

70034-1

70034-1

NO. 70034-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM BRUCE JONES,

Appellant.

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COURT OF APPEALS
DIVISION I
CLERK OF COURT

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE TIMOTHY BRADSHAW

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. When a defendant challenges the sufficiency of the information for the first time on appeal, this Court determines whether the necessary elements appear in any form or by fair construction on the face of the document. If so, reversal is warranted only if the defendant shows that he was actually prejudiced by the unartful language. Although Jones was charged with the completed offense of promoting prostitution in the second degree, the charging document stated that he did knowingly attempt to advance the prostitution of another. However, an attempt is included in the statutory definition of "advancing prostitution." Can the essential elements of the charge be fairly implied from the face of the information despite the addition of the superfluous word "attempt"? Jones neither alleges nor argues that he was prejudiced by the charging language. Was the charging document constitutionally sufficient?

2. Evidence is sufficient to support a conviction if, after viewing all of the evidence and inferences in the light most favorable to the State, any rational jury could have found the elements of the crime proved beyond a reasonable doubt. A person is guilty of second-degree promoting prostitution if he

knowingly engages in conduct designed to institute, aid, or facilitate an act of prostitution. The uncontroverted evidence was that Jones worked as a pimp. He engaged in a text message conversation with a woman named Tara Makepeace. He asked her if she had ever prostituted herself before, complimented her physical appearance, and promised to help her attain her goal of buying a house if she “helped” him. He asked her if she wanted to work with a “pimp” who treated women with respect. He asked for her assurance that she was willing to make sacrifices and would follow the rules, and asked her for “commitment and follow through.” He asked what type of sex acts she was willing to perform, and asked her to prove her sincerity by saving her wages for him to “reinvest” in her. Could a rational fact-finder conclude that Jones engaged in conduct designed to institute, aid, or facilitate prostitution?

3. To demonstrate ineffective assistance of counsel based on the failure to object to evidence, a defendant must show that the failure to object fell below prevailing professional norms, that the objection would likely have been sustained, and that the result of the trial would probably have been different if the evidence was not admitted. Jones argues that his attorney was deficient for failing to object to Detective Guyer’s testimony about the

satisfaction he felt in helping young girls escape from prostitution. However, trial counsel's strategy was to contrast E.J., whom she argued voluntarily worked as a prostitute for Jones, to the girls that Guyer described. Has Jones established that the failure to object to Guyer's testimony was not a tactical decision?

The jury acquitted Jones of the human trafficking charge involving E.J. The evidence that Jones promoted prostitution in his text messages to Makepeace was clear. Has Jones failed to establish a reasonable probability that the outcome of the trial would have been different had his attorney objected to Detective Guyer's testimony?

4. The trial court excluded a text message reference by Jones about being affiliated with a gang, but admitted the portion of his text that stated he had "killas on the payroll." Makepeace testified that she found Jones's text message intimidating. During cross-examination, Jones's trial counsel attempted to undercut Makepeace's "fear" of Jones by demonstrating that she had threatened him right back with her own alleged gang affiliation, and that she went to the police despite his intimidating statements. In so doing, counsel elicited testimony from Makepeace about the excluded statement. Has Jones failed to demonstrate that there

was no conceivable legitimate tactic for the cross-examination?

When the jury acquitted Jones of the charge to which threats or coercion was relevant, has Jones failed to establish a reasonable probability that the outcome of the trial would have been different?

5. Evidence that is necessary to complete the story of the crime is relevant as *res gestae* evidence and is admissible if not unduly prejudicial. Jones moved to exclude the fact that he left the state after E.J. talked to the police as improper evidence of flight. However, the trial court ruled that Jones's act of leaving, the timing of it, and his location in Los Angeles was *res gestae* of the offenses and was not unduly prejudicial. The text message conversation that formed the basis of count II occurred while Jones was in Los Angeles and included multiple statements about Jones "flying Makepeace down" to work as a prostitute for him. Has Jones failed to establish that the trial court abused its discretion in admitting the evidence, where it was necessary for the jury to understand the complete context of the crimes?

6. The cumulative error doctrine applies where several trial errors occurred which, standing alone, may not be sufficient to justify reversal, but when combined, denies the defendant a fair

trial. Has Jones failed to demonstrate the presence of multiple trial errors that cumulatively denied him a fair trial?

B. STATEMENT OF THE CASE

1. SUBSTANTIVE FACTS

During the summer of 2012, eighteen-year-old E.J., who had recently graduated from Holy Names Academy, was working as a nanny and working at her mother's store in Seattle. RP 253-54; 330, 473. In July, she met Appellant, Bruce William Jones, at a gas station near her home. RP 255. Jones called himself "Ty," and told E.J. that he was 21 years old.¹ RP 255, 267, 277. Over the next few weeks, Jones and E.J. went on several dates, visiting Seward Park, the bowling alley, and going for walks. RP 274. Jones introduced E.J. to his mother. Id. E.J. considered herself Jones's girlfriend. RP 269, 274.

Jones told E.J. that he managed "escorts" and strippers. RP 268. Jones told E.J. that an escort was someone who would get dressed up and go on dates and out to dinner; E.J. did not understand that sexual relations were involved. RP 268. Jones

¹ Jones was actually 27 years old at the time. CP 66. Jones also goes by "Tayshawn Finesse Jones." Ex. 8.

told E.J. that he had previously been in jail for robbing a bank. RP 273, Ex. 7 at 8. E.J. was the type of person who kept an open mind about everyone she met and did not want to judge Jones on his past. RP 276, Ex. 7 at 9.

Jones encouraged E.J. to forgo her plans of attending college in the fall and instead earn money with him. RP 268-70. E.J. understood him to mean that she could make money by stripping. RP 270. E.J. told Jones that was not going to happen. RP 268. Later, while intoxicated, she texted him that “too bad you[re] not here now because I[’]d totally work [strip].” RP 354; Ex. 7 at 5.

One weekend in late July, Jones and E.J. made plans to go to Portland for the weekend. RP 277-78. E.J., who lived with her parents, told them that she was with her friend Cheyenne. RP 277, 474. After picking E.J. up, Jones did not drive toward Portland. RP 279. Instead, he “changed the plan” and began driving to Bellevue. RP 339-40. Jones took E.J. to the Silver Cloud Hotel. RP 279.

On the way to Bellevue, Jones told E.J. that he was a pimp, and explained the rules of “the game” to her. RP 279. Jones told E.J. that he wanted her to prostitute for him, and that if she “snitched” on him, he would hurt her family. RP 280, 340. E.J. no

longer wanted to go anywhere with Jones, but she was overwhelmed and did not feel like she had any options. RP 280, 340. She had lied to her parents about who she was with and where she was going. RP 280-81. E.J. was concerned about consequences to her family. RP 280.

Once they arrived at the motel, Jones gave E.J. a book on achievement, as well as some loose internet pages with highlighting and handwritten notes, and told her to read them. RP 281-82. The loose pages included internet escort reviews, and a document entitled, "Top Ten Signs You're Being Set up by an Undercover Cop," which describes what escorts can do to avoid arrest. RP 282, 494-95, Ex. 2.

At the Silver Cloud Hotel, Jones placed an escort advertisement for E.J. RP 283, Ex. 3. He instructed her on how to be a prostitute. RP 282, 284, 287. Over the next several days, E.J. engaged in prostitution for Jones, handing over to him all of the money that she earned. RP 292-95. E.J. felt disgusting and ashamed. RP 288, 297. She believed that she had placed her family in danger, and felt that they would not accept her back home after everything that had happened. RP 286.

Meanwhile, E.J.'s family, who had called Cheyenne to check on E.J., learned that E.J. was not in Portland with Cheyenne. RP 474-75. They began texting E.J., and the responses they received did not appear to be from E.J. RP 488. They were able to discover where E.J. was and who she was with. RP 448, 488-91. E.J.'s father went to the Silver Cloud Hotel to find her. RP 489-94. However, Jones and E.J. had already left after the Bellevue Police came looking for E.J. RP 491, 497, 499.

E.J.'s friend Tempest Lewis began texting E.J. in an effort to meet with her. RP 363. E.J. asked Jones to allow her to meet Lewis at the mall in SeaTac. RP 317-18. Jones agreed, thinking it would help to "calm down" E.J.'s friends and family, who were frantically looking for her. RP 318. Jones drove E.J. to meet with Lewis, who got into the car with them. RP 320-21, 364. In front of Jones, Lewis tried unsuccessfully to convince E.J. to leave with her. RP 364-66. Shortly after they parted ways, Lewis called E.J. back, and E.J. convinced Jones to let her meet Lewis at Panera Bread for lunch. However, Jones dropped E.J. off several blocks away because he was scared that the police were involved. RP 320, 324, 367-68. Indeed, Jones's instincts were correct; the police were there with Lewis, and E.J. returned to her family. RP 325-26.

After E.J. returned home, Seattle Police Detective William Guyer received information about Jones from a woman named Tara Makepeace. RP 231. Makepeace and her friend Erika Hill were adult dancers. RP 129, 410. Hill knew Jones as "TJ." RP 130, 132. She had considered herself Jones's girlfriend. RP 130.

In May of 2012, Hill went with Jones to Las Vegas, where she had planned to work as a dancer. RP 131. However, she was arrested in a casino for loitering under the age of 21, and could not get a license to work as a dancer. RP 132. Jones told Hill that she would have to "make money otherwise." RP 133. He gave her the same "achievement" book that he would later give to E.J., as well as the highlighted loose internet pages. RP 133. Hill worked as a prostitute, handing over all of her earnings to Jones. RP 137.

After returning to Washington, the relationship soured when Jones stole money from Hill's bank account. RP 138-39. Makepeace and Hill later met with Jones in an unsuccessful bid to get him to return Hill's money. RP 139-40, 412.

In late July, Makepeace learned that E.J.'s family was looking for Jones. RP 419. Makepeace called Detective Guyer and provided him with the information that she had about Jones.

Id.

After E.J. returned to her family, Makepeace, who was working with Detective Guyer, initiated text messages with Jones. RP 419-20. Jones told Makepeace that he was getting on a plane and leaving. RP 420. Wanting to locate him, Makepeace continued text messaging with him. RP 421. During the conversations, Jones asked Makepeace if there was a “price on [her] pussy.” RP 421; Ex. 10 at 16. He asked her if she was trying to “fuck with a pimp who treats women with respect,” which Makepeace understood as an invitation to come to work for him as a prostitute. RP 425, Ex. 10 at 25. Detective Guyer located Jones in Los Angeles on August 9, 2012. RP 230.

2. PROCEDURAL FACTS

The State originally charged Jones in the King County Superior Court with one count of Promoting Prostitution in the Second Degree, for his conduct involving E.J. CP 1. The State later amended the charge to first-degree promoting prostitution, and added a count of second-degree promoting prostitution, for Jones’s text message conversation with Makepeace. CP 7-8. Before trial, the State filed a second amended information, changing the count

involving E.J. to Human Trafficking in the Second Degree, but leaving unaltered the count involving Makepeace. CP 10-11.

Jones proceeded to a jury trial before the Honorable Judge Timothy Bradshaw on February 6, 2013. RP 11. Following the State's case-in-chief, Jones made a motion to dismiss both counts for insufficient evidence. RP 518-22. He argued that the State had failed to prove that Jones knew that fraud or coercion would be used to cause E.J. to engage in prostitution. RP 519-20, 529-30. Jones further argued that his text message conversation with Makepeace was insufficient to "advance" prostitution. Jones argued that the evidence established, at most, that he was "feeling Makepeace out" about what she was willing to do, pointing out that Makepeace had no intention of engaging in prostitution. RP 521.

The court denied Jones's motion to dismiss, finding that as to the human trafficking charge, it was a reasonable interpretation of the evidence that Jones knowingly used coercion and fraud to cause E.J. to engage in prostitution. RP 531. With respect to promoting the prostitution of Makepeace, the court ruled that Makepeace's intentions were irrelevant, and that a reasonable juror could find that Jones had committed the offense. RP 563-64.

The jury acquitted Jones of second-degree human trafficking for his conduct involving E.J., but found him guilty of second-degree promoting prostitution relating to Makepeace. CP 25-26.

Prior to sentencing, Jones made a motion to set aside the verdict, arguing that the text messages to Makepeace were ambiguous, and did not necessarily relate to prostitution. CP 53-59. The trial court denied the motion, pointing out that in addition to the text messages there was other evidence presented to the jury that would allow them to find Jones guilty of promoting prostitution. RP 610-12.

At sentencing, Jones requested a Drug Offender Sentencing Alternative (“DOSA”), arguing that he was addicted to marijuana and painkillers. RP 616-18. The court rejected his request for a DOSA, finding that a connection between the crime and any addiction was “attenuated, at best.” RP 633-34. The court sentenced Jones to a standard-range sentence of 55.5 months incarceration. CP 64; RP 636. Jones now appeals. CP 69.

C. ARGUMENT

1. THE CHARGING DOCUMENT WAS CONSTITUTIONALLY SUFFICIENT

For the first time on appeal, Jones asserts that the charging document was constitutionally deficient. He contends that the addition of the word “attempt” affirmatively misadvised him of the essential elements of the crime of second-degree promoting prostitution. Jones’s claim should be rejected because the essential elements of the crime can be implied from a fair construction of the second amended information.

All essential elements of a crime, statutory and non-statutory, must be included in the charging document. State v. Pineda-Pineda, 154 Wn. App. 653, 670, 226 P.3d 164 (2010); State v. Kjorsvik, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991). The purpose of the essential elements requirement is to provide the defendant notice of the nature of the charges against him so that he can mount a defense. State v. Campbell, 125 Wn.2d 797, 801, 888 P.2d 1185 (1995).

When a defendant challenges the sufficiency of the information for the first time on appeal, it is liberally construed in favor of its validity. Kjorsvik, 117 Wn.2d at 105-06. It will be upheld

if the missing element can be fairly implied from the language of the charging document. Id. The appellate court first examines the information itself and considers whether the necessary elements appear in any form or by fair construction. State v. Zillyette, 178 Wn.2d 153, 162, 307 P.3d 712 (2013) (citing Kjorsvik, 117 Wn.2d at 105-06)). This analysis is to be “guided by common sense and practicality.” State v. Hopper, 118 Wn.2d 151, 156, 822 P.2d 775 (1992) (citing United States v. Pheaster, 544 F.2d 353, 361 (9th Cir.1971)). If the necessary elements appear in any form, the defendant must show that he was actually prejudiced by the ambiguous or vague language. Kjorsvik, 117 Wn.2d at 105-06. This standard of liberal interpretation removes an incentive for the defendant to “sandbag” by recognizing a defect in the charging document but declining to raise it at a time when the State could cure the defect by amending the document. Kjorsvik, 117 Wn.2d at 103.

Here, the original information alleged in a single count that Jones committed Promoting Prostitution in the Second Degree, and that he did “knowingly advance and profit from the prostitution of [E.J.]” CP 1. The information was later amended to change this charge to Promoting Prostitution in the First Degree, and to add

count II, a charge of Promoting Prostitution in the Second Degree for Makepeace. CP 7-8. With respect to count II, the charging document read:

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM BRUCE JONES of the crime of **Promoting Prostitution in the Second Degree**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant WILLIAM BRUCE JONES in King County, Washington, during a period of time intervening between July 31, 2012 through August 3, 2012, did knowingly attempt to advance the prostitution of Tara Makepeace;

Contrary to RCW 9A.88.080(1)(b), and against the peace and dignity of the State of Washington. CP 8 (bold in original, underlining added). One month before trial, the State amended the information a second time, changing count I (the count involving E.J.) from Promoting Prostitution in the First Degree to Human Trafficking in the Second Degree. CP 10. However, count II, Promoting Prostitution in the Second Degree relating to Makepeace, remained the same. CP 10-11.

Jones was not charged with criminal attempt, nor did the charging document refer to the criminal attempt statute, RCW 9A.28.020. CP 10-11. The charged crime was clearly designated as the completed offense of “Promoting Prostitution in the Second Degree.” Id. Nonetheless, the charging language stated that Jones did “knowingly attempt to advance the prostitution of Tara Makepeace.” CP 11.

Instead of omitting an essential element of the crime, Jones essentially complains that the addition of the word “attempt” alters the meaning of the charging language to such a degree that he was affirmatively misadvised of the elements of the offense. However, in this context, the addition of the superfluous word “attempt” does not render the information constitutionally deficient.

The common meaning of attempt is to “make an effort to do, accomplish, solve, or effect.” Webster’s New International Dictionary, 140 (3rd ed. 1993). In a case that involved criminal attempt, this Court, applying the liberal Kjorsvik review standard, has held that the word “attempt” in a charging document encompasses the statutory definition of criminal attempt, including the requirement of a “substantial step.” State v. Rhode, 63 Wn. App. 630, 636, 821 P.2d 492, rev. denied, 118 Wn.2d 1022 (1992).

“A substantial step is conduct that strongly indicates a criminal purpose and that is more than mere preparation.” Washington Pattern Criminal Jury Instruction (“WPIC”) 100.05. This Court concluded in Rhode that by fair construction, the “substantial step” element of attempt can be found simply by use of the word “attempt.” 63 Wn. App. at 636.

In State v. Borrero, 147 Wn.2d 353, 363, 58 P.3d 245 (2002), the court reached the same conclusion when it applied the stricter standard of review reserved for challenges to the sufficiency of the charging document made prior to verdict. Observing that synonyms of the word “attempt” include “try,” “endeavor,” and “strive,” the court concluded that the plain meaning of “attempt” adequately conveys the requirement of specific conduct, i.e., a “substantial step” by the defendant. Borrero, 147 Wn.2d at 363.

By statute, a person “advances prostitution” in a number of ways:

[By] acting other than as a prostitute or as a customer thereof, he or she causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a

prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

RCW 9A.88.060(1) (emphasis added).

Because a person “advances prostitution” by engaging in any conduct designed to institute, aid or facilitate an act of prostitution, a person advances prostitution merely by making an “attempt” or “an effort to do, accomplish, solve, or effect” it. See State v. Cann, 92 Wn.2d 193, 198, 595 P.2d 912 (1979) (an attempt is included in the statutory language of “advancing prostitution”). If by his conduct, a person “tries,” “endeavors,” or “strives” to institute, aid or facilitate prostitution, he has necessarily completed the offense of second-degree promoting prostitution. Therefore, by fair construction, the essential elements of the charge appear in the second amended information. The superfluous word “attempt” did not render it constitutionally defective.

In fact, Jones concedes that attempted activities can constitute advancing prostitution. Brf. of App. at 14-15, n.2. And here, the jury was instructed regarding only that portion of the “advancing prostitution” definition that includes “attempted activities,” i.e., engaging in conduct designed to institute, aid, or facilitate an act or enterprise of prostitution. CP 49. The State is

not required to specify in the charging document the “when, where or how” of the crime. State v. Noltie, 116 Wn.2d 831, 842, 809 P.2d 190 (1991). Use of the term “advanced prostitution” is constitutionally adequate. State v. Merrill, 23 Wn. App. 577, 580, 597 P.2d 446 (1979). And, in this context, the addition of the word “attempt” did not deprive the defendant of the required notice.

To the extent that Jones may have been confused about which portion of the definition of “advancing prostitution” the State would rely on, he could have moved for a bill of particulars. If the information states each element of the crime, but is vague as to some other matter, a bill of particulars may correct the defect. Noltie, 116 Wn.2d at 843. However, on appeal, a defendant is not entitled to challenge the information as vague if he has failed to timely request a bill of particulars. Id. Here, Jones never pursued a motion for a bill of particulars; thus, he has waived any argument that the information is vague with regards to the term “advanced prostitution.” Id.

If the essential elements can be fairly implied from the face of the charging document, it is constitutionally defective only if the defendant establishes that he was actually prejudiced by the unartful language. Kjorsvik, 117 Wn.2d at 105-06. Jones does not

allege that he was prejudiced. Nor could he, as it is clear from the record that he correctly understood the nature of the charge. See RP 521-22 (In his “halftime” motion to dismiss, Jones argued that the State had produced insufficient evidence of the crime because his text messages alone did not constitute conduct designed to institute, aid, or facilitate prostitution).

Because a person advances prostitution if, by their conduct, they “attempt” to institute, aid, or facilitate it, the essential elements of second-degree promoting prostitution can be fairly implied from the charging document. Jones has neither alleged nor established any prejudice. The information was constitutionally sufficient.

2. THE EVIDENCE WAS SUFFICIENT FOR A RATIONAL FACT-FINDER TO FIND JONES GUILTY OF PROMOTING PROSTITUTION IN THE SECOND DEGREE

Citing insufficient evidence, Jones moved to dismiss the second-degree promoting prostitution charge after presentation of the State’s proof, and then again prior to sentencing. RP 520-22; CP 53-59. The trial court denied both motions. RP 563-64, 610-12. Jones now advances the same arguments on appeal. However, considering the evidence viewed in the light most

favorable to the State and all reasonable inferences that flow from it, a rational fact-finder could find all elements of the offense.

Evidence is sufficient to support a conviction if, after viewing all of the evidence in the light most favorable to the State, any rational jury could have found the elements of the crime proved beyond a reasonable doubt. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). A defendant who challenges the sufficiency of the evidence admits the truth of the evidence and all rational inferences that may be drawn from it. State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). All reasonable inferences must be drawn in favor of the State and against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The appellate court reverses for insufficient evidence only when no rational trier of fact could conclude that the State proved the elements of the crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005). Furthermore, the reviewing court defers to the jury's determination as to the weight and credibility of the evidence and its resolution of any conflicts in the testimony. Thomas, 150 Wn.2d at 874-75.

Circumstantial evidence is just as reliable and probative as direct evidence in reviewing the sufficiency. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

Here, Detective Guyer testified as an expert about the unique vocabulary and business practices of pimping. RP 157-63. Specifically, he testified that “the game” is a euphemism for the world of prostitution. RP 159. He told the jury that the phrase “come fuck with me” is an invitation for a girl to work as a prostitute for a pimp. RP 160, 173. He testified that if a girl says she is “fucking with him,” that indicates that she is working for the pimp as a prostitute. RP 160. Detective Guyer also told the jury that the phrase “bottom bitch” is a phrase given to the prostitute who has either been with a pimp the longest or is the one whom he trusts the most. Id. He testified that if a girl is “coachable” it means that she understands her pimp’s rules, will follow them, and will not challenge his authority. RP 173-74.

Here, having recently served as pimp to Makepeace’s best friend Erika Hill, Jones had the following text message conversation with Makepeace:

Be honest. Have you put a price on that pussy before or right now?

...

[Makepeace]: An no I never have before

Dont lie....u know you got some money for fuccin im
smarter than that

...

[Makepeace]: Can u help with plane tickets :)

Im not there im somewhere cooler. I can help you get
us some money Where im at

[Makepeace]: Well how is that gunna help me
from over here

What is the intentions behind everything? Am I going
to be on the receiving end? Or u got different motives

...

[Makepeace]: My motivation for everything I
do is my Lil ones . . . My goal is to get a house

U help me and il hrlp u get that house.

...

I had intentions to have erika tell you to come fucc
with me back then. Are you tring to fucc with a PimP
that treats a woman with respect though?

[Makepeace]: Honest respect

If you was to go out of town, who would watch the lil
ones?

[Makepeace]: My sister she lives at my house.

I have to be honest though...how can you reassure me that if I fly you out, your going to make sacrifices and be coachable?

[Makepeace]: How can I reassure that and when I am most likely having to wait til after the 8th my daughter is going in for Surgury.

...

No rush baby...I just want to see some commitment and follow thru

...

But one thing, it's never too late to fuck with the kid.

[Makepeace]: True oh I don't do anal lol heard stories

Do you suck and fuck?

[Makepeace]: Ya Pussy n tongue pierced

...

Wyd?

[Makepeace]: Just gettin off work

What you take home? And give me the real not the shit that sounds good

[Makepeace]: It was slow today made three left with two

So you gonna put something up for me everyday starting todnight so when you come down I can have something to work with?

[Makepeace]: Tonight how n y

Bc it will tell me you serious about fuccin with me.
Then I can reinvest in you bc theres things that need
to be done to maximize your income

[Makepeace]: Wait aren't u in la

Yea. But that doesnt stop nothing. Planes leaves
everyday

[Makepeace]: Well hit me up when ur in town

Then what? You going to have some real money for
me to manage?

[Makepeace]: Ya give me a few days and I
kinda like being talked to like a person not ur
thing yet FYI Lil romance shit.

I like to too. But im serious and working towards being
successful. And that romance n emotions causes ppl
to lose focus

Ex. 10, at 16-33 (spelling and grammatical errors in original).

Jones concedes that these text messages “can be
interpreted to address prostitution activities.” Brf. of App. at 17.
However, he argues that the jury could not reasonably conclude
that Jones engaged in conduct designed to institute, aid, or
facilitate an act or enterprise of prostitution. Observing that
Makepeace testified that she was not a prostitute and did not intend
to become one, Jones asserts that, “At no time during these
'preliminary discussions' did Jones institute, aid, or facilitate an act

of prostitution.” Brf. of App. at 17-18. But the State was not required to prove that Jones actually instituted, aided, or facilitated an act of prostitution. Cann, 92 Wn.2d at 197-98. The State needed only to prove that Jones engaged in conduct that was designed to institute, aid, or facilitate prostitution. RCW 9A.88.060(1); CP 49.

Moreover, although Jones asserts that his text message discussions were not designed to institute, aid, or facilitate prostitution, he does not explain how that is so. It is apparent from the text messages themselves that Jones’s statements were designed to establish Makepeace as his prostitute. He asked her if she had ever prostituted herself before, and told her not to lie. Ex. 10 at 16. He complimented her physical appearance. Ex. 10 at 18-19. The jury heard from Detective Guyer how a pimp “sells a dream” to a potential prostitute with a promise to take her to a better place in life. RP 161-62. After Makepeace told Jones that she was motivated to help her children and that her goal was to get a house, Jones told Makepeace that he could help “them” get money, and that he would help her get a house if she “helped” him. Ex. 10 at 21, 23. He asked her to reassure him that she was willing to make sacrifices and that she was “coachable,” i.e., that she

would follow the rules. Ex. 10 at 27. He asked her for “commitment and follow through.” Ex.10 at 28. He asked what type of sex acts she was willing to perform. Ex. 10 at 29. Jones asked Makepeace to prove to him that she was sincere by saving her money for him to “reinvest” in her. Ex. 10 at 33. He told her that he was “serious” and that romance caused people to “lose focus.” Ex. 10 at 33. Contrary to Jones’s claim, a rational fact-finder could easily conclude that his conduct was designed to institute, aid, or facilitate prostitution.

Jones attempts to contrast his conduct to the facts in Cann, supra, State v. Dyson, 91 Wn. App. 761, 762, 959 P.2d 1138 (1998) and State v. Putnam, 31 Wn. App. 156, 160, 639 P.2d 858 (1982). However, none of those cases purport to establish the minimum threshold of evidence required for a promoting prostitution conviction, so they are unpersuasive in that regard. Moreover, in Cann, the court was clear that the fact the undercover officers had no actual intention of prostituting did not render Cann’s invitation to establish themselves at his house of prostitution insufficient to support the conviction. 91 Wn.2d at 198. Makepeace’s true intention was similarly irrelevant.

Moreover, although Jones focuses exclusively on the text message exchange itself, the jury heard additional evidence that they could use to conclude that Jones's conduct in the text messages was designed to institute, aid, or facilitate prostitution by Makepeace.

The uncontroverted evidence demonstrated that Jones is a pimp. The jury saw a YouTube video of Jones instructing his audience on the natural inequities that he feels exist in the "game," and on the relationship between a pimp and the different girls who work for him. Ex. 5, 6. In the video, Jones explains the disparate treatment he feels should be accorded the "bottom bitch" versus the "new bitch" who has only been "fucking with" him for a short period of time. Id.

Additionally, the jury heard how in the spring of 2012, Makepeace's best friend Hill went to Las Vegas with Jones, intending to work as an adult dancer. RP 131-32. When that job did not materialize, Jones told Hill that she would have to make money in some other manner, which she interpreted to mean by prostitution. RP 133. Jones provided Hill with written instruction (some of it in his own handwriting) regarding how sex workers can avoid arrest, and told her to read it. RP 133-36; Ex. 2. Hill had

approximately 20 “dates” in Las Vegas, each time texting or calling Jones immediately afterward, and giving all of the proceeds to Jones. RP 137.

Then, in July of 2012, Jones told E.J. that his job was managing “escorts.” RP 268. He encouraged her to come and work for him and to give up her plans for college. RP 267-68, 353. After unilaterally diverting what E.J. believed would be a romantic weekend in Portland to a hotel in Bellevue, Jones admitted to E.J. that he was a pimp, and told her that if she “snitched” on him, he would harm her family. RP 279-80, 340. He explained to her the rules of “the game,” and provided her the same written instructional materials that he had provided to Hill. RP 279, 281-82; Ex. 1, 2. He took pictures of E.J. for an internet advertisement. RP 283; Ex. 3. E.J. had approximately 30 “dates,” and gave all of the proceeds to Jones. RP 284, 292-95. Jones provided constant instruction to E.J. RP 285-87; Ex. 7 at 17, 19, 20, 21, 29, 37, 44.

It is through this lens that the jury viewed Jones’s text messages. Based on all of the evidence and the rational inferences drawn from it, it reasonably concluded that Jones’s text message conversation was “conduct designed to institute, aid, or

facilitate prostitution” by Makepeace. Jones's sufficiency challenge should be denied.

**3. JONES HAS FAILED TO ESTABLISH
INEFFECTIVE ASSISTANCE OF COUNSEL**

Jones claims that his trial counsel was ineffective for (1) failing to object to Detective Guyer's testimony regarding the perceived rewards of his job, and (2) “opening the door” to a statement Jones made to Makepeace about his friend's alleged gang association. Jones has failed to establish that his counsel was ineffective based on either of these claims.

An ineffective assistance of counsel analysis begins with the strong presumption that counsel's representation was effective and competent. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). For Jones to overcome this strong presumption, he must prove by a preponderance (1) that his trial counsel's performance was so deficient that it fell outside the wide range of objectively reasonable behavior based on consideration of all the circumstances of the case, and (2) that this deficient performance prejudiced him, i.e., that there is a reasonable probability that but for counsel's objectively unreasonable representation, the results of

trial would have been different. State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011); Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Conduct that can be characterized as legitimate strategy is not deficient. Grier, 171 Wn.2d at 33. The presumption of reasonableness can be overcome only by showing that there is no conceivable legitimate tactical reason for counsel's conduct. Id.

a. Jones Has Failed To Establish Ineffective Assistance Based On Trial Counsel's Failure To Object To Detective Guyer's Testimony.

To prove ineffective assistance of counsel based on the failure to object to evidence Jones must show that the failure to object fell below prevailing professional norms, that the objection would likely have been sustained, and that the result of the trial would probably have been different if the evidence was not admitted. State v. Johnston, 143 Wn. App. 1, 20, 177 P.3d 1127 (2007) (citing In re Pers. Restraint of Davis, 152 Wn.2d 647, 714, 101 P.3d 1 (2004)). The decision whether to object is a "classic example of trial tactics." State v. Madison, 53 Wn. App. 754, 763, 770 P.2d 662 (1998). This Court presumes that the failure to object

was legitimate trial strategy, and Jones bears the burden to rebut this presumption. Davis, 152 Wn.2d at 714. He has failed to do so.

During direct examination, the State asked Detective Guyer to describe his background, and the type of cases he worked on when he started in the Vice Unit. RP 155. Guyer responded that the majority of those investigations were prostitution-related, and more specifically, juvenile prostitution cases. Id. Immediately following, the State asked, "What's the most rewarding part of that work?" Id. Guyer answered in some detail, responding specifically regarding the satisfaction he felt from helping young girls who felt as if everyone had given up on them, that they were "throwaways, nobody cares about them." RP 156. He explained how assisting their families locate them and seeing them turn their lives around was rewarding. Id. Jones did not object.

Jones has not rebutted the presumption that his counsel's failure to object to this testimony was tactical. His defense to the human trafficking charge was that E.J. voluntarily chose to spend the weekend working with him as a prostitute. He portrayed her as the exact opposite of the girls Guyer referred to in the testimony he now challenges. For example, Jones argued to the jury that E.J. was "attracted to the idea of making quick money." RP 563. He

argued that E.J. did not have a lot of money, but wanted it. RP 563 (“She’s used to being able to do what it is the family can do because the family has enough money to do those things. But her herself, does she? . . . [She doesn’t] necessarily get to ask Mom and Dad for that money?”); RP 571-72 (“This is a girl who recognizes her limited financial capabilities. Again, this is an age where you want to be absolutely, absolutely independent, and you can’t.”). Jones pointed out that E.J. had worked in her mother’s store and tried to portray her as:

a salesperson, a salesperson who made, a few different times, the bonus for selling over a certain amount of product. This is a person who is used to meeting lots of people and selling them on an idea.

RP 564. Jones’s argument was that E.J. simply wanted to spend a few days making money with him and then return home. See RP 564-65 (“When she left, she knew she was going to come back on Wednesday.”); RP 576-77 (arguing that E.J. thought she was going to “come out for those four days and make some money, some quick cash, and be done with it,” but her parents found out and put ideas into her head that she had been forced into it).

Later, during closing argument, Jones's trial counsel had this to say to the jury regarding prostitution in general, and the human trafficking charge specific to this case:

Do we like the business? It's up to you guys. It depends, you know? Maybe it serves a function for some people. And, I'll tell you, certain women are attracted to that lifestyle. Not all women are victims. It's a high-money lifestyle that is attractive, and that is what's going on. When we—when—when you go back into that jury room to deliberate, pay attention to that, the idea that all women are not victims; that this is a legitimate business; that if the women want to go further, they do.

...

And, you know what? If you guys feel like, gosh, she prostituted, feel like I just have to say "guilty" because of those parents crying so much up there, it's not the case; that's not what happens here today. The Prosecutor chose to charge a Human Trafficking case, not a Prostitution case in that matter. So, we are dealing with Human Trafficking; remember that. Saying "not guilty" is not a moral decision in this case. Saying "not guilty" means, I'm sorry, Mr. Prosecutor, but if you wanted me to convict of some kind of prostitution, I think—and that was before me, then we've got game. But, that's not what you're asking me to do.

RP 592-93. Jones's trial counsel could easily have remained silent during Guyer's testimony based on her strategy of contrasting the facts of this case to the type of prostitution case that Guyer described. See RP 234-35 (Jones cross-examined Guyer about

the money involved in prostitution, and why some women might choose the lifestyle). Objecting to Guyer's testimony might well undermine her apparent confidence to the jury that the facts of this case were dissimilar. Jones has failed to rebut the presumption that trial counsel's decision was strategic.

Not only could the failure to object have been tactical, but Jones cannot establish a reasonable probability that the outcome of the trial would have been different had the evidence not been admitted. Most importantly, the jury acquitted Jones of the human trafficking charge, which was the only charge where prostitution actually occurred. CP 25. The jury was obviously not so swayed by Detective Guyer's description of his job that they felt compelled to convict Jones on the basis of emotion. Additionally, although Jones characterizes the jury's decision on the promoting charge as "a close call," he does not articulate why the decision would have been particularly difficult. As demonstrated above, the evidence that Jones promoted prostitution in his text messages to Makepeace was actually quite clear. Jones has not established ineffective assistance based on counsel's failure to object to Detective Guyer's testimony.

b. Jones Has Failed To Establish Ineffective Assistance Based on Counsel's Questioning Of Tara Makepeace.

Jones argues that his counsel was ineffective during cross-examination of Makepeace because she "opened the door" to otherwise-excluded testimony that Jones's friend was affiliated with a gang. Again, Jones has failed to establish either deficient performance or prejudice.

In June of 2012, after Hill and Jones had returned from Las Vegas, Jones stole money from Hill's bank account. RP 138-39. Hill and Makepeace convinced Jones to meet them at Southcenter Mall to discuss the return of Hill's money. RP 140, 412. Jones brought a friend, who stared at Makepeace in a menacing fashion, cracking his knuckles. RP 416. Later, in text messages with Jones, Makepeace described Jones's friend as looking "like he wanted to rip my head off." RP 416; Ex. 10 at 9. Jones texted, "He from family mafia crip. Young nigga that is trying to get street cred and is ready to do whatever i say...i got killas on the payroll." RP 43; Ex. 10A. Makepeace felt threatened and quipped back, "My homie Mike is crip I'm like his sister. I know he owes favors." RP 43; Ex. 10 at 10.

Prior to trial, Jones argued that the all of the text messages between him and Makepeace should be excluded as unauthenticated and irrelevant. RP 45-51. Specific to the comment about his friend being from “family mafia crip” and that he had “killas on the payroll,” Jones argued that the exchange related to money that he owed, and was not relevant to the charged crimes involving prostitution. RP 47, 50-51. The trial court found that the text was relevant due to its threatening tenor, but concluded that Jones’s statements, “He from family mafia crip,” and “young nigga,” were too prejudicial and would be excluded. RP 403-04. The court allowed evidence that Jones indicated his friend was “trying to get street cred,” and that Jones had “killas on the payroll.” Id. Makepeace’s reference to her “homie Mike” was not excluded. Ex. 10 at 10.

During questioning by the State, Makepeace testified that she believed Jones’s statements that his friend was trying to get “street cred” and that Jones had “killas on the payroll” were threats. RP 416. She believed that they were meant to intimidate her and Hill from going to the police and mentioning Jones’s name. RP 417. The State did not question Makepeace about her response

regarding her “homie Mike.” However, during cross-examination, Jones’s counsel brought up the subject:

Q: You—you were threatening him too, weren't you?

A: I wasn't really threatening him, no.

Q: Did you tell him that you had a friend on the mafia?

A: I said I had a friend who also was into the Crip gang when he was threatening me with his Crip gang.

Q: Okay, And that you're like his little sister?

A: Uh-huh.

Q: Okay. And you also told him that you would be his worst nightmare?

A: I believe so, yeah.

Q: And that was to TJ?

A: Uh-huh.

RP 431-32.

As stated above, Jones must establish both deficient performance and that the deficient performance prejudiced him. Strickland, 466 U.S. at 687. If the defendant fails to prove either

prong of this test, the inquiry must end. State v. Hendrickson, 129 Wn.2d 61, 78, 917 P.2d 563 (1996), overruled on other grounds by Carey v. Musladin, 549 U.S. 70, 127 S. Ct. 649, 166 L.Ed.2d 482 (2006).

First, Jones cannot show deficient performance.

Makepeace's direct testimony was that she found Jones's text messages intimidating. RP 416-17. Jones's trial counsel made a tactical decision to undercut Makepeace's "fear" of Jones by demonstrating that she had no trouble "threatening" him right back, and that she went to the police despite his intimidating statements. Counsel emphasized that Makepeace told Jones she would be his "worst nightmare," and that she went to the police and offered up her services to help find Jones despite his text message. RP 432-35. Jones has not rebutted the "strong presumption" of reasonable performance, and has not demonstrated that there was no conceivable legitimate strategy for the cross-examination.² Grier, 171 Wn.2d at 33-34.

Moreover, even if Jones could demonstrate deficient performance, he has failed to establish prejudice. The jury

² Jones's only argument to the contrary is an unpersuasive conclusory one: "No reasonable attorney would have opened this door having already obtained a ruling excluding the evidence." Brf. of App. at 26.

acquitted Jones of the only charge to which threats or coercion was relevant—the human trafficking charge. CP 25. Jones argues that he has established prejudice under Strickland because the inherently prejudicial nature of the evidence “could have swayed one or more jurors to convict.” Brf. of App. at 27. However, the legal standard demands more than mere speculation, and requires a reasonable probability that the outcome of the trial would have been different. Jones has failed to meet this standard, and he has failed to establish ineffective assistance of counsel.

4. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION TO ADMIT EVIDENCE THAT JONES TRAVELED TO CALIFORNIA

Jones argues that the trial court erred when it admitted evidence that he flew to Los Angeles the day after E.J. left him and returned home. He argues that the evidence was improper evidence of flight. However, the evidence was properly admitted as *res gestae*. The fact that Jones flew to another state was necessary to complete the story of the crimes for the jury, and was not unduly prejudicial. Jones has failed to establish that the trial court abused its discretion in allowing the evidence.

A decision to admit or exclude evidence is reviewed for abuse of discretion. State v. Perez-Valdez, 172 Wn.2d 808, 814, 265 P.3d 853 (2011); State v. Griswold, 98 Wn. App. 817, 823, 991 P.2d 657 (2000). A trial court abuses its discretion if its decision is “manifestly unreasonable or is based on untenable grounds or reasons.” State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995); State v. Cohen, 125 Wn. App. 220, 223, 104 P.3d 70 (2005). A court acts unreasonably “if its decision is outside the range of acceptable choices given the facts and the legal standard.” Cohen, 125 Wn. App. at 223.

Evidence that completes the story of the crime “by proving its immediate context of happenings near in time and place,” is relevant as *res gestae* evidence and is admissible if not unduly prejudicial. State v. Grier, 158 Wn. App. 635, 278 P.3d 225 (2012) (quoting State v. Lane, 125 Wn.2d 825, 831, 889 P.2d 929 (1995)).

Jones moved to exclude the fact that he left the state as improper evidence of flight. RP 190-98. The trial court excluded any mention of Jones’s arrest in California, but noted that Jones’s text messages with Makepeace (which comprised the promoting prostitution charge) would make clear to the jury that he was in another location with a different climate. RP 194, 198. The court

ruled that Jones's act of leaving Washington, the timing of it, and his location in Los Angeles was *res gestae* of the offenses. RP 197. The court concluded that although one inference of the evidence was that Jones left the state to evade law enforcement, that inference was not unduly prejudicial, especially considering the fact of his arrest was excluded. RP 197-98. Jones has failed to establish that this decision was manifestly unreasonable.

On July 31, 2012, Jones dropped E.J. off near the Panera Bread to meet her friend Lewis. RP 220-21; Ex. 7 at 63. Jones refused to take E.J. directly to Lewis's location, instead dropping her off several blocks away. RP 324. He did so because he thought that the place was "sketchy," and that the police might be with Lewis. RP 320, 324. Instead of returning to Jones, E.J. left Panera Bread with the police. RP 223, 325.

The very next morning, Jones flew "out of town." Ex. 10 at 15-16. He told Makepeace that he was in Los Angeles. Ex. 10 at 24. During their text message conversation, Jones invited Makepeace to "come down this way," to which she responded that she was broke. Ex. 10 at 16. When Makepeace asked Jones if he could help with plane tickets, he told her that he could help them get money "where I'm at." Ex. 10 at 21. After inviting Makepeace

to work for a “pimp with respect,” Jones asked her who would watch her children if she flew out of town. Ex. 10 at 26. He asked Makepeace how she could reassure him that if “he flew her out” she would make sacrifices and be coachable. Ex. 10 at 27. Jones asked Makepeace if she was going to save money for him so that he could have something to work with when she “came down” to his location. Ex. 10 at 31. He told her that the fact he was in Los Angeles should not be a deterrent to their plans because “planes leave every day.” Ex. 10 at 32.

Jones argues that the evidence he left the state was improperly admitted because the State did not establish a foundation for evidence of flight. He contends that the evidence was improperly admitted as *res gestae* because it was not necessary to complete the story for the jury. Jones is wrong.

The full context of Jones’s and Makepeace’s text messages was crucial to prove that Jones engaged in conduct designed to institute, aid, or facilitate prostitution. The fact that Jones continually encouraged Makepeace to “come down” to Los Angeles and earn money for him was part of the offense itself, and was required to complete the picture of the crime for the jury. It would have been impossible to redact the text messages in such a

manner to avoid all references to Jones's location in another state, and yet still have the conversation make sense to the jury. Jones's location in another state was *res gestae* of the promoting prostitution offense. The trial court did not abuse its discretion.

Moreover, the trial court's determination that any prejudice that might stem from the inference that Jones left town to evade law enforcement did not outweigh the probative value of the *res gestae* evidence. RP 197-98. Jones has failed to establish that this decision was manifestly unreasonable. Because the evidence that Jones went to Los Angeles was necessary to complete the picture of the crimes and was not unduly prejudicial, the trial court did not err in admitting it.

Finally, even if the evidence was improperly admitted, the erroneous admission of *res gestae* evidence is only reversible if, within reasonable probabilities, the outcome of the trial was materially affected by the evidence. State v. Tharp, 96 Wn.2d 591, 599, 637 P.2d 961 (1981). An error in the admission of evidence is harmless when the evidence is of minor significance to the evidence as a whole. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997).

Jones argues that the evidence “was harmful” to him because it indicated consciousness of guilt. That is not the correct standard. Moreover, there is no reasonable probability that the verdict was materially affected by the evidence. The jury was clearly not swayed by an inference that Jones fled to escape responsibility for his conduct with E.J., because it acquitted Jones of the charge involving her. And while Jones again attempts to cast the jury’s decision on the promoting charge as a “close” or “difficult” one, as shown above, the evidence of promoting was strong. Evidence that Jones left Washington was minor to the case as a whole. Jones has failed to establish a reasonable probability that the challenged evidence materially affected the verdict.

5. JONES DID NOT RECEIVE A FUNDAMENTALLY UNFAIR TRIAL

Jones argues that the cumulative error doctrine warrants reversal. His claim must be rejected because he was not denied a fair trial.

The cumulative error doctrine applies where several trial errors occurred which, standing alone, may not be sufficient to justify reversal, but when combined, may deny the defendant a fair

trial. State v. Hodges, 118 Wn. App. 668, 673, 77 P.3d 375 (2003), review denied, 151 Wn.2d 1031 (2004) (citing State v. Greiff, 141 Wn.2d 910, 929, 10 P.3d 390 (2000)). To seek reversal pursuant to the “accumulated error” doctrine, the defendant must establish the presence of multiple trial errors, and show that accumulated prejudice affected the verdict. The doctrine does not apply to cases where the defendant has failed to establish multiple errors, or where the errors that have occurred have “had little or no effect on the outcome at trial.” Greiff, 141 Wn.2d at 929; see also State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984) (errors included discovery violations, three types of bad acts evidence being improperly admitted, the impermissible use of hypnotized witnesses, and improper cross examination of the defendant); State v. Alexander, 64 Wn. App. 147, 158, 822 P.2d 1250 (1992) (errors included improper hearsay about the details of child sex abuse and the abuser’s identity, the court challenging defense counsel’s integrity in front of the jury, a counselor vouching for the victim’s credibility, and prosecutorial misconduct).

Here, Jones has failed to establish any error. Thus, he cannot obtain reversal based on the cumulative error doctrine. Moreover, even if multiple errors occurred, Jones has failed to establish that

such errors materially affected the outcome of the trial. In a case where the jury acquitted him of the more serious charge, Jones's claim that the alleged errors eased the State's ability to convict him of the promoting charge and impeded his ability to establish reasonable doubt must be rejected. Jones's argument that cumulative error denied him a fair trial must be rejected.

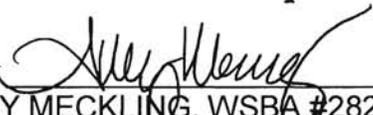
D. CONCLUSION

For all of the above reasons, the State respectfully requests that this Court affirm Jones's conviction and sentence for second-degree promoting prostitution.

DATED this 29th day of January, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

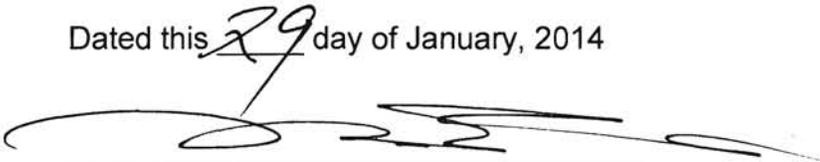
By: 
AMY MECKLING, WSBA #28274
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in STATE V. WILLIAM JONES, Cause No. 70034-1-I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 29 day of January, 2014

A handwritten signature in black ink, appearing to be "David Koch", written over a horizontal line.

Name
Done in Seattle, Washington