

**FILED**

Jun 20, 2014

Court of Appeals

Division III

State of Washington

**COPY**

NO. 32086-3-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**JESSE LEE CASTILLO,**

Defendant/Appellant.

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**RESPONSE TO STATE'S MOTION ON THE MERITS**

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Dennis W. Morgan    WSBA #5286  
Attorney for Appellant  
P.O. Box 1019  
Republic, Washington 99166  
(509) 775-0777

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## ARGUMENT

The State has filed a Motion on the Merits pursuant to RAP18.14

(e)(1). RAP18.14 (e)(1) provides:

A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is to be determined clearly without merit. In making these determinations, the judge or commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

Initially, RAP18.14 (e)(1)(c) has no application to Mr. Castillo's case. The determination of the presence of domestic violence (DV) is not a matter of judicial discretion. Factual predicates are required to support the imposition of a DV tag. There are no facts contained in the record to support its imposition other than the existence of a no-contact order.

The existence of that no-contact order that comes into play based upon the statutory definitions involved. As argued in the original brief, RCW 9.94A.030(20) incorporates RCW 10.99.020(5) and RCW 26.50.010(1) into the definition of "domestic violence."

These three statutes are of importance due to the Legislature's enactment of **Laws of 2010, Ch. 274, Sec. 101**. Legislative intent was to "identify violent perpetrators of domestic violence and hold them accountable."

No fact presented to the sentencing court indicates that Mr. Castillo was a "violent perpetrator of domestic violence."

Thus, it is readily apparent that RAP18.14 (e)(1)(b) forms no basis for a motion on the merits.

Finally, the caselaw in this area remains unsettled. Mr. Castillo agrees that the issue is one of statutory construction. However, no court has yet interpreted RCW 9.94A.030(20) since its amendment.

The cases cited by the State in its motion are inapplicable. They do not involve any interpretation of the statutory language in question.

Shepardization of the three statutes does not reveal any caselaw pertaining to the issue pending before the Court.

The State's assertion that RCW 26.50.010 has no application to the provisions of Chapter 10.99 RCW ignores the clear language of RCW 9.94.030(20). Chapter 9.94A RCW is the Sentencing Reform Act of 1981 (SRA). The SRA is applicable to criminal proceedings. The Legislature saw fit to include the definition of domestic violence contained in RCW 26.50.010 in its enactment of **Laws of 2010, Ch. 274, Sec. 101**.

The State's reliance upon the Attorney General's 2009 proposal is also misplaced. The proposal was based upon relationship issues between an alleged victim and a perpetrator as set forth in RCW 10.99.020 "or" RCW 26.50.110. It did not relate to the definition adopted by the Legislature under RCW 9.94A.030(20).

Mr. Castillo asserts that the interpretation of the word "and," as contained in RCW 9.94A.030(20), is an issue of first impression in the State of Washington. As such, the State's Motion of the Merits should be denied.

Mr. Castillo otherwise relies upon the argument contained in his original brief and requests that the State's motion be denied.

DATED this \_\_\_\_\_ day of June, 2014.

Respectfully submitted,

s/ Dennis W. Morgan  
DENNIS W. MORGAN WSBA #5286  
Attorney for Defendant/Appellant  
P.O. Box 1019  
Republic, Washington 99166  
(509) 775-0777  
(509) 775-0776  
nodblspk@rcabletv.com

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DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	YAKIMA COUNTY
Plaintiff,	)	NO. 13 1 01354 7
Respondent,	)	
	)	<b>CERTIFICATE OF SERVICE</b>
v.	)	
	)	
JESSE LEE CASTILLO,	)	
	)	
Defendant,	)	
Appellant.	)	
	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 20<sup>th</sup> day of June, 2014, I caused a true and correct copy of the *RESPONSE TO STATE'S MOTION ON THE MERITS* to be served on:

Court of Appeals, Division III  
Attn: Renee Townsley, Clerk  
500 N Cedar St  
Spokane, WA 99201

E-FILE

DAVID BRIAN TREFRY  
Attorney at Law  
[David.Trefry@co.yakima.wa.us](mailto:David.Trefry@co.yakima.wa.us)

E-FILE  
(per agreement)

JESSE LEE CASTILLO #724385  
Airway Heights Correction Center  
PO Box 1899  
Airway Heights, Washington 99001-1899

U.S. MAIL

s/Dennis W. Morgan  
DENNIS W. MORGAN LAW OFFICE  
PO Box 1019  
Republic, Washington 99166  
Telephone: (509) 775-0777  
Email: [nobdlspk@rcabletv.com](mailto:nobdlspk@rcabletv.com)