

68207-5

68207-5

NO. 68207-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MARIO GARCIA-BONILLA,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES D. CAYCE

Handwritten signature and vertical stamp: 6/19/19 11:34:19 AM

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

RANDI J. AUSTELL
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
1. PROCEDURAL HISTORY	2
2. A BRIEF HISTORY OF RAMIREZ'S LIFE IN AMERICA	3
3. GARCIA'S CRIMES	4
4. DEFENSE THEORY AT TRIAL	9
C. <u>ARGUMENT</u>	13
THE TRIAL COURT PROPERLY ADMITTED EVIDENCE OF GARCIA'S PRIOR DOMESTIC VIOLENCE TOWARD RAMIREZ FOR ASSESSING HIS MOTIVE, RAMIREZ'S STATE OF MIND AND TO REBUT CLAIMS THAT SHE FABRICATED THE ASSAULTS	13
1. ER 404(b) HEARING	14
a. Prior Acts Of Domestic Violence	15
i. August 27 – 28, 2006	15
ii. October 5, 2007	16
iii. October 13, 2007	16
iv. April 5, 2008	17
v. May 1, 2008	17
b. Trial Court's Ruling	18
2. STANDARD OF REVIEW	19

3.	REQUIREMENTS FOR ADMITTING ER 404(b) EVIDENCE	19
a.	Motive	23
b.	Credibility	25
c.	Reasonable Fear	28
d.	Harmless Error.....	34
D.	<u>CONCLUSION</u>	35

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

<u>State ex rel. Carroll v. Junker</u> , 79 Wn.2d 12, 482 P.2d 775 (1971).....	19
<u>State v. Baker</u> , 162 Wn. App. 468, 259 P.3d 270, <u>review denied</u> , 173 Wn.2d 1004 (2011).....	19, 20, 21, 23, 24, 26, 27
<u>State v. Foxhoven</u> , 161 Wn.2d 168, 163 P.3d 786 (2007).....	19, 22
<u>State v. Grant</u> , 83 Wn. App. 98, 920 P.2d 609 (1996).....	20, 21, 25, 26, 27, 28, 31
<u>State v. Hentz</u> , 32 Wn. App. 186, 647 P.2d 39 (1982), <u>rev'd on other grounds</u> , 99 Wn.2d 538 (1983).....	19
<u>State v. Kilgore</u> , 147 Wn.2d 288, 53 P.3d 974 (2002).....	22
<u>State v. Lane</u> , 125 Wn.2d 825, 889 P.2d 929 (1995).....	20
<u>State v. Lough</u> , 125 Wn.2d 847, 889 P.2d 487 (1995).....	22
<u>State v. Magers</u> , 164 Wn.2d 174, 189 P.3d 126 (2008).....	21, 26, 28, 29, 30, 31, 32, 33
<u>State v. Nelson</u> , 131 Wn. App. 108, 125 P.3d 1008 (2006).....	21, 27, 28
<u>State v. Powell</u> , 126 Wn.2d 244, 893 P.2d 615 (1995).....	20, 23, 24, 32
<u>State v. Ray</u> , 116 Wn.2d 531, 806 P.2d 1220 (1991).....	34

<u>State v. Thang</u> , 145 Wn.2d 630, 41 P.3d 1159 (2002).....	21
<u>State v. Walker</u> , 136 Wn.2d 767, 966 P.2d 833 (1998).....	32
<u>State v. Wilson</u> , 60 Wn. App. 887, 808 P.2d 754, <u>review denied</u> , 117 Wn.2d 1010 (1991).....	20, 21, 27, 28

Rules and Regulations

Washington State:

ER 404	13, 14, 19, 20, 21, 22, 23, 24, 25
--------------	------------------------------------

Other Authorities

11 Washington Practice: Washington Pattern Jury Instructions: Criminal 35.10, at 211 (2d ed. 2005 supplement).....	31
11 washington practice: Washington Pattern Jury Instructions: Criminal 35.11, at 381 (2d ed. 1994)	31

A. ISSUES PRESENTED

1. Evidence of motive is relevant in domestic violence cases. The State's theory in this case was that the defendant broke into his ex-girlfriend's residence, stabbed her boyfriend and assaulted her with the knife because he was a jealous, possessive man. When evidence demonstrated that the defendant repeatedly committed acts of domestic violence because of his jealousy and possessiveness, did the trial court properly admit the prior bad acts as relevant to the defendant's motive?

2. Evidence of prior bad acts is admissible to explain the dynamics of domestic violence and to rebut claims that the victim fabricated the charges. The defense theory in this case was that the victim had fabricated the charged assaults to avoid deportation and the loss of medical treatment needed to keep her alive. Did the trial court properly admit evidence of the defendant's prior domestic violence to rebut the claimed fabrication?

3. An essential element of assault in the second degree is that the victim's fear was objectively reasonable. An objective standard considers what a reasonable person would have done in the victim's position, knowing everything known to the victim. Did the trial court properly admit evidence of the defendant's prior

domestic violence to help the jury evaluate whether the victim's fear was objectively reasonable.

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY.

The defendant, Mario Garcia-Bonilla, was tried before a jury on burglary in the first degree (Count 1), assault in the first degree (Count 2 - victim Jose Bardales-Munoz (Bardales)), assault in the second degree – domestic violence (Count 3 - victim Mayra Ramirez-Diaz (Ramirez))¹, and domestic violence violation of a court order (count 4).² CP 7-9. The jury convicted Garcia as charged, and found that he was armed with a deadly weapon (a knife) during the commission of counts 1 - 3. CP 95-101. The court imposed a standard-range prison sentence and three consecutive deadly weapon enhancements. CP 111-20. Garcia now appeals. CP 124.

¹ To avoid confusion, other members of Ramirez's family are referred to by first name.

² At the close of the defense case, the State amended the violation of a court order from a felony violation to a misdemeanor violation. 18RP 172-73.

2. A BRIEF HISTORY OF RAMIREZ'S LIFE IN AMERICA.

Mayra Ramirez was born in Guatemala. 14RP 12.³ She has three brothers and one sister. 14RP 14. Ramirez's family was very poor. 14RP 13; 15RP 19. Her father planted maize and her mother washed other peoples' clothing and cleaned their homes. 14RP 13. Ramirez was too poor to go to school; she never learned to read or write Spanish.⁴ 14RP 13-14; 15RP 19-20.

When Ramirez was between ten and twelve years old (she only remembers that President Clinton held office), they moved to America. 14RP 16-18; 15RP 19. Initially, they all moved here to earn money so that when the family returned to Guatemala, they would no longer live in poverty. 14RP 17. Consequently, Ramirez did not attend school here. Id. Instead, she babysat neighborhood children, cleaned houses and worked at her brother's store. 14RP 17-18.

Ramirez's life did not improve much in America. 14RP 20. The one exception was the birth of her son, Ernesto, whom she

³ The State adopts the appellant's designation of the verbatim report of proceedings. See Appellant's brief at 1 n.1.

⁴ Ramirez does not read or write English either. 14RP 12; 15RP 7.

gave birth to ten years ago – when she was eighteen years old.

14RP 20-21.

Ramirez met Garcia when she was still in a relationship with Ernesto's biological father. 14RP 22-23. After Ramirez and Ernesto's father stopped seeing each other, and before Ernesto was born, Ramirez and Garcia started dating. 14RP 24. Ernesto always called Garcia "Dad"; Ramirez never told Ernesto that Garcia was not his father.⁵ 15RP 29.

About one year later (in 2006), Ramirez left Garcia. 14RP 25. But Garcia could not let Ramirez go.⁶ Id.

3. GARCIA'S CRIMES.

On August 3, 2008, after church, Ramirez hosted a family barbeque. 10RP 51. Ramirez's son, Ernesto, her male friend, Jose Bardales⁷, and some of Ramirez's family, including her mother, Barlia, her sister, Hety⁸, Hety's husband, Rosendo, and

⁵ Garcia referred to Ernesto as his son. 17RP 48.

⁶ Garcia's unwanted contact with Ramirez is discussed more fully in section C.1.a of Resp't Br., infra.

⁷ Ramirez and Bardales met in April 2008. After Garcia stabbed Bardales, Ramirez's and Bardales's relationship ended. 12RP 12; 14RP 55.

⁸ Hety is also known as Letti and is transcribed incorrectly by one court reporter as Hetti and by another court reporter as Heti. 13RP 13; 16RP 9; 17RP 9.

their adult daughter, Carolina, attended.⁹ 10RP 52; 12RP 22; 14RP 62-63. Around 11:00 P.M., Bardales went to bed. 10RP 53-54. A short time later, Ernesto and Ramirez went to sleep next to Bardales. 10RP 29, 53, 65; 12RP 25; 14RP 65; 16RP 64-65.

Carolina stayed up. 17RP 112-13. Carolina sat at the dining room table and watched music videos on her computer; she wore headphones so that she could turn the volume up high. 17RP 112-16. Out of her peripheral vision, Carolina saw Garcia. Garcia stared at her. His eyes were wide open and he held a kitchen knife. 17RP 114-15. Carolina wanted to scream, but she could not find her voice. 17RP 116-17. Garcia walked down the hall. 17RP 117.

Bardales awakened suddenly. Garcia had stabbed Bardales in the abdomen.¹⁰ 10RP 40, 56; 13RP 40. Instinctively, Bardales kicked his attacker away from him. 10RP 58. Bardales turned on the light. He saw Garcia with a knife in his hand, poised to stab

⁹ Hety, Rosendo and Carolina lived at Ramirez's apartment for a couple of weeks, including August 3-4, 2008. 14RP 65; 15RP 40; 16RP 58-59.

¹⁰ Initially, Bardales did not feel any pain. Two or three minutes later, Bardales felt "[p]ain like death." 10RP 59. Bardales said, "I would prefer to be dead than feel that pain." Id.

Bardales again.¹¹ 10RP 58-65. It was a kitchen knife with a five- or six-inch blade. 10RP 64; 17RP 115-16.

Ramirez awakened when she heard someone groan and a sound like someone had fallen. 14RP 70; 15RP 44. At first, Ramirez thought Ernesto had fallen from the bed. 14RP 71; 15RP 44. After Bardales turned on the light, Ramirez saw that Bardales had been stabbed and that Garcia held a knife. 14RP 71; 15RP 46. Ramirez asked Garcia, "What are you doing here?" 15RP 46. Then Ramirez saw blood on Bardales. 14RP 72. She screamed at Bardales, "He killed you, he killed you." 14RP 72. When Garcia lunged at Ramirez with the raised knife, Ramirez thought that Garcia would kill her. 14RP 72-73; 16RP 40. Bardales kicked Garcia again. 14RP 72-74. Garcia fled the bedroom. 13RP 19-20; 14RP 73.

Once Carolina heard screams in Ramirez's room, she screamed too. 17RP 118. Hety was awakened by Carolina, who yelled, "Mom, Mario's (Garcia's) here." 16RP 65. Carolina saw

¹¹ Bardales had seen Garcia only twice before the stabbing – once at a mall (Ramirez pointed Garcia out to Bardales, who saw only Garcia's profile) and on May 1, when Garcia walked up to the car that he, Ramirez and Ernesto were in. 10RP 42-48; 14RP 55-56.

Garcia walk down the hallway toward her. He held the knife in front of himself. 17RP 119.

Hety got out of bed and also saw Garcia walk down the hallway. 16RP 65. Hety followed Garcia. 16RP 67. She said, “You scoundrel, what did you do?” Garcia did not respond. 16RP 68. He fled through a sliding glass door.¹² 13RP 19-20; 14RP 73; 16RP 68; 17RP 121. He took the knife with him. 16RP 41.

Frightened, Carolina told Hety that she had seen Garcia walk toward Ramirez’s bedroom with a knife in his hand. 16RP 84. Hety and Carolina saw Bardales on the bed; he was bleeding. 16RP 84; 17RP 123. Bardales told Hety that Garcia had stabbed him. 16RP 84.

Ramirez called 911. 14RP 74-77; 16RP 85. With the assistance of an interpreter, Ramirez told the dispatcher that they needed an ambulance – somebody had been stabbed.¹³ 14RP

¹² Previously, Garcia had done something to the sliding glass door that prevented it from locking. Ramirez, Bardales, Carolina and Hety generally put a stick in place to secure the door, but they did not always remember to do that. 10RP 55; 14RP 67-68; 16RP 61; 17RP 110-11. Garcia was thus able to enter Ramirez’s apartment without any signs of forced entry. 10RP 21, 31.

¹³ Ramirez had difficulty providing the dispatcher with her address because she cannot read. 14RP 75. Carolina spoke to the dispatcher as well. 14RP 76-77. Carolina became frustrated at the dispatcher’s questions. She wanted an ambulance because she thought Bardales would die. 17RP 124-25.

74-77. Ramirez then advised Hety and Carolina to leave – “the sooner, the better.”¹⁴ 15RP 5; 17RP 126. Ramirez feared that the police would arrest Hety, Rosendo and Carolina, take them to immigration and deport them.¹⁵ 15RP 5-7; 16RP 85-86.

When the police arrived, Ramirez showed them a no-contact order.¹⁶ 15RP 2-5. Distraught, Ramirez pointed at Garcia’s name and told them that he had stabbed Bardales. 10RP 12-13, 19, 22.

Bardales lay bleeding on the bed.¹⁷ 10RP 16-17. Medics responded, administered some aid and then took Bardales to Harborview Medical Center. 10RP 24-25; 13RP 40-43. The stab wound had sliced through Bardales’s abdomen and perforated his intestine. 10RP 68; 13RP 31-32. Surgeons operated on Bardales to stop the intestinal contents from leaking into his abdomen. Id.

¹⁴ Rosendo slept through incident. 17RP 123.

¹⁵ Ramirez called the police once after Garcia violated a no-contact order. Garcia fled before the police arrived. The police arrested Ramirez because she was in the United States illegally. 16RP 43-44; see also section C.1.a.iii of Resp’t Br., infra. On March 9, 2011, after listening to the 911 call in the instant case, a detective asked Ramirez who else had been present during the incident; she responded Hety and Carolina. 16RP 14-16; 17RP 22-23. On March 17, 2011, a detective took statements from Hety and Carolina. 16RP 88; 17RP 10-11. Carolina identified Garcia as the man who had stabbed Bardales. 17RP 13, 128.

¹⁶ The no-contact order had been issued because of another domestic violence incident, discussed in section C.1 of the Resp’t Br., infra.

¹⁷ The only other person in the apartment when police arrived was Ernesto, who was asleep. 10RP 17, 28-29; 16RP 10-13.

Without surgery, Bardales would have died from severe infection.

Id.

4. DEFENSE THEORY AT TRIAL.

Ramirez has advanced acquired immunodeficiency syndrome (AIDS), which has caused brain lesions and infections, epilepsy and seizures.¹⁸ 11RP 23-30; CP 61. Additionally, Ramirez has suffered dangerous side effects from her anti-seizure and anticonvulsant medications.¹⁹ 11RP 29-33; CP 61. On July 8, 2008, Ramirez was admitted to Harborview Medical Center, where she began treatment with a neurologist who specializes in

¹⁸ Ramirez was diagnosed with AIDS while she was pregnant with Ernesto. 14RP 51. Human immunodeficiency virus (HIV) is an infection that attacks one's CD4 T-cell count, which then compromises the immune system and makes one susceptible to a variety of bad infections such as AIDS. 11RP 16-19. Not everyone with HIV develops AIDS, but one with AIDS is classified as having stage-three HIV. 11RP 19-20.

¹⁹ Pretrial the presiding court granted the defense motion for a compelled psychiatric evaluation of Ramirez. CP 10-24, 25. The defense challenged Ramirez's testimonial capacity; *i.e.*, her competence as a witness. CP 60-64. After the trial court heard testimony from Ramirez (3RP 8-15) and a defense expert, forensic psychiatrist Dr. Adler (2RP 7-132), reviewed transcripts of two defense interviews (3RP 4, 6) and considered counsels' written and oral arguments (CP 60-64, 159-222; 3RP 16), the court found Ramirez competent as a witness. 3RP 16-17.

infectious diseases.²⁰ 11RP 7, 25-27. A combination of anti-seizure medicine and other drugs caused Ramirez to hallucinate for a short time while hospitalized.²¹ 11RP 41-44. Nine days after her hospitalization (July 17, 2008), Ramirez's hallucinations and seizures stopped. As long as Ramirez takes her medications, she does not suffer from seizures. 15RP 15. The hospital discharged Ramirez two days later (July 19, 2008). 11RP 42-44.

The defense claimed that Garcia had not gone to Ramirez's residence on August 4, 2008. CP 34, 60. Rather, the defense suggested that Ramirez may have stabbed Bardales while she was suffering from her previously diagnosed psychosis, seizures or paranoia. CP 35, 61; 19RP 49-59. The defense contended that

²⁰ Ramirez went to the hospital because she felt nauseous and cold and she had a headache. 15RP 13.

²¹ Ramirez suffers from toxoplasmosis, a parasite that has destroyed portions of her brain and left permanent scars. 11RP 22-24. Toxoplasmosis and complications from medicines (drug toxicity) led to Ramirez's confusion, poor memory, and visual and auditory hallucinations. 11RP 25-43; 15RP 16-18. Bardales also has AIDS; however, his symptoms are controlled by medication. 12RP 17-18.

Ramirez stabbed Bardales while suffering a relapse.²² 19RP 49-56.

The defense argued that Ramirez had a motive to fabricate the charges against Garcia because she is an undocumented immigrant, who would likely face incarceration or permanent deportation if “it is determined that she stabbed someone in the middle of the night.” CP 35, 61; 19RP 57-58. The defense stressed that here, in the United States, Ramirez received public assistance for housing²³ (Ramirez is “completely illiterate . . . [with] no appreciable means of earning any real income”²⁴) and the expensive medical care needed to treat her AIDS and related

²² Ramirez’s psychiatrist evaluated her on August 22, 2008, and made a chart note: “no psychosis, no delusions.” 11RP 45; 18RP 197-98. Ramirez had no history of psychiatric treatment or of ever having previously spoken with a psychologist or psychiatrist. 18RP 188-89. Moreover, during Ramirez’s hospitalization, neurology never asked for a psychiatric consultation. 18RP 186. After reviewing Ramirez’s neurological treatment records, the psychiatrist had no reason to think that Ramirez’s hallucinations were not simply the result of too rapid titration of anticonvulsant medicine. 18RP 185-86. Also, Ramirez’s treating neurologist testified that it was “highly unlikely” that Ramirez suffered hallucinations on August 4, 2008. 11RP 45, 89.

However, Dr. Adler, the forensic psychiatrist retained by the defense, diagnosed Ramirez with “Impulsive Explosive Disorder” (IED). 18RP 74-76. People who suffer from the abnormality, which appears on the left side of the brain, at times just explode violently. 18RP 74-76. Although Dr. Adler said Ramirez had IED, he said that he did not know whether Ramirez had IED aggression on August 4, 2008. 18RP 74-76.

²³ 15RP 25-28.

²⁴ 19RP 56 (defense closing argument).

illnesses, which would end if Ramirez was deported.²⁵ CP 35, 61-62; 19RP 49-59 (defense closing argument) (“If [Ramirez] had to go back to Guatemala . . . [i]t would be a death sentence. A death sentence. She would die. It is impossible to conceive of any more motivation that that.”); see also 15RP 22 (Ramirez conceded during cross examination that had she returned to Guatemala, “I would have only been going to die. . . .”); 15RP 28, 38.

Bardales and Ramirez’s family, according to the defense theory, falsely accused Garcia because, if deported to Guatemala, Ramirez would have to either abandon Ernesto or bring him back to Guatemala where he would be deprived of all of the opportunities available to him in the United States. 15RP 22, 24 (cross examination); 19RP 56-57 (defense closing argument); CP 61-62. Defense counsel argued that Ramirez’s sister and niece know all about the deportation and medical care risks that Ramirez would face if found culpable for Bardales’s stab wounds, which is why

²⁵ “[S]he receives public medical care for a very complicated and, we have to assume, very expensive variety of illnesses for treatment, medications, a great many. Again, very expensive. And once more, all paid for by the public.” 19RP 56 (defense closing argument). Ramirez testified that she would not have received medical care had she returned to Guatemala. 15RP 21-23.

Bardales and Ramirez's family was covering for her.²⁶ 19RP 58; see also 12RP 14 (defense counsel: "Our theory has always been that the witnesses are trying to protect [Ramirez]. . . .").²⁷

The defense contended that Garcia and Ramirez's discordant relationship (the defense conceded that "[Garcia] probably wasn't the perfect boyfriend") and the potential immigration consequences provided motive for Ramirez and her family to fabricate the charges; counsel said Garcia was the "perfect scapegoat." 19RP 56; CP 35, 61-62.

C. ARGUMENT

THE TRIAL COURT PROPERLY ADMITTED EVIDENCE OF GARCIA'S PRIOR DOMESTIC VIOLENCE TOWARD RAMIREZ FOR ASSESSING HIS MOTIVE, RAMIREZ'S STATE OF MIND AND TO REBUT CLAIMS THAT SHE FABRICATED THE ASSAULTS.

Garcia argues that the trial court committed reversible error by admitting evidence of his prior domestic violence pursuant to ER 404(b). Specifically, Garcia claims that the evidence was only

²⁶ Carolina testified that she knew Ramirez had a serious illness, but she did not know the specific illness. Carolina did not know anything about Ramirez's immigration status. 17RP 129-31. Bardales stated that he did not know Ramirez was in the United States illegally or that she faced deportation. 12RP 5, 9.

²⁷ Bardales did not tell the police officers who responded to the 911 call that Hety and Carolina had been in the apartment when Garcia stabbed him because he knew that they did not have papers and could have been arrested by immigration. 13RP 17.

relevant to show propensity and irrelevant to assess Ramirez's state of mind, *i.e.*, her reasonable fear, or to evaluate her credibility.

Garcia's argument fails for three reasons. First, Garcia does not challenge the trial court's decision to also admit the evidence to assess Garcia's alleged motive. On this basis alone, Garcia's claim fails. Second, in light of the defense theory and issues relating to Ramirez's credibility, Garcia's argument must be rejected. Finally, evidence was admissible to prove an element of the assault in the second degree; namely the State was required to prove that a reasonable person under the same circumstances as Ramirez would have a reasonable fear of bodily injury.

1. ER 404(b) HEARING.

Pretrial, Ramirez testified regarding the April 5, 2008 incident and the State made an offer of proof regarding Garcia's other prior bad acts.²⁸ 3RP 29-31 (testimony), 32-34 (offer of proof); CP 237-63; CP 138-58.

²⁸ Although witnesses testified at trial about the prior domestic violence, the information upon which the trial court based its ruling came from Ramirez's pretrial testimony and the proffer.

a. Prior Acts Of Domestic Violence.

i. August 27 – 28, 2006.

On August 27, 2006, about two months after Garcia and Ramirez's two-year dating relationship ended, Garcia kicked in the front door to Ramirez's apartment. A neighbor who heard the disturbance (but who did not know the location of the disturbance) called 911. By the time the police arrived, Garcia had fled.²⁹ Ramirez was too afraid to stay in her apartment; she spent the night at her mother's residence.

The next morning, when Ramirez returned home, she found Garcia asleep on her living room floor. Ramirez asked the apartment manager to help her call 911. The deputies who responded to the call found an "extremely intoxicated" Garcia, who exhibited "extreme mood swings." CP 238-39. Police arrested Garcia for residential burglary – domestic violence.³⁰ Id.

²⁹ The King County Sheriff's Office deputies who responded to the 911 call could not locate the disturbance. When Ramirez provided a statement to police the next day she said, "[W]e called the police [Garcia] ran off before the police came." CP 238.

³⁰ On September 26, 2006, Garcia pleaded guilty to amended charges of criminal trespass – domestic violence and theft in the third degree (Garcia stole jewelry from Ramirez). CP 138-54. At sentencing (October 6, 2006), the trial court issued a no contact order, prohibiting Garcia from contacting Ramirez. CP 155-58.

ii. October 5, 2007.

On October 5, 2007, and in violation of the no contact order issued on October 6, 2006, Garcia knocked on Ramirez's apartment door and windows. Garcia wanted Ramirez to let him into the apartment so that they could talk. Ramirez did not want to talk to Garcia. Ramirez called the police. Ramirez told police that Garcia had also been at her house the previous day (October 4). Garcia had asked Ramirez multiple times to come back to him.³¹ CP 242-43.

iii. October 13, 2007.

Ramirez was in her residence with her friend, Jaime Carrillo. Garcia walked in through a door that had a broken lock. When Carrillo saw Garcia, he fled into the bathroom.³² Garcia stood outside the bathroom and asked Carrillo to open the door. Carrillo called 911. Garcia fled before the police arrived.³³ CP 188-92, 240-41.

³¹ Ramirez testified at trial that she did not want any contact with Garcia "because of how afraid of him I was." 14RP 35.

³² Ramirez testified at trial that she told Carrillo to hide in the bathroom because she feared Garcia's violence. 14RP 48.

³³ The responding police officer determined that Ramirez had an outstanding felony warrant with Immigration for failure to appear for removal. At immigration's request, Ramirez was booked into the King County Jail. 14RP 49. Ramirez spent about three months in custody. 14RP 49.

iv. April 5, 2008.

Ramirez and her mother returned to Ramirez's residence after a medical appointment. Garcia was there. He angrily accused Ramirez of having been with another man. He raised his voice and held Ramirez by her hair. Ramirez feared that Garcia would strike her because, "he always hit me." 3RP 31.

Ramirez's mother tried to defend her daughter. When she said that she was going to call 911, Garcia went after her. As Garcia started to grab Ramirez's mother from behind, Ramirez pulled him away. Ramirez took her mother and her son to the front yard. Ramirez's mother collapsed; she had a stroke. 3RP 31. A neighbor called 911. An ambulance transported Ramirez's mother to the hospital. The next day, Garcia returned and convinced Ramirez not to call the police. CP 38; CP 225, 244-50, 252-63.

v. May 1, 2008.

Bardales was giving Ramirez and her son a ride. At a stop sign, Garcia opened the car door, grabbed Ramirez's son, and tried to pull him out of the car. Ramirez freed her son from Garcia's grasp. Garcia screamed at Ramirez and Bardales as they drove away. CP 226, 252-63.

b. Trial Court's Ruling.

The trial court found that the State proved by a preponderance of the evidence that the prior bad acts detailed above occurred.³⁴ 3RP 34, 43. The court then ruled that, except for the May 1, 2008 incident, the evidence was more probative than prejudicial and was admissible to show motive, Ramirez's reasonable fear³⁵ or to assess Ramirez's credibility because the defense theory of the case was that Ramirez fabricated the incident.³⁶ 3RP 35-65; 14RP 40-4. The trial court said, "[Y]our (the defense) theory is that these people are all making this up. . . ." 14RP 5.

³⁴ Garcia does not challenge the trial court's determination that the State proved the prior acts of domestic violence by a preponderance of the evidence. See 3RP 32-34 (finding that State proved the prior acts).

³⁵ The trial court did not admit the October 4-5 incident to assess Ramirez's reasonable fear. The court found that for that purpose, the prior act was "unduly prejudicial" because it tended to lead to a propensity analysis. 3RP 50-51. The court did, however, admit the incident to help the jury assess Garcia's motive and Ramirez's credibility. 3RP 63-65.

³⁶ The court said that the prejudice from the May 1, 2008 incident, involving Ramirez's son, outweighed the probative value. The court expressed concern that, "[A] jury may well tend to use this as evidence that if he is willing to commit this type of crime, then, he is a bad guy, propensity type evidence." 3RP 28. The court did however allow Ramirez and Bardales to testify that they were driving in the car with Ramirez's son when they saw Garcia standing on a street corner right outside Ramirez's apartment complex. 10RP 50. The sanitized version was permitted because it bore on Bardales's ability to identify Garcia as the man who stabbed him. 3RP 63-64; 14RP 3-7-9.

2. STANDARD OF REVIEW.

This Court reviews the trial court's interpretation of ER 404(b) *de novo* as a matter of law. State v. Foxhoven, 161 Wn.2d 168, 174, 163 P.3d 786 (2007). If the trial court interprets ER 404(b) correctly, the Court reviews the trial court's ruling to admit or exclude evidence of misconduct for an abuse of discretion. Id. A court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). The appellant must prove abuse of discretion. State v. Hentz, 32 Wn. App. 186, 190, 647 P.2d 39 (1982), rev'd on other grounds, 99 Wn.2d 538 (1983).

3. REQUIREMENTS FOR ADMITTING ER 404(b) EVIDENCE.

In a criminal case, evidence of prior bad acts is generally inadmissible to prove that the defendant likely committed the crime charged, that the defendant acted in conformity with prior bad acts, or that the defendant had a propensity to commit the crime. ER 404(b); State v. Baker, 162 Wn. App. 468, 472-73, 259 P.3d 270, review denied, 173 Wn.2d 1004 (2011). However, prior bad acts or other character evidence may be admissible, "for other

purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

ER 404(b).

ER 404(b) sets out particular bases for admission; the list, however, is not exclusive. See State v. Lane, 125 Wn.2d 825, 831, 889 P.2d 929 (1995). If evidence of prior bad acts is admitted for purposes other than those set forth in 404(b), then the trial court must identify that purpose and determine whether the evidence is relevant and necessary to prove an essential ingredient of the crime charged. State v. Powell, 126 Wn.2d 244, 259, 893 P.2d 615 (1995); State v. Grant, 83 Wn. App. 98, 107-08, 920 P.2d 609 (1996).

Courts have specifically deviated from the non-exclusive list in domestic violence cases, recognizing the unique circumstances that such cases present. Evidence of a defendant’s prior acts of violence against a victim are admissible: (1) to show the victim’s fear of the defendant, thus explaining her delay in reporting the incident³⁷, or why she did not report the incident at all³⁸; (2) to show that the victim had a reason to fear the defendant, and thus to

³⁷ State v. Wilson, 60 Wn. App. 887, 891, 808 P.2d 754, review denied, 117 Wn.2d 1010 (1991).

³⁸ Baker, 162 Wn. App. at 474-75.

explain why she later changed her story and sought to minimize any harm done by the defendant³⁹; (3) to assess the victim's credibility and explain to the jury any recantations by the victim⁴⁰; and (4) to rebut the defendant's claim that the victim had fabricated the most recent charges.⁴¹

Before admitting evidence of prior acts, the trial court should: (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect. State v. Thang, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002). A trial court may find that there is

³⁹ State v. Nelson, 131 Wn. App. 108, 116, 125 P.3d 1008 (2006); Baker, 162 Wn. App. at 474-75.

⁴⁰ State v. Magers, 164 Wn.2d 174, 186, 189 P.3d 126 (2008) (“[P]rior acts of domestic violence, involving the defendant and the crime victim, are admissible in order to assist the jury in judging the credibility of a recanting victim”); State v. Grant, 83 Wn. App. 98, 105-06, 920 P.2d 609 (1996) (evidence of the defendant's prior assaults against the victim are admissible under ER 404(b) if relevant and necessary to assess the victim's credibility as a witness and prove that the charged assault actually occurred); see also Baker, 162 Wn. App. at 474-75 (prior acts of domestic violence between defendant and victim are admissible to assist the jury in assessing the credibility of a victim who delays reporting, changes her story, or minimizes the degree of violence due to fear of the defendant).

⁴¹ Nelson, 131 Wn. App. at 116; Grant, 83 Wn. App. at 105-06; Wilson, 60 Wn. App. at 891.

sufficient evidence of a prior act based solely on the State's offer of proof. State v. Kilgore, 147 Wn.2d 288, 53 P.3d 974 (2002).

When admitting ER 404(b) evidence, the trial court should give a cautionary instruction limiting how the jury may use the evidence. Foxhoven, 161 Wn.2d at 175. The jury is presumed to follow the court's instructions. State v. Lough, 125 Wn.2d 847, 864, 889 P.2d 487 (1995).

The trial court here followed the proper procedure. After the court determined that the State had proved each prior act by a preponderance of the evidence, and specified the purpose or purposes for which it would admit each prior act, and balanced the probative value of each act against any unfair prejudice, the court admitted four of Garcia's prior acts of domestic violence to help the jury assess Garcia's motive, Ramirez's credibility and to evaluate Ramirez's fear and state of mind vis-à-vis count 3 (assault in the second degree – domestic violence).⁴² 3RP 34-65. The court also instructed the jury on the proper use of the prior acts evidence:

Evidence has been introduced in this case regarding
allegations of the defendant's past acts against Mayra

⁴² The court admitted the prior bad acts from August 27, 2006, October 4, 2007, October 13, 2007 and April 5, 2008. Again, the court declined to admit the October 4-5 incident to help the jury assess whether Ramirez's fear was reasonable. That incident was admitted only to help the jury assess Garcia's motive and Ramirez's credibility.

Ramirez-Diaz before August 4, 2008. This evidence has been introduced for the limited purpose of assessing the defendant's alleged motive and assessing Mayra Ramirez-Diaz's credibility. Further, this evidence may be considered in evaluating Mayra Ramirez-Diaz's alleged fear and state of mind for Count III. You must not consider this evidence for any other purpose.

CP 75 (instruction 7).

a. Motive.

Cases addressing the admissibility of prior assaults and quarrels have established that “[e]vidence of previous quarrels and ill-feeling is admissible to show motive.” Powell, 126 Wn.2d at 260; see also Baker, 162 Wn. App. at 474 (finding that evidence of the defendant's prior assaults on the same victim, which were similar to the assaults with which he was charged and occurred but months apart, admissible to show motive). For ER 404(b) purposes, motive “goes beyond gain and can demonstrate an impulse, desire, or any other moving power which causes an individual to act.” Baker, 162 Wn. App. at 473-74 (quoting State v. Powell, 126 Wn.2d at 259).

In Powell, the Washington Supreme Court found that much of the testimony regarding the hostile relationship between the defendant and his wife was properly admitted to show the defendant's motive for the murder. Powell, 126 Wn.2d at 260.

While motive need not be proven by the State, it is relevant evidence in a domestic violence incident. Id.; Baker, 162 Wn. App. at 474.

The State's theory was that Garcia's anger regarding the demise of his relationship with Ramirez, and his animosity and jealousy toward any other man with whom Ramirez had a relationship, were what motivated Garcia to break into Ramirez's residence, stab Bardales and assault Ramirez.⁴³ 3RP 28-29, 34, 54-57. Under ER 404(b), Powell and Baker, the trial court exercised its discretion properly by admitting the prior bad acts to show Garcia's motive for the charged crimes.

Garcia does not challenge the trial court's ruling to admit the prior bad acts evidence to demonstrate motive. Consequently, the Court need not reach Garcia's claim that the trial court erred by admitting the evidence to help the jury assess Ramirez's credibility or her reasonable fear regarding Garcia's assault on her. Garcia's claim fails.

⁴³ The deputy prosecutor argued in closing that "anger, rejection by [Ramirez] [and], jealousy" drove Garcia-Bonilla to stab Bardales-Munoz; it was the act of a "spurned partner." 19RP 7.

b. Credibility.

Even if this Court considers Garcia's remaining claims, the prior acts were relevant to help the jury assess Ramirez's credibility. In Grant, this Court held that evidence of the defendant's prior assaults was relevant and necessary to prove that the crime of assault actually occurred, because the history of domestic violence explained the domestic violence victim's actions. The Court held that the reasons for recantation and inconsistency by a domestic violence victim are multiple and make prior domestic violence between the parties an exception to the typical preclusions under 404(b).⁴⁴ Grant, 83 Wn. App. at 107-08. The evidence does not show propensity, but is instead offered to give the jury the whole picture, and not give undue credibility to a denial or recantation or inconsistent testimony by the victim. Id. The Washington Supreme Court adopted the rationale in Grant, and concluded "that prior acts of domestic violence, involving the defendant and the crime victim, are admissible in order to assist the

⁴⁴ The Grant court thoroughly examined the reasons why a domestic violence victim may minimize or recant at trial, acknowledging that victims may be coerced into lying or changing their story; and victims may minimize or deny abuse out of a sense of hopelessness or mistrust of the ability of judicial system to help them; and many victims stay with their abusers out of fear of escalating violence, as most victims know from past experience that the violence often heightens once they seek help. Grant, 83 Wn. App. at 107-08.

jury in judging the credibility of a recanting victim.”⁴⁵ Magers, 164 Wn.2d at 186.

A domestic violence victim’s credibility is front and center at trial even when the victim does not recant. See Baker, 162 Wn. App. at 475. This Court rejected Baker’s claim that Grant and Magers were inapposite because those cases involved recanting witnesses. Although Baker’s victim had not recanted, she testified at trial that she had not contacted the police after Baker strangled her the first two times, nor had she called the police after he strangled her on the last occasion. Id. “[The victim] testified to being embarrassed, scared of the repercussions, afraid to upset Baker’s family by reporting the assaults, and reluctant to anger Baker.” The Court said that here, as in Grant, the jury was entitled to evaluate the victim’s credibility “with full knowledge of the dynamics of a relationship marked by domestic violence and the effect such a relationship has on the victim.” Id. (citing Grant, 83

⁴⁵ This was the conclusion reached in the lead opinion, signed by four justices (Alexander, J., Owens, J., Johnson, J.J. and Bridge, J.P.T.). Two concurring justices (Madsen, J. and Fairhurst, J.) said evidence of the defendant’s prior fighting with *other* persons was not admissible on the issue of credibility, because the fighting did not involve the victim in the charged incident. Presumably, the concurring justices would have agreed with the lead opinion in instances where the prior fighting involved the victim in the charged incident. Such are the facts here. The current charges involve yet another act of domestic violence by the defendant toward the same victim.

Wn. App. at 107-08); see also Nelson, 131 Wn. App. at 116 (“As in Grant, evidence of the history of abuse was relevant to establish a plausible alternative explanation for Ms. Nelson’s inconsistent statements and to rebut Mr. Nelson’s claim that it showed she fabricated the assault”); Wilson, 60 Wn. App. at 888-89 (finding evidence of prior abuse was admissible to explain the victim’s delay in reporting the abuse and to rebut the implication that the molestation did not occur.).

Ramirez’s credibility was the central issue in this case. The trial court said that, “The credibility issue in this case is significant. And as is unusual, this was pointed out in the defense memo[rand].”⁴⁶ 3RP 63. Like the victim in Baker, Ramirez did not recant, but she also did not report each incident of domestic violence to the police.⁴⁷ Additionally, like the defendants in Nelson and Wilson, Garcia defended against the charges by claiming that Ramirez lied about the charged incident. The trial court stated,

We pretty much do know the defense theory of the case, and that the dynamics of the relationship between the defendant and the alleged victim is important to the jury. And I believe that, under Baker,

⁴⁶ See CP 32-35, 60-64.

⁴⁷ CP 225, 247 (May 5, 2008 petition for order of protection) (Ramirez said that the day after the April 5, 2008 incident, “Mr. Garcia convinced me not to call the police.”).

that is something for which they can consider the incidents. August 27th, October 4th, October 13th, April 5th, as well as [consider it for] motive. So that's my ruling.

3RP 63.

The trial court's admission of the prior acts evidence here was within its discretion and consistent with Grant, Magers, Nelson and Wilson. For this additional reason, the Court should affirm the trial court.

c. Reasonable Fear.

Garcia contends that the trial court misread the Magers decision and therefore erred when it admitted Garcia's prior bad acts to help the jury evaluate the reasonableness of Ramirez's fear. Appellant's Br. at 15. The trial court, however, recognized that for purposes of proving each essential element of assault in the second degree, the State was required to prove that Ramirez's fear of bodily injury was *objectively* reasonable. 3RP 49. The court's ruling is consistent with Magers.

In Magers, the defendant and the victim, Carissa Ray, had a tumultuous relationship. 164 Wn.2d at 177-79. In December 2003, after the police arrested Magers for allegedly shoving Ray, the superior court issued an order that prohibited Magers from having

contact with Ray. Id. at 177. About one month later, despite the no-contact order, Magers was arrested for assaulting and unlawfully imprisoning Ray, while armed with a deadly weapon.⁴⁸ Id. at 177-78.

Ray's step-father had called 911 because Magers had held a sword to the back of Ray's neck for several hours and repeatedly threatened to kill her. Id. at 178-79. Ray initially denied to the police officer who responded that Magers assaulted her. Ray later admitted that Magers had held a sword to her neck. Id. Ray also told the officer that Magers had not permitted her to leave the residence. Id. at 179.

Magers filed a motion in limine in which he sought to exclude evidence of the December 2003 arrest, the no-contact order that had been previously entered barring him from contacting Ray and that he had previously been incarcerated in jail for an apparently unrelated fight. Id. at 178. The trial court denied Magers's motions. Id.

Ray testified that "she was aware that Magers had previously been 'in trouble for [] fighting.'" Magers, 164 Wn.2d at

⁴⁸ The State later amended the information and added a misdemeanor charge of violating a no-contact order. Magers, 164 Wn.2d at 178.

180 (alteration in original). Ray also said Magers's December 2003 arrest for domestic violence resulted in a no-contact order. Id. Ray, however, recanted the inculpatory statements that she had made to the officer who arrested Magers for assault and unlawful imprisonment. Id.

Magers was convicted and appealed, claiming that the trial court had erred in admitting evidence of his prior misconduct. Id. at 181. The Washington Supreme Court disagreed. Four justices signed the majority opinion⁴⁹ with two justices concurring but writing separately⁵⁰ that evidence of Magers's fighting was inadmissible to show either Ray's state of mind or for assessing her credibility. The justices, however, found the error harmless and agreed that Magers's prior acts of domestic violence between him and Ray were admissible.

The court in Magers stated that the essential elements of assault in the second degree are that (1) on the date in question, the defendant intentionally assaulted the victim with a deadly

⁴⁹ Alexander, C.J., Owens, J., Johnson, J.J., and Bridge, J.P.T.

⁵⁰ Madsen, J., concurred and filed a separate opinion in which Fairhurst, J., joined.

weapon, and (2) the assault occurred in the State of Washington.⁵¹

Magers, 164 W.2d at 182-83 (citing 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 35.11, at 381 (2d ed. 1994)). The trial court defined “assault” for the jury as follows:

An assault is also an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

Magers, 164 Wn.2d at 183 (citation to Clerk’s Papers therein omitted).⁵²

The majority opinion said that, in light of the definition of assault, the defendant’s prior violent misconduct, including the unrelated fighting, was relevant on the issue of whether the victim’s apprehension and fear of bodily injury was *objectively* reasonable.⁵³

164 Wn.2d at 183. The court said that because the charged act

⁵¹ As in Magers, the trial court in the instant case instructed the jury on the essential elements of assault in the second degree. CP 88 (instruction 20); 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 35.10, at 211 (2d ed. 2005 supplement).

⁵² The trial court here gave the jury the same instruction as in Magers. CP 82 (instruction 14).

⁵³ The lead opinion also held that Magers’s prior violent acts were admissible to help the jury assess Ray’s credibility and understand why, at trial, she recanted her earlier statements to the police. Magers, 164 Wn.2d at 184-86 (adopting this Court’s rationale in Grant, *supra*).

(assault in the second degree) does not conclusively establish “reasonable fear of bodily injury,” then whether the victim’s apprehension and fear of bodily injury was *objectively* reasonable was at issue. Magers, 164 Wn.2d at 183 (citing Powell, 126 Wn.2d at 262).

The reasonable person standard is an objective standard. See, e.g., State v. Walker, 136 Wn.2d 767, 772, 966 P.2d 833 (1998) (stating that the objective component of a defendant’s self-defense claim requires the court to determine what a reasonable person in the defendant’s situation would have done).⁵⁴

The concurring justices disagreed with the majority as to whether the State had to prove Ray’s state of mind, *i.e.*, that *she* reasonably feared bodily injury. Magers, 164 Wn.2d at 194 (Madsen, J., concurring). Rather, under the State’s theory of the case, the concurrence said that, “[T]he State was required to prove that a reasonable person under the same circumstances would

⁵⁴ Whereas the subjective aspect of the inquiry requires the trial court to place itself *in the defendant’s shoes* (not the shoes of a reasonable person in the defendant’s situation) and view the defendant’s acts in light of all the facts and circumstances known to the defendant. Id.

have a reasonable fear of bodily injury.”⁵⁵ Id. This, however, is consistent with the majority opinion. See id. at 183 (majority stating that the prior violent acts were relevant on the issue of whether the victim’s apprehension and fear of bodily injury was *objectively* reasonable).

Here, the trial applied the law correctly. The court said that an objective standard means, “It’s a reasonable person in the same circumstances as the alleged victim. And I believe that includes the knowledge of the history that that person has.” 3RP 44. The court said, “I actually believe the law is what a reasonable person in the same or similar situation as the alleged victim, which would include knowing what he or she knew, if that information is otherwise admissible.” 3RP 49. The trial court’s understanding of the reasonable person standard is consistent with the opinion in Magers. There was no error.

⁵⁵ The concurrence disagreed that evidence of Magers’s prior fighting incident should have been admitted to evaluate the reasonableness of Ray’s fear – especially because the State offered the evidence to explain why Ray had recanted her statements to the police. Magers, 164 Wn.2d at 194. Moreover, the concurrence would not have admitted evidence of the unrelated fighting to explain Ray’s recantation since it did not concern the dynamics of domestic violence. Id.

d. Harmless Error.

Even assuming the trial court abused its discretion in allowing Ramirez to testify about Garcia's prior acts of domestic violence, the error was harmless. The Court reviews erroneous prior bad acts evidence under the nonconstitutional harmless error standard. State v. Ray, 116 Wn.2d 531, 546, 806 P.2d 1220 (1991). Reversal is required only if there is a reasonable probability that the outcome of the trial was materially affected by the error. Ray, 116 Wn.2d at 546. Given the overwhelming evidence of Garcia's guilt, this Court can be confident that there is no reasonable probability that the outcome would have been materially affected had the court not admitted the evidence of Garcia's prior domestic violence.

Four eyewitnesses identified Garcia as having been present in Ramirez's residence. Carolina saw Garcia walk down the hallway, with a knife in his hand. After Carolina heard a scream, she saw Garcia walk back down the hall, still holding the knife, and then flee from the sliding glass door.

Hety also saw Garcia flee. Immediately afterward, Hety saw Bardales. He was wounded and bleeding. Bardales told Hety that Garcia had stabbed him.

Most compelling, however, was that Bardales positively identified Garcia as the man who stabbed him. Bardales knew Garcia; he clearly saw him standing by the bed, knife raised, ready to stab him again.

Ramirez also saw Garcia standing by Bardales. Garcia held a knife. Ramirez saw that Bardales had a stab wound. She also described how Garcia lunged at her, knife raised.

Even if the jury had never heard evidence about Garcia's prior domestic violence history, the outcome would have been the same. There was overwhelming evidence of Garcia's guilt.

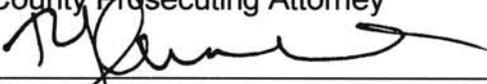
D. CONCLUSION

For the reasons stated above, the State respectfully asks this Court to affirm Garcia's convictions for burglary in the first degree, assault in the first degree, assault in the second degree and misdemeanor violation of a court order.

DATED this 5 day of November, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
RANDI J. AUSTELL, WSBA #28166
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Andrew Zinner, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. MARIO GARCIA-BONILLA, Cause No. 68207-5-I, in the Court of Appeals, Division I, for the State of Washington.

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

W Brame

Name

Done in Seattle, Washington

11/5/12

Date