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DIVISION II

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STATE OF WASHINGTON
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

NO. 38001-3-II

STATE OF WASHINGTON,

Respondent.

vs.

BOW STAR HALL

Appellant.

On Appeal from the Superior Court of Lewis County

STATE'S RESPONSE BRIEF

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STATEMENT OF THE CASE

Appellant's version of the statement of the case is adequate for purposes of this response.

ARGUMENT

A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT MR. HALL'S CONVICTION FOR VIOLATING A PROTECTIVE ORDER.

Bow Star Hall raises three issues on appeal. In his first, he claims that the evidence offered at trial was insufficient to permit a trier of fact to establish the elements of the crime of violating a protective order. This argument is not persuasive.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the state's evidence and all inferences that reasonably can be drawn from it. *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068. Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850(1990). The reviewing court must defer to the trier of fact on issues of conflicting

testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533 (1992). Circumstantial evidence is given equal weight with direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). As further explained below, sufficient evidence was presented in this case to support both convictions.

1. Substantial Evidence Supports the Conclusion That Bow Star Hall Had Knowledge of the May 4, 2007 Protective Order.

Mr. Hall argues that the state did not present sufficient evidence to show that he had knowledge of a protection order when he violated its terms. This argument is without merit. It is a straw man argument. Mr. Hall attempts to misdirect this court's attention away from his knowledge of the May 4, 2007 order (exhibit 7) by contesting he had a lack of knowledge of the May 25, 2007 order. He asserts that the May 4th order was invalid after May 25th, and then he establishes that he lacked notice of the second order. But his lack of knowledge of the May 25th order is immaterial. The lack of notice was uncontested at trial and the trial court specifically found that notice was lacking. CP 5, 1.4. It is Mr. Hall's knowledge of the May 4th order that is relevant. It was Mr. Hall's

failure to adhere to this order (Exhibit 7) that was the basis for the state's case at trial. See RP (6/09/08) 41, 46, 59, 86-87.

Mr. Hall's lack of knowledge of the May 25th order is beside the point because he had knowledge of the May 4th order. There is no question regarding this fact. The trial court found that Mr. Hall was aware of the May 4th order and this finding is undisputed on appeal. CP 5, 1.3. The evidence in the record is also incontrovertible and supports the finding. As Exhibit 7 illustrates, Mr. Hall was present at the hearing where the court commissioner entered the order. CP 5, 1.3. The commissioner noted that Mr. Hall refused to sign the order. Supp. CP Exhibit 7. This evidence effectively establishes his knowledge of the order, but it does not stand alone. It is supported by various statements of Mr. Hall acknowledging the order. Approximately a month before the date of the crime, Mr. Hall stated to a witness that "after May 8th [2008] the order would be over." RP 6/09/08, 75-77. On the day of the crime, he made a similar statement to Deputy Godbey. Upon being questioned by the officer, Mr. Hall answered that he was aware of a protection order prohibiting his contact with Ms. Hanson and his presence at her house. RP (6/09/08) 58 & 21. In light of this

evidence, there was no need for the state to prove his knowledge of the May 25th order. And his lack of knowledge of this nearly identical subsequent order certainly does not excuse his violation of the first order.

When viewed in the light most favorable to the state, the record sufficiently establishes that a restraining order existed on April 18, 2008, that Mr. Hall was aware of that order, and that he knowingly violated the order on that date.

2. Mr. Hall waived all arguments contesting the validity of the may 4th order.

Instead of contesting the evidence of his knowledge of the May 4th order, Mr. Hall concedes that he this knowledge but argues that the commissioner vacated the May 4th order prior to his commission of the crime. Appellant's Brief at 8. He argues that entry of the May 25th order, which corrected the May 4th order's termination date, vacated the earlier order. Whether this is correct, the argument is not subject to sufficiency of the evidence analysis and was not preserved for appeal.

The validity of an underlying restraining order is not an element of the crime of felony violation of a restraining order. *State*

v. Miller, 156 Wn.2d 23, 31 (2005). Rather, the validity of a restraining order is an evidentiary issue that a court must determine. A defendant's contention that an underlying order is invalid is a question of relevancy that the trial court must consider in admitting the order into evidence. *Miller*, 156 Wn.2d at 24. See also, *State v. Carmen*, 118 Wn.App. 655, 663-664, 77 P.3d 368 (2003). A trial court "...as part of its gate-keeping function, should determine as a threshold matter whether the order alleged to be violated is applicable and will support the crime charged. Orders that are not applicable to the crime should not be admitted." *Miller*, 156 W.2d at 31.

Thus, the appropriate standards by which this court should review the validity of the May 4th order is not sufficiency of the evidence, but those standards applicable to review of evidentiary rulings. These are well known. A trial court's decision to admit evidence is reviewed for abuse of discretion. See *State v. Lough*, 125 Wn.2d 847, 856, 864-65, 889 P.2d 487 (1995). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *State v. Perrett*, 86 Wn.App. 312, 319, 936 P.2d 426 (citing *Havens v. C & D Plastics, Inc.*, 124

Wn.2d 158, 168, 876 P.2d 435 (1994)), *review denied*, 133 Wn.2d 1019 (1997). And a defendant must make an objection to the admission of evidence before the trial court and not for the first time on appeal. *State v. Thetford*, 109 Wn.2d 392, 397, 745 P.2d 496 (1987).

Viewing the admission of the May 4th order according to these standards, Mr. Hall cannot now contend that the order was not sufficient to support his conviction. Mr. Hall did not object to the order at trial. Mr. Hall's counsel specifically denied having any objection to the court's admission of Exhibit 7. RP (6/09/08) 77. By doing so, he waived any future argument contesting admission of that order and consented to its validity. Admission of the order by the trial court established its validity; that it "will support the crime charged." *Miller*, 156 Wn.2d at 31. And Mr. Hall cannot now dispute that on appeal.

3. The trial court's admission of the May 4th order into evidence was not an abuse of discretion.

Even if we consider the appropriateness of the trial court's evidentiary ruling now on appeal, the court did not abuse its discretion by admitting the May 4th order into evidence. The May

4th was a valid order at the time Mr. Hall violated it, and was thus relevant to a determination of Mr. Hall's guilt.

Looking at the two orders in the light most favorable to the state, the reasonable and obvious inference to be drawn from the record is that there was only one restraining order, the May 4th order. By entering the order on May 25th, the commissioner did not issue a second restraining order. The May 25th order is an order amending the May 4th order - correcting the obvious scrivener's error in that order – and is not a new and separate restraining order. The May 25th order did not vacate the May 4th order as Mr. Hall suggests, it simply revised it.

It cannot be disputed that the May 25th order states that it “amends and supersedes” the May 4th order. But this language is not determinative. Although this parlance is commonly found throughout law, its meaning is ambiguous. Orders superseding other orders do not need to amend the antecedent orders. And there is no reason to supersede an order if the court's intent is merely to amend it. The two words are also largely mutually exclusive. An order amending an earlier order preserves the original order, while an order superseding another vacates the

preceding one. It is thus difficult to discern a court's intent regarding the authority of an order from its mechanical use of this customary phrase.

In contrast, the remaining language of the May 25th order clearly establishes that the order did not vacate the prior order. First, it is clear that there was no reason for the court commissioner to vacate the prior order. The order was not invalid or based on faulty evidence. It was not the result of improper judicial reasoning or determination. The order merely contained a scrivener's error that was the result of mistake or inadvertence. The appropriate response to this type of error is not to vacate the order, but to amend it. See CR 60(a).

It is also clear from the face of the order that the commissioner intended to correct the original order, not to replace it. The caption of the May 25th order states it is a "revised" temporary order. Supp. CP Exhibit 6. Similarly, the commissioner did not set a new expiration date in the second order, but simply revised the previous date to correct the obvious error. If the May 25th order truly superseded the May 4th order, it vacated that order and the May 4th order's "legal status [was] the same as if the order

had never existed.” *City of Tacoma v. Cornell*, 116 Wn.App. 165, 170, 64 P.3d 674 (2003); *Geiger v. Allen*, 850 F.2d 330, 332 (7th Cir.1988) (*quoting Mitchell v. Joseph*, 117 F.2d 253, 255 (7th Cir.1941)). In that case, one would expect the court to set May 25, 2008 – twelve months from the date of entry - as the expiration date of the order. The fact that the court commissioner used May 4, 2008 as the expiration date indicates that she did not consider the May 4th order vacated by the order entered on May 25th. A new and separate order would have an expiration date twelve months from its entry, or on May 25, 2008.

The law’s treatment of scrivener’s errors in other legal contexts also supports the conclusion that the commissioner’s correction of the date error did not have the affect of abrogating her original ruling. In the case of an appeal of a criminal sentence, remand to correct a scrivener's error does not result in a new final judgment and sentence, but merely modifies the original one. *State v. Amos*, 147 Wn.App. 217, 224 (2008) (*citing* RAP 2.2(a)(1), CrR 7.8(a) and *In re Pers. Restraint of Mayer*, 128 Wn.App. 694, 701-02, 117 P.3d 353 (2005)). The original sentence remains in full force and effect. Likewise, the May 4th order remained fully

effective after the commissioner amended its duration through entry of the May 25th order.

This evidence creates tenable grounds for the trial court's admission of the May 4th order into evidence. It was not an abuse of discretion for the court to admit the order as relevant to the crime charged.

4. Mr. Hall waived all objections to the relevancy of the May 4th order on the basis of the scrivener's error contained within it. The order was properly admitted.

The state's argument raises a second issue regarding the admissibility of the May 4th order: whether the order as originally entered was relevant since it expired on the same day as the commissioner entered it. Mr. Hall does not raise this matter directly, since his appellate arguments solely regard the court's May 25th order. However, since he generally states that the May 4th order was "not in effect on the violation date," the state will address this issue. Appellant's Brief at 8-9.

First, as with Mr. Hall's claim that the May 25th order superseded the May 4th order, challenges to the clarity of the term of an order contest the validity of the order. *Miller*, 156 Wn.2d at 31 (overruling *State v. Edward*, 87 Wn.App. 305 (1997) holding that

the state failed to establish an implicit element of the crime of violation of a protection order, the validity of the order, because the inconclusive term of the order rendered it void). If the term of a restraining order is unclear it may not provide a defendant adequate notice of the scope of the restraints imposed upon him. See *Miller*, 156 Wn.2d at 29. As noted above, evaluation of the validity of an underlying restraining order is “properly a question of law for the judge, not of fact for the jury.” *Miller*, 156 Wn.2d at 30. Here, the trial judge admitted the May 4th order. In doing so, the judge implicitly found the order relevant and applicable to the crime charged. Mr. Hall’s failure at that time to object to admission of the order waived his option later to challenge the trial courts admission and reliance on the May 4th order. Thus, regardless of whether the order’s term affected its relevancy, its validity must be accepted on appeal.

Regardless, the trial court did not abuse its discretion to admit the May 4th order. When the evidence is looked at in the light most favorable to the state, it establishes that the order was sufficiently clear to give Mr. Hall notice that its term was for one year not one day.

First, the order expressly states that it “will expire in 12 months...” Supp. CP, Exhibit 6 at 3. Second, the nature and conditions of the order indicate a term longer than a single day. The order restrained Mr. Hall from entering the victim’s home, her work place, and his child’s school. There is no imaginable purpose for the court to impose these constraints on Mr. Hall for a solitary day.

Third, the temporary relief listed in paragraph 3.2 of the order is inconsistent with the term of the order extending only one day. The paragraph sets out the terms and conditions for Mr. Hall’s *weekly* supervised visitation of his child. These visitation conditions are pointless if the order expired on the day of its entry.

Finally, the error is the type that a reasonable person would recognize as a simple mistake or careless misprint – the order simply uses the prior year in the expiration date rather than the current one.

In light of these aspects of the order, a reasonable person could not have understood the order to apply to a single day. The statements in the record of Mr. Hall, Deputy Godbey, and Sandra Hanson show that there was in fact no such misunderstanding.

Ms. Hanson's testimony at trial shows that she understood the May 4th order to be valid in 2008. She testified that exhibit 7 was "set to expire... around May 4th" of 2008. RP (6/09/08) 41. Similarly, the testimony of Ms. Melinda Hanson and Deputy Godbey show that Mr. Hall was also not unclear about the term of the order. Melinda Hanson testified that shortly before the date of the crime, Mr. Hall stated to her that he knew the order extended to May 8th. RP (6/09/08) 75. And Deputy Godbey testified that after speaking to both Melinda and Sandra Hanson and to Mr. Hall on the day of the crime he "had every reason to believe that he [Mr. Hall] was aware that there was a valid order" restricting him from entering the house on April 18, 2008. RP (6/09/08) 59-60. Thus, this is not a case such as *State v. Edward* where the language of the order was too vague to allow a reasonable person to determine if the order was effective. *Edward*, 87 Wn.app. at 311. Here, the order was sufficiently clear to inform the defendant of the one year duration. And the testimony established that, in fact, the parties had knowledge that the order had not expired at the time of Mr. Hall's entry into the residence. Based on this evidence, it was reasonable

for the court to admit the order into evidence. The court did not abuse its discretion by doing so.

Viewing the record in the light most favorable to the state, sufficient evidence supports Mr. Hall's conviction on Count II, including the element of knowledge. The evidence of Mr. Hall's knowledge of the May 4th order is clear. Whether this order was superseded or effective for only a single day are issues waived by Mr. Hall's failure to object to the trial court's admission of the order at trial. Regardless, the trial court's implicit finding that the May 4th order was valid and applicable was satisfactorily supported and reasoned. If Mr. Hall possesses evidence outside the record that the commissioner intended the May 4th order to expire in one day or intended the May 25th order to supersede the prior order, his recourse lies in a personal restraint petition. See, *State v. Carter* 127 Wn.App. 713, 719, 112 P.3d 561, 565 (2005).

B. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT MR HALL'S CONVICTION FOR RESIDENTIAL BURGLARY.

Mr. Hall next challenges Count I of his conviction, residential burglary. His arguments regarding Count I are an extension of his arguments against Count II and fail for the same reasons.

1. There is sufficient evidence establishing that Mr. Hall's unlawful entry and his intent to commit a crime.

Mr. Hall alleges that the state's failure to prove that he had knowledge of the May 25th order bars the court from finding he unlawfully entered Ms. Hanson's house and intended to commit a crime in doing so. But as already noted, Mr. Hall concerns himself with the wrong order. It is the May 4th order that is the basis for his conviction. It is uncontested that Mr. Hall was aware of this restraining order at the time he entered the victim's house. His knowledge of the order made his entry into the house unlawful. It also establishes that the entry was with the intent to commit a crime – violation of the May 4th order.

The fact that the court entered a second order restraining him for entering the residence does not excuse his violation. The record establishes that the May 4th order was a valid order. Regardless, Mr. Hall is bared from contesting the May 4th order's validity now for the first time on appeal.

2. Mr. Hall's mental state did not impair his intent to violate the restraining order.

Mr. Hall also briefly challenges his burglary conviction on the basis that the state failed to present sufficient evidence of criminal

intent. He quotes unspecified testimony from the record that Mr. Hall possessed mental defects at the time of his entry into the house. However, neither quote establishes to what degree the speaker felt Mr. Hall's mental facilities were impaired or whether the impairment prevented him from intending to violate the order. See RP (6/09/08) 27.

Regardless, the record contains sufficient evidence of Mr. Hall's intent. The records establishes that Mr. Hall was aware of the May 4th restraining order, that he was aware of Ms. Hanson's identity, and that he was aware he was inside her house. RP (6/09/09) 34 & 43. No more evidence of Mr. Hall's intent to violate the restraining order's provisions is needed. Because violation of a restraining order can serve as the predicate crime for residential burglary, proof of a defendant's knowledge and violation of a restraining order establish the "intent to commit a crime" element for burglary. *State v. Stinton*, 121 Wn.App. 569, 576, 89 P.3d 717 (2004).

Moreover, state law provides a permissive inference of intent to commit burglary. In burglary cases, a trier of fact may infer the requisite intent for burglary whenever the evidence shows "a

person enters or remains unlawfully in a building.” *State v. Brunson*, 128 Wn.2d 98, 107, 905 P.2d 346 (1995) (quoting RCW 9A.52.040). The permissive inference must be established according to the “more likely than not” standard of proof. *Brunson*, 128 Wn.2d at 107. There is sufficient evidence in the record to establish the inference and to dispel any claim that Mr. Hall violated the restraining order due to some diminished mental state.

The record establishes that although Mr. Hall spoke incoherently at times, he was cognizant of his location on the date of the crime and that he had entered the house in violation of the order. Aimee Devous testified that Mr. Hall knew he was at Ms. Hanson’s house because he complimented Ms. Hanson on the appearance of the dwelling. RP (6/09/08) 34. Similarly, Deputy Godbey stated that in a moment of coherence, Mr. Hall told him that he was aware of the restraining order. Mr. Hall also acknowledged to the deputy that he was not supposed to be at the Hanson home. RP (6/09/08) 58. Mr. Hall claimed that a judge had “squashed” the order, but other testimony threw the veracity of this belief that the order was stricken into doubt. RP 6/09/08) 58-59. Sandra Hanson testified that she wasn’t sure if Mr. Hall was

capable of truly believing that a judge had stricken the order, but it was her opinion that Mr. Hall did not so believe. RP (6/09/08) 53-54. She indicated that he had made the statement as an attempt to avoid being arrested. *Id.* Deputy Godbey echoed this opinion, affirming that it appeared to him that Mr. Hall was attempting to talk his way out of being taken into custody. RP (6/09/08) 62. He also observed that Mr. Hall raised the topic of a “squashed” order once the deputy advised him he was under arrest. RP (6/09/08) 60. Finally, it was the deputy’s opinion that Mr. Hall’s incomprehensible statements and irrational behavior were due to the defendant being “under the influence of a drug.” RP (6/09/08) 69.

Viewing the evidence and the reasonable inferences in the light most favorable to the state, a rational trier of fact could find that Mr. Hall possessed criminal intent. The evidence cited above establishes that at the time Mr. Hall entered Ms. Hanson’s residence, he was not confused about the existence of an order prohibiting his presence there. Based upon this evidence, a court could find that Mr. Hall’s insinuations that the order had been quashed were a ploy to escape arrest or were the product of drug use. Because Mr. Hall did not assert a diminished capacity

defense at trial, in either case his appeal fails. He either possessed the requisite intent to establish guilt of residential burglary, or he has waived the defense that his intoxication impaired his ability to form the specific intent. RAP 2.5(a); *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999) (appellate court will not review issues that were not raised in the trial court).

C. BOW STAR HALL HAS NOT SHOWN THAT TRIAL COUNSEL WAS INEFFECTIVE.

Mr. Hall's third claim is that his trial counsel was ineffective. He argues that his counsel's failure to object to certain evidence prejudiced him and put the veracity of the trial's outcome in doubt. This argument, too, is without merit.

1. Standard of review.

The standard of review for effective assistance of counsel is whether, after examining the whole record, the court can conclude that the defendant received effective representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988). The right to effective assistance of counsel is the right "to require the prosecution's case to survive the crucible of meaningful adversarial testing." *United States v. Cronin*, 466 U.S. 648, 656, 104 S.Ct. 2045, 80 L.Ed.2d 657 (1984). When such a true adversarial

proceeding has been conducted, even if defense counsel made demonstrable errors in judgment or tactics, the testing envisioned by the Sixth Amendment of the United States Constitution has occurred. *Id.*

To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-pronged test laid out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); *see also State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987). First, a defendant must demonstrate that his attorney's representation fell below an objective standard of reasonableness. Second, a defendant must show that he or she was prejudiced by the deficient representation. There is a strong presumption that a defendant received effective representation. *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995), *cert. denied*, 516 U.S. 1121, 116 S.Ct. 931, 133 L.Ed. 2d 858 (1996). An appellate court is not likely to find ineffective assistance on the basis of one alleged mistake. *State v. Carpenter*, 52 Wn.App. 680, 684-685, 763 P.2d 455 (1988).

Judicial scrutiny of a defense attorney's performance must be "highly deferential in order to eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689. Indeed,

[w]hat decision [defense counsel] may have made if he had more information at the time is exactly the sort of Monday-morning quarterbacking the contemporary assessment rule forbids. It is meaningless . . . for [defense counsel] now to claim that he would have done things differently if only he had more information. With more information, Benjamin Franklin might have invented television.

Hendricks v. Calderon, 70 F.3d 1032, 1040 (9th Cir. 1995). In other words, the reviewing court must judge the reasonableness of counsel's actions "on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* At 690; *State v. Benn*, 120 Wn.2d 631, 633, 845 P.2d 289 (1993).

2. Trial counsel did not error in failing to make a corpus delicti objection since evidence corroborated Mr. Hall's statement.

Mr. Hall claims his counsel was ineffective for failing to object to Melinda Hanson's testimony that Mr. Hall told her he was restrained from visiting her sister's house until May 8th. Appellant's Brief at 13. He argues that the statement was inadmissible since the state failed to present corroborating proof of Mr. Hall's

knowledge of the restraining order. He contends that had the court suppressed the statement under the doctrine of *corpus delicti*, the state could not have established the knowledge element of the crime of violation a protection order. Appellant's Brief at 13. Mr. Hall's argument fails because he ignores the additional proof that he had knowledge of the May 4th order.

Under the *corpus delicti* rule, a defendant's admission is not sufficient, standing alone, to prove guilt, and must be corroborated by other evidence. *State v. Aten*, 130 Wn.2d 640, 655-56, 927 P.2d 210 (1996). This corroborative evidence must merely establish a logical and reasonable inference of the facts sought to be proved by the state. *Aten*, 130 Wn.2d at 656, 927 P.2d 210. The independent evidence itself need not establish the criminal element sought to be proven by the admission, but only the truthfulness of the admission. *Opper v. United States*, 348 U.S. 84, 93, 99 L.Ed. 101 (1954).

Here, Mr. Hall's statement that he knew he was restrained by an order until May 8th is not the sole evidence establishing Mr. Hall's knowledge of the May 4th order. As previously noted, Mr. Hall's attendance at the proceeding where the commissioner

entered the May 4th restraining order verifies his knowledge of the order. Certainly, his presence at the proceeding establishes a logical and reasonable inference that Mr. Hall's acknowledgment of the order was truthfully conveyed. Thus, a *corpus delicti* objection to the admission of the statement could not have succeeded. And the decision not to make such an objection was not an unprofessional error by Mr. Hall's counsel. Mr. Hall's statement was corroborated by other evidence.

The decision also did not prejudice Mr. Hall. Even if his counsel had objected to Ms. Hanson's testimony and the court had suppressed it, the state still presented sufficient evidence for a rational trier of fact to determine that Mr. Hall was aware of the May 4th order. Again, his presence at the May 4th hearing was sufficient to establish the knowledge element of the crime.

CONCLUSION

Sufficient evidence supports the convictions for violation of a restraining order and for residential burglary. When viewed in the light most favorable to the state, the evidence shows that Mr. Hall had knowledge of the May 4th order and that he violated the order. Challenges to the validity of this order were waived at trial. And the

trial court did not abuse its discretion when it allowed into evidence the May 4th order. The record also establishes that Mr. Hall's irrational behavior and incoherence did not negate his intent to violate the order. And the corroborating evidence of Mr. Hall's presence at the proceeding at which the court entered the May 4th order establishes *corpus delicti* of the crime. Because none of Bow Star Hall's claims have merit, his convictions should be affirmed in all respects.

RESPECTFULLY submitted this _____ day of February, 2009.

MICHAEL GOLDEN
Lewis County Prosecuting Attorney

by: _____
DOUGLAS P. RUTH, WSBA 25498
Attorney for Plaintiff

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

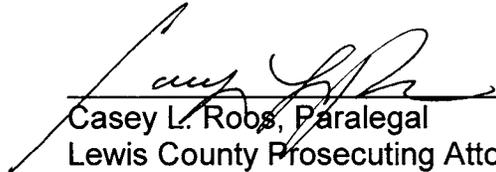
STATE OF WASHINGTON,) NO. 38001-3-II
Respondent,)
vs.)
BOW STAR HALL,)
Appellant.)
DECLARATION OF
MAILING

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DIVISION II
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STATE OF WASHINGTON
DEPUTY

Ms. Casey Roos, paralegal for Douglas P. Ruth, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On February 10, 2009 the appellant was served with a copy of the **Respondent's Brief** by depositing same in the United States Mail, postage pre-paid, to the attorney for Appellant at the name and address indicated below:

Jodi R. Backlund
Manek R. Mistry
203 Fourth Ave E Suite 404
Olympia WA 98501

DATED this 10th day of February 2009, at Chehalis, Washington.


Casey L. Roos, Paralegal
Lewis County Prosecuting Attorney Office