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NO. 50577-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

QURAN DAYMAN ALI INGRAM, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-02575-7

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

RESPONSE TO ASSIGNMENTS OF ERROR..... 1

- I. Validity of a foreign protection order is not an element of the crime of violating that protection order; the jury was properly instructed. 1
- II. The trial court properly imposed \$60,000 bail pending trial..... 1

STATEMENT OF THE CASE..... 1

ARGUMENT 5

- I. Validity of a foreign protection order is not an element of the crime of violating that protection order; the jury was properly instructed. 5
- II. The trial court properly imposed \$60,000 bail pending trial... 13

CONCLUSION..... 20

TABLE OF AUTHORITIES

Cases

<i>In re Personal Restraint of Myers</i> , 105 Wn.2d 257, 714 P.2d 303 (1986)	14
<i>State v. Abrams</i> , 163 Wn.2d 277, 178 P.3d 1021 (2008)	6
<i>State v. Carmen</i> , 118 Wn.App. 655, 77 P.3d 368 (2003)	6, 7, 8, 9, 11
<i>State v. Dent</i> , 123 Wn.2d 467, 869 P.2d 392 (1994)	12
<i>State v. Goodwin</i> , 4 Wn.App. 949, 484 P.2d 1155 (1971)	16
<i>State v. Kelly</i> , 60 Wn.App. 921, 808 P.2d 1150 (1991)	16
<i>State v. Miller</i> , 156 Wn.2d 23, 123 P.3d 827 (2005)	6, 10
<i>State v. Neal</i> , 144 Wn.2d 600, 30 P.3d 1255 (1996)	16
<i>State v. Reese</i> , 15 Wn.App. 619, 550 P.2d 1179 (1976)	16, 18
<i>State v. Rose</i> , 146 Wn.App. 439, 191 P.3d 83 (2008)	18
<i>State v. Snapp</i> , 119 Wn.App. 614, 82 P.3d 252 (2004)	6
<i>State v. Stenson</i> , 132 Wash.2d 668, 940 P.2d 1239 (1997)	16
<i>State v. Sutherland</i> , 114 Wn.App. 133, 56 P.3d 613 (2002), <i>rev. denied</i> , 149 Wn.2d 1034, 75 P.3d 969 (2003)	6
<i>State v. Thornton</i> , 24 Wn.App. 881, 604 P.2d 1004 (1979)	9
<i>State v. Turner</i> , 98 Wn.2d 731, 658 P.2d 658 (1983)	14

Statutes

RCW 26.50.110	8
RCW 26.50.110(1)	5
RCW 26.50.110(5)	6, 7, 8
RCW 26.52.020	6, 7, 8

Rules

CrR 3.2	13, 14, 20
CrR 3.2(a)(1), (2)	15
CrR 3.2(b), (c)	15
CrR 3.2(b), (d)	16
CrR 3.2(c)(1)-(9)	15
CrR 3.2(c)(7)	17
CrR 3.2(e)(1)-(8)	16

RESPONSE TO ASSIGNMENTS OF ERROR

- I. **Validity of a foreign protection order is not an element of the crime of violating that protection order; the jury was properly instructed.**
- II. **The trial court properly imposed \$60,000 bail pending trial**

STATEMENT OF THE CASE

The State charged Quran Ingram (hereafter 'Ingram') with Residential Burglary – Domestic Violence, and Violation of a protection order – Domestic Violence. CP 10-11. The case proceeded to trial on February 6, 2017. RP 130.

At trial, the State presented testimony from the victim of the two offenses, Tiffany Ingram,¹ and three police officers involved in investigating the case. RP 169-260. The following evidence was presented at trial:

Tiffany and Ingram were married for two years, lived together, and had a child in common. RP 170. They stopped living together on November 27, 2016. RP 171. Up until then, they had lived at a residence on Rossiter Lane in Clark County, State of Washington. RP 171. Only Tiffany and her son were on the lease for the residence at Rossiter Lane.

¹ For the sake of clarity and ease of reading the State refers to Mrs. Ingram by her first name, Tiffany, as she and the appellant share a last name. The State intends no disrespect.

RP 174-76; Ex. 31, 32. Ingram has never been on the lease for the Rossiter Lane residence. RP 176. On November 27, 2016, Tiffany went to stay in Multnomah County, Oregon at her mother's house. RP 171, 178. On November 30, 2016 Tiffany sought and was granted an order of protection by the Multnomah County Circuit Court. RP 171; Ex. 51. Tiffany indicated in her petition that she was a Multnomah County resident, and the Court found it had jurisdiction over the parties. Ex. 51; CP 54-69. A redacted copy of that protection order was admitted into evidence as exhibit 51. RP 172. Ingram did not object to the admission of the protection order. RP 172. After obtaining the protection order, Tiffany went through law enforcement to have Ingram served with a copy of the order. RP 172.

On December 1, 2016, Tiffany went to her residence on Rossiter Lane; when she left her residence that day, she locked all the doors, closed the curtains and shut off all the lights. RP 173. The following day, on December 2, 2016, Tiffany drove past her residence on Rossiter Lane and saw that the lights were on inside her home. RP 173. Believing someone was in her home, Tiffany called the police. RP 173-74. At that time, Ingram no longer had a key to the Rossiter Lane residence. RP 176. Tiffany had paid rent for the Rossiter Lane residence for the entire month of December 2016. RP 177. On December 2, 2016, Tiffany was receiving

mail at the Rossiter Lane address and kept her belongings there. RP 176. She had intended her residency in Oregon to be temporary as she planned to go back to her residence on Rossiter Lane after it was safe for her to return. RP 194-95.

Detective Chris Luque was contacted by Tiffany on December 2, 2016. RP 251. She sounded fearful on the phone. RP 251. Based on what Tiffany told him, Detective Luque responded to her residence on Rossiter Lane and found Ingram inside. RP 252. Officer Jordan Rasmussen also responded to Tiffany's residence upon this report. RP 197-98. When Officer Rasmussen arrived at Tiffany's residence, Ingram was inside the residence. RP 205. Officer Rasmussen contacted Ingram through a front window; he spoke to Ingram through the window. RP 205-06. Ingram showed Officer Rasmussen a copy of his identification, which was admitted as Ex. 5, and a copy of the no contact order involved. RP 206-07. Police entered the residence and took Ingram into custody. RP 207-08. Officer Rasmussen obtained a search warrant for Ingram's phone and found photographs on there of the lease agreement for the apartment, which listed Tiffany and her son as the only occupants. RP 209-11.

Sergeant Jay Alie also responded to this incident on December 2, 2016. RP 225. He saw Ingram inside the residence. RP 227. After Ingram came out, Sgt. Alie entered the residence and observed that throughout the

residence the belongings appeared to belong to a female. RP 229. The clothes were primarily female articles of clothing. RP 229. The house was fully furnished and appeared to be lived in. RP 229. Photographs of the clothing Sgt. Alie observed and of the house in general were admitted as exhibits 37 through 50. RP 229-30. Sgt. Alie also observed multiple handwritten notes neatly set out on the counter in the kitchen. RP 233-34. The notes were written to Tiffany and her child from Ingram. RP 234-35, 243-44. The notes were taken into evidence and admitted at trial as exhibits 52 and 53. RP 244.

After the State presented its witnesses and rested, the defense called no witnesses and rested. The jury returned guilty verdicts on the crimes of Residential Burglary and Violation of a Court Order. RP 319-20; CP 154-55. The jury also returned a special verdict finding Tiffany and Ingram were members of the same family or household. RP 320; CP 156. The trial court imposed a standard range sentence. CP 364-89. This appeal follows.

ARGUMENT

I. Validity of a foreign protection order is not an element of the crime of violating that protection order; the jury was properly instructed.

Ingram argues that the validity of the protection order underlying his prosecution for Burglary and violation of a protection order is an essential element of the crime of violation of a no contact order that the State must prove to a jury beyond a reasonable doubt. Ingram argues that because the trial court ruled that validity of the foreign protection order was not an element of the crime that his convictions should be reversed as the jury did not find that essential element proved beyond a reasonable doubt.

However, Ingram's contention that validity of a protection order is an element of the crime of violating that protection order is incorrect.

Validity of a protection order is a legal determination for a court to make and not a question for the jury; this legal finding relates to the admissibility of the evidence, i.e., the protection order, and not to an essential element of the crime. Ingram's claim fails.

RCW 26.50.110(1) provides that the elements of a foreign protection order, exclusive of enhancements, are (1) a protection order was in effect at the time charged; (2) the defendant knew of the order; and (3) a violation of the restraint provisions or a violation of a provision of a foreign protection order specifically identifying that a violation will be a

crime. *See State v. Snapp*, 119 Wn.App. 614, 82 P.3d 252 (2004).

Generally, foreign protection orders are presumed valid when an order appears authentic on its face. *Id.*; RCW 26.52.020. Furthermore, in a prosecution for violation of a protection order, the State need only prove the existence of a facially valid no-contact order; there is no requirement the State prove the validity of the no-contact order beyond a reasonable doubt. *Snapp*, 119 Wn.App. at 624. Admitting a certified copy of the no-contact order satisfies the State's burden of proof as to this element. *State v. Abrams*, 163 Wn.2d 277, 178 P.3d 1021 (2008) (Chambers, J. concurring). The validity of a no-contact order is not a question for the jury, but rather is a preliminary question of law for the court to decide. *State v. Miller*, 156 Wn.2d 23, 123 P.3d 827 (2005). Defects in the order do not necessarily invalidate them. *Snapp*, 119 Wn.App. at 624-25 (citing *State v. Sutherland*, 114 Wn.App. 133, 56 P.3d 613 (2002), *rev. denied*, 149 Wn.2d 1034, 75 P.3d 969 (2003)).

In *State v. Carmen*, 118 Wn.App. 655, 77 P.3d 368 (2003),

Division I of this Court addressed whether, in a prosecution for felony violation of a domestic violence no contact order by two prior convictions, the fact that the two predicate convictions were for violations of orders issued under the specified statutory provisions in RCW 26.50.110(5) was an essential element the State had to prove to a jury beyond a reasonable

doubt. *Carmen*, 118 Wn.App. at 660-68. The Court in *Carmen* found that whether or not the prior convictions were for violations of orders issued under one of the statutes listed in RCW 26.50.110(5) was clearly a question of law for the court to decide and not for the jury. *Id.* at 663. In coming to this conclusion, the Court discussed the difficulty of charging a jury with determining whether a foreign protection order was “valid” or not. *Id.* at 663 n. 2. There, the Court discussed the “impropriety of asking the jury to decide questions of law.” *Id.* At trial the defendant had proposed jury instructions which would require the jury to determine whether one of the predicate convictions was based on a “valid foreign protection order.” *Id.* Those instructions would then have required the trial court to define “valid foreign protection order,” refer to RCW 26.52.020, and our State’s Foreign Protection Order Full Faith and Credit Act. *Id.* Putting this issue to a jury would have required the jury determine jurisdictional issues, notice issues, sufficiency of the parties’ opportunity to be heard, and other due process concerns. *Id.* The *Carmen* Court put it simply: “These are clearly questions for the court and not the jury.” *Id.*

Instead, the Court in *Carmen* noted that the requirement in RCW 26.50.110(5) that prior convictions be for violations of no-contact orders issued under one of the listed statutes, or of a valid foreign protection order, relates to the admissibility of the State’s proof of the defendant’s

predicate convictions, and was not an element of the crime. *Id.* at 663. The Court stated,

Put another way, RCW 26.50.110(5) raises an evidentiary barrier to the admission of evidence of the two prior convictions in order to prove the felony offense unless the prior convictions qualified as predicate convictions as defined in the statute. The very relevancy of the prior convictions depended upon whether they qualified as predicate questions under the statute. If they had not so qualified, the jury never should have been permitted to consider them.

Id. at 664. This reasoning is applicable to the validity of a foreign protection order as well. The definitions in RCW 26.50.110 and 26.52.020 provide a gatekeeping function that affects the admissibility of the foreign protection order; it does not create an essential element of the crime which must be determined by a jury.

That the validity of a foreign protection order is an evidentiary issue is supported by examining situations in which juries are charged with determining the existence of a prior conviction beyond a reasonable doubt. *See Carmen*, 118 Wn.App. at 664-65. The Court in *Carmen* discussed two situations in which the State must prove the constitutional validity of a predicate conviction beyond a reasonable doubt: habitual offender proceedings, and prosecutions involving the crime of being a

felon in possession of a firearm. *Id.* at 665 (citations omitted). In examining cases discussing this issue, the *Carmen* Court found that

...what is at issue is the admissibility into evidence of the fact of the predicate conviction, because evidence of a constitutionally invalid conviction may not be admitted for the jury's consideration. And it is the trial court, not the jury, which decides the constitutional validity of the predicate conviction, at a hearing held outside the presence of the jury, as in other situations where the court must determine the admissibility of evidence that has been challenged.

Id. at 665. In *State v. Thornton*, 24 Wn.App. 881, 604 P.2d 1004 (1979), a habitual offender proceeding, the Court on appeal addressed whether the constitutional validity of a defendant's prior convictions was an element that the State had to prove to the jury. The Court found that the constitutional validity of convictions is "a question of law for the court, not a question of fact for the jury." *Thornton*, 24 Wn.App. at 887. The *Thornton* Court reasoned that if an offender challenged the constitutional validity of his or her prior convictions, the trial court then had to determine whether the evidence of his prior convictions was admissible at the trial, as invalidity of a prior conviction renders the evidence of that conviction inadmissible. *Id.*

It is improper to collaterally attack the validity of a protection order in a criminal prosecution for violation of that order. *See Miller*, 156 Wn.2d at 31-32. In holding that the validity of a protection order was not an element of the crime of violation of the order, the Court in *Miller* found the validity of an order is a question of law that is solely for the court to resolve, not the jury. *Id.* at 31. The Court further found that questions regarding the validity of the order affected the admissibility or “applicability” of the order in the trial for violating that order. *Id.* The Court clarified however that they “do not suggest that orders may be collaterally attacked after the alleged violations of the orders. Such challenges should go to the issuing court, not some other judge.” *Id.* at 31 n. 4.

At trial, Ingram did not object to the admission of the Protection Order at issue on appeal. RP 172. When the State moved to admit the order as an exhibit, Ingram stated, “No objections other than the record has previously made.” RP 172. Prior to this, Ingram had argued the “scope of the Oregon order,” alleging the location he was arrested at, the victim’s house, was not covered by the Oregon protection order. RP 26. Yet he specifically indicated he was “not arguing the validity of the Oregon order.” RP 26. Ingram’s counsel later indicated he wanted Ingram to attack the underlying petition and restraining order prior to trial. RP 42.

However, Ingram never objected to the admissibility of the order, nor did he move to exclude the order from evidence. Thus as Ingram did not object to the admission of the order, he has failed to preserve any claim that it was improperly admitted into evidence. In *Carmen*, the Court held that the defendant failed to object to the admission of the certified copies of his prior convictions and therefore he waived any claim on that issue. *Carmen*, 118 Wn.App. at 668.

Additionally, however, the trial court did not abuse its discretion in admitting the protection order out of Oregon into evidence. It was a certified copy of an order that was active at the time of the commission of the offense, and that appeared on its face to be valid and properly issued. The Oregon Court made findings based on evidence it had. Ingram bases a lot of his claims on the fact that the victim was not a “resident” of Oregon and therefore her petition for an order was based on a misrepresentation which therefore invalidates the entire order. This is not the case. The victim specifically indicates on the order that her child had been living with her, first in Clark County up until November 26, 2016 and then in Multnomah County from November 27, 2016 until the present day. CP 66. Thus the Multnomah County Court was aware of the length of time that the victim had been living in Multnomah County based on the information she provided in the petition. CP 66; RP 57-59. The Multnomah County

Court further found that it had jurisdiction over the parties and the subject matter. CP 60. The Multnomah County court indicated that the “Order is valid,” and that it would be in effect for one year from November 30, 2016. CP 60. Therefore, based on the information available to it, the trial court below properly admitted the protection order into evidence. The order was valid, issued by a competent Court, and was active at the time of the commission of the crime.

Furthermore, Ingram did not propose a jury instruction to the court with an additional element of validity of the protection order for the jury to find in order to convict him. RP 275-76. Ingram also did not object to the State’s proposed to-convict instruction which set forth the elements of the crime of violation of the protection order that the jury needed to find in order to convict. RP 275-76. Ingram was asked directly by the Court whether he had any issues or objections to the instructions regarding the violation of the protection order and he indicated he did not. RP 275-76. Thus Ingram has waived any argument that the jury should have been instructed on an additional element of the crime of violation of a no contact order. “An objection to a jury instruction cannot be raised for the first time on appeal unless the instructional error is of constitutional magnitude.” *State v. Dent*, 123 Wn.2d 467, 869 P.2d 392 (1994). This Court should decline to review Ingram’s claim that the instructions were

improper for failing to include validity of the order as an element of the crime. But even if this Court reaches this issue, the jury was correctly instructed as validity is not an element of the crime and need not be included in the to-convict instruction. The trial court properly instructed the jury.

The validity of a foreign protection order is not an essential element of the crime of violating that order. The trial court properly admitted the Oregon protection order and properly instructed the jury on the true elements of the crime. Ingram's convictions should be affirmed.

II. The trial court properly imposed \$60,000 bail pending trial

Ingram claims the trial court violated CrR 3.2 and his constitutional right to due process by requiring \$60,000 bail be posted prior to release pending trial. This issue is now moot as there is no relief requested by Ingram, nor is there any relief this Court could grant at this juncture. Furthermore, the trial court properly imposed bail in this case. Accordingly, Ingram's claim fails.

Ingram argues this issue is not moot because it is one that involves continuing and substantial public interest and is likely to recur. It is difficult to argue that Ingram's particular release conditions and the trial court's discretion in imposing bail is one of continuing and substantial

public interest. A case is moot if the Court can no longer provide effective relief by deciding the action. *State v. Turner*, 98 Wn.2d 731, 658 P.2d 658 (1983). Our Courts will generally not address moot issues unless they involve “matters of continuing and substantial public interest.” *In re Personal Restraint of Myers*, 105 Wn.2d 257, 714 P.2d 303 (1986). In determining whether an issue involves a matter of continuing and substantial public interest, this Court considers three factors: 1) whether the question presented is of a public or private nature; 2) the need for judicial determination for future guidance of public officers, and 3) the likelihood of future recurrence of the issue. *Id.* The issue of Ingram’s bail is applicable only to this particular case and is not an issue that is likely to recur. Ingram is asking this Court to issue a blanket opinion on a general legal issue as opposed to the narrow issue addressed in Ingram’s case – whether it was appropriate in his case to set bail while pending trial. This Court should decline to issue an advisory opinion in this situation.

However, the trial court did properly set bail in Ingram’s case. CrR 3.2 provides that a criminal defendant should be released pending trial unless the court determines that release will not reasonably assure the defendant’s required appearance in court, or when there is a likely danger that the defendant will commit a violent crime or seek to intimidate witnesses or will otherwise interfere with the administration of justice.

CrR 3.2(a)(1), (2). If the court decides a defendant is not likely to reappear if released, then the court shall consider what conditions of release will reasonably assure the defendant's appearance. CrR 3.2(b), (c). In such a situation, the trial court is to consider the defendant's history of response to legal process and prior court orders to appear, the defendant's employment, on-going education, participation in treatment, volunteer work, or receipt of financial assistance, the defendant's family ties and relationships, reputation, character, mental condition, criminal record, the nature of the charge, the willingness of responsible members of the community to vouch for the defendant's reliability and assist him in complying with conditions of release, and any other factors indicating the defendant's ties to the community, in determining what conditions to impose as conditions of release. CrR 3.2(c)(1)-(9). If the court finds there's a substantial danger the defendant will commit a violent crime or will seek to intimidate witnesses or interfere with the administration of justice if he were to be released pending trial, then the court is to consider the defendant's criminal record, the nature of the charge, the defendant's reputation, character, mental condition, past record of threats to victims or witnesses, past interference with witnesses or the administration of justice, any evidence of present threats or intimidation directed to witnesses, past record of committing offenses while on pretrial release, probation or

parole, past record of use or threatened use of deadly weapons, and willingness of responsible community members to vouch for the defendant's reliability and assist him, in deciding what conditions the court should place on the defendant's pretrial release. CrR 3.2(e)(1)-(8). If the court determines that conditions are necessary to ensure the defendant's future appearance or community safety, then the court is to impose the least restrictive conditions that will reasonably assure reappearance and community safety. CrR 3.2(b), (d).

This Court reviews a trial court's decisions on release pending trial for an abuse of discretion. *State v. Kelly*, 60 Wn.App. 921, 808 P.2d 1150 (1991). "An abuse of discretion exists '[w]hen a trial court's exercise of its discretion is manifestly unreasonable or based on untenable grounds or reasons.'" *State v. Neal*, 144 Wn.2d 600, 30 P.3d 1255 (1996) (alteration in original) (quoting *State v. Stenson*, 132 Wash.2d 668, 940 P.2d 1239 (1997)). Once a trial court finds that bail is necessary, the amount of the bail is a matter within the sound discretion of the court and will only be reversed for a manifest abuse of that discretion. *State v. Reese*, 15 Wn.App. 619, 550 P.2d 1179 (1976) (citing *State v. Goodwin*, 4 Wn.App. 949, 484 P.2d 1155 (1971)).

The trial court did not abuse its discretion in deciding that conditions were necessary prior to releasing Ingram and did not commit a

manifest abuse of its discretion in setting bail at \$60,000. Ingram did not contest at the trial court below, nor does he now, that he has multiple prior felony convictions, that he had six criminal cases in which he failed to appear for required court appearances, that one of his convictions was for Escape, or that he held a firearm to his wife's head, the same woman who then obtained a protection order which he violated the same day after he was released from jail. RP 5-7, 21-22. The facts known to the trial court at the time it considered release and the second time it reconsidered release showed that the defendant was not likely to reappear without some incentive for him to do so, and that he posed a substantial danger to the victim, the woman whom he had threatened to kill by holding a gun to her head and against whom he violated the protection order within 24 hours of being released from custody. The trial court also had information from the Clark County Corrections Release Unit that it considered in determining whether release was appropriate for Ingram. CP 3. Ingram had no references, therefore no "responsible members of the community to vouch for [his] reliability" or to "assist [him] in complying with conditions of release;" Ingram was unemployed, currently on Probation in another state, had a history of escape, of failing to appear, and had mental health issues. CP 3; *see* CrR 3.2(c)(7). Furthermore, the Corrections Unit recommended that release on his own recognizance be denied because of his extensive

criminal record, his failures to appear, and his prior escape conviction. CP

3. Based on all the information available to it at the time it made both its initial decision and subsequent decision on bail, the trial court did not abuse its discretion in finding that bail was reasonably necessary both to secure Ingram's future attendance at court and to protect the victim's and the community's safety.

Ingram relies on *State v. Rose*, 146 Wn.App. 439, 191 P.3d 83 (2008) to support his claim that the trial court improperly imposed bail as a condition of release. This reliance is misplaced. In *Rose*, the trial court was made aware that the defendant had no history of failing to appear and her criminal history included only a nearly 20-year-old driving while suspended charge. *Rose*, 146 Wn.App. at 450. There was no evidence from which the court could find that the defendant was unlikely to appear. *Id.* The situation is quite different in Ingram's case. The trial court was presented with significant evidence showing that Ingram was not likely to appear and that he was a danger to the victim and community.

In *Reese, supra*, this Court affirmed the trial court's imposition on bail when the defendant had a prior similar conviction, was evasive with the court about his employment and address, and was currently charged with two felonies. 15 Wn.App. at 620. The reasons for denying pretrial release in *Reese* were substantially less worrisome than the reasons for

denying release in Ingram's case, and this Court found it was appropriate to impose bail as a condition of release. When all the facts of the case are taken into consideration, along with the prior history of Ingram's known to the court, the trial court did not abuse its discretion in deciding that bail was warranted. Not to mention the well-known fact that domestic violence victims are at their most vulnerable when they're trying to leave their abuser. This trial court was faced with a domestic violence offense committed a day after a defendant was released from jail, released on allegations of weapons violations and having held a gun to his wife's head, not to mention this defendant's significant history of failing to appear, his prior escape conviction, his probation status, and his lack of references. The trial court very appropriately set bail in this case. The trial court did not abuse its discretion and it should be affirmed.

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CONCLUSION

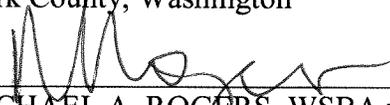
The validity of a foreign protection order is not an essential element of the crime, but rather is a decision for admissibility of the order that is left to the trial court to decide in exercising its gate-keeping function. Furthermore, the trial court properly set pretrial bail in this case pursuant to CrR 3.2. Ingram's claims fail and his conviction and sentence should be affirmed.

DATED this 18th day of May, 2018.

Respectfully submitted:

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