

647644

647644

NO. 64764-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JASON DRAKE,

Appellant.



APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARY E. ROBERTS

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. An issue may not be considered for the first time on appeal unless the error involves manifest constitutional error. Evidentiary rulings do not implicate constitutional rights. At trial, Drake objected to ER 404(b) evidence in general, but did not specifically object to individual incidents. Drake now challenges specific ER 404(b) evidence for the first time on appeal. Has Drake waived his challenge to the ER 404(b) evidence?

2. Under ER 404(b), evidence of a defendant's prior crimes or other misconduct is admissible if the evidence is relevant to a material issue at trial. In a felony harassment case, evidence of prior bad acts is admissible if relevant to prove the victim's reasonable fear that the defendant's threats would be carried out. Drake was charged with numerous domestic violence offenses, including felony harassment for threatening to kill his girlfriend. Evidence of Drake's prior bad acts, including the allegation that he had abused the victim's dog, was admitted to prove the victim's reasonable fear. Did the trial court exercise sound discretion in admitting this evidence under ER 404(b)?

3. To prevail on an ineffective assistance of counsel claim, an appellant must show deficient performance and resulting

prejudice. A defendant is prejudiced when there is a reasonable probability that but for counsel's deficient performance, the trial would have resulted in a different outcome. Legitimate trial tactics and strategy cannot form the basis of an ineffective assistance of counsel claim. At trial, the State presented evidence of Drake's prior bad acts under several ER 404(b) exceptions. Drake's counsel did not object to specific incidents. Instead, Drake's counsel simply objected to the admission of all ER 404(b) evidence. Does counsel's failure to object to specific ER 404(b) evidence reflect a legitimate trial strategy? If not, has Drake failed to demonstrate prejudice?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Jason Drake was charged by amended information with Burglary in the First Degree, Felony Harassment, Assault in the Second Degree, Unlawful Imprisonment, Residential Burglary, and Intimidating a Witness. CP 10-14. The State further alleged that each of the crimes involved domestic violence and an ongoing pattern of psychological, physical, or sexual abuse of the victim. CP 10-14.

Trial occurred in November and December 2009. The trial court denied Drake's motion to suppress all ER 404(b) evidence. 1RP¹ 81. The jury found Drake guilty of Burglary in the First Degree and Residential Burglary. CP 97, 103. The jury also found that the crimes were aggravated domestic violence offenses. CP 86-87, 94-95. Although the jury acquitted Drake on the Assault in the Second Degree charge, they found Drake guilty of the lesser offense of Assault in the Fourth Degree. CP 99-100. The court sentenced Drake to a standard range sentence. CP 107-15.

2. SUBSTANTIVE FACTS.

Vanessa Rose and Jason Drake's five-year relationship began in 2004. 3RP 7-8. Most of their time was spent in Washington, although they moved to Florida between March 2006 and August 2007. 3RP 12-14. While there were periods of happiness, the relationship was marked by Drake's abuse of PCP, or sherm. 3RP 16. Drake became angry, volatile, and more violent when he was under the influence of drugs. 3RP 17.

¹ The verbatim report of proceedings will be referred to as follows: 1RP (11/23/2009, 11/24/2009, 12/18/2009); 2RP (12/1/2009, morning session); 3RP (12/1/2009, afternoon session); 4RP (12/2/2009); and 5RP (12/8/2009). This is consistent with the Brief of the Appellant.

The violence started approximately one year into the relationship. 3RP 10. Over the next four years, Drake assaulted Rose approximately 20 times. 3RP 16. Rose never reported the incidents to the police because she feared how Drake would respond if she turned against him. 3RP 19.

In May 2008, Rose attempted to break up with Drake. 3RP 24. Drake moved back to Florida in July 2008, but continued to talk to Rose on a regular basis. 3RP 36, 38. When he returned to Washington in early 2009, Drake moved into Rose's house. 3RP 38. After just a few days, Drake returned to his violent behavior. Id. Rose finally ended the relationship in May 2009. 3RP 46.

Although Rose kicked Drake out of her house, Drake continued to store his property on her porch. Id. He frequently changed his clothes on the porch and repeatedly asked Rose to let him in. Id. Rose would not let him in, but Drake persisted. Id. After Rose ended the relationship, Drake threatened to kill Rose and her family on multiple occasions. 3RP 47.

The abuse came to a head on June 25, 2009. At around 5:00 a.m., Drake woke Rose up by knocking on her door. 3RP 49. Still half-asleep, Rose opened the door about a foot wide to see

who was there. Id. Drake pushed his way into the house, despite Rose's demands that he leave. 3RP 51. Once it was clear that Drake was not going to leave, Rose gave up and tried to get some more sleep before she had to go to work. Id.

When Rose woke up at 6:30 a.m., her car was missing. 3RP 52. Drake returned with her car at 7:00 a.m., around the time that Rose had to leave for work. Id. They got into an argument because Drake wanted to borrow Rose's car, but she did not want to loan it to him. Id. Drake finally got out of the car, but continued to lean into the open passenger door. Id. Despite Rose's insistence that she had to get to work, Drake would not leave. Id. Rose became scared as Drake yelled more and more, so she eventually drove off with the passenger door open. Id.

When Rose returned home from work that evening, she found Drake asleep on her sofa. 3RP 54-55. Rose's apartment was a mess, with dishes everywhere and trash from her puppy, who had been let out of its kennel. Id. Rose yelled at Drake to leave and then began to clean up the mess by doing the dishes. 3RP 55. As she was washing a knife, Drake came from behind and "slapped [her] butt really hard, like your parents would spank you." 3RP 55. The slap hurt Rose, who turned around with the knife in

her hand. Id. Drake picked up a big candle and asked her if she wanted to fight. Id.

The two then began arguing over Rose's phone. 3RP 56. Drake was upset about text messages on the phone, and the argument became more physical. Id. During the struggle, Rose wound up on the ground, wedged between the couch and the coffee table. Id. Drake was sitting on top of her in such a way that he was putting pressure on her neck. Id. Drake grabbed her wrists, wrestled away the phone, and started going through Rose's text messages. Id. While he was holding Rose down on the ground, Drake was yelling at her and calling her names. Id. Rose screamed out for someone to call the police. Id. When Drake finally let her up, Rose ran to the bedroom. 3RP 58. Drake followed her and the argument continued. Id. When Rose tried to get away from him, Drake grabbed her by the neck and threw her against the wall. 3RP 60.

Eventually Rose was able to get away from Drake. 3RP 62. In order to prevent him from following her, Rose told Drake that she needed to go to the store for cigarettes. 3RP 63. She grabbed her keys and drove off to her mother's house, where she spent the night. 3RP 62. Although her mother urged her to call the police,

Rose believed that things would get better if she just gave it time.

3RP 64-65.

The next day, Drake called Rose while she was at work and demanded that she turn over her paycheck. 3RP 65. Rose refused. Id. Drake threatened Rose that if she did not give him her paycheck, he would take things from her home. Id. When Rose returned home after work, a number of her possessions were missing, including her television, some furniture, and a clock. 3RP 67. She also noticed that her rug had been cut. Id. Rose decided she could not live with the abuse any longer and called 911. 3RP 67-68.

Although Rose told Drake that she had called the police, he did not believe her at first. 3RP 76. About a week or two after the incident, Drake received paperwork regarding a court date. 3RP 77. He then began calling Rose repeatedly, threatening her and demanding that she drop the charges. Id.

Sometime after he received his court paperwork, Drake told Rose that he was going to return to Florida. 3RP 77-78. In the weeks that followed, Rose received calls from a Florida phone number. Id. Drake was eventually arrested in Florida and extradited to Washington to face the charges. 2RP 73-74.

3. ER 404(b) EVIDENCE.

Prior to the start of trial, the court conducted an evidentiary hearing to determine whether the State would be permitted to offer ER 404(b) evidence against Drake. 1RP 23-88. Rose was the only witness to testify at the hearing. Id.

Rose testified that over the course of their relationship, Drake had assaulted her approximately 20 times. 1RP 29. These incidents varied in their seriousness, but the most serious tended to occur when Drake was under the influence of drugs. 1RP 29-30. As their relationship progressed, Drake's drug use became worse. 1RP 28. With this increased drug use, Drake became unpredictable and violent. Id.

Rose provided detailed accounts of several incidents in which Drake's behavior made her afraid. 1RP 30-46. Most of these incidents involved assaults on Rose. In one such incident, Drake slammed Rose's head against a car window while she was sleeping because he suspected she had been talking to another man. 1RP 40. On another occasion, Drake was upset when a friend touched Rose on the head. 1RP 49. After fighting the friend, Drake slammed Rose's head against the bathroom wall. Id. When Drake discovered that Rose had a MySpace account, he screamed

at Rose and punched her in the jaw, knocking her to the floor.

1RP 39. Following another jealousy-fueled argument in 2008, Drake asked Rose for a hug. 1RP 34. When she approached for the hug, Drake punched her in the stomach. 1RP 34.

Rose also described two incidents that did not involve assaults on her, but contributed to her fear of Drake. In the first incident, Drake and Rose were in the car together. 1RP 30. Drake was driving and suddenly began slobbering and driving recklessly. Id. When he finally stopped the car, his odd behavior continued until he was lying in the street without his pants. 1RP 31. Although she had not seen him smoke any sherm, Rose could tell that Drake was under the influence of drugs. 1RP 30-31. She was so frightened by Drake's behavior that she thought that she was going to die. 1RP 32.

Following the aforementioned 2008 assault in which Drake punched Rose in the stomach, Drake disappeared with Rose's dog. 1RP 45. The next day, Drake called Rose on the phone and Rose could hear her dog crying in the background, as if Drake was hitting the dog. 1RP 46. After three days, Drake returned the dog, who

was missing a toenail and had welts all over his back. Id. Rose was extremely close to her dog and was disturbed by the fact that she did not know what happened to him while he was gone. 1RP 45-46.

Drake moved to exclude "previous domestic violence allegations between Ms. Rose and Mr. Drake," as well as any mention of Drake's drug use. CP 135. The trial court allowed the ER 404(b) evidence offered by the State under three exceptions. The court allowed the evidence to prove Rose's reasonable fear, to help the jury assess Rose's credibility in light of delayed reporting, and to assess Drake's motive when he entered Rose's house. 1RP 80-81. The court determined that Rose's reasonable fear was relevant to the charges of Felony Harassment, Unlawful Imprisonment, and Intimidating a Witness. Id. The court also held that the evidence might be relevant to help the jury assess Drake's intentions and motive with regard to the burglary charges. Id.

On appeal, Drake only challenges the evidence regarding his abuse of Rose's dog.

C. ARGUMENT

1. DRAKE DID NOT PRESERVE HIS OBJECTION TO EVIDENCE REGARDING HIS TREATMENT OF ROSE'S DOG.

Drake challenges Rose's testimony that she suspected Drake had abused her dog, contending that it is different from all of the other ER 404(b) evidence admitted at trial. However, Drake did not specifically object to the dog abuse evidence at trial. He has therefore waived any objection.

Under RAP 2.5(a)(3), appellate courts may consider an issue raised for the first time on appeal only when it involves a "manifest error affecting a constitutional right." To raise an issue not previously preserved, an appellant must show that (1) the error is manifest, and (2) the error is truly of constitutional dimensions. State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009). Drake must first identify a constitutional error and then must show how the asserted error actually affected his rights at trial. State v. Kirkman, 159 Wn.2d 918, 926-27, 155 P.3d 125 (2007). An error is "manifest" where it had "practical and identifiable consequences in the trial of the case." State v. Kirkpatrick, 160 Wn.2d 873, 880, 161 P.3d 990 (2007). Only after the court determines that the claim does in fact raise a manifest constitutional error does it move on to

a harmless error analysis. State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

An evidentiary error, such as erroneous admission of ER 404(b) evidence, is not of constitutional magnitude. State v. Everybodytalksabout, 145 Wn.2d 456, 468-69, 39 P.3d 294 (2002).

Error may not be predicated upon a ruling that admits evidence unless a timely objection is made, stating the *specific ground* of the objection. ER 103(a). Courts will only consider appellate challenges to evidentiary issues if the evidentiary rule was argued at trial. See State v. Powell, 166 Wn.2d 73, 84, 206 P.3d 321, 328 (2009).

At trial, Drake moved to exclude "previous domestic violence allegations" between himself and Rose, as well as any mention of Drake's drug use and any mention of his extradition from Florida. CP 135. Drake never specifically objected to Rose's testimony that she suspected Drake had injured her dog. 1RP 74-77. Although the incident involving Rose's dog could arguably be encompassed by the motion to exclude "previous domestic violence allegations," Drake now contends that the dog incident was distinct from the other allegations of previous domestic violence. To the extent that the dog abuse incident may require different analysis, Drake did not

preserve his argument by lodging a specific objection at trial.

See ER 103(a). Because the allegedly erroneous admission of ER 404(b) evidence is not of constitutional magnitude, Drake cannot raise the objection for the first time on appeal.

Everybodytalksabout, 145 Wn.2d at 468-69.

2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ALLOWING THE ADMISSION OF ALL ER 404(b) EVIDENCE.

Drake argues that the dog abuse was not relevant to any material issues at trial. However, certain ER 404(b) evidence is admissible in felony harassment cases to explain a victim's reasonable fear. Likewise, in domestic violence cases, ER 404(b) evidence may be relevant to evaluating a victim's credibility. In this case, the trial court properly admitted ER 404(b) evidence to explain Rose's state of mind.

Evidence of a defendant's other crimes or misconduct is admissible if it is relevant to a material issue at trial other than the defendant's propensity for criminal behavior, and if its probative value is not substantially outweighed by the potential for unfair prejudice. ER 404(b); ER 403; State v. Ragin, 94 Wn. App. 407, 411, 972 P.2d 519 (1999).

To admit evidence of other crimes, wrongs, or acts, the trial court must: (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for introducing the evidence, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value of admitting the evidence against the prejudicial effect. State v. Lough, 125 Wn.2d 847, 853, 889 P.2d 487 (1995). Courts review the trial court's interpretation of ER 404(b) *de novo* as a matter of law. State v. Fisher, 165 Wn.2d 727, 745, 202 P.3d 937 (2009).

Here, the trial court properly interpreted the requirements of ER 404(b). The court conducted a pretrial hearing in which it took testimony and heard arguments from both parties. 1RP 23-88. The court found by a preponderance of the evidence that the prior acts occurred, and identified three reasons for which the evidence would be admitted. 1RP 80-81. Finally, the court found that the probative value of the evidence outweighed the prejudicial effect. 1RP 81.

Because the trial court interpreted ER 404(b) correctly, the review on appeal is limited to whether the trial court abused its discretion in admitting or excluding the evidence. Fisher, 165 Wn.2d at 745. A trial court abuses its discretion where it fails to

abide by the rule's requirements. Id. Likewise, abuse of discretion exists when a trial court's exercise of its discretion is manifestly unreasonable or based upon untenable grounds or reasons. State v. Magers, 164 Wn.2d 174, 181, 189 P.3d 126 (2008).

A person is guilty of harassment if he or she knowingly threatens to cause bodily injury to the victim immediately or in the future, and the victim is placed in reasonable fear that the threat will be carried out. RCW 9A.46.020(1)(a)(i). Harassment is a felony if the defendant makes a threat to kill. RCW 9A.46.020(2)(b).

Accordingly, in addition to the reasons for admissibility explicitly enumerated in ER 404(b), Washington courts allow evidence of a defendant's prior bad acts to be admitted in felony harassment cases when such evidence is relevant to show that the victim's fear was reasonable. Ragin, 94 Wn. App. at 411-12; State v. Barragan, 102 Wn. App. 754, 758-60, 9 P.3d 942 (2000).

Additionally, in domestic violence cases where the victim delays in reporting the incident, evidence of the defendant's history of violence is admissible because it is relevant in assessing the victim's credibility. See Fisher, 165 Wn.2d at 746.

When admitted in order to explain a victim's state of mind—either for reasonable fear, or for a delay in reporting—the prior bad

acts need not involve the same victim. State v. Ragin, supra, and State v. Magers, supra, are instructive on this point. In Ragin, the felony harassment charge was based on the defendant's threatening phone calls from the jail. Prior to these calls, Ragin had always been soft-spoken and polite with the victim, William Dahl. Id. at 409. However, Ragin had told Dahl that he had been "convicted of armed robbery, had been involved in a 'domestic violence situation' with his wife, was well known to the police department, and suffered from episodic rages." Id. The court held that, although prior bad acts in felony harassment cases generally involve the victim, these acts were properly admitted to help the jury to determine whether Dahl's fear was reasonable. Id. at 419.

Likewise, in domestic violence cases, the prior bad acts may involve people other than the victim. Magers was charged with assault in the second degree and unlawful imprisonment of his long-term girlfriend, Carissa Ray. Magers, 165 Wn.2d at 177. During the course of the investigation, Ray recanted her story on two occasions. Id. at 179. Ultimately, Ray's trial testimony was consistent with her original report of the incident. Id. In addition to testifying about her history with Magers, Ray testified that she was aware that Magers had previously been in trouble for fighting. Id.

The court held that evidence that Magers had been in trouble for fighting was properly admitted to demonstrate Ray's "reasonable fear of bodily injury." Id. at 183. The court also found that, in light of Ray's recantations, the evidence was admissible to assist the jury in judging her credibility. Id. at 186.

In this case, the trial court's primary basis for admitting the ER 404(b) evidence was to explain Rose's fear of Drake. 1RP 81. Rose's reasonable fear was relevant to the charges of felony harassment, unlawful imprisonment, and intimidating a witness. In addition to the prior assaults against Rose, the court concluded that the non-assaultive behavior was helpful in understanding Rose's perception that Drake was volatile. 2RP 14. Allowing the jury to fully understand why Rose feared Drake was a proper exercise of the court's discretion. See Ragin and Magers, supra.

The court also allowed the evidence to help the jury evaluate Rose's credibility in light of her delayed reporting. Again, the court's ruling was reasonable and well within its discretion. See Magers, supra.

Drake does not specifically address either of these ER 404(b) exceptions upon which the trial court relied. Drake thus does not articulate how the trial court abused its discretion

regarding these two exceptions. Instead, Drake focuses his argument on the motive exception.² However, Drake ignores the fact that motive was not the court's primary basis for its ruling. The record clearly indicates that, while the ER 404(b) evidence may be relevant to help the jury understand Drake's motive with regard to the burglary charges, the court's primary basis for admitting the evidence was to explain Rose's state of mind. 1RP 81.

Drake attempts to distinguish the evidence of the dog incident from all of the other ER 404(b) evidence, including the 20 past assaults on Rose and the testimony regarding his volatility when he was on drugs. Drake contends that the dog incident was somehow more prejudicial than all of the other ER 404(b) evidence. However, Drake does not offer any authority to support his argument that the dog incident was uniquely prejudicial and not relevant to Rose's state of mind. Rather, Drake's argument requires the court to assume that jurors would find the dog incident substantially more offensive than the 20 past assaults on Rose.

² Evidence of other crimes, wrongs, or acts may be admissible as proof of motive. ER 404(b). At trial, the State argued that evidence regarding the volatility of the relationship and Drake's persistence in trying to get into Rose's house was admissible to prove the defendant had a motive to subsequently assault Rose. Supp. CP __ (sub no. 83, State's Trial Memorandum, filed 9/15/10).

Drake has not demonstrated that admitting the evidence involving the abuse of Rose's dog constituted an abuse of the trial court's discretion. To the contrary, this evidence was properly admitted to prove Rose's reasonable fear that Drake would carry out his threats, and to assist the jury in evaluating Rose's credibility. Drake's claim should be rejected.

3. DRAKE RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

Drake argues alternatively that if trial counsel failed to object to the evidence at issue on appeal, counsel rendered ineffective assistance. Drake's claim is meritless. Given the amount of ER 404(b) evidence admitted against Drake, counsel's failure to object to the dog incident was a legitimate tactical decision. Moreover, Drake cannot show that he was prejudiced by counsel's failure to object.

Ineffective assistance of counsel claims present a mixed question of law and fact. In re Pers. Restraint of Brett, 142 Wn.2d 868, 873, 16 P.3d 601 (2001). As a result, they are reviewed *de novo*. Id. To prevail on an ineffective assistance of counsel claim, the defendant must show (1) that his attorney's conduct fell

below an objective standard of reasonableness and (2) that this deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). Prejudice exists where "there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." State v. Hendrickson, 129 Wn.2d 61, 78, 917 P.2d 563 (1996). If the defendant fails to demonstrate either prong, the inquiry ends. Id. at 78.

Courts presume that counsel has provided effective representation and are "highly deferential" when scrutinizing counsel's performance. Strickland, 466 U.S. at 689. "It is all too tempting for a defendant to second-guess counsel's assistance after conviction . . . and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id.

On review, the relevant inquiry is "whether counsel's assistance was reasonable considering all the circumstances." Id. at 688. There is a "wide range" of reasonable performance and a recognition that even the best criminal defense attorneys take different approaches to defending someone. Id. at 689. If

counsel's conduct can be characterized as legitimate trial strategy or tactics, then it cannot be the basis for an ineffective assistance of counsel claim. State v. Lord, 117 Wn.2d 829, 883, 822 P.2d 177 (1991). The defendant must show the absence of legitimate strategic or tactical reasons to support the challenged conduct. McFarland, 127 Wn.2d at 336.

Drake contends that "no legitimate tactic" supports his counsel's failure to specifically object to the dog abuse incident. *App. Br.* at 16. However, given the quantity of ER 404(b) evidence admitted in the State's case, counsel could have determined that the impact of the dog incident was minimal. This court should presume that trial counsel provided effective representation.

Alternatively, even if the Court finds that counsel provided deficient performance, Drake cannot show that he was prejudiced. To prevail, Drake must show that "but for counsel's errors, the result of the trial would have been different." Hendrickson, 129 Wn.2d at 78. In the case of a missed evidentiary objection, Drake must show that the proposed objection would likely have been sustained and that the result of the trial would have been different if the evidence had not been admitted. In re Personal Restraint of Davis, 152 Wn.2d 647, 714, 101 P.3d 1 (2004).

As discussed above, the trial court did not abuse its discretion in admitting the evidence at issue. Drake has not shown how a more specific objection would have resulted in a different ruling. Furthermore, with so much evidence against him, Drake cannot show that the trial would have been different had testimony regarding the dog incident not been admitted.

D. CONCLUSION

For the reasons cited above, this Court should affirm Drake's conviction.

DATED this 10 day of December, 2010.

Respectfully submitted,

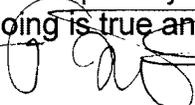
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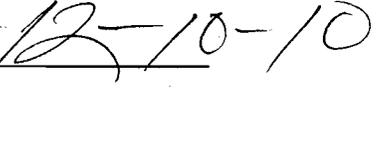
Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher H. Gibson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. JASON DRAKE, Cause No. 64764-4-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.



Bora Ly
Done in Seattle, Washington

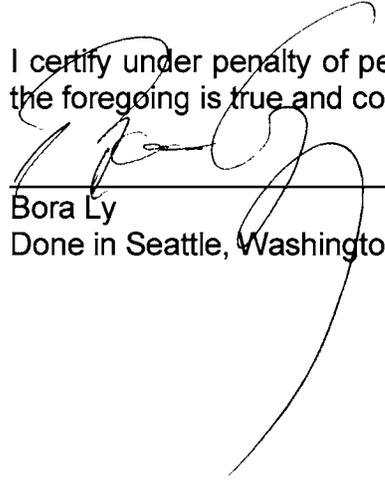
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Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Peregrin Sorter, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. JASON DRAKE, Cause No. 64764-4-1, 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.



Bora Ly
Done in Seattle, Washington

12-10-10

Date