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IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

FILED

APR 06 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By: \_\_\_\_\_

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 vs. )  
 )  
 JOSE R. VELIZ, JR., )  
 )  
 Appellant. )

No. 284956

FILED  
APR 13 2011  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

APPEAL FROM COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

PETITION FOR REVIEW

GEORGE P. TREJO, Jr.  
Attorney for Jose R. Veliz, Jr.

THE TREJO LAW FIRM  
701 NO. 1ST STREET, SUITE 100  
YAKIMA, WA 98901  
(509) 452-7777

**IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	<b>No. 284956</b>
	)	
vs.	)	
	)	
JOSE R. VELIZ, JR.,	)	
	)	
Appellant.	)	

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OF THE STATE OF WASHINGTON**

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**A. IDENTITY OF THE PETITIONER:**

The Petitioner, Jose R. Veliz Jr., through his attorney, George Paul Trejo, Jr. of The Trejo Law Firm Petitions this honorable court for review of his case designated in Part B of this Petition.

**B. COURT OF APPEALS DECISION:**

The Petitioner respectfully requests this honorable court to accept review of this petition as it involves an issue of substantial public interest that should be determined by the Supreme Court.

The Petitioner seeks review of the court of appeals decision where it concluded "that the term 'court-ordered parenting plan' as used in RCW 9A.40.060 (2) encompasses any valid court order that establishes a minor child's parent' rights to residential placement and/or visitation, including the order for protection in this case." Decision at p. 2. In addition, the Petitioner seeks review of the lower court's holding that the trial court did not abuse its discretion in admitting the challenged evidence." Id.

The court of appeals decision is State of Washington v. Jose R. Veliz Jr., No. 284956. It was filed on March 8, 2011. A copy of the Decision is attached hereto in the Appendix.

**C. ISSUES PRESENTED FOR REVIEW:**

1. Whether an Order of Protection is a Court ordered Parenting Plan for purposes of Custodial Interference in the First Degree, RCW 9A.40.060 (2) (a)?
2. Assuming arguendo, whether an Order of Protection constitutes a Parenting Plan for purposes of Custodial Interference in the First Degree, an improperly filled out Order of Protection can support a conviction since it lacks proper notice to defendants?
3. Whether a trial court commits reversible error in allowing, over objection, testimony as to another name used by the defendant/appellant as it is not relevant, or in the alternative should be excluded under ER 403 on the charge of Custodial Interference in the First Degree?

**D. STATEMENT OF THE CASE**

The testimony and evidence presented at trial was as follow:

**Karla Carmac**; Ms. Carmac stated that she was an attorney with the Northwest Justice Project, a legal aid office. (RP 25) She indicated that she consulted with Lorena Veliz, who presented her with a protection order. (RP 25-26). The protection order had been filled out by a Judge Swisher.

Over continuing objection, the witness testified that the order allowed visitation every weekend of Nicole Veliz, a child of Lorena Veliz and the defendant, Jose Veliz. (RP 27-29) She further testified that Mr. Veliz had visitation with Nicole from Saturday at 10:00 am until Sunday at 5 pm, every weekend. (RP 30) The order was dated May 5, 2008. (RP 30-31) The attorney was not present when the exhibit was entered. (RP 37) She had not reviewed a transcript of the hearing of May 5, 2008. (RP 37)

The Order for Protection was a mandatory form pursuant to RCW 26.50.060. (RP 37) The court starts with a blank which is then filled in by the parties, the attorneys or the judge and is then signed by the court. (RP 37-38) The form has boxes that can be checked off as may be applicable.

The Order for Protection had boxes number 1-8, with the first 7 boxes being checked off, but box 8 was not checked off. On page 3 of the order, none of the boxes were checked off. (RP 39) On page 3 of the protection order, item number 15, which pertained to visitation, was not checked off. (RP 39)

Items 12, 13, 14 and 15 dealt with custody and visitation and none of those were checked off. (RP 40).

The witness further agreed that RCW Chapter 26.09 deals with dissolutions. (RP 41) She further agreed that Mr. Veliz

initiated a dissolution action on May 14, 2009, 9 days after the entry of the Order of Protection. (RP 41).

Ms. Carmac filed a Notice of Appearance in the dissolution action in June 2008. (RP 41). A Temporary Parenting Plan was entered by Judge Yule on August 25, 2008. (RP 31) The witness stated that RCW Chapter 26.09 was very specific in terms of what the requirements were for temporary parenting plans and permanent parenting plans. (RP 42) In the Veliz matter a permanent parenting plan was entered in January 2009. (RP 42)

**Lorena Veliz** Lorena Veliz stated on May 5, 2008, she obtained a protection order and that Mr. Veliz was present. (RP 45) Mr. Veliz would pick up Nicole and have her with him on Saturdays and Sundays. (RP 46)

On August 17th or 18, 2008, which was a weekend, Mr. Veliz picked up Nicole but did not bring her back. (RP 46) She stated that he was supposed to bring her back on Sunday, August 18, 2008, at 5 p.m. (RP 46-47) She based this belief on her interpretation of the order of protection of May 2008. (RP 54) She waited for one hour and then called the police. (RP 47) She did not see Nicole again until approximately December 21, 2008. (RP 47) She met her at the airport in Pasco. (RP 47)

Jose Veliz The defendant/appellant, Jose Veliz, testified in his own defense. He stated that Nicole Veliz was his daughter and that he had three other children that he saw all the time. (RP 72)

He stated that he and Ms. Veliz separated on April 16, 2008. (RP 74) He was present in court when the Order for Protection was entered on May 5, 2008. (RP 74-75) The Order is a four-page form with some of the information being filled out before the hearing. (RP 75) He stated that on page 3, item 15, regarding visitation, that this was filled out before the hearing, but that Judge Swisher, when he wrote on, and then signed the form, did not check off item number 15, regarding visitation. (RP 76) He and his wife and the judge then signed the form. (RP 76)

During the time period from the April 16, 2008, separation, until the May 5, 2008, hearing he continued to see Nicole regularly. After the May 5, 2008, hearing, he understood the order to prevent him from bothering his wife but he did not interpret it as a visitation order. (RP 77) He worked during the week and would see his daughter on weekends. (RP 78)

He had his daughter on the weekend of Saturday, August 17, 2008, and Sunday, August 18, 2008. (RP 78) As of that date, no temporary parenting plan had been entered pursuant to the

dissolution proceedings. (RP 78) The first temporary parenting plan was entered on August 25, 2008. (RP 79)

Thus, he left with his daughter and they went to Los Angeles. (RP 79) He then decided to take Nicole to Mexico to see her grandparents. (RP 79) Mr. Veliz also wanted to meet his wife's family as he knew little about them and since he was going to get divorced, he thought that his daughter might be having more contact with his wife's family. (RP 79) Mr. Veliz had never met his wife's family. (RP 80)

Mr. Veliz had obtained the addresses of where his wife's family lived at in Colima and Guadalajara, Mexico. (RP 80) He and Nicole went to Colima, Mexico where he met his wife's brother, Norberto, as well as some other brothers. (RP 80-81) He and Nicole met her grandparents. (RP 80) They then traveled to Guadalajara, Mexico and met two sisters of his wife. (RP 80) At each place, he introduced his daughter to her relatives. (RP 81)

He and his daughter also spent some time in Manzanillo, Mexico. (RP 81) When he went to Mexico, he did not know how long he would be there. (RP 81) They traveled by bus within Mexico. (RP 82)

When they were done visiting, they then took a bus to Tijuana, Mexico. (RP 82) On December 15, 2008, he and Nicole

presented themselves at the point of entry into the United States at San Ysidro, California. (RP 83)

Prior to that date, he had found out that there was a court order for his arrest. (RP 90) He was arrested on his way back to return Nicole to her mother. (RP 91) He told the immigration authorities his name and told them that he thought that he had a warrant for his arrest. (RP 93) He gave the immigration officials his Washington state driver's license and social security card under the name of Joe Veliz, as well as his birth certificate. (RP 100) He also provided his daughter's birth certificate. (RP 100)

Over objection, the State was allowed to present evidence that the appellant, at the time of his arrest, had additional identification with the name of Joel Rodriguez. (RP 97) This was an identification that a friend of his got for him to use in Mexico. (RP 97) Rodriguez was his mother's surname. (RP 97) Over defense objection, the identification in the name of Joel Rodriguez was admitted. (RP 98)

The portion of the Order of Protection (CP 35-38), where it indicated that he could not take his child out of the State, was not checked off by the court. Neither was the visitation schedule. (RP 99) He did not believe that he was prohibited from taking his daughter out of the State of Washington. (RP 99)

Mr. Veliz stated that it was never his intent to deny Nicole's mother from ever seeing Nicole again. (RP 83) It was never his intent to deny the mother access to Nicole for a protracted period of time. (RP 83) Previously, he had Nicole for four months all by himself when his wife went to Mexico. (RP 84).

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

**I. Convictions such as the one in the underlying proceeding must be reversed as evidence of an Order of Protection does not establish a Court Ordered Parenting Plan**

Mr. Veliz was charged by information with violating RCW 9A.40.060(2)(a) . . . "during the time intervening between the 16th day of August, 2008, and the 17th day of August, 2008, . ." (RP 56)

The plain language of the Information means the defendant had to have violated the statute by conduct occurring between the dates indicated, although the dates are consecutive to each other. A literal reading would require one to conclude that the time period was midnight of Saturday, August 17, which would be the start of Sunday, August 17, 2008. It is critical to this issue that the court keep in mind that the time period charged was a Saturday/Sunday weekend period.

The State, in prosecuting this case, based its position upon an Order of Protection, entered on May 5, 2008, as constituting the

"court ordered parenting plan", which it maintained was violated, thus leading to the instant charge. The record is devoid of any court ordered parenting plan because there was none. The defense maintained that the Order of Protection was not a "court order parenting plan" for purposes of the statute at issue. However, even that document, consistent with the State witnesses, gave the defendant, Mr. Veliz, the right to have visitation with his daughter that weekend and every weekend. The document, assuming that it was a court ordered parenting plan, and assuming that its visitation provisions, which were not checked off by the court, read as follows:

The respondent (Jose Veliz) will be allowed visitation as follows: Weekends Saturdays & Sundays or in accordance with a court ordered parenting plan. Sat & Sunday Sat from 10 AM to Sunday at 5 pm. (CP 37)

The document itself indicates that it is not a court ordered parenting plan, as it references the parenting plan in the alternative; "or in accordance with a court ordered parenting plan". However, assuming that it is to be considered a "court ordered parenting plan" for purposes of the statute at issue, and assuming that its visitation provisions, although not checked off by the court, were enforceable, it nevertheless gave Mr. Veliz the right to visitation

with his daughter, Nicole, during the time period intervening between Saturday, August 16, 2008, and Sunday, August 17, 2008.

In that time period, all of the State witnesses testified, and assuming, *arguendo*, the State's position that the May, 2008, Order of Protection meets the statute's requirement of a "court ordered parenting plan", that Mr. Veliz was authorized to visit with his daughter, Nicole.

For instance, Karla Carmac, the mother's attorney, testified that Mr. Veliz, in her opinion, was authorized to visit with his daughter, Nicole, from Saturday, August 16, 2008, until Sunday, August 17, 2008, at 5 p.m. (RP 30) The mother, Lorena Veliz, testified similarly. (RP 46-47)

As indicated, all of the State's witnesses testified that Mr. Veliz was authorized to have his daughter and to visit with her on that weekend of August 16 and August 17, 2008. Thus, even assuming, *arguendo*, that the May, 2008, order of protection satisfied the statute's requirement of a predicate court ordered parenting plan, and assuming that the order of protection's visitation provisions were enforceable, even though not checked off by the court, the order authorized Mr. Veliz to have his daughter on that weekend for which he was charged in the Information, as per the

testimony of the mother, the mother's attorney, and all of the police officers that testified.

The information could have been amended, for instance, to include the time frame up until December 2008, when Mr. Veliz returned to the United States with his daughter, but it was never done. The State, fatally, it is submitted, proceeded forward on a defective information which, in light of the State's own evidence, cannot support a conviction. An order for protection cannot constitute a necessary element for conviction for RCW 9A.40.060(2)(a).

The first court ordered parenting plan was that entered on August 25, 2008 (CP 25-34) It was signed by the court, the attorney for Mr. Veliz and the attorney for Ms. Veliz, Karla Carmac. Prior to that time, there was no court ordered parenting plan and thus a necessary predicate element, i.e., a court order parenting plan, was nonexistent during the time period charged in the information as it was not entered until one week after the end of the charging time period.

The court reasoned that the May 5, 2008, Order of Protection, filed pursuant to the provisions of RCW Chapter 26.50, sufficed to meet the statutory requirement of a "court ordered parenting plan", which plans are entered consistent with the requirements of RCW

Chapter 26.09. It is submitted that this was a patently erroneous interpretation of a clear legal requirement of a predicate court ordered parenting plan, pursuant to the provisions of RCW Chapter 26.09. As a matter of law, an Order for Protection, entered pursuant to RCW Chapter 26.50, cannot suffice to meet the legal requirements of a "court ordered parenting plan", a predicate requirement to sustain a conviction pursuant to RCW 9A.40.060(2)(a).

The Order for Protection at issue is set forth in the Clerk's Papers at 35-38. It was not entered as part of a dissolution proceeding, and, was defective in that the provisions that addressed visitation were not checked off by the court. (CP 37)

Even the order itself, at paragraph 15, page 3 of the Order for Protection, which was not checked off by the court, and upon which the State relied upon for this prosecution, the order itself indicates that it is not a court ordered parenting plan, as it states:

The respondent will be allowed visitation as follows:  
or in accordance with a court ordered parenting plan... (CP 37).

Karla Carmac, the attorney for Ms. Veliz, acknowledged in her testimony that in Washington state, the requirements of a court ordered parenting plan are very specific and are set forth in a

different statute, RCW Chapter 26.09. She also testified that in this instance the court ordered parenting plan was not entered until after the time period charged in the information. What could possibly be clearer? This court should reverse the patently improper ruling of the trial court in the pretrial motion to dismiss and the verdict of the jury which was not supported by any evidence in this record.

Chapter 26.09 addresses dissolution proceedings. RCW 26.09.194, which addresses filing a motion for, and obtaining a temporary parenting plan, sets forth a multitude of requirements that shall be accompanied by affidavit or declaration. Also, this same statute sets forth the requirements of a proper temporary parenting plan including:

- a schedule for the child's time with each parent when appropriate
- designation of a temporary residence for the child
- allocation of decision-making authority
- provisions for temporary support of the child
- restraining orders, if applicable.

Other provisions of RCW Chapter 26.09 provide for the entry of a permanent parenting plan, which in this instance was not done until January, 2009.

In Washington State, the term "court ordered parenting plan" is not a nebulous concept. It is a term of great definition and the cases interpreting the court ordered parenting plan have recognized that specificity, such that there no legal support to argue that an Order of Protection can be considered to be a "court ordered parenting plan" for purposes of the necessary predicate element in this instance.

For instance, in Davisson v. Davisson, 131 Wn.App. 220, 126 P.3d 76 (2006), this court dealt at length on issues pertaining to the interpretation of a court ordered parenting plan entered pursuant to RCW Chapter 26.09, citing various provisions of RCW Chapter 26.09.

Similarly, In re Custody of Halls, 126 Wn.App. 599, 109 P.3d 15 (2005), the court of appeals therein reversed modification actions taken by the trial court, interpreting parenting plan modifications pursuant to RCW Chapter 26.09, and ruled that the trial court had failed to follow the procedures of RCW 26.09.260. This is another example to show that "court ordered parenting plans" is a highly specific court order and it is not to be confused with an Order of Protection entered pursuant to RCW Chapter 26.50.

In this instance, Mr. Veliz, to be found guilty, had to be found guilty of violating a court ordered parenting plan entered

pursuant to the provisions of RCW Chapter 26.09. Since such a plan was not entered in this instance until August 25, 2008, until after the charging period, (CP 25-34) his conviction cannot stand.

Herein, the State relied upon the Order of Protection which was entered on May 5, 2008 (CP 35-38), as the predicate "court ordered parenting plan" to support its charge against Mr. Veliz. The Order of Protection is not a court ordered parenting plan, as set forth in Chapter 26.09, and, as a matter of law, should be found not to constitute a court ordered parenting plan, such that the conviction of Mr. Veliz should be vacated.

RCW 26.50.060, which is the statutory basis for the Order of Protection, and which is noted on the form itself, sets forth, at RCW 26.50.060(1)(d), as follows:

...parenting plans as specified in chapter 26.09 shall not be required under this chapter.

Thus, the statute under which the Order of Protection was issued itself draws a distinction between any order under its provisions and a court ordered parenting plan entered pursuant to the provisions of RCW Chapter 26.09.

More so, even though RCW 26.50.060 allows for the entry by the court of residential provisions with regard to minor children, it also makes a distinction between such actions and parenting plans

as specified in Chapter 26.09, which it states "shall not be required under this chapter."

In situations such as this, where the statute at issue does not define "court ordered parenting plan" and the issue is subject to varying interpretations, the court should consider application of the "rule of lenity" as was recently done by this Court in City of Seattle v. Winebrenner, 167 Wn.2d 451, 219 P.3d 686 (2009) Court concludes RCW 46.61.5055 subject to more than one reasonable interpretation so the statute was ambiguous. It stated:

If, after applying rules of statutory construction, we conclude that a statute is ambiguous "the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary." (citations omitted).

Similarly, herein, alternatively, one could argue that the statute, which is silent as to what is a court ordered parenting plan, is ambiguous as it is subject to more than one reasonable interpretation. Thus, application of the rule of lenity requires that the interpretation be in favor of the defendant in the absence of a legislative intent to the contrary.

There are no reported cases that counsel has found which address this specific issue in the context of the statute in question. Thus, it is submitted that this is an issue of first impression.

**II. Assuming *arguendo* that an Order of Protection can constitute a valid Parenting Plan, in this instance, the improperly filled out Order of Protection cannot suffice to support a conviction**

Even assuming, *arguendo*, that an Order of Protection could suffice to constitute the necessary predicate element of a "court ordered parenting plan", in this instance, the court must reverse the conviction because the court that entered the Order of Protection, on May 5, 2008, failed to check off that section of the mandatory form which pertains to visitation.

The Order of Protection, (CP 35-38) is a four-page form.

The order contains what is clearly handwriting by different persons. Page one of the order (CP 35) identifies the parties and the three children of Lorena De Veliz, only one of which, Nicole, is the child of Mr. Veliz. Various boxes on page one are checked off, some with an "x" and some with a "/".

Page 2 of the Order of Protection (CP 36) has paragraphs or items numbered 1-8. Each of the seven items which contain information on Page 2 of the Order for Protection have a "/", indicating that those provisions are being checked off as applicable.

By contrast, Page 3 of the Order of Protection (CP 37) has paragraphs or items numbered 9-15. On Page 3, none of the items are checked off, either with an "x" or with a "/". This would

indicate that the judge, who checked off and thus entered the restraining provisions on page 2, made no provisions on page 3 as to visitation, even though someone had at some point filled in visitation provisions at paragraph 15 of the Order for Protection. There are initials to the right of Paragraph 15. but one should not be left to wonder whose initials they are and what is the significance of having initials on the right side of paragraph 15., which was not checked off in any way, either with an "x" or with a "/". The only proper interpretation of this mandatory form is that by failure to check off Paragraph 15., that the court made no provisions for visitation, thus there was no "court ordered parenting plan" that could have been violated by Mr. Veliz as of August 16, 2008, and August 17, 2008.

Page 4 of the Order for Protection (CP 38) again has various items checked off and it is signed by a Judge/Commissioner and by the mother and Mr. Veliz. In the absence of a check or mark, one must assume that the judge or commissioner meant that those sections or paragraphs were not meant to be applicable or enforceable. Again, one should not be left to wonder as to the provisions of an ostensible predicate order which was the sole basis for the "court ordered parenting plan" for the felony conviction of Mr. Veliz.

**III. The trial court committed reversible error in allowing, over objection, testimony as to another name used by the defendant**

In this case, at trial, there was no issue as to the identity of Mr. Jose Veliz, a lifelong resident of the Pasco, Washington area. At no time did this defendant maintain that he was not the person named in the information. The information set forth an extremely discrete charging period, i.e., the time intervening between August 16, 2008, and August 17, 2008.

Even, if relevant, in such situations the court had clear obligations which it failed to meet. For instance, the defense argued, in making its objection, that the evidence was prejudicial and cited Evidence Rule 403. See, State v. Foxhoven, 161 Wn.2d 168, 163 P.3d 786 (2007).

We review the trial court's balancing of probative value against prejudicial effect for abuse of discretion. State v. Sexsmith, 138 Wn.App. 497, 506, 157 P.3d 901 (2007), *review denied*, 163 Wn.2d 1014 (2008)...

In State v. Russell, even though the court felt that the trial court committed no error in its decision to admit the challenged evidence, it stated that it committed reversible error by failing to give a limiting instruction.

“...we apply the Supreme Court's recent articulation of the ER 404(b) evidence admission requirements in Foxhoven, which states that where such evidence is admitted, a limiting instruction must be given to the jury. Foxhoven, 161 Wn.2d at 175...the cases for which this rule is derived place the burden of giving such an instruction on the trial court...the trial court should explain the purpose of the evidence and give a cautionary instruction to consider it for no other purpose. (citations omitted)...We hold that given the facts of this case the trial court abused its discretion in failing to give a limiting instruction...Accordingly, we reverse Russell's conviction... Id.

**F. CONCLUSION**

Mr. Veliz respectfully requests that the Washington State Supreme Court accept review of this Petition and reverse the decision of the Court of Appeals upholding his conviction for custodial interference in the first degree.

Respectfully submitted this 5th day of April 2011.

**THE TREJO LAW FIRM**

  
\_\_\_\_\_  
GEORGE PAUL TREJO, JR.  
WSBA 19758  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2011, I have mailed by United States Postal Service of such filing to the following:

David Wayne Corkrum  
Maureen R. Lorincz  
Prosecuting Attorneys  
1016 N. 4<sup>th</sup> Avenue  
Pasco, WA 99301-3706

Jose R. Veliz, Jr.  
PO BOX 7039  
Kennewick, WA 99336

DATED this 5<sup>th</sup> day of April, 2011, in Yakima, Washington.

THE TREJO LAW FIRM

  
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*The Court of Appeals  
of the  
State of Washington  
Division III*



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March 8, 2011

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CASE # 284956  
State of Washington v Jose R Veliz Jr  
FRANKLIN COUNTY SUPERIOR COURT No. 081503223

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

A handwritten signature in cursive script that reads "Renee S. Townsley".

Renee S. Townsley  
Clerk/Administrator

RST:jcs  
Enclosure

c: Honorable Carrie L. Runge

c: Jose Roel Veliz, Jr  
PO Box 7039  
Kennewick, WA 99336

**FILED**

MAR 08 2011

In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

<b>STATE OF WASHINGTON,</b>	)	<b>No. 28495-6-III</b>
	)	
<b>Respondent,</b>	)	
	)	<b>Division Three</b>
<b>v.</b>	)	
	)	
<b>JOSE R. VELIZ, JR.,</b>	)	
	)	<b>PUBLISHED OPINION</b>
<b>Appellant.</b>	)	

SIDDOWAY, J. — Jose R. Veliz Jr. appeals his conviction for custodial interference in the first degree, imposed after he took his four-year-old daughter out of the country for four months in violation of his wife’s rights under an order for protection. He challenges his conviction on the basis that an order for protection does not constitute a “court-ordered parenting plan” within the meaning of the statute establishing felony custodial interference; that even if such an order constitutes a court-ordered parenting plan, the order was improperly completed and cannot support the conviction; and that the evidence was insufficient to convict him of the offense for the charging period identified in the

information. He also argues that the trial court committed reversible error in admitting irrelevant and unduly prejudicial evidence.

We conclude that the term “court-ordered parenting plan” as used in RCW 9A.40.060(2) encompasses any valid court order that establishes a minor child’s parents’ rights to residential placement and/or visitation, including the order for protection in this case. The evidence sufficed to establish that Mr. Veliz committed the offense during the charging period and the trial court did not abuse its discretion in admitting the challenged evidence. We therefore affirm the conviction.

#### FACTS AND PROCEDURAL BACKGROUND

Jose R. Veliz Jr. and Lorena Velasco were in a relationship for approximately seven years, beginning in 2001. They have a daughter, NV, who was born in January 2004. They later married in 2006 but separated in April 2008.

At the time of their separation, Ms. Velasco applied for an order for protection against Mr. Veliz under RCW 26.50.020. We have no record from those proceedings other than the order for protection itself. Although the order recites that Ms. Velasco alleged domestic violence, its terms were largely addressed to sorting out residency, property, and visitation issues between the parties. Ms. Velasco’s petition was heard by the superior court on May 5, 2008, with both Ms. Velasco and Mr. Veliz in attendance. The order entered at the conclusion of the hearing was prepared using a standard order for protection form, which includes some required and some optional provisions as well

as room for handwritten detail or modification. *See* RCW 26.50.035(1). Some handwritten terms had been added to the order prior to the hearing and others were added by the court. The order was signed by Ms. Velasco, the judge, and Mr. Veliz, acknowledging his receipt of a copy.

Most of the preprinted terms of the order are preceded by a box in the left-hand margin. Nothing on the order explains the significance of the boxes, although the implication to someone familiar with such forms is that the boxes are marked to indicate which terms of the order apply in a given matter. In the case of the May 5 order, however, it appears on the face of the order that this convention was not followed. Boxes next to some terms are marked. Boxes next to many other terms are not marked, even though a number of these terms are marked internally or have been completed with handwritten detail and bear the initials of the judge. One of the terms whose marginal box is unmarked has been stricken through with hash marks, suggesting that it alone is intended to be excluded as a term.

Among terms significant in this case are that NV is identified as a minor child in a table on the first page of the order. The box preceding the term numbered 2 is marked, and reads as follows:

- 2. Respondent is ***Restrained*** from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3<sup>rd</sup> party or contact by Respondent's

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lawyer(s) with  petitioner  the minors named in the table above  
 these minors only:

If both parties are in the same location, respondent shall leave.

Clerk's Papers (CP) at 36. The box preceding the term numbered 12 is unmarked but an interior box is marked, causing the term to read as follows:

12. Petitioner is **Granted** the temporary care, custody, and control of   
the minors named in the table above  these minors only:

CP at 37. Finally, the box preceding the term numbered 15 is unmarked but the space reserved for handwritten terms is completed and initialed "RGS," the initials of the judge.

The full term reads as follows, with italicized text indicating the handwritten portion:

15. The respondent will be allowed visitations as follows: Weekends  
Saturdays & Sundays or in accordance with a court approved  
parenting plan. Sat & Sunday Sat from 10 am to Sunday at 5 pm.  
RGS

Petitioner may request modification of visitation if respondent fails to comply with treatment or counseling as ordered by the court.

*Id.* Ms. Velasco understood these terms to give Mr. Veliz visitation rights to see NV only at the indicated time on weekends, which he exercised without incident in May, June, and July.

Mr. Veliz filed for divorce shortly after entry of the order for protection. An order approving a parenting plan was entered thereafter, but not until August 25, 2008. It, too, provided for weekend-only visitation for Mr. Veliz, from Saturday at 10 a.m. to Sunday at 5 p.m. CP at 26.

On the weekend of August 16 and 17, 2008, Mr. Veliz picked up NV on Saturday as usual. He did not return her by Sunday at 5 p.m. At approximately 6 p.m., Ms. Velasco called the police. Over the next couple of weeks, officers visited Mr. Veliz's place of employment, his parents, and one of his close friends, but were unable to determine his whereabouts. On August 22 he was charged by information with custodial interference in the first degree under RCW 9A.40.060(2)(a). The information charged that Mr. Veliz,

during the time intervening between the 16<sup>th</sup> day of August, 2008, and the 17<sup>th</sup> day of August, 2008, then and there, being the parent of and with intent to deny access from Lorena [Velasco], the other parent having the lawful right to time with N.V. pursuant to a court ordered parenting plan, did retain N.V., a child under eighteen years of age, and intended to hold N.V. permanently or for a protracted period.

CP at 24. Police reported NV as a missing child to a national registry and obtained a nationwide warrant for Mr. Veliz's arrest.

It was later determined that Mr. Veliz had taken NV to Los Angeles and thereafter to Mexico. He claimed that his purpose in traveling to Mexico was so that he and NV could meet Ms. Velasco's family. During his time in Mexico, neither he nor NV ever contacted Ms. Velasco. Ms. Velasco testified that she never heard from any family members in Mexico during the four months that Mr. Veliz and her daughter were gone and disputed that her parents and grandparents, whom Mr. Veliz claims to have visited, were even alive.

Mr. Veliz did not return to the United States with NV until December 18, 2008. When he crossed the border he was arrested. At the time of his arrest, Mr. Veliz had in his possession not only valid identification, but an additional identification card in the name "Joel Rodriguez," which was seized. NV was returned to her mother in Pasco by authorities on December 21, 2008.

Prior to trial, Mr. Veliz filed a *Knapstad*<sup>1</sup> motion, arguing that the order for protection entered on May 5, 2008 did not constitute a court-ordered parenting plan under chapter 26.09 RCW, dealing with marriage dissolution proceedings, and that he therefore could not be guilty of custodial interference as a matter of law. The August 22 information had never been amended to address violation by Mr. Veliz of the August 25 parenting plan entered in the dissolution action. Mr. Veliz also argued that the term numbered 15 in the protective order, pertaining to visitation, was not a part of the order because the box preceding it in the left-hand margin was not marked.

The trial court denied the motion, concluding that the term "court-ordered parenting plan" used in RCW 9A.40.060 is not limited to temporary or permanent parenting plans under chapter 26.09 RCW and, construing all inferences in the light most favorable to the State, that a reasonable jury could find that the order for protection was a court-ordered parenting plan and created binding weekend visitation limitations on

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<sup>1</sup> *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

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Mr. Veliz notwithstanding the parties' or the court's failure to check the box preceding the visitation term.

In cross-examining Mr. Veliz at trial, the State questioned him about his use of the name "Joel Rodriguez" and his possession of identification bearing that name seized from him at the border. The defense objected to the evidence, arguing that because the State had no evidence that Mr. Veliz ever used the name or identification for an improper purpose, the evidence was irrelevant and unduly prejudicial. The court overruled the objection, allowing the evidence as "probative evidence regarding [Mr. Veliz's] intent, as well as potential evidence of flight." Report of Proceedings (RP) at 95.

A jury found Mr. Veliz guilty of the custodial interference charge. He appealed, renewing his challenges to the State's evidence raised in his *Knapstad* motion and arguing that the court erred in its admitting evidence of the identification card seized from him at the border.

## ANALYSIS

### I

Mr. Veliz argues that the evidence presented was insufficient to prove the offense of custodial interference in the first degree because the May 5, 2008 order for protection is not a "court-ordered parenting plan"—a required element under RCW 9A.40.060(2)—as a matter of law. Br. of Appellant at 21-22.

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We review questions of statutory construction de novo. *City of Spokane v. Spokane County*, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006). When interpreting a statute, the court's fundamental objective is to ascertain and carry out the legislature's intent. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). To determine that intent, we first look to the language of the statute. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). In determining the plain meaning of a provision, we look to the text of the statutory provision in question as well as "the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Jacobs*, 154 Wn.2d at 600. If, after this inquiry, the statute is susceptible to more than one reasonable interpretation, it is ambiguous and we "may resort to statutory construction, legislative history, and relevant case law" to resolve the ambiguity. *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007). If the statute remains ambiguous after both attempting to determine the plain meaning and resorting to tools of statutory construction, we then employ the rule of lenity and interpret ambiguities in favor of the criminal defendant. *In re Pers. Restraint of Sietz*, 124 Wn.2d 645, 652, 880 P.2d 34 (1994); see also *State v. Coria*, 146 Wn.2d 631, 639, 48 P.3d 980 (2002).

The statute establishing felony custodial interference provides in relevant part that "[a] parent of a child is guilty of custodial interference in the first degree if the parent takes . . . the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan." RCW

9A.40.060(2) (emphasis added). The term “parenting plan” is not defined in the criminal code nor does the criminal statute refer to the domestic relations title or the dissolution chapter of the Washington code. The term “parenting plan” is used in the domestic relations title of the Washington code, however, and the legislative history is clear that the 1994 amendment adding “parenting plan” language to RCW 9A.40.060 was the result of changes made to chapter 26.09 RCW, dealing with dissolution proceedings and legal separation.<sup>2</sup> FINAL BILL REP. on H.B. 2333, 53d Leg., Reg. Sess. (Wash. 1994); *State v. Pesta*, 87 Wn. App. 515, 942 P.2d 1013 (1997), *review denied*, 135 Wn.2d 1002 (1998). Mr. Veliz argues that the term must be construed to accord with chapter 26.09 RCW.

“Parenting plan” is not a defined term in chapter 26.09 RCW, but “permanent parenting plan” and “temporary parenting plan” are. The meaning of “parenting plan” shared by the two defined terms is a plan for parenting a child. *See* RCW 26.09.004(3), (4).<sup>3</sup> Otherwise, the defined terms are different. RCW 26.09.194(2) provides that a “temporary parenting plan” shall include (1) a schedule for the child’s time with each

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<sup>2</sup> Prior to the amendment, former RCW 9A.40.060(2) (1984) read as follows:

“A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.”

<sup>3</sup> We cite to the current subsections. The 2009 amendments to RCW 26.09.004 required alphabetizing of the definitions, renumbering subsection (1) as subsection (4) and subsection (2) as subsection (3).

parent, (2) designation of the child's temporary residence, (3) allocation of decision-making authority for the child, (4) provisions for temporary support, and (5) restraining orders, if applicable. RCW 26.09.184(2) provides that the "permanent parenting plan" shall contain "provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child."

An argument similar to that advanced by Mr. Veliz was addressed by Division One of this court in *Pesta*, 87 Wn. App. 515. In that case the defendant was likewise convicted of custodial interference in the first degree, but unlike Mr. Veliz, Ms. Pesta was charged with violating both a temporary order of visitation entered before she took her child as well as a court-ordered temporary parenting plan entered thereafter, while she was concealing her child out of state. Like Mr. Veliz, she argued that the initial visitation order was not a "court-ordered parenting plan" at all. She argued that the court-ordered temporary parenting plan later entered did not include all of the provisions required by RCW 26.09.194(2) and its violation therefore could not be the basis for an offense. In affirming the defendant's conviction, the court elected to rely solely on the court-ordered temporary parenting plan, thereby distinguishing the violation it examined from the violation charged in our case. Nonetheless, much of its well-reasoned analysis of the relationship between the custodial interference statute and marriage dissolution provisions applies.

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In light of the undefined meaning of “parenting plan” in the custodial interference statute, the *Pesta* court looked to RCW 9A.04.020, which sets forth the purposes and principles of construction applicable to the Washington criminal code. RCW 9A.04.020(2) states:

The provisions of this title shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this title.

One of the express purposes of the criminal code set forth at RCW 9A.04.020(1)(a) is “[t]o forbid and prevent conduct that inflicts or threatens substantial harm to individual and public interests.” With the context of the custodial interference statute, its history, and this purpose and principal of construction in mind, the *Pesta* court concluded that “the Legislature’s purpose was to criminalize a parent intentionally depriving the other parent of the right to time with their child,” and that “[t]he proscribed conduct is one parent depriving the other parent of the right to time with the child.” 87 Wn. App. at 522. It rejected the argument that the State must prove violation of a parenting plan that is fully compliant with the marriage dissolution chapter, because to do so would require the State to prove the existence of terms having nothing to do with the right to time with the child—an interpretation of the criminal provision that it characterized as “at best . . . strained.” *Id.* at 523. We agree.

The May 5 order for protection that Mr. Veliz is charged with violating is one step further removed from the parenting plans required in a dissolution proceeding than was

the temporary parenting plan in *Pesta*. The order for protection at issue here was entered pursuant to chapter 26.50 RCW, dealing with domestic violence prevention, before any dissolution proceeding was filed. We nonetheless find that it, too, qualifies as a “parenting plan” within the meaning of the custodial interference statute.

Provisions of chapter 26.50 RCW recognize that parents rely on orders for protection to address the same residential placement and visitation issues addressed by chapter 26.09 RCW. RCW 26.50.060, for example, provides, with emphasis added:

(1) Upon notice and after hearing, the court may provide relief as follows:

....  
(d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, *parenting plans as specified in chapter 26.09 RCW* shall not be required under this chapter.

If a dissolution action is later filed by a parent who is a party to an order for protection under the domestic violence provisions, the order for protection may be consolidated under the dissolution action and cause number. RCW 26.50.025(2). Notably, while RCW 26.50.060 explicitly provides that placement and visitation terms in an order for protection need not be a “parenting plan as specified in chapter 26.09 RCW,” a later provision of the domestic violence chapter nonetheless characterizes them as a parenting plan. RCW 26.50.220 addresses the fact that under other laws—federal tax law, for example<sup>4</sup>—a designation of determination of custody might be required, and states that

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<sup>4</sup> *E.g.*, 26 U.S.C. § 152(e), addressing which parent of a dependent child may

“a *parenting plan* shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child” (emphasis added), thereby recognizing that parenting plans may be provided by orders entered under chapter 26.50 RCW.

Accordingly, a court-ordered parenting plan may, but need not, be a parenting plan as specified in chapter 26.09 RCW. The fair import of the custodial interference provision, consistent with the purpose of the criminal code, includes all court-ordered parenting plans. The trial court did not err in denying Mr. Veliz’s motion to dismiss.

II

Mr. Veliz argues that even if we conclude that proof of an order for protection may satisfy the required element of a court-ordered parenting plan, the order for protection in this case was deficient because of the manner in which it was completed.

The existence of an order is an element of the crime of violating such an order that must be found by a jury as a matter of fact. *State v. Miller*, 156 Wn.2d 23, 24, 123 P.3d 827 (2005). However, the validity of an order is not; it is a question of law appropriately within the province of the trial court to decide as part of the court’s gatekeeping function. *Id.* The trial judge should not permit an invalid, vague, or otherwise inapplicable order to be admitted into evidence. *Id.* The nature of Mr. Veliz’s challenge to his conviction

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claim a federal tax exemption for the child when the parents are divorced, legally separated, or have been living apart for a prescribed period.

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because of the form of the order is not clear; he cites no authority.<sup>5</sup> He did not challenge the admissibility of the order, however, and therefore evidently does not challenge its validity. He appears instead to challenge its sufficiency to support the jury's verdict, arguing:

The only proper interpretation of this mandatory form is that by failure to check off Paragraph 15., that the court made no provisions for visitation, thus there was no "court ordered parenting plan" that could have been violated by Mr. Veliz as of August 16, 2008, and August 17, 2008.

Br. of Appellant at 33.

In reviewing a defendant's challenge to the sufficiency of the evidence we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007); *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 therefrom." *Salinas*, 119 Wn.2d at 201. Substantial evidence means evidence in the record of a sufficient quantity to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

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<sup>5</sup> We remind counsel that we need not consider arguments that are unsupported by authority. RAP 10.3(a).

The preprinted portion of term number 15, which Mr. Veliz argues on appeal is not a term of the order, states “The respondent will be allowed visitation as follows:”. CP at 37. That language is followed by space within which the parties or the court can fill in a particular respondent’s visitation rights. When cross-examined about the order for protection, Mr. Veliz admitted that he believed the superior court had made and initialed the handwritten entry, “Sat[urday] from 10 am to Sunday at 5 pm,” in the space provided at term number 15. RP at 86-87. Mr. Veliz agreed, in response to questioning by the prosecutor, that term number 15 “gave me time with my daughter.” *Id.* at 87. Mr. Veliz asserted only that “I didn’t interpret [it] to be a visitation order.” *Id.* The position that term number 15 is not a term of the order at all is therefore a position argued by counsel, but is not the position testified to by Mr. Veliz.

In addition to acknowledging his presence at the hearing on the order for protection and his belief that the superior court completed term number 15, Mr. Veliz admitted that he adhered to the prescribed visitation schedule during May, June, and July 2008. RP at 88. His claim of insufficient evidence also admits the truth of the State’s evidence, offered through Ms. Velasco, that term number 15 was completed by the superior court to dictate Mr. Veliz’s right to visitation. From this evidence—and the fact that but for term number 15 of the order for protection, term number 2 would have given

Mr. Veliz no visitation at all with NV<sup>6</sup>—there was sufficient evidence from which the jury could find that term number 15 was not excluded as a term of the order for protection.

III

Mr. Veliz next argues that the jury could not have found that he committed the crime during the charging period of “the time intervening between the 16<sup>th</sup> day of August, 2008, and the 17<sup>th</sup> day of August, 2008” because, he contends, the evidence establishes that he was entitled to visitation with NV during that time period. In order for the jury to convict Mr. Veliz of custodial interference in the first degree, the State had to prove that the other parent had the lawful right to time with the child pursuant to a court-ordered parenting plan during the charging period. CP at 15 (Instruction 6); RCW 9A.40.060(2); *see State v. Boss*, 144 Wn. App. 878, 884, 184 P.3d 1264 (2008), *aff’d*, 167 Wn.2d 710, 223 P.3d 506 (2009).

The State was required to prove that some of Mr. Veliz’s acts in committing the offense occurred in the state of Washington, which may be why the charging period—selected at a time when his movements were unknown—encompassed the day when he picked NV up for his weekend visitation. But while Mr. Veliz had the lawful right to time with her for much of the two-day charging period, the jury was presented with

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<sup>6</sup> Term number 2, which was marked, restrained Mr. Veliz from “coming near and from having any contact whatsoever” with the minors named in the order. CP at 36.

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substantial evidence that it was Ms. Velasco who had the lawful right to time with NV after 5 p.m. on Sunday, August 17. The order for protection admitted into evidence specified that Mr. Veliz's visitation with NV ended on Sundays at 5 p.m. Ms. Velasco testified that Mr. Veliz was supposed to have returned NV at 5:00 in the afternoon on August 17, that he did not, and that after waiting for an hour, she called the police.

Testimony at trial indicated that Mr. Veliz retained NV, that he left the state of Washington with her, and that Ms. Velasco did not see her daughter again for almost four months. From this, a fair-minded, rational jury could have found that Mr. Veliz committed the crime charged during the charging period.

#### IV

Finally, Mr. Veliz challenges the trial court's denial of his counsel's objection to evidence of his use of the name Joel Rodriguez and the identification card seized at the border. Defense counsel objected to the evidence as irrelevant under ER 401 and prejudicial under ER 403. The prosecutor responded that the evidence was relevant to the fact that Mr. Veliz took flight with his daughter for four months. The trial court overruled the defense objection, allowed the examination, and admitted the evidence. On appeal, Mr. Veliz argues that an ER 403 balancing analysis should have been done on the record and argues for the first time that the trial court committed reversible error by failing to give a limiting instruction, relying on *State v. Foxhoven*, 161 Wn.2d 168, 175,

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163 P.3d 786 (2007) and *State v. Russell*, 154 Wn. App. 775, 782, 225 P.3d 478, review granted, 169 Wn.2d 1006 (2010).

The decision to admit evidence lies within the sound discretion of the trial court and will not be overturned on appeal absent a manifest abuse of discretion. *State v. Magers*, 164 Wn.2d 174, 188, 189 P.3d 126 (2008); *State v. Bourgeois*, 133 Wn.2d 389, 399, 945 P.2d 1120 (1997) (citing *State v. Crenshaw*, 98 Wn.2d 789, 806, 659 P.2d 488 (1983)). A trial court abuses its discretion when it exercises its discretion on untenable grounds or for untenable reasons, or where its discretionary act was manifestly unreasonable. *In re Estate of Stevens*, 94 Wn. App. 20, 29, 971 P.2d 58 (1999).

Use of an alias may be proved or referred to by the State if the alias or other name is relevant and material to prove or disprove any of the issues in the case. *State v. Cartwright*, 76 Wn.2d 259, 264, 456 P.2d 340 (1969). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” ER 403. The process of weighing probative value against prejudicial effect “is necessarily a matter addressed to the discretion of the trial court.” *State v. Chase*, 59 Wn. App. 501, 507-08, 799 P.2d 272 (1990). A court need not state its ER 403 analysis on the record. *State v. Gould*, 58 Wn. App. 175, 184, 791 P.2d 569 (1990); see also *Carson v. Fine*, 123 Wn.2d 206, 222-26,

867 P.2d 610 (1994) (recognizing that the court's balancing of probative value and prejudicial effect need not be made on the record in the case of an ER 403 objection).<sup>7</sup>

Among the elements of the custodial interference offense that the State was required to prove were that in retaining NV, Mr. Veliz "acted with the intent to deny [Ms. Velasco] access to the child," and that he "intended to hold the child permanently or for a protracted period of time." CP at 16 (Instruction 7). Mr. Veliz denied any such intent, attributing his four-month absence and failure to communicate to a misunderstanding and to having no contact information for Ms. Velasco. As recognized by the trial court, Mr. Veliz's possession of false identification had a tendency to make the existence of intentional concealment and denial of access more likely, since it could decrease Mr. Veliz's likelihood of apprehension. The court did not abuse its discretion in allowing the evidence.

Mr. Veliz never requested a limiting instruction as to the evidence. His failure to request a limiting instruction at trial waives any right to assign error to the court's failure to give it. *State v. Williams*, 156 Wn. App. 482, 492, 234 P.3d 1174 (citing *State v. Stein*, 140 Wn. App. 43, 70, 165 P.3d 16 (2007)), *review denied*, 170 Wn.2d 1011 (2010). The

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<sup>7</sup> Appellant's brief also includes arguments based on ER 404(b) but Mr. Veliz did not rely on ER 404(b) as a basis for his objection below. A party who objects to evidence on one ground does not preserve unraised grounds for review. *See State v. Mason*, 160 Wn.2d 910, 933, 162 P.3d 396 (2007) (defendant's objection at trial solely on relevancy grounds did not preserve an ER 404(b) challenge on appeal), *cert. denied*, 553 U.S. 1035 (2008).

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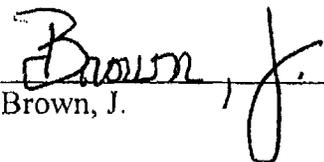
decision in *Russell*, 154 Wn. App. 775, relied upon by Mr. Veliz, involves the need for a limiting instruction where an objection is made to evidence of prior bad acts under ER 404(b) and the evidence is admitted for one of the purposes identified by the rule. That objection was not made, and the issue is not present in this case.

We affirm the conviction.

  
Siddoway, J.

WE CONCUR:

  
Korsmo, A.C.J.

  
Brown, J.