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AUG 20 2012

King County Prosecutor  
Appellate Unit

NO. 68207-5-I

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

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STATE OF WASHINGTON,

Respondent,

v.

MARIO GARCIA-BONILLA,

Appellant.

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COURT OF APPEALS DIVISION ONE  
STATE OF WASHINGTON  
2012 AUG 20 PM 4:09

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable James D. Cayce, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred under ER 404(b) when it admitted evidence that Mario Garcia-Bonilla, the appellant herein, had on several occasions over a nearly two-year period appeared at and entered his ex-girlfriend's residence.

Issue Pertaining to Assignment of Error

ER 404(b) prohibits the admission of prior bad acts evidence unless the evidence is admissible for a proper and limited purpose. In Garcia-Bonilla's case, the trial court misapplied case law as authorizing the admission of evidence that Garcia-Bonilla previously and continually harassed his ex-girlfriend. Did the prosecution's use of this prohibited evidence deny Garcia-Bonilla a fair trial?

B. STATEMENT OF THE CASE

Mayra Ramirez-Diaz came illegally to the United States from her native Guatemala when she was 11 or 12 years old. She was illiterate and had never gone to school. 14RP 12-18.<sup>1</sup> That did not change in her new

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<sup>1</sup> The verbatim report of proceedings is cited as follows: 1RP – 8/22, 8/24-25/11; 2RP – 8/30/11; 3RP – 8/31/11; 4RP – 9/13/11; 5RP – 9/14/11; 6RP – 9/15, 12/9/11, 1/6/12; 7RP – 10/20/11; 8RP – 10/24/11; 9RP – 10/25/11; 10RP 10/26/11; 11RP – 10/27/11; 12RP – 10/31/11 (a.m.); 13RP – 10/31/11 (p.m.); 14RP – 11/1/2011; 15RP – 11/2/11; 16RP – 11/7/11; 17RP – 11/8-9/11; 18RP – 11/14-15/11; 19RP – 11/16-17/11.

country, because her parents told her she had come to work. 14RP 17-18. Ramirez-Diaz took care of children and later worked at her brother's store. 14RP 18.

At age 18, Ramirez-Diaz became pregnant. 14RP 20-21. During the pregnancy, Ramirez-Diaz was diagnosed with AIDS. 14RP 51. Her AIDS-defining illness was toxoplasmosis, which causes a brain infection. 11RP 20-24, 33-34. Toxoplasmosis is treated with suppressive medicine and can cause seizures in its active state. 11RP 24, 29-34. Her AIDS prevented Ramirez-Diaz from working. Despite her illegal status, the government paid for her medical care and provided housing and financial assistance. 15RP 22-27, 37-39. Without the medicine, which Ramirez-Diaz would not get in Guatemala, she would die. 15RP 22.

In July 2008, Ramirez-Diaz went to the hospital because of nausea, confusion, dizziness, memory loss, and a painful headache. 11RP 27-29; 14RP 51-52. An EEG revealed Ramirez-Diaz was having an alarming number of seizures which, according to her neurologist, Dr. Marra, were most likely caused by her inability to keep her medicine down. 11RP 34-36, 69.

To make the seizures stop, the neurologist prescribed heavy doses of anti-convulsant medication. 11RP 36-39. The medication and seizures

caused Ramirez-Diaz to have auditory and visual hallucinations and confusion. 11RP 39-44, 69-71. She heard voices coming from under her bed and believed there were two men in a closet. 11RP 42, 59. Ramirez-Diaz complained the voices laughed at her and the people under the bed refused to come out. 11RP 67; 14RP 53-54. She also said she saw her former boyfriend, Mario Garcia-Bonilla, at the hospital and he said he wanted to take her son away. 11RP 66-68; 14RP 53. A nurse assured Ramirez-Diaz that Garcia-Bonilla would not be welcome to come looking for her. 11RP 68.

Garcia-Bonilla had been Ramirez-Diaz's boyfriend until sometime in 2006, when Ramirez-Diaz chose to end the relationship. 14RP 22-25, 29-30. Garcia-Bonilla nevertheless continued to contact Ramirez-Diaz. 14RP 30-31. In August 2006, Garcia-Bonilla came to her apartment and kicked her door when she refused to open it. He came back later and the police arrested him. 14RP 31-32. Ramirez-Diaz stayed the night at her mother's residence because she feared Garcia-Bonilla. 14RP 32-33. When she returned home the next day, Garcia-Bonilla was sleeping on her living room floor. 14RP 32-33.

Garcia-Bonilla also visited Ramirez-Diaz's residence in early October 2007, despite the existence of a court order prohibiting him from

contacting her. 14RP 33, 46. He knocked on her door and windows, but Ramirez-Diaz refused to allow him inside. She told him she would call the police if he did not leave. 14RP 33-34.

About a week later, Ramirez-Diaz and her friend Jaime were at the apartment when Garcia-Bonilla returned. Ramirez-Diaz told Jaime to hide in the bathroom, which he did, for fear of violence. 14RP 46-48. Jaime called police, but Garcia-Bonilla was gone by the time they arrived. The police ended up arresting Ramirez-Diaz because she was not legally in the United States. 14RP 48-49. She spent three months in jail before being released. 14RP 49.

In April 2008, an angry Garcia-Bonilla again visited Ramirez-Diaz's apartment. He accused her of seeing another man, and she left the room. 14RP 49-50.

Ramirez-Diaz began seeing another man, Jose Bardales-Munoz, in about mid-April 2008. 10RP 40-41; 12RP 4. In June, the couple was together in Bardales-Munoz's car when they saw Garcia-Bonilla as they waited at a stop sign. He approached the car to within reaching distance when Bardales-Munoz drove off. 10RP 43-49.

Bardales-Munoz visited Ramirez-Diaz during her July 2008 hospitalization. He said he was not aware she had been hallucinating.

12RP 19-20. The hallucinations went away, the seizures stopped, and Ramirez-Diaz was discharged after 11 days. 11RP 29, 42-43; 14RP 53-54. Dr. Marra believed she correctly identified the cause of the hallucinations as drug toxicity and that she had fixed the problem. 11RP 42-43.

Two weeks after her discharge, Ramirez-Diaz had a barbeque with her son, her sister, Hety, Hety's husband, her niece, Carolina, and Bardales-Munoz. 14RP 62-64. Everyone stayed at Ramirez-Diaz's two-bedroom apartment that night, with Hety and Carolina in one bedroom and Ramirez-Diaz, her son, and Bardales-Munoz sharing a bed in the other bedroom. 14RP 64-66. Bardales-Munoz was the first person to go to bed after the barbeque, and was later joined by Ramirez-Diaz and her son. 10RP 49-50, 53-56; 14RP 69-70.

Early the following morning, Bardales-Munoz felt something near his stomach and woke up. 10RP 58-59. He reacted by kicking someone, immediately turned the light on, and realized Garcia-Bonilla had entered the apartment and stabbed him in the abdomen with a kitchen knife. 10RP 59-64. Garcia-Bonilla stood facing him with the knife raised up near ear level. 10RP 62-65.

Ramirez-Diaz, meanwhile, heard a groan and woke up. The light came on and she, too, saw Garcia-Bonilla with a knife. 14RP 70-72; 16RP

9-10. She then saw some blood on Jose and exclaimed that "he killed you." 10RP 72. With the knife raised, Garcia-Bonilla tried to "get towards" Ramirez-Diaz, who thought she might get killed. 14RP 70-73. But Bardales-Munoz kicked Garcia-Bonilla in the chest and he fled the apartment. 10RP 64-65; 14RP 70-73; 16RP 40-41

Carolina did not go to bed after the barbeque. 17RP 111-12. Instead, she sat at the dining room table using her computer. 17RP 112-13. All of a sudden, Carolina saw Garcia-Bonilla standing in the apartment with a kitchen knife in his hand. 17RP 113-16. She became dumbstruck with fear and watched Garcia-Bonilla walk toward the bedrooms. 17RP 116-17. She heard a grunting sound, then a scream. Lights came on, and Carolina observed Garcia-Bonilla walking toward her up the hallway with knife in hand. 17RP 118-20, 133-36. He said nothing, continued out the sliding patio door, and ran off. 17RP 120-22. Someone called 911, and Carolina spoke with the operator. 17RP 123-26.

Carolina's mother, Hety, got up and saw Garcia-Bonilla walking down the hallway away from her. 16RP 65-67. Hety saw only his back, but recognized Garcia-Bonilla by his gait and height. 16RP 67-69. She followed behind him, but did not see a knife. Hety asked him what he had done, but he said nothing and turned in the direction of the sliding patio

door. 16RP 68-69. She looked into the other bedroom and saw Bardales-Munoz lying on the bed near a bit of blood. 16RP 75, 84-85.

Hety's husband slept through the entire incident. 16RP 74. After Ramirez-Diaz called the police, she told Hety's family to leave for fear of immigration consequences. 15RP 5-6; 16RP 85-86; 17RP 80-84. Ramirez-Diaz said she feared the police would take her family away. 16RP 42-44. Bardales-Munoz explained "all the people in Renton said that if you call the police, they would ask for your papers." 13RP 17. By the time the police arrived, Hety's family was gone. 15RP 5-6; 17RP 136-40.

Ramirez-Diaz, who spoke no English, showed an arriving officer a protection order and pointed to the respondent's name, Garcia-Bonilla. 10RP 21-22. Medics tended to Bardales-Munoz, who was in obvious pain. 10RP 25. A police tracking dog could not detect a scent, and no physical evidence pointed to Garcia-Bonilla as the assailant. 10RP 33-35.

Bardales-Munoz was taken to Harborview Medical Center with a stab wound in his abdomen. 13RP 28-29. He required surgery to close a hole in his intestine. 13RP 31. Without the procedure, Bardales-Munoz would have contracted a severe infection that would have eventually killed him. 13RP 31-32.

Neither Bardales-Munoz nor Ramirez-Diaz revealed the presence of Hety's family to the police for several years. 10RP 30; 12RP 25-27; 13RP 17, 20-21; 15RP 6-7. Two and one-half years after the incident, the detective confronted Ramirez-Diaz with information that Carolina has spoken with the 911 operator. Ramirez-Diaz first said Hety's family was at her apartment but left before the stabbing incident. She eventually acknowledged they were there for the event. 17RP 20-22.

The State charged Garcia-Bonilla with first degree burglary, first degree assault for stabbing Bardales-Munoz, second degree assault with a deadly weapon against Ramirez-Diaz, and a felony violation of a no-contact order entered June 2, 2008. CP 7-9.

Garcia-Bonilla's defense theory was set forth in his trial brief. CP 34-35. Specifically, defense counsel planned to contend Ramirez-Diaz may have stabbed Bardales-Munoz as she suffered "some combination of psychosis, seizures, and paranoia." CP 35. The witnesses – Bardales-Munoz and Hety's family -- then agreed to blame Garcia-Bonilla for a variety of reasons, including the fear of deportation to a country where Ramirez-Diaz would likely not receive the level of medical care she needed to survive as an AIDS patient. CP 35.

To support the theory, Garcia-Bonilla called an expert forensic psychiatrist, Dr. Richard Adler, to testify to Ramirez-Diaz's condition. Adler reviewed records from Harborview Medical Center and other providers and met with Ramirez-Diaz for a 90-minute evaluation. 18RP 23-26. Adler testified that treating epilepsy, which is a condition that causes seizures, is particularly dependent on proper compliance with prescription medications. 18RP 38-40. Noncompliance can precipitate seizures. 18RP 39. Adler noted that Ramirez-Diaz's continued compliance would be more difficult because of her complicated drug regimen and illiteracy. 18RP 40-41. Medical record notes indicated that noncompliance had been, and would likely continue to be, a problem for Ramirez-Diaz. 18RP 46-50.

Furthermore, according to an MRI, Ramirez-Diaz's seizure-causing activity occurred in an area of the brain that is associated with explosive, reflexive, nonsensical violence in response to a real or perceived threat. 18RP 43-44, 66-67, 74-75. A 2000 study also showed intermittent explosive disorder was related to the kind of MRI abnormalities that Ramirez-Diaz had. 18RP 74-75.

Among the perceived threats Ramirez-Diaz identified during her hospital stay were Garcia-Bonilla wishing to kidnap her son and two men

in the closet telling her to do things. 18RP 67-71, 149. Adler agreed with Dr. Marra that drug toxicity caused these hallucinations. 18RP 136. Adler acknowledged he was unaware of any violent acts Ramirez-Diaz committed. It was nevertheless possible that Ramirez-Diaz could have stabbed Bardales-Munoz. 18RP 75-76.

Dr. Marra disagreed with Dr. Adler in this regard. She did not believe Ramirez-Diaz could have been hallucinating at the time Bardales-Munoz was stabbed because she had no history of hallucinations and because she appeared alert and coherent about 10 minutes after the incident happened. 11RP 46, 88.

Harborview Medical Center psychiatrist Christine Youdelis-Flores testified for the State in rebuttal. 18RP 182-83. She met with Ramirez-Diaz nearly three weeks after the stabbing incident. Ramirez-Diaz was alert, oriented and coherent. 18RP 192-93. She exhibited no forms of psychosis and suffered from an "acute stress reaction," that occurred when Bardales-Munoz was stabbed. 18RP 196-97. It did not appear Ramirez-Diaz was having auditory hallucinations during the appointment. 18RP 198-99.

During closing argument, defense counsel contended it was more likely Ramirez-Diaz failed to strictly comply with her medication

instructions, suffered known adverse reactions, and stabbed Bardales-Munoz than it was Garcia-Bonilla, who left no physical evidence. 19RP 52-54. A King County jury concluded otherwise, finding Garcia-Bonilla guilty as charged of first degree burglary, first degree assault, second degree assault, and violating a no-contact order. CP 95-97, 101.<sup>2</sup> Jurors also found Garcia-Bonilla committed the burglary and assaults while armed with a deadly weapon. CP 98-100.

The trial court imposed concurrent, standard range sentences totaling 160 months, plus a 60-month total of deadly weapon enhancements, for a sentence of 220 months. CP 111-19. The court sentenced Garcia-Bonilla to time served for the misdemeanor. CP 120-22.

C. ARGUMENT

THE TRIAL COURT ERRED BY ALLOWING ADMISSION OF PREJUDICIAL EVIDENCE OF PREVIOUS INCIDENTS INVOLVING GARCIA-BONILLA AND HIS EX-GIRLFRIEND.

Before trial and over defense objection, the trial court found that other incidents between Ramirez-Diaz and Garcia-Bonilla were admissible for purposes of establishing a motive for the burglary and assaults and for Ramirez-Diaz's credibility. 1RP 38-48; 2RP 134-40; 3RP 23-65. In

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<sup>2</sup> The State amended the violation of the no-contact order count from a felony to a misdemeanor at the end of the defense case. 18RP 172-73.

addition, the evidence was allowed to assess whether Ramirez-Diaz's apprehension and fear of bodily harm was reasonable with respect to the second degree assault alleged in count 3.<sup>3</sup> The court's final reason for admitting the evidence was wrong, and because jurors were told they could use the evidence when evaluating Ramirez-Diaz's alleged fear, the error caused prejudice.

1. General principles regarding ER 404(b)

A defendant must be tried only for those offenses actually charged. Consistent with this rule, evidence of other crimes must be excluded unless shown to be relevant to a material issue and to be more probative than prejudicial. State v. Coe, 101 Wn.2d 772, 777, 684 P.2d 668 (1984).

The prosecution's attempts to use evidence of other crimes or bad acts must be evaluated under ER 404 (b), which reads:

**(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove

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<sup>3</sup> The trial court provided a jury instruction that defined "assault" in part as follows:

An assault is also an act, with unlawful force, 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 intent to inflict bodily injury.

CP 82 (instruction 14).

the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident.

Admission of evidence under this rule is reviewed for an abuse of discretion. State v. Fisher, 165 Wn.2d 727, 745, 202 P.3d 937 (2009). A trial court abuses its discretion when its decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons. State v. Blackwell, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993).

The court abused its discretion in Garcia-Bonilla's case.

2. Application of ER 404(b)

Before admitting evidence under ER 404(b), the trial court must engage in a three-part analysis. First, the court must identify the purpose for which the evidence is being admitted. State v. Smith, 106 Wn.2d 772, 776, 725 P.2d 951 (1986).

Second, the court must determine that the proffered evidence is logically relevant to an issue. The test is whether the evidence is relevant and necessary to prove an element of the charged crime. State v. Saltarelli, 98 Wn.2d 358, 362, 74 P.3d 119 (1982). Evidence is logically relevant if it is of consequence to the outcome of the action and tends to make the

existence of the identified fact more or less probable. Saltarelli, 98 Wn.2d at 361-62.

Third, assuming the evidence is logically relevant, the court must then determine whether its probative value outweighs any potential prejudice.<sup>4</sup> Saltarelli, 98 Wn.2d at 362-63. "Evidence of prior misconduct is likely to be highly prejudicial, and should be admitted only for a proper purpose and then only when its probative value clearly outweighs its prejudicial effect." State v. Lough, 125 Wn.2d 847, 862, 889 P.2d 487 (1995).

In a doubtful case, the evidence should be excluded. State v. Powell, 126 Wn.2d 244, 264, 893 P.2d 615, 627 (1995). The State bears a substantial burden when attempting to introduce evidence of other bad acts under one of the exceptions to ER 404(b). State v. DeVincentis, 150 Wn.2d 11, 17, 20, 74 P.3d 119 (2003).

In Garcia-Bonilla's case, the trial court erred when it found his earlier appearances at Ramirez-Diaz's apartment after she terminated their relationship in 2006 were relevant to assess her credibility at trial and

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<sup>4</sup> Similarly, ER 403 provides, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ."

whether her fear of injury was reasonable. The court gave jurors the following limiting instruction:

Evidence has been introduced in this case regarding allegations of the defendant's past acts against Mayra 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 [second degree assault]. You must not consider this evidence for any other purpose.

CP 75 (instruction 7). The error stems from the court's misreading of the Supreme Court's opinion in State v. Magers, 164 Wn.2d 174, 189 P.3d 126 (2008).

The State charged Magers with second degree assault, unlawful imprisonment, and violation of a no-contact order for holding his girlfriend, Carrisa Ray, at her home against her will, threatening her with a sword, and having contact with her despite a court order. Magers, 164 Wn.2d at 177-179. Ray later recanted her allegations against Magers. Id. at 179-180.

At trial, over a defense objection, the court admitted evidence of Magers' 2003 arrest for domestic violence against Ray, the resulting entry of the no-contact order at issue, and the fact Magers had spent time in prison for fighting. Id. at 178, 180. The evidence was admitted under two theories: (1) it was relevant to prove Ray's reasonable fear of injury for the

assault and (2) it was relevant in assessing Ray's credibility, *i.e.*, why she may have recanted her allegations. *Id.* at 180.

The Court of Appeals reversed Magers' assault and unlawful imprisonment convictions. *Magers*, 164 Wn.2d at 181. In a split opinion, the Supreme Court reinstated them.

A four-justice plurality held the evidence surrounding entry of the no-contact order was properly admitted because Magers was charged with violating that order. *Id.* at 181. The plurality held the evidence of fighting was admissible to establish Ray's state of mind, specifically the element of "reasonable apprehension and imminent fear of bodily injury." *Id.* at 183. Analogizing to harassment cases – where lower courts had held evidence of other misconduct relevant to establish reasonable fear the defendant would carry out a threat – the plurality held that evidence of previous violent misconduct was admissible to show "Ray's apprehension and fear of bodily injury was objectively reasonable . . . ." *Id.* at 182-83. The plurality also held the evidence admissible "to assist the jury in judging the credibility of a recanting victim." *Id.* at 186.

Two justices concurred in the result. They agreed evidence surrounding the 2003 no-contact order was properly admitted as *res gestae* of the charged crimes, but disagreed with the plurality's legal analysis on

the prior fighting. Id. at 194-195 (Madsen, J., concurring; joined by Fairhurst, J.). Notably, regarding state of mind, Justice Madsen wrote:

First, the majority holds that Kha Magers's prior fighting incident was properly admitted to show Ms. Carissa Ray's state of mind, i.e., that she reasonably feared bodily injury. But under the State's theory of second degree assault it was not required to prove that Ms. Ray reasonably feared bodily injury. Rather, the State was required to prove that a reasonable person under the same circumstances would have a reasonable fear of bodily injury. Thus, the State did not have a burden to demonstrate Ms. Ray's state of mind as an element of assault.

Id. at 194. The concurrence also took issue with the plurality's conclusion the evidence of fighting was admissible in Magers' case to explain Ray's recantation. Id. Ultimately, however, the concurrence agreed Magers' convictions should be reinstated because the improper admission of the fighting evidence was harmless error. Id. at 195.

Three judges dissented and would have affirmed the Court of Appeals. Magers, 164 Wn.2d at 195-199 (Johnson, J., dissenting; joined by Sanders, J., and Chambers, J.).

Garcia-Bonilla's case does not involve a recanting witness. Thus, that portion of Magers discussing the admissibility of prior acts of misconduct to assist jurors in assessing the credibility of a recanting victim does not apply.

Nor had Ramirez-Diaz protected Garcia-Bonilla from police contact regarding the earlier incidents. Indeed, he had been arrested after the August 2006 door-kicking incident. 14RP 29-32. Ramirez-Diaz threatened to call police during the early October 2007 incident and police were called after the incident later that same month. 14RP 33-34, 46-49. Cf. State v. Baker, 162 Wn. App. 468, 474-75, 259 P.3d 270 (evidence of prior stranglings admissible to help jurors assess victim's credibility because victim failed to call police after the first, second, and fourth strangling incidents out of fear of the repercussions), review denied, 173 Wn.2d 1004 (2011).

Moreover, the prior evidence surrounding the no-contact order in Magers was part of the res gestae because he was charged with violating that same order. Magers, 164 Wn.2d at 195 (Madsen, J., concurring). This is not so in Garcia-Bonilla's case: all but the alleged April 2008 incident, wherein Garcia-Bonilla angrily accused Ramirez-Diaz of seeing someone else, occurred well before the June 2, 2008 no-contact order that Garcia-Bonilla was charged with violating. Unlike in Magers, then, the incidents are not part of the res gestae of the current charges.

The only relevant portion of Magers is that pertaining to state of mind. Only four judges found the other misconduct evidence admissible

for that purpose. And for the reasons explained by Justice Madsen in her concurrence, the evidence is not admissible under that theory. Magers, 164 Wn.2d at 194.

Evidence of prior confrontations between Garcia-Bonilla and Ramirez-Martinez was therefore not relevant to assess her fear, state of mind, or credibility. Its resulting prejudice necessarily outweighs its probative value. The admission of this evidence over defense counsel's objection was an abuse of discretion.

The erroneous admission of evidence under ER 404(b) requires reversal if, within reasonable probabilities, the evidence materially affected the outcome at trial. Smith, 106 Wn.2d at 780; State v. Carleton, 82 Wn. App. 680, 686, 919 P.2d 128 (1996).

Absent evidence an angry Garcia-Bonilla repeatedly appeared at Ramirez-Diaz's apartment to confront her and show his displeasure with their break-up, he had a plausible defense. It was undisputed Ramirez-Diaz suffered seizures and had visual and auditory hallucinations only about two weeks before the stabbing incident. Her medical condition made her continually susceptible to seizures. 11RP 30-35, 45. And her type of epilepsy was associated with nonsensical, explosive violence. 18RP 43, 66-67. Nor was there any physical evidence Garcia-Bonilla was

at the apartment when the stabbing occurred. But acquittal was far less likely once jurors learned Garcia-Bonilla had a history of harassing and frightening his ex-girlfriend. The evidence demonstrated a propensity for potential violence.

Furthermore, the court instructed jurors it could use the evidence to assess Ramirez-Diaz's credibility in general, as well as to evaluate her alleged fear and state of mind for the second degree assault charge. CP 75. It must be presumed jurors followed this instruction. State v. Stein, 144 Wn.2d 236, 247, 27 P.3d 184 (2001). Finally, the prosecutor exacerbated the prejudice when, during closing argument, he reminded jurors of the prior incidents. 19RP 7-11. Garcia-Bonilla is entitled to a new trial.

D. CONCLUSION

For the aforesaid reasons, this Court should reverse Garcia-Bonilla's convictions and remand for a new trial.

DATED this 20 day of August, 2012.

Respectfully submitted,

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Attorneys for Appellant

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

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 68207-5-I
	)	
MARIO GARCIA-BOLINA,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20<sup>TH</sup> DAY OF AUGUST, 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MARIO GARCIA-BOLINA  
DOC NO. 796134  
WASHINGTON CORRECTIONS CENTER  
P.O. BOX 900  
SHELTON, WA 98584

**SIGNED** IN SEATTLE WASHINGTON, THIS 20<sup>TH</sup> DAY OF AUGUST, 2012.

x *Patrick Mayovsky*