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Court of Appeals
Division II
State of Washington
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COA No. 51880-5-II

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN ACKERMAN,

Appellant.

**ON APPEAL FROM THE SUPERIOR COURT
OF THURSTON COUNTY**

The Honorable Christopher Lanese

APPELLANT'S REPLY BRIEF

**OLIVER R. DAVIS
Attorney for Appellant**

**WASHINGTON APPELLATE PROJECT
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GR 14.1. 1

A. REPLY ARGUMENT

As recently emphasized by the Court of Appeals, a prosecutor breaches the plea agreement by failing to provide what the defendant bargained his trial rights away for – “the prosecutor’s good faith [sentencing] recommendation[.]” State v. Mobley, COA No. 77059-4-I (Division One, February 25, 2019) (Slip Op. at P. 3) (unpublished, cited for persuasive purposes only, under GR 14.1) (citing State v. Carreno-Maldonado, 135 Wn. App. 77, 83, 143 P.3d 343 (2006)). Thus, a prosecutor need merely “undermine[]” a promised recommendation to be deemed in breach. Mobley¹ (Slip Op., at p. 4) (citing State v. Lake, 107 Wn. App. 227, 233, 27 P.3d 232 (2001)).

- 1. The Respondent’s contention -- that the prosecutor’s extensive argument effectively portraying the crime as premeditated and highlighting facts that mirror aggravating factors - was merely intended to describe second degree murder and to distinguish Ackerman from his co-defendant Garlock, is neither persuasively supported by the record or the law, nor pertinent given that the Due Process breach-of-plea standard is objective.**

Here, in this case where the defendant was originally charged with premeditated murder but agreed to plead guilty to second degree murder, the first salient fact of breach was the prosecutor’s lengthy

¹ Mobley emphasized the prosecutor’s obligations to adhere in good faith to a promised recommendation; but the case itself involved an un-revised written sentencing briefing filed in a case that had been ordered to be re-sentenced.

discussion of facts that pertain to motive, describing the State's belief in several fact patterns that showed multiple, particularly wrongful, purposes as to why Mr. Ackerman planned to, and did shoot the victim. See AOB, at pp. 14-16. (The breach was followed by the court sentencing Mr. Ackerman to 295 months, rather than the 240 months the parties negotiated as an agreed recommendation).

Respondent concedes that the prosecutor "noted" that Mr. Ackerman clearly had a motive to kill the victim. SRB, at p. 5 (citing 4/13/18RP at 29). The State appears to argue that discussion of motive was part of a prosecutorial effort to explain how the State came to determine that Ackerman, rather than co-defendant Garlock who the court would later be sentencing, was the person, of the two, who shot the victim. SRB, at pp. 5. But there is no need at a sentencing hearing for the trial court to "distinguish" this defendant from a co-defendant who will later be sentenced. And indeed it would be well understood by counsel to be not proper - the present trial court was not sitting to consider the co-defendant's comparative level of guilt, or to take evidence on the co-defendant's actions, for use at the later hearing.²

² On March 4 a Commissioner of the Court denied the Respondent's RAP 9.11 motion to supplement the record with documents pertaining to co-defendant Mr. Garlock. The movant State of Washington had argued these were necessary

The assertion that the discussion of Mr. Ackerman’s motive was engaged in for that purpose also does not seem persuasive, especially considering that the charging documents described the two co-defendants as either principals or accomplices, each guilty of whatever degree of murder as the other, irrespective of who pulled the trigger. See CP 5 (information, naming jointly charged co-defendant Vincent Garlock and alleging that the defendants were guilty as either principals or accomplices). This is even more the case when one considers that distinguishing between principal and accomplice liability is unnecessary for charging, or guilt. See State v. Teal, 117 Wn. App. 831, 73 P.3d 402 (2003) (charging document need not allege the State’s reliance on accomplice liability, which is simply criminal liability).

In any event, even if the Respondent’s vaguely-explained purpose was the prosecutor’s subjective purpose at the time, the issue of breach is adjudged objectively by looking to the language uttered. AOB, at pp. 7, 16 (citing cases including *inter alia* Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) (the question whether the

for a “complete understanding” of “the overall context of the State’s arguments at [Mr. Ackerman’s] sentencing hearing.” Respondent’s RAP 9.11 motion, at p. 2 (filed 1/24/19). The Brief of Respondent relies throughout on the same argument, that the prosecutor was merely attempting to “distinguish” Ackerman’s case from Garlock’s. SRB, at p. 1, 5, 8, 11.

breach was intentional, inadvertent, or unintentional, is immaterial); see also Mobley (Slip Op., at p. 3).

Therefore the discussion of Ackerman's motives, purposes, and plan to kill the victim – including the motive that the victim had learned that Ackerman was wanted by authorities, that he had learned that Mr. Ackerman (captioned in the case herein as *aka* “David Capron,” *aka* Jonathan Jason Bartosek, and *aka* Jordan Monk, see CP 1, had a true identity), the purpose that it appeared the victim was about to turn Ackerman and Garlock in to the police, and the plan and act of driving the victim to a wooded area – all stands as improper discussions of the more serious crime of *first degree* murder. AOB, at pp. 14-15 (citing 4/13/18RP at 30-31).

For that reason, this unsolicited series of factual presentations was a fundamental breach of the plea, in perhaps the most basic form. It was a long recitation of facts that supported the greater charge that the prosecutor, by *dropping* that charge, had induced Mr. Ackerman to enter a guilty plea. Yet the objective relevance of these matters pertained to that greater crime, and they were proffered here in the sentencing forum, where the amount of punishment was to be decided.

At its core, the gravamen of a breach of the plea is that it violates the defendant's Due Process protections because he has waived his panoply of trial rights, including the right to demand proof to a jury and the rights to cross-examine, defend, and testify, by agreeing to give the government a conviction without a trial. State v. Sledge, 133 Wn.2d 828, 838-39 n. 6, 947 P.2d 1199 (1997); State v. Shineman, 94 Wn. App. 57, 61, 971 P.2d 94 (1999) (a prosecutor's breach implicates fairness of justice system because it undermines the defendant's waiver of rights).

Next, the Respondent's argument that this was mere discussion of the "intent" element of second degree murder is not a plausible objective characterization of the prosecutor's conduct. The question of whether the killing – the shooting of the victim - was intentional was never at issue during any phase of the case. It was of course agreed by the defendant's very entry of the plea to second degree murder. The court needed no education as to the plain factual basis for the plea, nor was the court requesting one when it asked for the prosecutor's sentence recommendation. Carreno-Moldonado, 135 Wn. App. at 81-85 (a key issue in determining whether breach occurred is whether the remarks were unsolicited, or in response to a court's specific inquiry into the particular facts of the case); United States v. Whitney, 673 F.3d 965, 971

(9th Cir. 2012) (government breached plea agreement by introducing unsolicited information at sentencing).

The Respondent's claim that the prosecutor's litany of facts pertained to intent is also unpersuasive, under the objective standard of review, because it is contrary to the law, which requires very little for legal sufficiency of proof of intent. State v. Gallo, 20 Wn. App. 717, 729, 582 P.2d 558 (1978) (intent to kill may be inferred from all the circumstances). Indeed, the mere fact of the firing of a weapon at the victim proves intent, with no further showing required. State v. Hoffman, 116 Wn.2d 51, 84-85, 804 P.2d 577 (1991). Rather, to any objective observer, this was a more complex discussion of *premeditated* murder – the crime the prosecutor claimed to be abandoning, in order to induce Mr. Ackerman's plea. See State v. Pirtle, 127 Wn.2d 628, 644, 904 P.2d 245, 255 (1995) (four facts relevant to establish premeditation are motive, procurement of a weapon, stealth, and the method of killing, the second and third factors being evidence of planning) (citing State v. Ortiz, 119 Wn.2d 294, 312, 831 P.2d 1060 (1992)).

It should be noted that the Respondent writes that the prosecutor told the court that the State has “not been able to get information about why was Dakota shot at that particular moment.” SRB, at p. 6. The

implication seems to be that this quote shows that there was no discussion of motive, purpose, or planning. But the context of the quoted language itself (“Ackerman shot Dakota when he was least expecting it, just like he threatened to do to others”), and the prosecutor’s other remarks at sentencing set forth in the Opening Brief, make clear the the prosecutor was extensively discussing motive and purpose and the series of wrongful reasons why the shooting was not just an intentional act, but planned. The same criticism must be leveled at the Respondent’s argument at pages 8 to 9 that the prosecutor was “explain[ing] the basis for the reduction to murder in the second degree.” SRB, at pp. 8-9. That is in fact the opposite of what the prosecutor’s cited facts did. The prosecutor’s sentencing statements were a fundamental breach of the plea to the lesser crime of second degree murder in a case where premeditated murder was dismissed by the agreed plea. As Mr. Ackerman emphasizes, however, wrongful purpose is immaterial: the prosecutor objectively breached the plea agreement.

- 2. The objective standard of review and the case law shows that the prosecutor did not need to cite specific statutory aggravating factors, or even to name particular aggravating factors, to be in breach by lengthily discussing facts typical of aggravating circumstances.**

Contrary to the State’s contentions, it is not necessary for the prosecutor to denote specific statutory aggravating factors per their

RCW 9.94A.535 subsection designation, or to expressly set forth the various elements of the factors, in order for there to be breach of an agreed recommended number of months incarceration. See SRB, at pp. 9-10, 12 (contending that the prosecutor did not argue the two elements of the aggravating factor of particular vulnerability under RCW 9.94A.535(3)(b)), (contending that the prosecutor did not explicitly state the “lack of remorse” aggravating factor under RCW 9.94A.535(3)(q)), (contending that the prosecutor did not argue the domestic violence aggravator pursuant to RCW 9.94A.535(3)(h)).

The Respondent’s claim that there could be no breach unless there was a citation of specific aggravating factors, or express mention of particularly named aggravating factors and their elements, is not a basis to find absence of breach, under the objective standard, in this case. See Carreno-Maldonado, 135 Wn. App. at 81-82 (where prosecutor did not cite aggravator statutes but argued that defendant committed crimes by seeking out women for “free sex” and “preyed on what would normally be considered a vulnerable segment of our community” prosecutor was “undercutting the agreed sentencing recommendation [by] using words that mirror the statutory aggravating factors[.]” (Emphasis added.). See also AOB, at pp. 10-13.

Notably, Mr. Ackerman was originally charged with first degree murder, CP 5, and the affidavit of probable cause described the crime as “AGGRAVATED MURDER IN THE FIRST DEGREE.” CP 1.

Aggravated murder is causing the death of a person with premeditated intent, and at least one aggravating factor. Several of those aggravating factors mirror or closely share themes in common with the fact patterns highlighted by the prosecutor at Mr. Ackerman’s sentencing, including the alleged belief that the victim was going to report his crimes, and the alleged abusive domestic or sexual relationship with the victim. RCW 10.95.020;³ RCW 9A.32.030(1)(a). The same is true of the statutory aggravating factors pursuant to RCW 9.94A.535(2) and (3) which are similarly well known.

³ RCW 10.95.020 includes factors that aggravate first degree murder:

* * *

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

* * *

(14) At the time the person committed the murder, the person and the victim were “family or household members” as that term is defined in *RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

- (a) Harassment as defined in RCW 9A.46.020; or
- (b) Any criminal assault.

The facts set forth in the original allegations and charge were the origination of the very same factual themes that Mr. Ackerman argues were improperly employed in breach by the prosecutor at the sentencing hearing. These included the prosecutor highlighting Mr. Ackerman's "life of crime" (as a "skilled criminal"), cruelty by shooting the victim six times, the vulnerability of the victim, the preceding sexual abuse and psychological manipulation of the young victim (noting that defendant was 30 years old and victim was 17 when the defendant approached him sexually, and then treated the victim as if he "owned him"), taking advantage of the victim's status of not living with a legal custodian or being estranged from his family (highlighting that defendant took advantage of victim's hope in "getting out" of where he lived which overcame the reluctance of this "vulnerable young man" who lacked actual desire for a homosexual relationship), particularly where the victim "didn't have as much connection with all of his family members as you might hope;" and threatening to kill "[a]nybody that appeared to be helping Dakota," and that "nobody seemed to know that Dakota was missing," enlisting the victim into crime and then killing him after a burglary to avoid being reported to police, and lack of remorse by calculated efforts to conceal the offense including returning to the scene

“where Dakota’s body was laying in the woods,” and efforts to prevent the family or police finding the body, such as by “pretending to be Dakota” by sending text messages to Dakota’s friends. 4/13/18RP at 24-32; AOB, at pp. 10-15; CP 1-2.

Although the prosecutor’s descriptions of the aggravated facts did not precisely track the elements of SRA statutory aggravating factors, they closely mirror the central themes of many of them.⁴

⁴ RCW 9.94A.535(2),(3) set out aggravating factors for crimes:

(2) Aggravating Circumstances--Considered and Imposed by the Court
The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

* * *

(d) The failure to consider the defendant’s prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances--Considered by a Jury--Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant’s conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

* * *

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or more of the following was present:

The Respondent argues that discussion of the minor age of the victim, of the defendant’s enlisting of the victim into a sexual relationship, and of the defendant’s manipulation of the relationship, was a proper request for domestic violence treatment conditions of sentence. SRB, at pp. 11-12. But as the Respondent concedes, the parties agreed – *before* the sentencing hearing commenced in earnest – that the case was not appropriate for a “DV” domestic violence designation. 4/13/18RP at 16-22; see SRB, at p. 11. The discussions that led to this agreement appeared to pertain to all the implications of a domestic violence designation, as also shown by defense counsel’s statement that the “DV issue” was no longer in contention. See 4/13/18RP at 38. More importantly, nothing in the prosecutor’s challenged sentencing statements indicated that certain facts, or any facts, were being set forth in order to secure domestic-violence related

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

* * *

(iii) The offender’s conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

* * *

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

* * *

(q) The defendant demonstrated or displayed an egregious lack of remorse.

conditions of sentence such as treatment. 4/13/18RP at 24-32. The court certainly did not impose any such conditions - see CP 38 - yet it did describe the defendant as a “predator” of the victim, after the sentencing presentations were concluded. 4/13/18RP at 41.

The cases that the Respondent argues are distinguishable, support Mr. Ackerman’s position. See SRB, at pp. 12-14. The Respondent argues State v. Van Buren and State v. Jerde are different because the prosecutors in those cases highlighted aggravating factors, or outlined aggravating factors, respectively. SRB, at p. 13-14; State v. Van Buren, 101 Wn. App. 206, 211-12, 2 P.3d 991 (2000), review denied, 142 Wn.2d 1015, 16 P.3d 1265 (2000); State v. Jerde, 93 Wn. App. 774, 780, 970 P.2d 781, review denied, 138 Wn.2d 1002 (1999).

Mr. Ackerman cited these cases for the standards that deem alleged plea breaches as generally manifest constitutional error under RAP 2.5(a)(3) which the Respondent does not dispute, that the reviewing court uses an objective test and reviews the entire record, and that utterance of the agreed recommendation does not insulate the prosecutor from an argument that the plea agreement was breached. See AOB, at pp. 6-7, 13-14. It is also true, however, that Van Buren was a close case in which the Court of Appeals held that “on balance . . . the

State crossed that impermissible boundary” when the prosecutor recommended the sentence set out in the plea agreement, but also listed factors that the presentence reporter had identified, “if” the court was considering an exceptional sentence. Van Buren, at 215-16 (also noting that although the prosecutor also responded spontaneously to factual claims by the defendant in allocution, that response was nonetheless advocacy by arguing that the allocution showed lack of remorse).

The Respondent also argues the applicability of State v. Jerde, where one of two prosecutors handling five defendants highlighted aggravating facts, and the individual prosecutor in defendant Jerde’s case added another aggravating factor to the discussion of the case, despite uttering that the State was recommending the agreed term of prison. State v. Jerde, 93 Wn. App. at 778-79. The Court held that the prosecutors together effectively undercut the plea agreement. State v. Jerde, 93 Wn. App. at 782. State v. Jerde in fact carries similarity to this case where the different prosecutor in Mr. Ackerman’s identify theft case, which was sentenced before the murder case, told the court that the victim wanted Ackerman to be sentenced to the highest sentence possible for the murder; that prosecutor purported to disavow any attempt to seek a higher sentence in the murder case. 4/13/18RP at 9-11.

The Respondent’s overall arguments, that there is no breach in the absence of the prosecutor more expressly citing to particular aggravating factors, should be rejected. The Respondent argues that State v. Sledge is different because the prosecutor in that case argued for specific aggravating factors after calling probation and parole officers as witnesses. SRB, at p. 12; see AOB, at pp. 7-10. This is correct – the prosecutor expressly used the term “aggravating factors” and orally stated multiple “factors,” some of which were statutory. The Sledge Court described that prosecutor’s breach as “transparent,” while also noting that the basic breach standard does not consider wrongful intent one way or the other. State v. Sledge, supra, 133 Wn.2d at 837-38, 843 and n. 7. But the objective breach standard also does not require that the prosecutor expressly list identified aggravating factors by citation or precise statutory language – it is enough that the factual recitation “mirror[s]” known aggravators. Carreno-Maldonado, at 81-82.

The Respondent argues that State v. Williams is different because there, the prosecutor listed and argued multiple, specific aggravating factors. SRB, at p. 12; see AOB, at p. 13; State v. Williams, 103 Wn. App. 231, 236, 236-39, 11 P.3d 878 (2000). But Mr. Ackerman’s prosecutor very similarly argued aggravating circumstances like many of

those in Williams, if less expressly, including victim vulnerability, concealing the crime, and lack of remorse. Williams, 103 Wn. App. at 233-34. Much more importantly, in Williams the State had listed the aggravating factors as support for its promise to recommend 12 months (the *top end* of the standard range) as against the defendant's permissible request for a *lower*, 6 month, sentence. The core of the State's breach was the prosecutor's briefing and repeated use of language that the defendant should receive "at least" or "a minimum" of 12 months , which was followed by the court imposing a 5-year prison term. Williams, at 233. The case does not stand for the proposition that express citation to aggravating factors is a prerequisite before the Court of Appeals can find breach.

The Respondent also argues that State v. Xaviar is different because the prosecutor there agreed to recommend a 240 month sentence, but then "emphasized the graveness of the situation, reiterated charges that the State did not bring, noted that the State had foregone the opportunity to ask for a 60 year exceptional sentence and highlighted aggravating circumstances that would support an exceptional sentence." SRB, at p. 13. First, that is akin to what the prosecutor did in this case – emphasize the terrible facts of the crime (and also the defendant's "life

of crime” as a “skilled criminal”), recited multiple facts supporting the higher degree charge that the State had dropped, and highlighted facts of the case that were akin to well-known aggravators. State v. Xavier, 117 Wn. App. 196, 200-01, 69 P.3d 901 (2003). Second, the case *does* stand for the proposition that a prosecutor need not particularly cite specific statutory aggravating factors to be in breach – there, the prosecutor discussed the facts as “grave” and causing “trauma,” and faulted the defendant for exhibiting “no remorse” after committing crimes “in the worst way possible;” the Court of Appeals stated that “[t]he above unsolicited remarks obviously refer to the aggravating factors in RCW 9.94A.535.” (Emphasis added.) Xavier, 117 Wn. App. at 200-01. Here, the prosecutor’s unsolicited extended discussion told a tale of an alleged planned shooting of an abused youth who had been supposedly enlisted into a criminal enterprise by taking advantage of his vulnerability, by a defendant who (the State contended) posed as an impostor (the victim) after the offense. This is very much like the Xavier case.

Mr. Ackerman also strongly opposes the notion that this prosecutor was entitled to regale the sentencing court with facts amounting to the more serious first degree crime that was dismissed by plea negotiations, or to list multiple aggravating circumstances (even

though refraining from citing the statutes or the elements thereof), or to describe the defendant as having led a life of crime (when the defendant's criminal history has already been employed to establish the standard range), simply under the justification that this conduct was necessary to protect against the court imposing a sentence below the mid-range sentence that was agreed by the parties. See SRB, at p. 11.

The point of the case of Whitney, 673 F.3d at 969-72, is that certain factual recitations, including going beyond the defendant's criminal history such as labeling him a "good thief" and an "incorrigible narcissistic thief," was highly probative of the appellate court's assessment that a breach occurred by "implicitly arguing for a sentence greater than the terms of the plea agreement" – regardless of whether the agreed recommendation was at the low end of the range (as in Whitney) or the middle of the range (as here, where the prosecutor went beyond the criminal history to describe Mr. Ackerman as a "skilled criminal" who had engaged in a "life of crime.").⁵

⁵ The Whitney Court was also unpersuaded by the government's claim that its factual recitation was a mere effort to guard against the court departing downward from the guidelines range, where the defendant had agreed to a joint sentence recommendation and thus was barred from seeking, and did not seek, a sentence below the agreed-upon sentence recommendation - as here. See CP 11. There was nothing in the nature of that case that made it plausible that the court was contemplating *sua sponte* imposition of a sentence below the recommendation. Whitney, 673 F.3d at 971-72. The same is all true in Mr.

The Respondent's case in support of its argument that the prosecutor's comments about motive and plan, and other circumstances appellant has identified, were simply made in recommendation of the mid-range sentence and were not an attempt to show that the crime was more egregious than a typical second degree murder, is Carreno-Maldonado, supra. But there, breach was found, where the prosecutor's language only tracked aggravating factors without citing them, where the Court emphasized the significance of the prosecutor's factual recitation being unsolicited, and where the prosecutor discussed facts that portrayed the crime as more egregious than typical, even though a mid-range sentence was supposed to be agreed. Carreno-Moldonado, at 81-85. The case is much like Mr. Ackerman's.

Finally, the Respondent's argument of harmlessness – contending that the sentencing court imposed 295 months because of the statements of the victim's mother at sentencing - see SRB, at p. 15 - has been rejected categorically. No harmless error test applies to a prosecutor's breach of plea, which is a violation of the fundamental, insoluble protections of fairness and good faith in the plea bargaining process

Ackerman's case. 4/13/18RP at 39-40 (defense counsel, in brief argument, asking the court to impose the sentence "that the parties had worked out.").

where defendants waive all their trial rights and allow the State to obtain a conviction without a trial. Carreno-Moldonado, 135 Wn. App. at 87 (“Under [In re James, 96 Wn.2d 847, 849, 640 P.2d 18 (1982)] and Santobello, harmless error review does not apply when the State breaches a plea agreement.”).

The defendant’s plea agreement was breached by the prosecution, and Mr. Ackerman is entitled to remand for the choice of remedies set forth in the Opening Brief. AOB, at pp. 1, 17.

B. CONCLUSION

Based on the foregoing and on the Opening Brief, Mr. Ackerman respectfully requests that this Court reverse his sentence, and remand for re-sentencing, and for correction of the scrivener’s errors.

DATED this 7th day of March, 2019.

Respectfully submitted,

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

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| |) | |
| Respondent, |) | |
| |) | NO. 51880-5-II |
| v. |) | |
| |) | |
| JONATHAN ACKERMAN, |) | |
| |) | |
| Appellant. |) | |

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