

NO. 71215-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

BRANDON HANSEN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LeROY McCULLOUGH

**BRIEF OF RESPONDENT**

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A. ISSUE

1. To establish ineffective assistance for counsel's failure to renew a motion to sever after the State's case-in-chief, a defendant must show both that counsel was deficient in failing to renew the motion and that the defendant was prejudiced because the motion likely would have been granted and, if it had been granted, the result of the proceedings would have been different. Counsel had legitimate strategic reasons for not renewing the motion and instead proceeding to verdict on all counts. The victim had not testified and the State stipulated to medical records of the victim's blood alcohol level, which defense relied on in arguing that the victim was not credible. Nor had circumstances changed from when the trial court properly denied the motion pretrial and Hansen cannot show that the result of the trial would have been different if the counts had been severed. Has Hansen failed to show that his counsel was ineffective for failing to renew the motion to sever?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged Brandon Hansen by amended information with second-degree assault, domestic violence, of Lindsey Hartley and seven counts of domestic violence felony

violation of a court order. 1RP<sup>1</sup> 105-17; CP 42-47. The State further alleged the aggravating factor that the second-degree assault, count 1, was a domestic violence offense and part of an ongoing pattern of psychological, physical, or sexual abuse of multiple victims over a prolonged period of time.<sup>2</sup> CP 42. The Honorable LeRoy McCullough presided over the jury trial at which Hansen was found guilty of all counts. 1RP 2; 4RP 950-54; CP 81-87. Hansen pled guilty to the aggravating factor, which had been bifurcated, following the verdicts. 5RP 11-30; CP 92-105.

At the first sentencing hearing, Hansen's attorney withdrew, explaining that she believed that she had committed an error at trial that could be seen as ineffective assistance of counsel. 1RP 67, 75. New counsel was appointed and the sentencing was continued. 1RP 75, 79. Hansen was arrested for a new charge of violating a court order for contacting Hartley. 1RP 85-95. After several continuances due to the new charge and a motion for a new trial, the trial court sentenced Hansen to concurrent terms of

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<sup>1</sup> The verbatim report of proceedings consists of 13 volumes, some of which are separately paginated. The State adopts the Appellant's method of referencing the record and the record will be referred to as follows: 1RP (5/2/13 (pretrial motions), (post-trial motions) 6/28/13, 7/8/13, 8/30/13, 10/4/13, 10/25/13, 12/13/13 & 1/9/14); 2RP (5/7/13, morning session); 3RP (5/7/13, afternoon session; 5/8/13; 5/9/13; 5/15/13); 4RP (5/16/13, 5/20/13, 5/21/13, 5/22/13, 5/23/13, & 5/24/13); 5RP (5/28/13).

<sup>2</sup> RCW 9.94A.535(3)(h)(i).

84 months on the second-degree assault and 60 months on each of the violations of a court order, the high end of the standard range as requested by the State. 1RP 96-102, 116-37; CP 107-11.

The motion for a new trial was based on alleged newly discovered evidence: a letter from Lindsey Hartley stating that Hansen had not assaulted her. CP 130-39. The trial court denied the motion, finding that because Hansen had been contacting Hartley through numerous phone calls prior to trial, her statement was not newly discovered evidence. 1RP 199-202.

## 2. SUBSTANTIVE FACTS.

On March 25, 2012 at shortly after 3 a.m., Enumclaw Police Officer Nona Zilbauer responded to a 911 call where the female caller had dropped off the line. 4RP 143-46. The dispatcher called the number back and it went to Lindsey Hartley's voicemail. 4RP 145, 148; Ex. 7. Zilbauer checked the area where the caller appeared to have called from. 4RP 148. Zilbauer found Hartley hunched over, bleeding from her nose and eyes, and crying hysterically across the street from Hartley's residence. 4RP 153-57. Hartley held her head and complained of pain, especially to her ears. 4RP 152-57. Hartley's top lip was extremely swollen and she had red marks around her neck. 4RP 157.

Hartley told Zilbauer that her boyfriend Brandon had “beat the s\*\*\* out of me.” 4RP 152-53. She did not know where her boyfriend, Brandon Hansen, was at the time, but she expressed fear that he was hiding in the bushes and watching her. 4RP 159. Hartley was eventually able to tell Zilbauer that she and Hansen had been at Seeder’s Bar & Grill earlier in the evening, they argued, and Hansen pushed her off of a barstool and then left. 4RP 551. Hartley stayed at the bar until it closed and then she went home. 4RP 551. When she arrived home, she and Hansen argued again and Hansen “went off,” punching her in the face and choking her until she blacked out. 4RP 551-52.

Hartley regained consciousness and ran outside. 4RP 552. Hansen chased after her and punched her in the face. 4RP 552. He smashed her head into the sidewalk and choked her once or twice more. 4RP 552. Hartley was extremely distraught and in obvious pain as she described the assault. 4RP 553. She also expressed fear that Hansen would find her and kill her. 4RP 553.

Zilbauer, the sole Enumclaw officer on-duty, called for back-up officers from nearby Buckley. 4RP 554, 605-06. Once aid arrived and took over Hartley’s care, Zilbauer and the Buckley officers searched the surrounding area and Hartley’s home for

Hansen. 5RP 553-55. They did not find him. 5RP 553-55. They did find a male asleep downstairs, as they expected since Hartley had told them that a male who worked for Hansen was staying downstairs. 5RP 553-55. The male, Jeffrey Tanner, said that he had heard an argument, but did not wish to be involved. 5RP 555, 860.

Emergency Medical Technicians Maryn Otto and Benjamin Paradis treated Hartley at the scene. 4RP 756, 813. Hartley was still extremely emotional and in obvious pain when she told Otto and Paradis between sobs what had happened. 4RP 757-58, 814. Hartley told them, "He beat the f\*\*\* out of me," "He choked me," and "He slammed me into the curb." 4RP 761-62, 815. They transported Hartley to the hospital. 4RP 763. During the ride to the hospital, Otto offered Hartley domestic violence resources, but Hartley declined, saying, "I have a mortgage with him and I would lose my house." 4RP 763.

At the hospital, Hartley was still extremely upset and continued to express to Zilbauer that she feared Hansen was going to kill her. 5RP 557. She begged Zilbauer not to allow Hansen to come to the hospital. 5RP 557. Hartley refused to give a police statement because she feared Hansen would kill her. 5RP 558.

Hartley's left orbital bone, or eye socket, and nose had each been broken in two places. 5RP 531. One of the fractures to her orbital bone was displaced; the blow had pushed a bone fragment into her sinuses. 5RP 528-29. At least one blunt force blow directly to the eye socket had caused the fractures. 5RP 538-39.

Hartley did not testify at trial. 4RP 900-01, 918-20. Zilbauer had contact several times with Hartley in the two weeks following the assault, but then Hartley dropped out of contact. 4RP 566-67. Zilbauer attempted to locate Hartley at different locations and through Facebook, but could not find her. 4RP 567. Prior to the assault, Zilbauer had had previous contacts with Hartley and Hansen. 4RP 546-47, 565. Earlier on the night of the assault she had seen them both when she had responded to Seeder's Bar for an unrelated incident. 4RP 546. Hartley did not have any injuries at that time. 4RP 547. Zilbauer had also stopped Hansen for a traffic violation the night before the assault and Hartley had been in the car. 4RP 566. Based on her prior contacts with each, Zilbauer reviewed over 160 jail calls made with Hansen's booking number and identified the male voice as Hansen and the female voice as Hartley. 4RP 579, 583-92, 626-27, 664-78.

Hansen had been prohibited from contacting Hartley by court order issued on April 10, 2012. 4RP 582-83. The State introduced some of the recorded jail calls between Hansen and Hartley as evidence of the no-contact order violations, counts 2-8. 4RP 585-92, 626-94. The King County Jail records all calls made by inmates and warns them and the call receiver of this fact. 4RP 115-17. Each inmate has a booking number (BA number) and the inmate must input his or her BA number and a security code to access funds in their account and make a call. 4RP 118-19. Inmates sometimes make calls using other inmates' BA numbers. 4RP 132.

Each of the calls made using Hansen's BA number from the jail from April 14, 2012 through June 4, 2012 matched Hansen's location within the jail from his jail housing history. 4RP 125-29. Zilbauer identified the male voice as Hansen and the female as Hartley in all but one of the calls admitted at trial. 4RP 584.

Each phone call admitted at trial began with the inmate stating his name as "Brandon," and then the male and the female discussed their relationship and, at times, the conversations were

of a sexual nature. 4RP 583-89, 673; Ex. 3.<sup>3</sup> The male referred to the female as “sister” despite the other content of the calls clearly indicating a romantic relationship.<sup>4</sup> 4RP 583-89, 673. The male and female were attempting to avoid detection, but slipped at times, such as when the female referred to herself as “Lindsey” and the male became very upset, stating, “Oh man, gosh. . .that just sinks my ship.” Ex. 3 at call on April 14, 2012 at 2105 hours at 4:55 minutes, file named 1334462739\_101. In one of the calls, the female referred to her sister, “Lauren.” 4RP 664; Ex. 3 at call on April 15, 2012 at 1235 hours, file named 1334518515\_101. Hartley has a sister named “Lauren.” 4RP 664.

Whitney Hartman, Hansen’s half-sister, testified that she is close with Hansen, but did not have any sort of sexual discussions with Hansen while he was in jail. 4RP 792-97. She also explained that Hansen has three other sisters, to whom Whitney is not related. 4RP 798. One of those sisters, Desiree, has a sister named Lauren and that sister is not related to Hansen. 4RP 799.

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<sup>3</sup> Exhibit 3 is a CD containing the jail calls. The file named “call report” allows access to the time and date of the calls and the call can be played with the speaker icon on this page. The calls can also be played by individual file number, such as 1334518515\_101.

<sup>4</sup> For example, in the call on May 25, 2012 at 1211 hours, the male and female argued about their relationship and whether the female has been speaking to other men, but the male referred to the female as “sis.” Ex. 3 at call on May 25, 2012 at 1211 hours, file named 1337973080\_161.

Hansen's cousin, Kelsey Spencer, testified for Hansen that she had seen Hansen and Hartley at Seeder's Bar on the night of March 25, 2012. 4RP 834, 839-41. She testified that she briefly said hello to Hartley and Hartley appeared drunk. 4RP 837. Spencer later gave Hansen a ride to their grandmother's house about three miles away. 4RP 834, 839-41. Spencer admitted that she did not see Hansen after 1:35 a.m. when she dropped him off, that Hansen kept his work vehicles at their grandmother's, and that one may have been parked there that night. 4RP 848-49. Spencer said that she did not really know the nature of Hansen's and Hartley's relationship, but did not know them to be dating. 4RP 836.

### 3. THE PRETRIAL MOTIONS AND SEVERANCE MOTION.

The trial court heard pretrial motions and testimony over five days. 1RP 2-65; 2RP 3-68; 3RP 2-49, 79-197, 199-371; CP 8-15, 38-41. Defense sought to dismiss the case under CrR 8.3(b) for prosecutorial mismanagement, alleging late disclosure of additional discovery. 1RP 1-65; CP 8-15. The motion was based in part on the State's amended information, which changed the dates of four of the no-contact order violation counts. 1RP 2-11; CP 42-47. The

trial court granted the defense a brief continuance, but denied the motion to dismiss, noting that the defense attorney had notice of the amended information from when she had first received the case, although the exact dates for some of the counts had changed. 1RP 63-65.

The trial court heard the testimony of Officer Zilbauer and EMTs Otto and Paradis so that it could rule on the admissibility of Hartley's statements if Hartley did not testify at trial. 2RP 15-68; 3RP 2-25, 199-256. The trial court ruled that the witnesses could testify to Hartley's statements because each statement met a hearsay exception and the statements did not violate the Confrontation Clause. 3RP 49-53, 275-98, 311-71. The trial court also listened to many of the jail calls and ordered the State to redact unduly prejudicial information. 3RP 98-197.

Hansen's counsel brought the severance motion after the trial court allowed the amendment of the information. CP 38-41. The trial court denied severance at the end of the pretrial hearings and testimony. 3RP 369-71. First, the court found that the assault and no-contact order violations each had sufficiently strong evidence. 3RP 369-70. The assault charge, even without the victim's testimony, was strong given the documented injuries and

Hartley's admissible statements that the defendant had assaulted her. 3RP 369. For the no-contact order violations, the circumstantial evidence and the testimony from Zilbauer identifying Hansen's and Hartley's voices was also strong. 3RP 370.

Second, the trial court found that the defenses were not antagonistic, as the defense to the assault was that Hansen had not been the one to assault Hartley and the defense to the jail calls was that the female was not Hartley. 3RP 370. Third, the court noted that it would properly instruct the jury to consider the evidence of each crime separately and that jurors are presumed to follow the instructions. 3RP 370. Regarding the cross-admissibility of the evidence, the trial court concluded that there was some cross-admissibility, but that the evidence was not entirely clear and that this factor was not as strong as the others. 3RP 370. The trial court referenced State v. Watkins, 253 Wn. App. 264, 766 P.2d 484 (1989), in determining this factor. Lastly, the trial court found that the balance of the factors weighed in favor of joinder and any residual prejudice did not outweigh the concern for judicial economy. 3RP 370-71.

Hansen's counsel did not renew the motion to sever at the close of the State's evidence. 4RP 832. The trial court instructed

the jury to consider each count separately and that its verdict on one count should not control its verdict on any other counts.

CP 59. The trial court also provided the limiting instruction requested by defense:

Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of telephone calls from the King County Jail. These calls may be considered by you only for the purpose of deciding whether the State has proved the charges of violation of no contact order as contained in Counts II through VIII. You may not consider it for any other purpose, and you may not consider it as to Count I. Any discussion of the evidence during your deliberations must be consistent with this limitation.

CP 78.

C. ARGUMENT

1. HANSEN HAS NOT SHOWN THAT HIS COUNSEL WAS INEFFECTIVE FOR FAILING TO RENEW THE SEVERANCE MOTION AT THE END OF THE STATE'S CASE.

Hansen contends that his counsel's performance was constitutionally deficient because she failed to renew her severance motion at the close of the State's case, thus waiving the issue for appeal under CrR 4.4(a)(2).<sup>5</sup> Because Hansen cannot demonstrate

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<sup>5</sup> CrR 4.4(a)(2) states:

If a defendant's pretrial motion for severance was overruled he may renew the motion on the same ground before or at the close of all the evidence. Severance is waived by failure to renew the motion.

that counsel's decision was not strategic or that there was a reasonable chance that the trial court would have reversed its earlier ruling and the outcome of the trial would have been different, his claim fails.

To prevail on an ineffective assistance of counsel claim, a defendant must show that (1) counsel's performance was deficient, and (2) counsel's deficient performance prejudiced him. State v. Grier, 171 Wn.2d 17, 32-33, 246 P.3d 1260 (2011) (citing Strickland v. Washington, 466 U.S. 668, 687, 108 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). The first prong of the test "requires a showing that counsel's representation fell below an objective standard of reasonableness based on consideration of all of the circumstances." State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987) (citing Strickland, 466 U.S. at 689).

Judicial scrutiny of counsel's performance must be highly deferential and begins with a strong presumption that the representation was effective. Strickland, 466 U.S. at 689; State v. McFarland, 127 Wn.2d 322, 337, 899 P.2d 1251 (1995). Trial counsel's legitimate strategy or tactics cannot be the basis for a claim of ineffective assistance. McFarland, 127 Wn.2d at 336.

The second or prejudice prong of the test requires a showing that there is a reasonable probability that, but for counsel's error, the result of the trial would have been different. Thomas, 109 Wn.2d at 226. In this context, Hansen must demonstrate that: 1) the severance motion would likely have been properly granted, and 2) if severance had been granted, there is a reasonable probability that the jury would have found him not guilty of the charges. State v. Sutherby, 165 Wn.2d 870, 885, 204 P.3d 916 (2009).

A defendant seeking severance must show that a trial on multiple counts "would be so manifestly prejudicial as to outweigh the concern for judicial economy." State v. Bythrow, 114 Wn.2d 713, 718, 790 P.2d 154 (1990). In evaluating possible prejudice, a trial court considers 1) the strength of the State's evidence on each count, 2) the clarity of defenses as to each count, 3) court instructions to the jury to consider each count separately, and 4) the admissibility of evidence of the other charges even if not joined for trial. State v. Russell, 125 Wn.2d 24, 63, 882 P.2d 747 (1994). Lastly, any residual prejudice must be weighed against the need for judicial economy. Id. On direct review, a trial court's

denial of a motion to sever will not be reversed absent an abuse of discretion. Bythrow, 114 Wn.2d at 717.

Hansen fails to meet either prong of the ineffective assistance of counsel test. First, there were legitimate, strategic reasons for trial counsel not to renew the motion to sever. Second, the trial court was not likely to grant a renewed motion nor can Hansen show that he would have been found not guilty had he been tried separately for the charges.

a. The Decision Was Strategic.

There was a legitimate reason for Hansen's counsel not to renew the motion to sever—the trial court had denied the motion pretrial and there was no significant change in circumstances to suggest that the court would reverse its original decision. Counsel is not ineffective for declining to pursue a strategy that reasonably appears unlikely to succeed, either at trial or on appeal. See McFarland, 127 Wn.2d at 334-37 & n.2, 899 P.2d 1251 (1995).

Moreover, as the trial progressed, counsel may have reasonably felt confident in moving forward on all of the charges rather than moving to sever. The State had been unable to have

the victim testify to any of the charges. 4RP 900-01. Second, the State had chosen to proceed with only one witness to identify Hansen's voice on the jail calls rather than also relying on the Buckley officers who listened to some of the calls, a fact that defense argued in closing undermined Zilbauer's voice identification. 4RP 929.

Third, Hansen's sister had testified that Hansen had another sister, Desiree, who had a sister unrelated to Hansen named Lauren. 4RP 799. This undermined key evidence for the State that Hartley was actually the individual speaking to Hansen on the jail calls because Hartley discussed her sister Lauren on one call and Zilbauer testified that Hartley had a sister named Lauren. 4RP 567, 664, 799; Ex. 3, call at April 15, 2012 at 1235 hours, file named 1334518515\_101.

Lastly, the State stipulated to the medical records, providing a distinct advantage to defense. 4RP 809; CP 48; Ex. 23. This allowed defense to introduce the medical records showing that Hartley's blood alcohol level had been .25 at the hospital immediately after the assault, thereby allowing defense to argue

that Hartley was not credible because of her intoxication.<sup>6</sup>

4RP 920-21; Ex. 23 at 12. And, the defense avoided the likely compelling testimony of the nurse and doctor testifying to Hartley's statements that her boyfriend punched and choked her and slammed her into a curb, rather than a documentary exhibit.

Ex. 23.

Defense counsel capitalized on these advantages in closing argument by using the theme that the State had not provided the "universe of information" necessary to find Hansen guilty beyond a reasonable doubt. 4RP 919-20. Defense explained that the assault case lacked key evidence—the testimony of Hartley or anyone that Hansen committed the assault, and that the State's case involving the jail calls lacked key evidence— testimony from anyone aside from Officer Zilbauer of the identity of the individuals on the calls. 4RP 919-22, 924-32, 934-35. The fact that defense

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<sup>6</sup> In closing argument, defense counsel pointed to the medical records showing that Hartley reported that she drank two beers a month and had not used recreational drugs in the past year. 4RP 920-21; Ex. 23 at 2. Counsel then contrasted that with the toxicology report in the records showing that Hartley's blood alcohol level was .25; that a toxic level was .3; and that Hartley also had cocaine, marijuana, and opiates in her system. 4RP 921; Ex. 23 at 12-13. Defense counsel summed up this evidence:

This is, for better or for worse, the reporter of information that you have as a jury and that you get to evaluate, and you didn't get to hear from her in a sober state of mind; you didn't get to hear from her after the fact what happened that night.

4RP 921.

counsel's strategy was not ultimately successful does not mean it was not reasonable at the time. See Strickland, 466 U.S. at 689.

b. Hansen Cannot Show Prejudice.

Next, Hansen fails to demonstrate prejudice because he cannot show that the motion would have properly been granted or that he would have been found not guilty if the motion had been granted. The trial court denied the motion at the end of five days of pretrial hearings and was well-acquainted with the facts from the parties' briefs, the testimony of Officer Zilbauer and EMTs Otto and Paradis, and listening to many of the jail calls. 1RP 2-65; 2RP 3-68; 3RP 2-49, 79-197, 199-371; CP 8-15, 38-41; Supp. CP \_\_\_ (sub no. 63).

The trial court properly concluded that the motion to sever should be denied and did not abuse its discretion in doing so. It carefully articulated its analysis in denying the motion, weighing each of the factors to determine prejudice. 3RP 368-71. None of the circumstances had changed to make it likely that the trial court would have granted a renewed motion to sever at the end of the State's case-in-chief. Instead, Hansen argues that the trial court's original denial of the motion was incorrect. Br. of App. at 12. This is insufficient to meet Hansen's burden on appeal.

Hansen mainly relies on the cross-admissibility factor in contending that because the trial court did not find that the assault and no-contact order violations were cross-admissible, its decision was incorrect. The trial court referenced Watkins in deciding this factor, which held it was harmless error to join two robbery charges for trial that were not cross-admissible. 53 Wn. App. at 273. However, Bythrow, decided after Watkins, is most instructive. 114 Wn.2d at 720-24. In Bythrow, the Washington Supreme Court clarified that the lack of cross-admissibility of joined offenses does not necessarily warrant severance. 114 Wn.2d at 720-21. Instead, the trial court in Bythrow properly denied severance for the two counts of robbery because: 1) the State's evidence was strong on each count, 2) the jury was instructed to consider each count separately, and 3) the jury was reasonably able to compartmentalize the evidence given the simple issues and that the trial lasted only a two days. Id. at 721-22. Lastly, any residual prejudice from joinder did not outweigh the concern for judicial economy. Id. at 723.

Here, the trial court properly denied Hansen's severance motion for similar reasons as in Bythrow. The State's evidence was strong for both the assault and the no-contact order violations. The

evidence of the assault was strong even without the victim's testimony; evidence included the statements that Hartley made to the first responders that Hansen assaulted her, and the medical records showing her fractured nose and orbital bone. Hansen agrees on appeal that the evidence for the assault was strong. Br. of App. at 12.

The evidence of the no-contact order violations was also strong, because the evidence was the actual recorded conversations of Hansen and Hartley. Despite the fact that Hansen attempted to refer to the female as "sister," the content of the calls and Zilbauer's testimony that the female voice was Hartley made these charges sufficiently strong. Hansen's counsel at trial agreed, although on appeal, Hansen contends the opposite. 3RP 361-62; Br. of App. at 12.

In addition, the trial was relatively short, lasting six days total with four days of testimony; the jury was properly instructed to consider each count separately and was provided a limiting instruction; and, although the charges were not cross-admissible, on balance any residual prejudice did not outweigh concerns for judicial economy. The trial court properly denied the severance motion.

The only factor for which Hansen attempts to show that circumstances had changed from the trial court's pretrial denial of the motion was the jury's ability to compartmentalize the evidence. Hansen contends that this factor weighed against joinder because the testimony lasted four days and witnesses were not presented sequentially. Br. of App. at 14. Hansen is incorrect. The evidence of the no-contact order violations was mainly the jail calls, which was of a different quality than the testimony of officers and medical providers for the assault. At four days, the testimony was still relatively short. The limiting instruction, which the jurors are presumed to have followed, made it abundantly clear that the jail calls could only be used as evidence of the no-contact order violations. CP 78; see State v. Warren, 165 Wn.2d 17, 28, 195 P.3d 940 (2008). On balance, this factor still weighed in favor of joinder.

Also, the jail calls would have been cross-admissible under ER 404(b) as evidence of Hansen and Hartley's dating relationship.<sup>7</sup> The State had to prove the domestic relationship in order to prove that the assault was a domestic violence offense.

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<sup>7</sup> ER 404(b) prohibits the admission of other crimes, wrongs, or acts to prove the character of a person in order to show action in conformity therewith. It allows such evidence for other purposes, such as to show motive.

CP 87-89. The calls showed that Hansen and Hartley were in a dating relationship. 4RP 583-89; Ex. 3. Hansen's counsel also argued in closing that the State had not proved Hansen and Hartley's relationship, making this evidence necessary.<sup>8</sup> 4RP 925.

Lastly, Hansen attempts to flip the standard that he must meet to prevail on appeal by contending that "nothing had occurred during the trial to mitigate the prejudice that counsel anticipated when bringing the motion in the first place," so that the only reason counsel failed to renew the motion was neglect. Br. of App. at 16. Hansen is incorrect. To prevail, Hansen must demonstrate that the trial court would likely have properly granted the motion had it been renewed and that the result of the trial likely would have been different. Hansen cannot meet this burden. He cannot show that counsel did not have strategic reasons for not renewing the motion or that the trial court likely would have properly granted it at the close of the State's case. Finally, as shown above, the State's evidence on all counts was strong, thus, even if the assault had

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<sup>8</sup> Hansen's counsel argued:

Brandon Hansen's name appears one time in the medical records, right here, as the person to notify or contact, Brandon Hansen, 1533 Whitmore Way, Buckley, Washington. That's the address that you heard from both his cousin and his sister, who testified. That's the address where he lives. His relationship? Friend.

4RP 925.

been severed from the no-contact order violations, the result of the trial would likely have been the same.

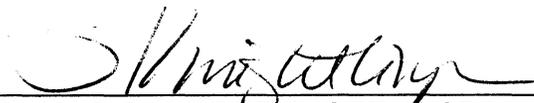
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Hansen's convictions.

DATED this 12<sup>th</sup> day of February, 2015.

Respectfully submitted,

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By:   
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Jared Steed, the attorney for the appellant, at Steedj@nwattorney.net, containing a copy of the Brief of Respondent, in State v. Brandon Lee Hansen, Cause No. 71215-2, 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 12<sup>th</sup> day of February, 2015.

U Brame

Name:

Done in Seattle, Washington

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