iPhone and remotely moved information.

CP 2.

In Ayesh's petition for an order of protection, Ayesh alleged that Bullis engaged in past incidents of violence by:

1. On December 1, 2013, throwing a Christmas tree;
2. Downloaded a tracking device on Ayesh's phone;
3. Controlled all of Ayesh's whereabouts; and
4. In mid-November 2013, threatened to break the glasses on Ayesh's face.

CP 2.

In Ayesh's petition for an order of protection, Ayesh alleged that Bullis engaged in stalking behavior, including use of telephonic, audiovisual or electronic means to harass or monitor her by sending her an excessive amount of text messages and phone calls in one night and by removing "entire phone content" from her iPhone. CP 2.

The trial court commissioner issued the protection order because she found that on December 1, 2013, a struggle took place between Bullis and Ayesh that involved a firearm:

With respect to the incident on December 1st, given both of the parties' testimony, we have slightly different tellings and, frankly, slightly different tellings in your documents and in your testimony, both of you. It is natural and typical in life, so I am not looking for the exact same tellings. What is clear and what has been proven by preponderance of the evidence is that there was a struggle. What is clear from the admissions of Mr. Bullis is that it involved a firearm, again something that I must be aware of in terms of increasing danger during an argument. Firearms should not be part of an argument. And it is clear that you broke a Christmas tree. All of those things have been established by a preponderance of the evidence. RP 120.

With respect to the "tracking device" on the parties' phones, the trial court commissioner found that it was done simply as part of the relationship and that Ayesh did not establish by a preponderance of the evidence that Bullis engaged in stalking behavior as outlined in Ayesh's petition for an order of protection. RP 119.

With respect to Ayesh's allegation that Bullis threatened to break the glasses on her face, the trial court commissioner found that Ayesh did not establish by a preponderance of the evidence that Bullis engaged in a past incidence of domestic violence.

With respect to the text messages sent by Bullis to Ayesh on December 9, 2013, the trial court commissioner found that they were frightening, disturbing, suicidal,¹ excessive, and battering. RP 120. "All of

¹ The trial court commissioner abused her discretion when she found that Bullis's text messages were suicidal. Bullis was psychiatrically examined by an ER doctor and two mental health professionals after the sending of the text. CP 13. He was found not to be

those circumstances taken together rise to the level of domestic violence...” RP 121. The trial court commissioner goes on to state:

I understand that I found that she can't establish the phone behavior was you. However, that explains why she came in. It kept going. It is escalating. She is getting more and more scared. There are text messages, and then her phone gets erased completely around midnight.² That explains why she came in on the date that she came in... What is relevant to these proceedings and, frankly, most compelling is your own testimony where you admit that these things happened, your own words.³ You were in a very bad mental place... the actions that you took were absolutely frightening, threatening, intimidating, and though there is no overt threat to kill her, no intent on your part – and I believe you when you testify that you had no intent to cause her to fear for her life. You did cause her to fear for her life with your actions by bringing a firearm into the argument, by breaking the Christmas tree, by bombarding her with a barrage of text messages that vacillate from romantic to frightening to suicidal. That is domestic violence. RP 121-22.

Substantial evidence does not support the trial court commissioner's finding that Bullis engaged in domestic violence when a struggle over a firearm took place between him and Ayesh. Bullis was removing his work clothes for bed while Ayesh was on the phone with her sister. The struggle over the firearm did not occur because Bullis aimed it at Ayesh in an attempt to harm her during the course of an argument. The struggle over the firearm occurred because Ayesh mistook Bullis's removal of the firearm from his person as an attempt on his part to harm

a danger to himself or to others. CP 13. The trial court commissioner disregarded the outcome of Bullis's psychiatric evaluation.

² The trial court commissioner erred with respect to the time. Ayesh alleged that her phone was "erased" at approximately 9:30 p.m. while she was shopping at the Lacey Target. CP 13.

³ Bullis admitted that he knocked over a Christmas tree; that a struggle between he and Ayesh took place that involved a firearm; and that he sent her numerous texts. CP 13. Bullis denied remotely accessing Ayesh's phone. CP 13.

himself. The struggle over the firearm ensued because Ayesh ran to him and attempted to wrestle the firearm away from him, putting him in fear for both of their safety.

Likewise, substantial evidence does not support the trial court commissioner's finding that Bullis engaged in domestic violence when he knocked over the Christmas tree in fatigue and frustration over yet another argument between he and Ayesh that took place the moment he returned home from work. Bullis did not knock over the Christmas tree in an attempt to harm Ayesh.

Substantial evidence does not support the trial court commissioner's apparent finding that Bullis remotely accessed Ayesh's phone, particularly in light of the trial court commissioner's statement that "I understand that I found that she can't establish that the phone behavior was you." RP 121. If the commissioner could not find that Ayesh was able to attribute the "phone behavior" to Bullis, then Ayesh did not meet her burden of proof by a preponderance of the evidence and the commissioner abused her discretion when she apparently found that Bullis erased information from Ayesh's phone. RP 121.

Finally, substantial evidence does not support the trial court commissioner's finding that Bullis engaged in domestic violence by sending numerous texts to Ayesh on December 9, 2013. It is less clear from the trial court commissioner's finding that, standing alone, the text messages constituted domestic violence. The commissioner stated that

“[T]hough there is no overt threat to kill her, no intent on your part – and I believe you when you testify that you had no intent to cause her to fear for her life...” CP 122. While Bullis’s numerous texts may constitute harassment,⁴ they are not in and of themselves evidence that Bullis placed Ayesh in fear of *imminent* physical harm, as is required by RCW 26.50.010(1). Throughout the numerous texts, there is not one text that Ayesh pointed to where Bullis stated that he would or that he wanted to physically harm her. The evidence simply does not support the trial court commissioner’s finding that Ayesh had an imminent fear for her life from Bullis’s text messages that a reasonable person would experience under the same circumstances.

The trial court commissioner abused her discretion when she issued a restraining order against Bullis because she found that there was no past history of violence and the record in this matter does not support the legal standard for the issuance of a restraining order based upon domestic violence. RCW 26.50.010(1) is clear that the legal standard is *fear of imminent physical harm*. While the trial court commissioner made a formal finding that Ayesh “fear[ed] for her life” based upon a struggle over a firearm; the knocking over a Christmas tree; and numerous text messages, the legal standard is not *fear*, but *fear of imminent physical harm*. RP 121-122. The trial court commissioner made no formal finding that Ayesh was placed in fear of imminent physical harm, which the

⁴ The trial court commissioner did not find that Bullis engaged in harassment or stalking by sending numerous texts to Ayesh during the course of one night.

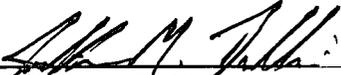
statute requires for the issuance of a restraining order based upon domestic violence.

With respect to whether Bullis presented a fear of imminent harm to Ayesh, to himself, or to others, Bullis was subjected to a psychiatric evaluation by an ER doctor and two mental health professionals. The medical diagnosis was that Bullis presented no danger to himself, to Ayesh, or to others, and he was released from the psychiatric evaluation without conditions. It was an abuse of discretion for the trial court commissioner to disregard the medical and psychiatric findings of trained and experienced medical and psychiatric professionals when she issued a restraining order against Bullis. Again, the RCW 26.50.010(1) is clear that the legal standard for the issuance of a protective order for domestic violence is *fear of imminent physical harm*. The record does not support by a preponderance of the evidence that Ayesh was placed in fear of imminent physical harm by Bullis.

V. CONCLUSION

For the foregoing reasons, this court should find that the trial court commissioner abused her discretion when she found sufficient evidence that Bullis engaged in domestic violence against Ayesh and issued a protective order against him.

RESPECTFULLY submitted this 15th day of September, 2014.


Jonathan M. Bullis
Appellant in Pro Se

Jonathan M. Bullis
1911 Nelson Street
DuPont, WA 98327
Telephone: (253) 905-4488
Fax: (253) 912-4882

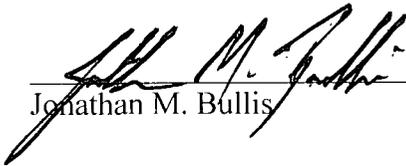
CERTIFICATE OF SERVICE

I certify that on September 15, 2014, I caused a true and correct copy of this Amended Opening Brief of Appellant to be served by messenger on the following:

Counsel for Respondent:

**J. Anne Redford-Hall
The Redford Law Firm
921 Lakeridge Way SW, Ste 202
Olympia, WA 98502**

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


Jonathan M. Bullis

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