

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2012 FEB 13 P 2:24  
BY RONALD R. CARPENTER

NO. 85909-4

SUPREME COURT OF THE STATE OF WASHINGTON  
CLERK

STATE OF WASHINGTON,

Respondent,

v.

STEVEN A. JANDA,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HOLLIS HILL

**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> .....	1
1. PROCEDURAL FACTS .....	1
a. The Charges .....	1
b. Pretrial Motions And Rulings .....	2
i. Motion to dismiss.....	2
ii. Motion to join .....	4
c. Verdict, Sentencing And Post-trial Hearings.....	5
2. SUBSTANTIVE FACTS.....	7
a. The Frelins 1994-97 .....	9
b. The Frelins 2003-04 .....	10
c. The Frelins 2008-09 .....	12
d. Mary And William McGraw.....	13
C. <u>ARGUMENT</u> .....	16
1. A “NONLAWYER” INCLUDES PERSONS WHO HAVE NEVER BEEN A MEMBER OF THE WSBA .....	16
2. GR 24 DEFINES AN ELEMENT OF THE UNLAWFUL PRACTICE OF LAW.....	22
3. THE TRIAL COURT CORRECTLY INSTRUCTED THE JURY .....	23

4.	THE ORDER IN LIMINE WAS PROPER AND DID NOT RELIEVE THE STATE OF ITS BURDEN TO PROVE EACH ESSENTIAL ELEMENT OF THE CRIME CHARGED.....	25
a.	The Order In Limine Excluded Irrelevant Evidence.....	26
b.	The Order Did Not Relieve The State Of Its Burden.....	27
c.	The State Proved Each Essential Element Beyond A Reasonable Doubt.....	29
5.	THE SUPERIOR COURT HAD JURISDICTION .....	33
6.	THE PROSECUTING ATTORNEY HAS THE SOLE DISCRETION TO FILE CRIMINAL CHARGES.....	35
a.	Frelin And McGraw Had No Knowledge Of Janda's Crimes .....	36
b.	Frelin And McGraw Were Not Similarly Situated As Janda.....	36
c.	The Prosecutor - Not The Court - Files Criminal Charges .....	37
7.	JANDA'S RIGHT TO PRIVACY WAS NOT VIOLATED .....	38
8.	THE THEFTS WERE PROPERLY AGGREGATED .....	41
9.	THE TRIAL COURT PROPERLY ORDERED RESTITUTION.....	47
10.	THE NO CONTACT ORDERS ARE A VALID CRIME-RELATED PROHIBITION.....	48
D.	<u>CONCLUSION</u> .....	50

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Katz v. United States, 389 U.S. 347,  
88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).....39

United States v. Nixon, 418 U.S. 683,  
94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).....37

Washington State:

Berrocal v. Fernandez, 155 Wn.2d 585,  
121 P.3d 82 (2005).....17

Bremerton v. Kitsap County Sewer Dist.,  
71 Wn.2d 689, 430 P.2d 956 (1967).....40

City of Seattle v. Fontanilla, 128 Wn.2d 492,  
909 P.2d 1294 (1996).....21, 22

Cockle v. Dep't of Labor & Indus.,  
142 Wn.2d 801, 16 P.3d 583 (2001).....17, 18

Cowiche Canyon Conservancy v. Bosley,  
118 Wn. 2d 801, 828 P.2d 549 (1992).....23

Crosby v. Spokane County, 137 Wn.2d 296,  
971 P.2d 32 (1999).....33

Hale v. Wellpinit School Dist. No. 49,  
165 Wn.2d 494, 198 P.3d 1021 (2009).....37

In re Droker and Mulholland, 59 Wn.2d 707,  
370 P.2d 242 (1962).....20

In re Pers. Restraint of Maxfield,  
133 Wn.2d 332, 945 P.2d 196 (1997).....39, 40

<u>Schmalenberg v. Tacoma News, Inc.</u> , 87 Wn. App. 579, 943 P.2d 350 (1997).....	38
<u>State ex rel. Carroll v. Junker</u> , 79 Wn.2d 12, 482 P.2d 775 (1971).....	26, 49
<u>State v. Armendariz</u> , 160 Wn.2d 106, 156 P.3d 201 (2007).....	49, 50
<u>State v. Barton</u> , 28 Wn. App. 690, 626 P.2d 509, <u>rev. denied</u> , 95 Wn.2d 1027 (1981).....	41, 44
<u>State v. Brown</u> , 132 Wn.2d 529, 940 P.2d 546 (1997).....	31
<u>State v. Byrd</u> , 125 Wn.2d 707, 887 P.2d 396 (1995).....	27
<u>State v. Carmen</u> , 118 Wn. App. 655, 77 P.3d 368 (2003), <u>review denied</u> , 151 Wn.2d 1039 (2004).....	28, 29
<u>State v. Cronin</u> , 142 Wn.2d 568, 14 P.3d 752 (2000).....	36
<u>State v. Davison</u> , 116 Wn.2d 917, 809 P.2d 1374 (1991).....	47
<u>State v. Evans</u> , 96 Wn. 2d 119, 634 P.2d 845 (1981).....	26
<u>State v. Finch</u> , 137 Wn.2d 792, 975 P.2d 967, <u>cert. denied</u> , 528 U.S. 922, 120 S. Ct. 285 (1999).....	37
<u>State v. Garman</u> , 100 Wn. App. 307, 984 P.2d 453 (1999).....	42, 43, 44
<u>State v. Goucher</u> , 124 Wn.2d 778, 881 P.2d 210 (1994).....	39

<u>State v. Green</u> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	30, 41
<u>State v. Hampson</u> , 9 Wn.2d 278, 114 P.2d 992 (1941).....	33
<u>State v. Handran</u> , 113 Wn.2d 11, 775 P.2d 453 (1989).....	42
<u>State v. Hudlow</u> , 99 Wn.2d 1, 659 P.2d 514 (1983).....	27
<u>State v. Hunt</u> , 75 Wn. App. 795, 880 P.2d 96, <u>rev. denied</u> , 125 Wn.2d 1009 (1994).....	19, 20, 28
<u>State v. J.P.</u> , 149 Wn.2d 444, 69 P.3d 318 (2003).....	18, 21
<u>State v. Keller</u> , 143 Wn.2d 267, 19 P.3d 1030 (2001).....	17, 18, 20
<u>State v. Kirkman</u> , 159 Wn.2d 918, 155 P.3d 125 (2007).....	23, 24
<u>State v. LaRoque</u> , 16 Wn. App. 808, 560 P.2d 1149 (1977).....	50
<u>State v. Love</u> , 80 Wn. App. 357, 908 P.2d 395 (1996).....	42
<u>State v. Manussier</u> , 129 Wn.2d 652, 921 P.2d 473 (1996).....	36
<u>State v. Meyer</u> , 26 Wn. App. 119, 613 P.2d 132 (1980).....	43
<u>State v. Miller</u> , 156 Wn.2d 23, 123 P.3d 827 (2005).....	29
<u>State v. Myrick</u> , 102 Wn.2d 506, 688 P.2d 151 (1984).....	40

<u>State v. Pirtle</u> , 127 Wn.2d 628, 904 P.2d 245 (1995).....	23
<u>State v. Riley</u> , 121 Wn.2d 22, 846 P.2d 1365 (1993).....	49
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992).....	30
<u>State v. Smith</u> , 67 Wn. App. 838, 841 P.2d 76 (1992).....	26
<u>State v. Vining</u> , 2 Wn. App. 802, 472 P.2d 564 (1970).....	42, 44
<u>State v. Werner</u> , 129 Wn.2d 485, 918 P.2d 916 (1996).....	33, 34
<u>State v. Williams</u> , 158 Wn.2d 904, 148 P.3d 993 (2006).....	17
<u>State v. Williams</u> , 159 Wn. App. 298, 244 P.3d 1018 (2011).....	24
<u>State v. Zorich</u> , 72 Wn.2d 31, 431 P.2d 584 (1967).....	44
<u>W. Telepage, Inc. v. City of Tacoma Dep't of Fin.</u> , 140 Wn.2d 599, 998 P.2d 884 (2000).....	18
<u>Washington State Bar Ass'n v. Great Western Union Fed. Sav. and Loan Ass'n</u> , 91 Wn.2d 48, 586 P.2d 870 (1978).....	20
<u>Other Jurisdictions:</u>	
<u>Dauphin Cy. Bar Ass'n v. Mazzacaro</u> , 465 Pa. 545, 351 A.2d 229 (1976).....	19

Constitutional Provisions

Federal:

U.S. Const. amend. I .....3  
U.S. Const. amend. IV .....3, 39  
U.S. Const. amend. V .....3  
U.S. Const. amend. VI .....3  
U.S. Const. amend. XIV .....3, 36

Washington State:

Const. art. I, § 7.....39  
Const. art. I, § 12.....36  
Const. art. IV, § 6.....33, 34

Statutes

Washington State:

Former RCW 9A.56.010.....44  
Laws 2001, ch. 10, § 6 .....44  
RCW 2.08.010 .....33, 34  
RCW 2.48.170 .....7, 18  
RCW 2.48.180 .....2-7, 16, 18-20, 24, 25, 28, 31, 33, 34, 50  
RCW 9.94A.030.....49, 50  
RCW 9.94A.505.....48  
RCW 9.94A.650.....5

RCW 9.94A.753.....	47
RCW 9A.04.030.....	34
RCW 9A.56.010.....	44
RCW 9A.56.030.....	41
RCW 26.50.110 .....	29

### Rules and Regulations

#### Washington State:

CrR 7.3 .....	34
GR 24 .....	19, 20, 22, 25, 28, 31
RAP 2.5.....	23, 24

### Other Authorities

Consumer Protection Act.....	8, 45
------------------------------	-------

**A. ISSUES PRESENTED**

1. Whether Janda's contentions vis-à-vis his unlawful practice of law convictions should be dismissed as without merit because each claim depends on this Court's affirmation of Janda's illogical and unsupported claim - that he is not a non-lawyer because he has never been a member of the Washington State Bar.

2. Whether Janda's claim of insufficient evidence apropos his first degree theft convictions should be dismissed because it disregards the aggregation theory at common law.

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

a. The Charges.

In a third amended information, the State charged the defendant, Steven Janda, with two counts of the unlawful practice of law and two counts of theft in the first degree. CP 175-77. The State alleged that Janda had unlawfully practiced law and held himself out as an attorney to Dale J. Frelin and Irene Frelin (Count I) and to William McGraw and Mary McGraw (Count II). The State charged Janda with theft in the first degree, alleging that he had obtained the property of Dale and Irene Frelin

(Count III) and William McGraw (Count IV) “by color and aid of deception.” CP 175-77.

b. Pretrial Motions And Rulings.

Janda filed several pretrial motions, including a motion to dismiss the charges against him based upon a “misrepresentation of the statute” and alleged constitutional violations<sup>1</sup> and a motion to join the victims as defendants.<sup>2</sup> Below, the State discusses the motions that Janda has re-asserted in this appeal.

i. Motion to dismiss.

In the motion to dismiss, Janda first contended that the proscription of the unlawful practice of law in RCW 2.48.180<sup>3</sup> does not apply to someone like him who has never been a member of the Washington State Bar Association (“WSBA”). 1RP 6-17<sup>4</sup>; CP 23-26, 31-34. Janda argued that the definition of “nonlawyer” in RCW 2.48.180(1)(b) applies only to persons who were at one time active members of the WSBA, and therefore is inapplicable to him. 1RP 6-17; CP 23-26, 31-34.

---

<sup>1</sup> CP 23-27, 31-35.

<sup>2</sup> CP 12-15, 20-27, 28-30.

<sup>3</sup> RCW 2.48.180 is attached as Appendix A.

<sup>4</sup> The State designates the verbatim report of proceedings as follows: 1RP (10/27/10); 2RP (2/7/11); 3RP (2/18/11); 4RP (3/1/11); 5RP (3/9/11); 6RP (3/10/11); 7RP (3/14/11); 8RP (3/15/11) and 9RP (3/16/11).

Janda also sought dismissal of the charges based on alleged First, Fourth, Fifth, Sixth and Fourteenth Amendment violations.<sup>5</sup> CP 26-27, 34-35.

On November 9, 2010, the trial court denied Janda's motions to dismiss. The court ruled that, contrary to Janda's argument, the definition of "nonlawyer" in RCW 2.48.180 (1)(b) "applies to a person who has never been an active member of the state bar." CP 76-77, 79; 1RP 31. The court also denied Janda's motion to dismiss based on alleged constitutional violations because Janda "has not offered any analysis or authority to support his assertions. . . ." CP 79; 1RP 31.

On December 7, 2010, Janda sought discretionary review of, among other rulings, the trial court's order denying his motions to dismiss.<sup>6</sup> On February 17, 2011, Commissioner Mary S. Neel of the Court of Appeals, Division One, denied discretionary review and the ruling became final on March 25, 2011.<sup>7</sup>

On February 23, 2011, Janda filed another motion to dismiss in the trial court, arguing, once again, that RCW 2.48.180 does not apply to him. CP 89-102.

---

<sup>5</sup> It is not clear from Janda's pleadings how the amendments apply.

<sup>6</sup> CP 349-56.

<sup>7</sup> CP 337-41.

On March 1, 2011, the trial court denied the motion. 4RP 9-21. The court reiterated that RCW 2.48.180 refers to “nonlawyers,” which includes a person who has never been admitted to the bar. 4RP 16, 20-21. The court granted the State’s motion in limine to preclude Janda from arguing to the jury that the definition of “nonlawyer” in RCW 2.48.180(1)(b) did not apply to him because he has never been an active member of the WSBA. 4RP 34-35. The court’s written order instructed the parties “not to argue or otherwise imply or infer during trial that RCW 2.48.180 excludes from the definition of ‘nonlawyer’ individuals who have never been active members of the state bar.” CP 169.

ii. Motion to join.

Janda urged the trial court to join two other defendants to this case, Irene Frelin and the personal representative of Mary McGraw’s estate.<sup>8</sup> CP 12-14, 20-22. In sum, Janda argued that Irene Frelin and her now deceased husband, Dale Frelin, and William and Mary McGraw paid him for the services that the State alleged constituted the unlawful practice of law; therefore, the Frelins and Ms. McGraw (or her estate’s personal representative) were complicit in any alleged criminal activity and must be

---

<sup>8</sup> Ms. McGraw died in 2008.

charged.<sup>9</sup> CP 12-14, 20-22. Janda claimed that, “The [S]tate may not decide arbitrarily which persons should be indicted when the law defining the offense requires both persons to be tried.” CP 14, 22.

The trial court denied Janda’s motion. 1RP 3-5; CP 79. The court said that it is a function of the executive branch of government, not the judicial branch, to file criminal charges. “The Court does not have the authority or the responsibility to file criminal charges, and it could not ‘join defendants’ without violating the separation of powers among the three branches of government.”<sup>10</sup> CP 79.

c. Verdict, Sentencing And Post-trial Hearings.

On March 16, 2011, a jury convicted Janda as charged. CP 282-83. At the sentencing hearing on April 20, 2011, the trial court imposed a suspended sentence on Count I<sup>11</sup> and a first time offender waiver on Counts II, III and IV.<sup>12</sup> CP 304-15.

---

<sup>9</sup> Janda also claimed that the alleged “victims” were, in fact, not victims at all. Rather, they were guilty of criminal solicitation for paying him to unlawfully practice law. CP 13, 20.

<sup>10</sup> Janda also challenged this ruling in his unsuccessful motion for discretionary review. CP 349-56.

<sup>11</sup> RCW 2.48.180(3)(a), (b) state that a single violation of the unlawful practice of law is a gross misdemeanor and each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. Appendix A.

<sup>12</sup> RCW 9.94A.650.

At the same hearing, Janda filed a motion for direct review in this Court.<sup>13</sup> In a letter dated April 21, 2011, this Court notified the parties that after the State filed the Respondent's response brief, the Court will decide whether to accept direct review. On May 4, 2011, the State filed its answer in opposition to Janda's motion.

On June 14, 2011, as a condition of Janda's release pending appeal, the trial court ordered Janda to refrain from practicing law.<sup>14</sup> Janda filed an emergency motion in this Court to vacate the order.

On September 21, 2011, Commissioner Goff of this Court denied Janda's motion.<sup>15</sup> In his ruling, Commissioner Goff rejected Janda's reasoning - that because Janda had never been a member of the state bar, he cannot be considered a "nonlawyer," as defined by RCW 2.48.180(1)(b) ("A 'nonlawyer' is defined in part as 'a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership.'").<sup>16</sup> Commissioner Goff

---

<sup>13</sup> Janda's "Notice of Direct Review" filed in the trial court states that he is seeking direct review in this Court of "The King County Superior Court decision entered on March 16, 2011," and also recites that a "copy of the decision is attached." CP 286-87. The document attached is a copy of a King County Superior Court form designed to inform the Sentencing Coordinator of the jury's verdict and of the setting of a sentencing date. CP 287. The Judgments and Sentences were entered on April 20, 2011, when Janda was sentenced. CP 304-13, 314-15.

<sup>14</sup> CP 342.

<sup>15</sup> CP 343-44.

<sup>16</sup> Id.

stated that this is the “only sensible construction” of RCW 2.48.180 and that RCW 2.48.170 “plainly prohibit[s] Mr. Janda from practicing law.”<sup>17</sup>

On November 21, 2011, Department I of this Court unanimously denied Janda’s Motion to Modify the Commissioner’s Ruling.<sup>18</sup>

On December 6, 2011, the trial court modified the conditions of Janda’s release pending appeal. On January 20, 2012, Janda filed a Motion for Discretionary Review and a Statement of Grounds for Direct Review of the modification order. That action is pending under Supreme Court Case Number 86889-1.<sup>19</sup>

## 2. SUBSTANTIVE FACTS

It is undisputed that Janda is not now, and never has been, a member of the WSBA. 5RP 127. Yet, since at least 1997, Janda was on notice that he was unlawfully practicing law. 7RP 64-75; Ex. 45. In 1997, Douglas Walsh, a Senior Assistant Attorney General in the Consumer Protection Division, investigated Janda for unfair and deceptive practices. 7RP 64-65. After a thorough investigation, the Attorney General’s (“AG’s”) office determined that Janda’s engagement in providing legal services for financial consideration while not a member of the WSBA was

---

<sup>17</sup> Id.

<sup>18</sup> CP 347-48.

<sup>19</sup> On January 25, 2012, the State filed its answer to Janda’s motions for discretionary and direct review.

an unfair and deceptive trade practice that violated the Consumer Protection Act (“Act”). 7RP 65-75. Janda acknowledged that the estate planning documents that he was creating and providing to the public violated the Act. 7RP 70-71. Janda also agreed that he had engaged in the unauthorized practice of law. 7RP 70-71. On April 16, 1997, Janda signed an “Assurance of Discontinuance,” promising that he would no longer engage in the identified unfair and deceptive practices. 7RP 65-75; Ex. 45.

Despite the agreement, Janda continued to create and sell estate documents. On August 30, 2004, Janda entered into an agreement with the Practice of Law Board (“POLB”), which was established by the Washington Supreme Court, in part, to investigate complaints of the unauthorized practice of law. 5RP 111-13. After an investigation, the POLB entered into a cease and desist agreement with Janda. 5RP 128-29; Ex. 46A. Janda again agreed to refrain from the unauthorized practice of law. Ex. 46A.

Prior to 1997, Janda unlawfully practiced law (albeit without formal notice that his conduct was unlawful) and after 1997, Janda reneged on his agreements with the AG’s office and the POLB.

a. The Frelins 1994-97.

In 1994, Janda took out a newspaper advertisement concerning services that he offered at Evergreen Paralegal Services (owned by Janda and his wife). 5RP 73-74; 7RP 66-67. Irene Frelin saw one such advertisement. Janda's services appealed to her because Janda promised to come to one's home for legal matters. 6RP 74.

Irene believed that she needed to have a will in place before she and Dale took a trip to Germany.<sup>20</sup> 6RP 77. Irene's primary concern was to ensure that her mother would be allowed to live on the adjoining property if something happened on the trip. 6RP 77. Janda met with the Frelins and suggested a living trust. 6RP 77. Irene thought that Janda was an attorney. 6RP 78.

On May 31, 1994, Irene and Dale signed myriad documents that Janda had drafted and completed for estate-planning purposes. 6RP 79-86; Exs. 2, 3. On June 22, 1994, before the Frelins' planned overseas trip, they signed healthcare directives and wills that Janda told the Frelins they needed. 6RP 87-102.

After the Frelins had signed all of the documents related to their estates, Janda continued to telephone them. 6RP 103. Janda told the

---

<sup>20</sup> For clarity, at times the State refers to the Frelins by first name. No disrespect is intended.

Frelins that new laws had gone into effect and that they needed more legal documents to protect their interests. 6RP 103. Dale finally told Janda not to call anymore. 6RP 103.

Janda continued to contact the Frelins. Between 1994 and 1997, Janda prepared over 20 estate-related documents for the Frelins to sign. 6RP 116, 134-38. In 1996, Janda prepared quit claim deeds, transferring the Frelins' property from the 1994 trusts that Janda had created to the Frelins' daughters. 6RP 106-13. The Frelins never requested the conveyance. 6RP 110.

b. The Frelins 2003-04.

In a letter to the Frelins dated January 6, 2003, Janda wrote to tell them that they needed to update the previous trust documents to "protect their estate." Ex. 25. Janda also informed the Frelins that revisions to Washington statutes necessitated updating their financial power of attorney. Ex. 25. This letter to the Frelins concluded with this sentence: "Our attorney is also available to answer your questions and to confirm all services we perform for you." Below the list of services offered by

Evergreen Paralegal Services, Inc. are the words "Attorney Supervised."<sup>21</sup>  
Exs. 2, 5; 6RP 117-18.

Janda mailed another letter to the Frelins dated May 20, 2003, with the subject line reading: "Re: Notice of Medicaid Changes." Ex. 26; 6RP 119-20. This letter advised the Frelins about a "sole benefit trust" that was, according to Janda, "a certain irrevocable trust arrangement that can be used (primarily for couples) to qualify for Medicaid without creating any periods of ineligibility." Ex. 26. This letter also told the Frelins that "the laws regarding powers of attorney have changed over the past several years," and that their "estate planning documents should be reviewed to ensure you have maximum protection under the law." Ex. 26;<sup>22</sup> 6RP 120-22.

In April and May 2004, after Dale had had a few strokes and was very ill, the Frelins permitted Janda to draft more documents for them, even though there had been no change in the Frelins' assets. Ex. 27; 6RP 122-32.

---

<sup>21</sup> There is no such phrase on the Evergreen letterhead of Janda's previous correspondence with the Frelins (before he entered into an agreement with the AG's office). Exs. 2, 5; 6RP 117-18. Section 1.3(e) of Janda's agreement with the AG's office provided that Janda could provide certain legal services "when working under the supervision of an attorney licensed in Washington State." Ex. 45.

<sup>22</sup> This letter makes no reference to an attorney being available as the January 2003 letter did, but like the earlier letter, the May 20th letter does bear the words "Attorney Supervised" as part of the letterhead at the top of the page. Ex. 26.

c. The Frelins 2008-09.

Throughout 2008, Dale had been in and out of hospitals and nursing homes, as a result of congestive heart failure and diabetes.

6RP 144. Dale's prolonged illnesses took their toll on Irene; she was tired and under extreme stress. 6RP 149. Someone told Irene that she needed to arrange for Medicaid to pay for some of Dale's care or his medical costs could deplete their life savings. 6RP 145. Irene turned to Janda, whom she trusted, for help. 6RP 146. Janda took Irene's money and said that he would get back to her - but he never did. 6RP 147-49.

Dale and Irene's daughter, Julie Kanikkeberg, became concerned. 6RP 169-77. Kanikkeberg heard her mother mention Janda's name, but her mother was unable to explain what she had paid Janda to do.

6RP 175. Kanikkeberg's concern grew because her mother was distracted by Dale's poor physical health and she did not have any accounting of the services for which she had paid Janda. 6RP 175-78. All Irene could tell her daughter was that she had to sign the documents that Janda had prepared or she could lose her property. 6RP 178. Kanikkeberg left many messages for Janda to try and determine what he had been paid for and why, but Janda never returned the calls.<sup>23</sup> 6RP 179-83.

---

<sup>23</sup> Kanikkeberg asked her mother to schedule future appointments with Janda at times that she could be present. Despite Irene telling Janda that she wanted her daughter at their appointments, Janda met with Irene only when she was alone. 6RP 179-80.

Dale passed away on September 24, 2008. 6RP 143. In addition to all of the money that Dale and Irene had paid Janda between April 2004 and October 2008, Irene paid Janda another three thousand dollars for more documents that Janda said she needed to settle Dale's estate. Exs. 54-60; 6RP 149-66. Concerned, Kanikkeberg researched Janda on the internet and found the agreement that Janda had entered into with the POLB. 6RP 18-85. It was only then that Irene stopped paying Janda.

Later, because Janda failed to keep Irene apprised of the administration of Dale's estate, Irene missed a mandatory court appearance. 6RP 164-66. And, the properties that she and Dale had owned before they met Janda in 1994 no longer belonged to Irene because, without the Frelins' permission or understanding, Janda had conveyed them to Irene and Dale's daughters. 6RP 164-66.

d. Mary And William McGraw.<sup>24</sup>

The McGraws' contact with Janda began in February 2008, when Mary was 89-years-old, in failing health (she suffered from the late stages of Alzheimer's or dementia) and needed 24-hour care. 7RP 8-11. Mary had had six children. 7RP 9-10, 16. Mary's then current will was handwritten and named one of her deceased sons as beneficiary and

---

<sup>24</sup> For clarity, at times the State refers to the McGraws by first name. No disrespect is intended.

personal representative of her estate and also named her other deceased son as a beneficiary. 7RP 9-10. William wanted to get a new will drafted for his mother, one that would name him as administrator of his mother's estate upon her death. 7RP 10-11. Because Mary had trouble paying her bills, among other difficulties, William also wanted to have a power of attorney to act on her behalf. 7RP 11. A friend recommended Janda to William. 7RP 8.

William met with Janda on February 5, 2008. 7RP 13. William gave Janda Mary's old will and explained that he wanted a new will for her and a power of attorney so that he could act on Mary's behalf. William also wanted to be named as administrator of Mary's estate. 7RP 12-15. Janda gave William the impression that he was qualified to prepare the needed documents. 7RP 11.

Janda told William that Mary needed a living trust. Although William did not know what a living trust was, he agreed to pay Janda for one. 7RP 14; Exs. 47-48. The men met the next day at Mary's nursing home so that Mary could sign the documents. 7RP 15-18; Exs. 48-49. Janda did not explain the documents, or how to put Mary's primary asset - her home - into the trust. 7RP 18-20.

Later, William met again with Janda to learn how to administer Mary's estate after she passed away. 7RP 22-23. Janda charged William

\$950 for “estate administration,” which William thought was for documents that he would need to administer Mary’s estate. 7RP 22-24.

After Mary passed away (October 1, 2008), William tried multiple times - unsuccessfully - to contact Janda. 7RP 25-27, 30. Eventually, William sought advice from Peter Perron, an attorney who had advised William in business matters. 7RP 27, 35-36.

Perron is experienced in estate planning. 7RP 32-34. Perron reviewed the documents that Janda had prepared. 7RP 36-37. In his expert opinion, Mary had no need for a living trust; her most valuable asset was her home, which along with Mary’s other minor assets, Janda had failed to transfer to the trust. 7RP 43-46. Perron reviewed the “pour-over” will that Janda had drafted and, it, too, contained many deficiencies. 7RP 46-57; Ex. 49.

In sum, Perron said that Janda had complicated Mary’s estate. William had to pay Perron approximately \$1,200 (a discounted fee because William had been a good client) to cure the many defects in Janda’s documents. 7RP 58-61. Perron filed a complaint against Janda with the POLB. 7RP 61.

Additional facts will be discussed in the sections to which they pertain.

**C. ARGUMENT**

**1. A “NONLAWYER” INCLUDES PERSONS WHO HAVE NEVER BEEN A MEMBER OF THE WSBA.**

Janda’s primary - and most of his subsidiary - arguments flow from a fundamentally flawed premise: That there are only two primary classes of “nonlawyers” or persons who may not practice law - a person granted a limited authorization by the Washington Supreme Court to practice law but who practices law outside that authorization, and a person who is not an *active member* in good standing of the state bar, i.e., one disbarred or suspended from membership.<sup>25</sup> Janda contends that “not an active” member means precisely the same as “inactive” member, and the definition therefore applies only to those who are “inactive” members of the WSBA. Because Janda has never been a member of the WSBA, he claims that he is not an “inactive” member of the WSBA; therefore, he does not fall under the statutory definition of “nonlawyer.” So, according to Janda, as a matter of law, he is incapable of the unlawful practice of law in violation of RCW 2.48.180(2)(a). Br. of Appellant at 11-16, 20-26, 29-30, 32-34, 42-49 (assignments of error 1, 3, 5, 6 and 11).

---

<sup>25</sup> Br. of Appellant at 11-16, 20-26, 29-30, 32-34, 42-49 (assignments of error 1, 3, 5, 6 and 11).

The Court should reject Janda's unsupported and circular argument. There is neither statutory text nor other authority to support Janda's contention that the legislature intended to bar only suspended and disbarred members of the WSBA from practicing law. The trial court properly concluded that a "nonlawyer," i.e., a person who is not an "active member" in good standing of the state bar, applies to a person who has never been an active member of the WSBA. CP 79. As Commissioner Goff of this Court stated, "[T]he only sensible construction [of the statutory definition of nonlawyer] is that persons who have never been an active bar member are nonlawyers." CP 343-44.

The interpretation of a statute is a question of law that is reviewed de novo. Berrocal v. Fernandez, 155 Wn.2d 585, 590, 121 P.3d 82 (2005). The primary goal of statutory construction is to ascertain and give effect to the legislature's intent and purpose. State v. Williams, 158 Wn.2d 904, 908, 148 P.3d 993 (2006). To determine legislative intent, a court looks first to the language of the statute. If a statute is clear on its face, its meaning is to be derived from the plain language of the statute alone. State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). If a statute is ambiguous and that intent cannot be discerned from the plain text of the statute, the court will resort to principles of statutory construction, legislative history, and relevant case law to assist in interpreting it. Cockle

v. Dep't of Labor & Indus., 142 Wn.2d 801, 808, 16 P.3d 583 (2001).

However, a statute is not ambiguous simply because different interpretations are conceivable. Keller, at 276. The court is not “ ‘obliged to discern any ambiguity by imagining a variety of alternative interpretations.’ ” Id. at 276-77 (quoting W. Telepage, Inc. v. City of Tacoma Dep't of Fin., 140 Wn.2d 599, 608, 998 P.2d 884 (2000)).

Finally, in construing a statute, a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

The plain language of RCW 2.48.170 and .180 prohibits Janda from practicing law. RCW 2.48.180(1)(b) defines a “nonlawyer,” in part, as a “person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership.” Only active members of the WSBA may practice law. RCW 2.48.170 says that, “[n]o person shall practice law in this state . . . unless he or she shall be an active member [of the state bar].” As Commissioner Goff stated, “[T]hese statutes . . . plainly prohibit Mr. Janda from practicing law.” CP 343-44.

This is the only “sensible construction”<sup>26</sup> of RCW 2.48.180, and it is the reading of the statute that gives effect to the legislative purpose and intent. The purpose of proscribing the unauthorized practice of law is to protect the public. State v. Hunt, 75 Wn. App. 795, 803, 880 P.2d 96, rev. denied, 125 Wn.2d 1009 (1994).

When a person holds himself out to the public as competent to exercise legal judgment, he implicitly represents that he has the technical competence to analyze legal problems and the requisite character qualifications to act in a representative capacity. When such representations are made by persons not adequately trained or regulated, the dangers to the public are manifest. . . .

Hunt, at 803 (quoting Dauphin Cy. Bar Ass’n v. Mazzacaro, 465 Pa. 545, 351 A.2d 229, 232 (1976)).

In 2001, the Washington Supreme Court adopted General Rule 24, which defines the practice of law. In general, the practice of law is “the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law.” GR 24. More specifically, practicing law includes giving legal advice for a fee or other consideration, drafting legal documents, such as a will or a deed or negotiating the legal rights of another. GR 24.

---

<sup>26</sup> CP 79, 343-44.

Before GR 24 was adopted, Washington cases defined practicing law. See, e.g., In re Droker and Mulholland, 59 Wn.2d 707, 719, 370 P.2d 242 (1962) (holding that a person preparing legal forms is practicing law); and Washington State Bar Ass'n v. Great Western Union Fed. Sav. and Loan Ass'n, 91 Wn.2d 48, 54, 586 P.2d 870 (1978) (holding that the practice of law includes selecting or completing legal documents, and drafting or amending documents such as deeds of trust or promissory notes).

Given the legislative intent, and the plain language of the statutes and court rules that govern the unlawful practice of law, the word nonlawyer must necessarily include persons - such as Janda - who have never been members of the WSBA and who are not adequately trained or regulated. See Hunt, 75 Wn. App. at 803.

Simply because Janda has imagined another interpretation of “nonlawyer” does not make RCW 2.48.180 ambiguous. See Keller, 143 Wn.2d at 277. Even assuming that the definition of nonlawyer was ambiguous - Janda’s interpretation thwarts the legislative intent. If only suspended and disbarred members of the WSBA were nonlawyers and all other persons (except those who exceed the Washington Supreme Court’s limited authorization to practice law) were not inactive members of the WSBA, the danger to the public would be manifest. Moreover, under

Janda's reading, untrained, unlicensed elementary school children, electricians, gardeners and bar tenders would all be permitted to practice law. This is precisely the kind of absurd result that statutory construction strives to avoid. J.P., 149 Wn.2d at 450.

Janda next argues that under the maxim *expressio unius est exclusio alterius* - specific inclusions exclude implication - the word including in the statute ("person who is not an active member in good standing of the state bar, *including* persons who are disbarred or suspended from membership") means that only disbarred or suspended WSBA members are not active members in good standing. Br. of Appellant at 13-17. It is under this maxim, Janda contends, that the trial court violated his right to due process by "redefining" the statutory definition of nonlawyer to include those who were never members of the state bar.<sup>27</sup>

Contrary to Janda's reading, disbarred and suspended members are merely a subset of all not active members in good standing. In other words, a not active member includes, but is not limited to, a disbarred or suspended member. This is the only construct that gives effect to the legislature's intent. See City of Seattle v. Fontanilla, 128 Wn.2d 492, 498,

---

<sup>27</sup> Br. of Appellant at 16-19 (assignment of error 2).

909 P.2d 1294 (1996) (stating that if the statutory language is susceptible of two constructions, one of which will carry out the purpose and intent of the legislature and other that will defeat it, the former construction should be adopted.).

This Court should reject Janda's claim.

**2. GR 24 DEFINES AN ELEMENT OF THE UNLAWFUL PRACTICE OF LAW.**

Janda appears to argue that the State relied on the definition of the unlawful practice of law, as stated in GR 24, as evidence of his criminal activities and that the definition relieved the State of its burden to prove each essential element of the crime charged. Br. of Appellant at 29-30, 45-49 (assignments of error 5 and 11). Janda is mistaken.

As discussed above, GR 24 defines the element of the unlawful practice of law consistently with the definition used in cases before 2001. The trial court instructed the jury on what constitutes the unlawful practice of law, i.e., the legal definition, and the jury then made its determination that the State had proved beyond a reasonable doubt that Janda had unlawfully practiced law (the essential element).

Janda has not provided this Court with any citation to the record to support either his claim that the trial court's legal definition of nonlawyer violated his right to due process, or that the State used the definition itself

as evidence. This Court should decline to review assignment of error 5. Cf. Cowiche Canyon Conservancy v. Bosley, 118 Wn. 2d 801, 819, 828 P.2d 549 (1992) (“It is not the function of the appellate court to search through an entire deposition to locate relevant testimony.”).

**3. THE TRIAL COURT CORRECTLY INSTRUCTED THE JURY.**

Based once again on Janda’s fundamental misunderstanding of “nonlawyer,” Janda asserts that jury instruction number 7 is incorrect. Br. of Appellant 32-34. It is not. The jury instructions, taken as a whole, are correct statements of the law.

This Court reviews jury instructions *de novo*, within the context of the jury instructions as a whole. State v. Pirtle, 127 Wn.2d 628, 656, 904 P.2d 245 (1995).

As a preliminary matter, however, this Court should decline to review this assignment of error because Janda did not object to the instruction at trial. See 7RP 96-109 (jury instruction conference). While a failure to timely object generally waives the claim on appeal, an appellant may raise for the first time on appeal a manifest error affecting a constitutional right. RAP 2.5(a); State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). This is true even with respect to instructional errors.

See, e.g., State v. Williams, 159 Wn. App. 298, 312-13, 244 P.3d 1018 (2011).

Janda did not object to instruction number 7. Although Janda asserts that instruction number 7 constitutes a manifest error affecting a constitutional right, without some showing of how the error is manifest or that it affected a constitutional right, he has failed to preserve any error. RAP 2.5(a); Kirkman, 159 Wn.2d at 926.

Even if this Court reviews Janda's claim, it is without merit. As discussed above, the term nonlawyer means a person who is not an active member in good standing of the WSBA, including persons who are disbarred or suspended from membership. The term nonlawyer also includes persons who have never been members of the WSBA. CP 79, 343-44.

RCW 2.48.180 states that one commits the crime of unlawful practice of law when: "A nonlawyer practices law, or holds himself or herself out as entitled to practice law." RCW 2.48.180(2)(a). But because a nonlawyer is a category that includes persons who have never been members of the WSBA as well as persons who have been disbarred or suspended from membership, instructions 7, 8 and 9 are correct statements of the law. Instruction number 7 says,

A person commits the crime of Unlawful Practice of Law when, not being an active member of the State Bar, he practices law or holds himself out as entitled to practice law.

CP 265.

In turn, instruction number 8 defines nonlawyer as “a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership.” CP 266. Finally, instruction number 9 defines the unlawful practice of law, as set forth in GR 24.

Janda claims that the meaning of nonlawyer is an essential element. Br. of Appellant at 33. He is mistaken. The definition of a nonlawyer is a purely legal matter. Whether Janda is a nonlawyer, i.e., whether Janda held himself out as a lawyer, is a question of fact for the jury to determine.

Taken as a whole, the trial court’s instructions are correct. This Court should reject Janda’s claim.

**4. THE ORDER IN LIMINE WAS PROPER AND DID NOT RELIEVE THE STATE OF ITS BURDEN TO PROVE EACH ESSENTIAL ELEMENT OF THE CRIME CHARGED.**

Janda next asserts that the trial court erred by ordering the parties “not to argue or otherwise imply or infer during trial that RCW 2.48.180 excludes from the definition of ‘nonlawyer’ individuals who have never

been active members of the state bar.” Br. of Appellant at 20-26. The crux of Janda’s claim is that the order in limine had the effect of relieving the State of proving each essential element of the crime charged.<sup>28</sup>

This claim is without merit. The court’s order in limine did no more than order the parties to abide by the trial court’s ruling that, as a matter of law, nonlawyer includes individuals who have never been members of the state bar. The State still had to prove that Janda was a nonlawyer, i.e., not an active member of the bar in good standing.

a. The Order In Limine Excluded Irrelevant Evidence.

“The purpose of a motion in limine is to dispose of legal matters so counsel will not be forced to make comments in the presence of the jury which might prejudice his presentation.” State v. Evans, 96 Wn. 2d 119, 123, 634 P.2d 845 (1981). A trial court’s determination of relevance is within the broad discretion of the trial court, and will not be disturbed absent manifest abuse of that discretion. State v. Smith, 67 Wn. App. 838, 841 P.2d 76 (1992). A trial court abuses its discretion when its ruling is manifestly unreasonable or based on untenable grounds. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

---

<sup>28</sup> Br. of Appellant at 41-49 (assignment of error 11) wherein Janda contends there is insufficient evidence from which a rational trier of fact could have found Janda guilty of unlawfully practicing law.

As discussed extensively above, the trial court correctly ruled that the term nonlawyer includes persons who have never been members of the state bar. Implicit in the court's ruling was the court's determination that comparisons of "active" versus "not active" status of military members or the difference in meaning between nonlawyers as used in court rules versus in the state bar act were irrelevant. A criminal defendant has no right to have irrelevant evidence admitted in his defense. State v. Hudlow, 99 Wn.2d 1, 15, 659 P.2d 514 (1983). It was thus not manifestly unreasonable for the trial court to try and give teeth to its ruling by prohibiting argument or inference to the contrary. The order in limine was proper.

b. The Order Did Not Relieve The State Of Its Burden.

Janda next asserts that the order relieved the State of its burden of proving the "threshold element of 'nonlawyer.'" Br. of Appellant at 20-21, 46-49 (assignments of error 3 and 11). Janda is mistaken. The order did not relieve the State of proving each element of the crime charged.

It is without question that the State must prove every essential element of the crime charged beyond a reasonable doubt. State v. Byrd, 125 Wn.2d 707, 713, 887 P.2d 396 (1995).

A person commits the unlawful practice of law when: “not being an active member of the State bar, he practices law or holds himself out as entitled to practice law.” CP 265 (instruction 7); RCW 2.48.180(2)(a); see also Hunt, 75 Wn. App. at 807 n.3. In turn,

The “practice of law” means the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration. It also includes the selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

GR 24(a)(1), (2); see also CP 267. Thus, to convict a defendant of the unlawful practice of law, the State must prove that a defendant did (1) unlawfully practice law or hold himself out as entitled to practice law; and (2) that the defendant was not then an active member of the Washington State Bar. RCW 2.48.180; GR 24.

The threshold determination that a “nonlawyer” includes persons who have never been members of the WSBA is a legal matter determined by the judge, not a fact that must be proved beyond a reasonable doubt. Cf. State v. Carmen, 118 Wn. App. 655, 77 P.3d 368 (2003), review denied, 151 Wn.2d 1039 (2004).

In Carmen, the defendant was convicted of felony violation of a protection order. The defendant claimed on appeal that the jury, not the

trial court, had to determine whether he had at least two previous convictions for violations of orders issued under one or more of the specific statutes listed in RCW 26.50.110(5). Carmen, 118 Wn. App. at 660. The Court of Appeals held that the jury examined the prior convictions and determined that Carmen had twice previously been convicted for violating a no-contact order, but whether the convictions relied upon by the jury actually were based on violations of protection orders issued under one of the statutes listed in RCW 26.50.110(5) was properly a question of law for the court. Id. at 662-63; see also State v. Miller, 156 Wn.2d 23, 31, 123 P.3d 827 (2005) (stating that the validity of a no-contact order is a question of law and thus for the court, not the jury, to resolve.).

Similarly, the trial court in this case had the initial responsibility of defining the term “nonlawyer.” Whether Janda was a “nonlawyer” or “not then an active member of the bar” was then a question of fact for the jury to resolve. This claim fails.

c. The State Proved Each Essential Element Beyond A Reasonable Doubt.

Janda contends that insufficient evidence supports the jury’s determination that he was “not an active member of the bar” and that he

held himself out as entitled to practice law.<sup>29</sup> Br. of Appellant at 42, 46-49. Janda is incorrect. The “to convict” jury instruction explicitly required a jury determination that Janda was not an active member of the WSBA and that he had held himself out to practice law. Overwhelming evidence supports each essential element of the crime charged.

In reviewing the sufficiency of the evidence, appellate courts examine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, viewing the evidence in the light most favorable to the State. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). In such a claim, the defendant admits the truth of the State’s evidence and all inferences that reasonably can be drawn from that evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

First, to the extent that Janda argues the jury was improperly instructed on the essential elements of the unlawful practice of law, Janda is mistaken. The trial court instructed the jury that in order to convict Janda of either count of the unlawful practice of law, the jury had to find that Janda practiced law, or “held himself out as entitled to practice law” and “[t]hat the defendant was not then an active member of the

---

<sup>29</sup> Although Janda’s arguments are not entirely clear, he seems to argue that the jury was not properly instructed on the elements of unlawful practice of law and that there is insufficient evidence to support the jury’s verdicts.

Washington State Bar.” RCW 2.48.180; CP 268-69. The jury is presumed to have followed the court’s instructions. State v. Brown, 132 Wn.2d 529, 618, 940 P.2d 546 (1997).

Here, the State presented sufficient evidence for a rational trier of fact to find Janda unlawfully practiced law. It was uncontested that Janda was never a member of the WSBA. 5RP 127. Janda selected, drafted and completed legal documents that affected the Frelins’ and the McGraws’ legal rights.<sup>30</sup> Exs. 3, 16, 25-27, 34, 48-49. These documents, for example, transferred assets (or, in the case of Mary McGraw, failed to transfer her primary asset), conveyed real property, created healthcare directives, resulted in tax consequences, purported to administer estates and contained deficiencies. 6RP 77-68; 7RP 12-25, 43-61; Exs. 3, 16, 25-27, 34, 48-49.

Janda held himself out to the Frelins as entitled to practice law. Irene Frelin said that she thought Janda was a lawyer; he drafted documents and created a living trust for her and her husband. 6RP 78. Janda sent letters advising the Frelins about changes in Medicaid and long-term care. Exs. 25, 26. The letters sounded like legal advice, which was why Irene thought Janda was a lawyer. 6RP 119-20; Ex. 26. On May

---

<sup>30</sup> See GR 24(a)(2).

20, 2004, Irene and Dale signed myriad forms that Janda had suggested. Irene trusted Janda and thought that he was a lawyer. 6RP 122-30. And when Dale was gravely ill, Irene desperately needed legal advice so she turned to Janda whom she trusted. 6RP 144-49. Janda took Irene's money to research how Medicaid impacted her and Dale, but Janda never provided Irene with any research.

Janda held himself out to the McGraws as entitled to practice law. William McGraw needed help getting his mother's affairs in order. 7RP 11. William brought Janda a copy of a very old will that Mary had handwritten. Janda assured William that he would take care of the necessary paperwork. 7RP 11-12. Janda then drafted and completed a living trust and a "pour-over" will (among other legal documents) for Mary. 7RP 14; Exs. 48-49. William did not know what a living trust was, but Janda assured him that Mary needed one. 7RP 14. Before Mary passed away, William sought legal advice from Janda regarding how to administer Mary's estate after her death. 7RP 22-24. Janda charged William \$950 for future estate administration, but after Mary died, William never saw Janda again. 7RP 25-30.

This evidence supports the jury's determination that Janda unlawfully practiced law.

**5. THE SUPERIOR COURT HAD JURISDICTION.**

Janda contends that the superior court lacked jurisdiction. Br. of Appellant at 9-16. Janda's argument is not entirely clear; however, he appears to argue that the legislature excluded persons who were never members of the state bar when it enacted RCW 2.48.180. Because Janda was never a member of the bar, he contends that the superior court lacked jurisdiction "over him." This Court should reject Janda's argument. The superior court had jurisdiction over Janda and his crimes.

Jurisdiction is the power to hear and determine a cause or proceeding. State v. Hampson, 9 Wn.2d 278, 281, 114 P.2d 992 (1941). Article IV, section 6 of the Washington State Constitution states that the superior court "shall have original jurisdiction . . . in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law." See also RCW 2.08.010 (setting forth the jurisdiction of superior courts). Complete jurisdiction has three components: (1) Jurisdiction over the subject matter; (2) jurisdiction over the parties; and (3) power to render the particular judgment. State v. Werner, 129 Wn.2d 485, 493, 918 P.2d 916 (1996). Jurisdiction is a question of law which this Court reviews *de novo*. Crosby v. Spokane County, 137 Wn.2d 296, 301, 971 P.2d 32 (1999).

The King County Superior Court had subject-matter jurisdiction over Janda for the crimes that Janda committed in King County, under both WASH. CONST. art. IV, § 6, and RCW 2.08.010. Although the first conviction for the unlawful practice of law is a gross misdemeanor,<sup>31</sup> the superior court has jurisdiction because it is not a criminal case “otherwise provided for by law.” See 2.08.010. The second conviction for the unlawful practice of law is a felony and the superior court has jurisdiction under both WASH. CONST. art. IV, § 6, and RCW 2.08.010.

Personal jurisdiction arises from RCW 9A.04.030(1),<sup>32</sup> which establishes superior court’s personal jurisdiction over all persons who commit crimes in the state. Werner, 129 Wn.2d at 493.

Finally, the superior court is empowered by court rule to enter the judgment for a criminal conviction. CrR 7.3 states that the judgment, which shall set forth the verdicts, shall be signed by the judge and entered by the clerk.

The superior court had complete jurisdiction. This Court should accordingly reject Janda’s assertion to the contrary.

---

<sup>31</sup> RCW 2.48.180(3)(a) provides: “Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.” Section b provides in part: “Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony. . . .”

<sup>32</sup> The State has criminal jurisdiction over “[a] person who commits in the state any crime, in whole or in part.”

**6. THE PROSECUTING ATTORNEY HAS THE SOLE DISCRETION TO FILE CRIMINAL CHARGES.**

Janda next asserts that the trial court erred when it denied his motion to join the victims as defendants. Janda's theory is that, but for the contracts for services that the Frelins and McGraws entered into with Janda, he could not have unlawfully practiced law. Br. of Appellant at 26-28, 44-45 (assignments of error 4 and 11). Janda thus claims that the victims should have been charged as accomplices. The decision by the State not to charge the victims, Janda continues, also violates the equal protection clause. These arguments are unsound and should be rejected for three reasons.

First, it is absurd to claim that the victims were complicit. The victims believed that they had contracted for *bona fide* legal services precisely because Janda had held himself out as a lawyer. Second, the victims and Janda were not similarly situated therefore the equal protection clause is inapposite. Finally, the trial court properly denied Janda's motion to "join defendants" because the executive branch has the sole discretion to file criminal charges and any judicially-based joinder would violate the separation of powers among the three branches of government. CP 79.

a. Frelin And McGraw Had No Knowledge Of Janda's Crimes.

In order for accomplice liability to attach, the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is charged. State v. Cronin, 142 Wn.2d 568, 579, 14 P.3d 752 (2000).

In this case, Ms. Frelin and Mr. McGraw were not accomplices to Janda's unlawful practice of law. It is precisely because Janda unlawfully held himself out as entitled to practice law that the victims contracted with Janda. Janda's attempt to impute knowledge of his crime and attach accomplice liability to those he victimized is without merit.

b. Frelin And McGraw Were Not Similarly Situated As Janda.

Article I, section 12 of the Washington Constitution and the Fourteenth Amendment to the United States Constitution guarantee that similarly situated persons must receive like treatment under the law. State v. Manussier, 129 Wn.2d 652, 672, 921 P.2d 473 (1996).

Here, Janda and his victims were not similarly situated. The victims were individuals who sought legal advice. Janda was a criminal who held himself out as an individual who could legitimately provide legal advice. The equal protection clause is not implicated.

c. The Prosecutor - Not The Court - Files Criminal Charges.

The separation of powers created a clear division of functions among the executive, legislative and judicial branches of government. Hale v. Wellpinit School Dist. No. 49, 165 Wn.2d 494, 504, 198 P.3d 1021 (2009). Each branch of government has its own “appropriate sphere of activity” and any interference by one branch into another’s function is very limited. Id.

The fundamental function of the judicial branch is judicial review. Id. at 505. The legislative branch sets policy, drafts and enacts laws. Id. at 506. Whether to initially file criminal charges, what charges to file, and when to file them are decisions made solely by the prosecuting attorney, a member of the executive branch. State v. Finch, 137 Wn.2d 792, 809, 975 P.2d 967, cert. denied, 528 U.S. 922, 120 S. Ct. 285 (1999); see also United States v. Nixon, 418 U.S. 683, 693, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974) (“[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case”).

The trial court correctly ruled that it did not have the authority to join Ms. Frelin or Mr. McGraw as defendants in the instant case. The court said it could not “ ‘join defendants’ without violating the separation of powers among the three branches of government.” CP 79. Janda has

provided no authority to the contrary. The Court should reject his argument.

**7. JANDA'S RIGHT TO PRIVACY WAS NOT VIOLATED.**

Janda next contends that his right to privacy under the federal and state constitutions was violated. Br. of Appellant at 34-35. Janda has failed to support his claim with any authority. This Court should accordingly reject Janda's assertion.

Before turning to Janda's constitutional claims, it is important to briefly discuss what this assignment of error (number 7) is not. Janda's claim - that the POLB defamed him - is not properly before this Court on a direct appeal from a criminal conviction. Br. of Appellant at 34-35. The only parties to this appeal are Janda and the State - more specifically, King County. But even still, "[a] defamation claim must be based on a statement that is provably false." Schmalenberg v. Tacoma News, Inc., 87 Wn. App. 579, 590, 943 P.2d 350 (1997). Janda cannot prove that the POLB's statements are false.

Julie Kanikkeberg, Irene Frelin's daughter, said that she had researched Janda on line and found out that the WSBA had warned Janda to stop unlawfully practicing law. 6RP 169, 184-88. Kanikkeberg had not researched Janda until after her father passed away in 2008. 6RP 72,

180-88. Exhibits 45 (copy of “Assurance of Discontinuance,” dated April 16, 1997) and 46A (“Agreement to Refrain from Engaging in the Unauthorized Practice of Law,” dated August 25, 2004) make it impossible for Janda to prove that either the WSBA or the POLB made provably false statements. This is especially true given the jury’s verdicts. CP 282-83.

With regard to his constitutional argument, Janda cannot assert Ms. Frelin’s constitutional right to privacy. Article I, section 7 of the Washington State Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” In contrast, a search occurs under the Fourth Amendment if the government intrudes upon a subjective and reasonable expectation of privacy. Katz v. United States, 389 U.S. 347, 351–52, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). Fourth Amendment rights, however, are personal and cannot be vicariously asserted. State v. Goucher, 124 Wn.2d 778, 787, 881 P.2d 210 (1994).

In determining whether a search (or seizure) violates art. I, § 7, this Court must first decide whether the action in question intruded upon a person’s “private affairs.”<sup>33</sup> See In re Pers. Restraint of Maxfield, 133

---

<sup>33</sup> It is unclear whether Janda’s claim is based on an unlawful search or an unlawful seizure.

Wn.2d 332, 339, 945 P.2d 196 (1997). Generally, private affairs are “those privacy interests which citizens of [Washington] have held, and should be entitled to hold, safe from governmental trespass.” State v. Myrick, 102 Wn.2d 506, 511, 688 P.2d 151 (1984).

Janda has not identified the privacy interest that he claims was violated. Janda certainly did not have a reasonable expectation of privacy in the documents he had prepared for Dale and Irene Frelin or Mary McGraw. Janda prepared the living trusts, pour-over wills, and powers of attorney with the expectation that the documents would be filed in a public court record to facilitate settling their estates. See Exs. 2-3, 16, 25-27, 34, 47-49.

Janda seems to claim a privacy interest in Ms. Frelin’s documents. Br. of Appellant at 35. Janda’s claim fails because he agrees that the POLB “obtained consent” from Frelin. If Frelin gave the POLB copies of her documents, Janda has no standing to object. Janda has no reasonable expectation of privacy in Frelin’s private affairs.

In short, Janda has not cited any authority to support the alleged constitutional violations. This Court can assume that Janda, after diligent search, has found none. See Bremerton v. Kitsap County Sewer Dist., 71 Wn.2d 689, 704-05, 430 P.2d 956 (1967). These claims fail.

**8. THE THEFTS WERE PROPERLY AGGREGATED.**

Janda next urges this Court to reverse his theft convictions. Janda claims that there was insufficient evidence to convict him of first degree theft because of improper aggregation.<sup>34</sup> Br. of Appellant at 36-39, 43-45 (assignments of error 8 and 11). Janda is mistaken. Under the common law, aggregation applies to acts of theft that were part of a common scheme or plan, a continuing course of conduct and a continuing criminal impulse. Here the trial court properly instructed the jury on aggregation and sufficient evidence exists to support the jury's verdict.

Again, in reviewing the sufficiency of the evidence, appellate courts examine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, viewing the evidence in the light most favorable to the State. Green, 94 Wn.2d at 221-22.

First degree theft requires proof that the value of the property obtained exceeded \$1,500. RCW 9A.56.030(1)(a). At common law and by statute, the State may aggregate the individual transactions to meet the threshold for a particular degree of theft. State v. Barton, 28 Wn. App. 690, 694, 626 P.2d 509, rev. denied, 95 Wn.2d 1027 (1981).

---

<sup>34</sup> Janda also asserts that improper aggregation should result in the reversal of his unlawful practice of law convictions. Br. of Appellant at 36, 39. The State is unclear on how an aggregation of thefts implicates the unlawful practice of law charges.

The common law allows aggregation of a series of thefts, provided that the thefts are from the same owner and the same place and result from a single criminal impulse pursuant to a general larcenous scheme. State v. Vining, 2 Wn. App. 802, 808, 472 P.2d 564 (1970). In Vining, the Court of Appeals held:

Where property is stolen from the same owner and from the same place by a series of acts there may be a series of crimes or there may be a single crime, depending upon the facts and circumstances of each case. If each taking is the result of a separate, independent criminal impulse or intent, then each is a separate crime, but, where the successive takings are the result of a single, continuing criminal impulse or intent and are pursuant to the execution of a general larcenous scheme or plan, such successive takings constitute a single larceny regardless of the time which may elapse between each taking.

2 Wn. App. at 808-09.

“A continuing course of conduct requires an ongoing enterprise with a single objective.” State v. Love, 80 Wn. App. 357, 361, 908 P.2d 395 (1996). To determine whether criminal conduct constitutes one continuing act, “the facts must be evaluated in a commonsense manner.” State v. Garman, 100 Wn. App. 307, 313, 984 P.2d 453 (1999) (citing State v. Handran, 113 Wn.2d 11, 17, 775 P.2d 453 (1989)). Whether a series of takings from the same owner is one crime or a series of independent crimes is a question for the trier of fact. Vining, 2 Wn. App. at 809.

In Garman, the defendants were both charged with one count of first degree theft and one count of conspiracy to commit first degree theft. Garman, 100 Wn. App. at 309. The State presented evidence of a computer scheme used to steal the money, as well as evidence of other methods used to steal money. Id. On appeal, the primary issue was whether a unanimity instruction was required as to the “other” means to steal money or if such evidence could be considered as part of the defendant’s continuing course of conduct. Id. The Court of Appeals held that a unanimity instruction was not required when

(1) a defendant is charged with a single count of theft based on a common scheme or plan, (2) the evidence indicates multiple incidents of theft from the same victim, (3) the multiple transactions are aggregated for charging purposes, (4) the jury is instructed on the law of aggregation, and (5) the to-convict instruction for the theft charge requires the jury to find that the multiple incidents are part of “a common scheme or plan, a continuing course of conduct, and a continuing criminal impulse.”

Id. at 317.

The common law also allows aggregation of thefts from the same victim over a period of time, if the takings are part of a common scheme or plan. State v. Meyer, 26 Wn. App. 119, 124, 613 P.2d 132 (1980). As well, by statute, separate third degree thefts can be aggregated to constitute first or second degree theft if the thefts are part of a common

scheme or plan. RCW 9A.56.010(21)(c);<sup>35</sup> see also Barton, 28 Wn. App. at 694-95 (holding that a series of thefts based on a common scheme or plan may be aggregated in determining value). RCW 9A.56.010 “does not purport to abrogate the common law principle of State v. Vining, supra.” Barton, at 694. The principle of Vining - allowing the State to charge a series of related thefts as one crime - is consistent with the aggregation statute allowing the State to charge a series of misdemeanor third degree thefts as a felony. Id. at 695.

In this case, Janda was charged with theft of U.S. currency, “having a value in excess of \$1,500, by a series of transactions that were part of a common scheme or plan, a continuing course of conduct and a criminal impulse.” CP 176-77. The jury was instructed that the State had to prove beyond a reasonable doubt: (1) that Janda, by color of aid or deception,<sup>36</sup> obtained control over the property of another, (2) that the property exceeded \$1,500 in value, and (3) that Janda’s acts “were part of a common scheme or plan, a continuing course of conduct, and a continuing criminal impulse.”<sup>37</sup> CP 274.

---

<sup>35</sup> Former RCW 9A.56.010(17)(c) (2000) (amended as RCW 9A.56.010(18)(c) by LAWS 2001, CH. 10, § 6).

<sup>36</sup> “By color of aid or deception” means that the deception operated to bring about the obtaining of the property or services. CP 272; RCW 9A.56.010(4). It is not necessary that deception be the sole means of obtaining the property or services. CP 272; RCW 9A.56.010(4); see also State v. Zorich, 72 Wn.2d 31, 34, 431 P.2d 584 (1967).

<sup>37</sup> This is the same to-convict instruction given to the jury in the Garman case. See Garman, 100 Wn. App. at 316-17 & n.4.

Based on the evidence at trial, a reasonable trier of fact could conclude that Janda's acts vis-à-vis Irene Frelin and William McGraw were a series of acts based on a common scheme or plan, a continuing course of conduct and a continuing criminal impulse. As far back as 1997, the AG's office put Janda on notice that the work he performed at Evergreen Paralegal Services (the sale and advertisement of legal products designed to create revocable living trusts) constituted unfair and deceptive practices.<sup>38</sup> 7RP 63-68; Ex. 45. Despite Janda's acknowledgement that the estate planning documents that he drafted violated the Consumer Protection Act, Janda continued to draft revocable living trusts. 7RP 70-72; Exs. 3, 27, 34, 45, 48.

Janda engaged in a series of acts with the Frelins that were part of a common scheme or plan - to steal as much money as he could under the auspices of providing the Frelins with necessary estate-planning documents. 6RP 77-79, 103, 107-68; Exs. 2-3, 16, 25-27, 34. After Janda prepared the Frelins' first set of documents in 1994, Janda kept calling the Frelins and telling them that they needed more documents. 6RP 103. After Dale became gravely ill in 2004, Janda hounded a vulnerable Irene to hire him to prepare yet more estate-planning documents. 6RP 123-68.

---

<sup>38</sup> In 2004, Janda also signed an agreement with the POLB in which he agreed to refrain from the unlawful practice of law. Ex. 46A.

Even after Dale's death, Janda convinced Irene that she needed to hire him to settle Dale's estate. 6RP 138-68. Irene identified seven checks that she had written to Janda between 2004 and 2008 for estate-planning services - services that Janda could not lawfully perform. Exs. 54-60. There is sufficient evidence from which a reasonable trier of fact could find that Janda had engaged in a continuing course of criminal conduct or had a common plan or scheme to steal from the Frelins.

Similarly, William McGraw hired Janda to make certain that McGraw's elderly mother, who suffered from late-stage dementia, had her will in order. 7RP 6-12. Janda drafted a living trust and other estate-planning documents (at a cost of \$750) for Mary, whose primary asset was her home, which Janda failed to include in the trust. 7RP 13-19; Exs. 47-50. Attorney Peter Perron, who is experienced in estate planning and knowledgeable about Washington's probate system, said that Mary did not need a living trust, but even if it had been an appropriate estate planning tool, the documents that Janda drafted had significant shortcomings. 7RP 32-61. Later, Janda charged William another \$950 to administer Mary's estate - a task that Janda never undertook after Mary died and a fee that was a "travesty" according to Perron. 7RP 23-30, 60-61; Ex. 51. A reasonable trier of fact could have concluded that Janda engaged in a series of acts with William McGraw that constituted a continuing course

of criminal conduct or were part of a common plan or scheme to steal McGraw's money.

Janda contends that there was no continuing course of conduct or common scheme or plan because each set of completed documents constituted a separate act. Br. of Appellant at 44. The jury disagreed. This Court should accordingly reject Janda's challenge to the sufficiency of the evidence.

**9. THE TRIAL COURT PROPERLY ORDERED RESTITUTION.**

Janda next asserts that the restitution order must be vacated. Br. of Appellant at 40. Janda's argument depends upon reversal of his theft convictions for insufficient evidence. This claim is without merit because, as discussed above, Janda's theft convictions are supported by sufficient - if not overwhelming - evidence.

The authority to impose restitution is statutory. State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). RCW 9.94A.753(3) authorizes a trial court to order restitution pursuant to a criminal conviction "based on easily ascertainable damages for injury to or loss of property."

In this case, the trial court ordered restitution of \$9582.50 to Ms. Frelin and \$2700 to Mr. McGraw (based on easily ascertainable

damages).<sup>39</sup> CP 310. Janda does not challenge the amount of the restitution. Rather, Janda's challenge is strictly to the imposition of any restitution based on his contention that insufficient evidence supports his two first degree theft convictions. As discussed fully above, sufficient evidence supports the jury's verdicts. Janda's claim accordingly fails.

**10. THE NO CONTACT ORDERS ARE A VALID CRIME-RELATED PROHIBITION.**

Finally, Janda asserts that the no contact orders entered by the trial court following his convictions were unwarranted. Br. of Appellant at 40-41. Given the sustained victimization of Irene Frelin and William McGraw, the trial court ordered Janda to have no future contact with Irene, her daughter, Julie Kanikkeberg, William McGraw and Perron, the attorney hired by McGraw to cure the myriad errors Janda made preparing Mary's estate documents. CP 307. These orders were a proper exercise of the trial court's discretion.

As a part of any sentence, the court may impose and enforce crime-related prohibitions. RCW 9.94A.505(8). A "crime-related prohibition" is "an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been

---

<sup>39</sup> Exs. 44, 50-51, 54-60.

convicted.” RCW 9.94A.030(10).<sup>40</sup> Together, these provisions authorize trial courts, as part of any sentence, to impose orders prohibiting conduct directly relating to the circumstances of an offender’s crime. State v. Armendariz, 160 Wn.2d 106, 113, 156 P.3d 201 (2007). These orders may also include no contact orders with witnesses. See id. This Court reviews sentencing conditions for abuse of discretion. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). A trial court abuses its discretion when its discretionary decision is manifestly unreasonable or based upon untenable grounds or reasons. State ex rel. Carroll v. Junker, 79 Wn.2d at 26.

In this case, the trial court’s prohibition against Janda contacting Ms. Frelin and Mr. McGraw falls squarely under RCW 9.94A.030(10), i.e., it prohibits contact with persons directly related to “the circumstances of the crime for which the offender has been convicted.” Janda has not provided any authority that disallows a no contact order between a defendant and his or her victim.

The no contact orders regarding witnesses Kanikkeberg and Perron are proper because each was a witness against Janda. See Armendariz, 160 Wn.2d at 109-10 (upholding a no contact order that prohibited the

---

<sup>40</sup> This statute has been renumbered several times; however, the language has not changed. For simplicity, the State cites to the current iteration.

defendant from having contact with a witness to the defendant's conviction for assaulting a police officer.).

Even if the court lacked authority under RCW 9.94A.030(10) and Armendariz, supra, to order Janda to have no contact with Kanikkeberg and Perron, the court had authority to order no contact as part of the misdemeanor judgment and sentence.<sup>41</sup> State v. LaRoque, 16 Wn. App. 808, 810, 560 P.2d 1149, 1151 (1977). The granting of a suspended sentence and the conditions attached are within the sentencing court's discretion. Id. It was a proper exercise of the trial court's discretion to prohibit Janda from contacting the witnesses against him.

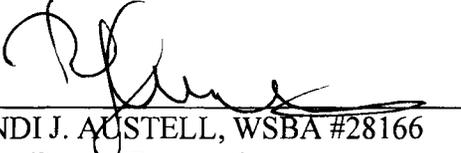
**D. CONCLUSION**

For the reasons stated above, this Court should affirm Janda's judgment and sentence.

DATED this 10 day of February, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

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

---

<sup>41</sup> Pursuant to RCW 2.48.180(3)(a), the first violation for the unlawful practice of law is a gross misdemeanor.

## RCW 2.48.180.

Definitions--Unlawful practice a crime--Cause for discipline--Unprofessional conduct--  
Defense--Injunction--Remedies--Costs--Attorneys' fees--Time limit for action

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.

(b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

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 Steven Andrew Janda, the pro se appellant, at 233 1<sup>st</sup> Avenue S., Kent, WA, 98032, containing a copy of Brief of Respondent, in STATE V. JANDA, Cause No. 85909-4, in the Supreme Court, 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

2/10/12  
Date

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2012 FEB 13 P 2:24  
BY RONALD R. CARPENTER  
CLERK