

No. 96325-8

NO. 35172-6-III

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

BRENDAN TAYLOR,  
Appellant.

---

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KITTITAS COUNTY

Kittitas County Cause No. 16-1-00323-0

The Honorable Scott R. Sparks, Judge

---

---

BRIEF OF APPELLANT

---

Skylar T. Brett  
Attorney for Appellant

**Law Offices of Lise Ellner**  
**Skylar Brett**  
P.O. Box 2711  
Vashon, WA 98070  
(206) 494-0098  
skylarbrettlawoffice@gmail.com

**TABLE OF CONTENTS**

**TABLE OF CONTENTS.....i**

**TABLE OF AUTHORITIES ..... iii**

**ISSUES AND ASSIGNMENTS OF ERROR..... 1**

**STATEMENT OF FACTS AND PRIOR PROCEEDINGS..... 4**

**ARGUMENT..... 9**

**I. The trial court erred by refusing to accept Mr. Taylor’s stipulation to the existence of a valid No-Contact Order and instead admitting the order itself, which contained highly prejudicial information..... 9**

**II. Mr. Taylor’s defense attorney provided ineffective assistance of counsel by unreasonably acquiescing to the admission of extensive, highly prejudicial, inadmissible evidence..... 15**

A. Mr. Taylor’s defense attorney provided ineffective assistance of counsel by improperly waiving objection under ER 404(b) to the extensive, inadmissible, and highly prejudicial allegations that he had been acting “mean” at the time of the alleged assault because of drug use. .... 15

B. Mr. Taylor’s defense attorney provided ineffective assistance of counsel by “opening the door” to the admission of a highly-prejudicial 911 tape that had been previously excluded. .... 20

<b>III.</b>	<b>The cumulative effect of the errors at Mr. Taylor’s trial require reversal of his conviction for Violation of a No-Contact order. ....</b>	<b>22</b>
<b>IV.</b>	<b>Mr. Taylor’s conviction for Escape from Community Custody must be vacated and dismissed because there was insufficient factual basis for his guilty plea. ....</b>	<b>23</b>
	A. To convict Mr. Taylor of Escape from Community Custody, the state was required to prove that he committed a purposeful act. ....	24
	B. The factual basis for Mr. Taylor’s plea to Escape from Community Custody was constitutionally deficient because it demonstrates that he did not commit a purposeful act. .	27
	C. The factual basis for Mr. Taylor’s guilty plea is inadequate because it specifies that the alleged offense took place on a date in the future. ....	28
<b>V.</b>	<b>The sentencing court exceeded its authority in Mr. Taylor’s case. ....</b>	<b>28</b>
	A. The court exceeded its authority by sentencing Mr. Taylor to a combined period of incarceration and community custody longer than the 60-month statutory maximum sentence for class C felonies. ....	28
	B. The sentencing court exceeded its authority by increasing Mr. Taylor’s offender score based on alleged prior convictions, of which the state provided no evidence	29
<b>VI.</b>	<b>If the state substantially prevails on appeal, the Court should decline to impose appellate costs on Mr. Taylor, who is indigent. ....</b>	<b>30</b>
	<b>CONCLUSION .....</b>	<b>31</b>

## **TABLE OF AUTHORITIES**

### **FEDERAL CASES**

<i>Bousley v. United States</i> , 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998).....	23
<i>Boykin v. Alabama</i> , 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).....	23
<i>Old Chief v. United States</i> , 519 U.S. 172, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997).....	1, 10, 11, 12, 13, 14, 22

### **WASHINGTON CASES**

<i>City of Seattle v. Pearson</i> , 192 Wn. App. 802, 369 P.3d 194 (2016) ...	9, 13
<i>State v. Aguilar</i> , 153 Wn. App. 265, 223 P.3d 1158 (2009).....	25
<i>State v. Arredondo</i> , 188 Wn.2d 244, 394 P.3d 348 (2017).....	17
<i>State v. Baker</i> , 194 Wn. App. 678, 378 P.3d 243 (2016).....	25
<i>State v. Blazina</i> , 182 Wn.2d 827, 344 P.3d 680 (2015).....	30, 31
<i>State v. Boyd</i> , 174 Wn.2d 470, 275 P.3d 321 (2012).....	29
<i>State v. Cherynell</i> , 99 Wn.2d 309, 662 P.2d 836 (1983).....	23
<i>State v. Danforth</i> , 97 Wn.2d 255, 643 P.2d 882 (1982) .....	24, 25, 26, 27
<i>State v. Estes</i> , --- Wn.2d ---, 395 P.3d 1045 (2017).....	15
<i>State v. Fuller</i> , 169 Wn. App. 797, 282 P.3d 126 (2012) .....	17
<i>State v. Gallagher</i> , 112 Wn. App. 601, 51 P.3d 100 (2002).....	20
<i>State v. Hall</i> , 104 Wn.2d 486, 706 P.2d 1074 (1985).....	24, 25
<i>State v. Hatch</i> , 165 Wn. App. 212, 267 P.3d 473 (2011) .....	13

<i>State v. Hendrickson</i> , 138 Wn. App. 827, 158 P.3d 1257 (2007), <i>aff'd</i> , 165 Wn.2d 474, 198 P.3d 1029 (2009).....	16, 19, 20, 21
<i>State v. Hunley</i> , 175 Wn.2d 901, 287 P.3d 584 (2012).....	29, 30
<i>State v. Johnson</i> , 90 Wn. App. 54, 950 P.2d 981 (1998) 1, 9, 10, 12, 14, 15	
<i>State v. Jones</i> , 183 Wn.2d 327, 352 P.3d 776 (2015).....	15
<i>State v. LaRue</i> , 74 Wn. App. 757, 875 P.2d 701 (1994).....	26
<i>State v. McCreven</i> , 170 Wn. App. 444, 284 P.3d 378 (2012) <i>review denied</i> , 176 Wn.2d 1015, 297 P.3d 708 (2013) .....	16, 17, 18, 19
<i>State v. Powell</i> , 166 Wn.2d 73, 206 P.3d 321 (2009).....	16, 19
<i>State v. R.L.D.</i> , 132 Wn. App. 699, 133 P.3d 505 (2006).....	23, 24, 27, 28
<i>State v. Rizor</i> , 121 Wn. App. 898, 91 P.3d 133 (2004).....	25
<i>State v. S.M.</i> , 100 Wn. App. 401, 996 P.2d 1111 (2000).....	24
<i>State v. Saltarelli</i> , 98 Wn.2d 358, 655 P.2d 697 (1982) .....	17
<i>State v. Sandoval</i> , 171 Wn.2d 163, 249 P.3d 1015 (2011) .....	23
<i>State v. Sinclair</i> , 192 Wn. App. 380, 367 P.3 612 (2016).....	30
<i>State v. Sisemore</i> , 114 Wn. App. 75, 55 P.3d 1178 (2002).....	26
<i>State v. Slocum</i> , 183 Wn. App. 438, 333 P.3d 541 (2014) .....	17
<i>State v. Thang</i> , 145 Wn.2d 630, 41 P.3d 1159 (2002).....	17, 19
<i>State v. Venegas</i> , 155 Wn. App. 507, 228 P.3d 813 (2010).....	22

**CONSTITUTIONAL PROVISIONS**

U.S. Const. Amend. VI.....	1, 15
U.S. Const. Amend. XIV .....	1, 2, 15, 23
Wash. Const. art. I, § 22.....	15

**WASHINGTON STATUTES**

RCW 26.50.110 ..... 28

RCW 72.09.310 ..... 24

RCW 72.65.070 ..... 25

RCW 9.94A.7..... 29

RCW 9A.08.010..... 24

RCW 9A.20.021..... 28, 29

**OTHER AUTHORITIES**

ER 401 ..... 6, 16

ER 402 ..... 6

ER 403 ..... 1, 6, 9, 10, 12, 14, 16, 18

ER 404 ..... 1, 2, 6, 15, 16, 17, 18, 19, 22, 32

ER 602 ..... 6, 16

GR 34 ..... 31

RAP 14.2..... 3, 31

RAP 15.2..... 31

### **ISSUES AND ASSIGNMENTS OF ERROR**

1. The trial court abused its discretion by refusing to accept Mr. Taylor's offered stipulation to the existence of a valid no-contact order.
2. The no-contact order in Mr. Taylor's case was inadmissible under ER 403.
3. The no-contact order in Mr. Taylor's case was inadmissible under *Old Chief* and *Johnson*.
4. Mr. Taylor was prejudiced by the court's improper admission of the no-contact order.

**ISSUE 1:** When an element of an offense includes some legal status decided by a prior court, the instant trial court must accept the accused's offer to stipulate to the existence of that status in order to preclude the admission of more prejudicial evidence regarding the prior proceeding. Did the trial court in Mr. Taylor's case abuse its discretion under ER 403 by refusing to let him stipulate to the existence of a valid no-contact order and, instead, admitting the order, which contained highly-prejudicial, inadmissible information?

5. Ineffective assistance of counsel deprived Mr. Taylor of his rights under the Sixth and Fourteenth Amendments.
6. Mr. Taylor was prejudiced by his attorney's deficient performance.
7. Defense counsel provided ineffective assistance by objecting on the wrong grounds to admission of evidence of Mr. Taylor's alleged drug use.
8. Evidence of Mr. Taylor's alleged drug use was inadmissible under ER 404(b)
9. Evidence of Mr. Taylor's alleged drug use was inadmissible under ER 403.
10. Evidence that Mr. Taylor acted "mean" when he used drugs was inadmissible under ER 404(b).

**ISSUE 2:** Defense counsel provides ineffective assistance by waiving the proper objection to inadmissible evidence that prejudices his/her client. Did Mr. Taylor's attorney provide ineffective assistance by failing to object to evidence of his alleged

drug use and acting “mean” while on drugs under the proper grounds: ER 404(b)?

11. Defense counsel provided ineffective assistance by unreasonably opening the door to the admission of a previously excluded tape of a 911 call.

**ISSUE 3:** Defense counsel provides ineffective assistance by permitting the admission of inadmissible, prejudicial evidence. Did Mr. Taylor’s attorney provide ineffective assistance by “opening the door” to the playing of a highly prejudicial 911 tape, which she had previously successfully argued to exclude?

12. The cumulative effect of the errors at trial requires reversal of Mr. Taylor’s conviction for Violation of a No-Contact Order.

**ISSUE 4:** The cumulative effect of errors during a trial can require reversal when, taken together, they deprive the accused of a fair trial. Does the doctrine of cumulative error require reversal of Mr. Taylor’s conviction for Violation of a No-Contact Order when errors by the court and his defense attorney worked together to expose the jury to a large amount of evidence that made him appear particularly violent and dangerous?

13. Mr. Taylor’s guilty plea to Escape from Community Custody was not knowing, voluntary, and intelligent, in violation of his rights under the Fourteenth Amendment.

14. The trial court erred by accepting Mr. Taylor’s guilty plea absent an adequate factual basis for the charge.

**ISSUE 5:** A guilty plea is not knowingly, intelligently, and voluntarily made unless it includes a factual basis that meets each element of the charged offense. Was the factual basis for Mr. Taylor’s guilty plea to Escape from Community Custody inadequate when he explained that it was “basically true” and that he had missed an appointment with the Community Corrections Officer because of car trouble, rather than because of some purposeful act?

**ISSUE 6:** A guilty plea must be accompanied by a factual statement supporting each element of the charge. Was the factual basis for Mr. Taylor’s guilty plea inadequate when it referred only

to events happening in “December 2017,” which was after the trial court proceedings in his case?

15. The sentencing court exceeded its authority by imposing a combined prison and community custody term exceeding the 5-year statutory maximum for class C felonies.

**ISSUE 7:** The potential sentence for a class C felony is limited to five years, including the total of any period incarceration and any term of community custody. Did the trial court exceed its authority by sentencing Mr. Taylor to 60 months in prison and 12 months of Community Custody for a class C felony?

16. The sentencing court exceeded its authority by sentencing Mr. Taylor with an offender score of eight when the state did not present evidence that he had any prior felony convictions.

**ISSUE 8:** In order for a prior conviction to be included in an offender score calculation, the state must prove that the conviction occurred by a preponderance of the evidence. Did the trial court err by increasing Mr. Taylor’s offender score based on alleged prior convictions for which the state did not provide any evidence?

17. The Court of Appeals should decline to impose appellate costs, if Respondent substantially prevail and request such costs.

18. Under RAP 14.2, the trial court’s finding that Mr. Taylor is indigent remains in effect.

**ISSUE 9:** If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Mr. Taylor is indigent?

## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

Brendan Taylor and Anna Kelly both had no-contact orders prohibiting them from contacting one another. RP 119-20. But they decided to live together anyway. RP 70.

On Christmas Day, 2016, their landlord drove past their house and saw Kelly using a snow shovel “like a hatchet” against the windshield of Mr. Taylor’s car. RP 140-41. The landlord called 911. RP 145.

When the police arrived, Mr. Taylor was gone and Kelly claimed that he had assaulted her. RP 153-54, 157. The responding officer did not see any injuries other than a cut on Kelly’s hand and some redness around her temple. RP 154-55.

The state charged Mr. Taylor with Violation of a No-Contact order (a felony because of the assault allegation) and Escape from Community Custody.<sup>1</sup> CP 7-9.

Mr. Taylor pleaded guilty to the Escape from Community Custody charge. CP 10-20. His written plea statement contained the following language for the factual basis:

---

<sup>1</sup> The state also charged Mr. Taylor with Second Degree Assault (based on strangulation) and First Degree Burglary. CP 7-9. The jury acquitted him of the assault charge and the judge dismissed the burglary charge at the request of the state. RP 188, 263. Mr. Taylor also pleaded guilty to two counts of misdemeanor Violation of a No-Contact Order based on phone calls he made to Kelly. CP 10-20.

On or about December 27, 2017 [(sic)]<sup>2</sup>, I did willfully discontinue making myself available to the Department of Corrections for supervision, by making my whereabouts unknown or by failing to maintain contact with the Department as directed by the Community Corrections Office.  
CP 19.

That factual basis was supplemented with the following colloquy  
at Mr. Taylor's plea hearing:

COURT: ... it says that on or about December 27, 2017 I did discontinue making myself available to the Department of Corrections for supervision by making my whereabouts unknown or by failing to maintain contact as with the Department as directed by the community corrections office.  
Is that true?

MR. TAYLOR: I – I was out of gas in Oregon. But it's – yeah, it's basically true. I was making my way to get back up here before being brought up on the chain, so...

...

COURT: But you knew that you were supposed to keep yourself...

MR TAYLOR: Yeah. I was on the phone with him and then he had left a message that I wasn't going to be able to make an appointment, but it's still... it's still the same as... as missing out on that.  
RP 7-8.

The court concluded Mr. Taylor's guilty plea was knowing,  
voluntary, and intelligent. RP 8.

Mr. Taylor moved *in limine* to exclude any allegations that he had  
been on drugs at the time of the alleged assault. CP 23. Defense counsel

---

<sup>2</sup> Mr. Taylor's case was tried in March 2017. See RP generally.

raised the objection under Evidence Rules 401, 402, and 602. CP 23.

Defense counsel did not object under ER 404(b) or ER 403. CP 23; RP 18-19.

In response, the state argued that the evidence was admissible to show Mr. Taylor's motive for the assault because he "acts like a completely different person when he's using drugs, which [Kelly] believes is the basis for this assault on that day." CP 16.

The court ruled that the evidence about Mr. Taylor's alleged drug use was admissible because it was being offered to show his motive, not his character. RP 18-19.

Mr. Taylor moved pretrial to be permitted to stipulate to the existence of a valid no-contact order in order to preclude the admission of the actual order into evidence. RP 21-22. The state refused to agree to the arrangement and the court agreed that the state was not required to accept the stipulation. RP 48-49.

At trial, the no-contact order against Mr. Taylor was admitted into evidence over his objection. RP 181; Ex. 35. The order specifies that it is a "Domestic Violence No-Contact Order" that was enacted "Post Conviction." Ex. 35, p. 1. The date on the order is less than a week before the alleged assault for which Mr. Taylor was being tried. Ex. 35, p.

1. The order states that Mr. Taylor is no longer permitted to possess firearms and must surrender any guns in his possession. Ex. 35, p. 1.

On the morning of trial, the state sought to admit a tape of Kelly's call to 911, which had not been previously disclosed to defense counsel. RP 51-53. The prosecutor claimed that there had been a mistake at "Kitcom" that prevented her from obtaining the tape any earlier. RP 51-53.

Noting that defense counsel had requested timely discovery of all 911 calls and that the extremely late disclosure was likely to prejudice the defense, the court ruled that tape would be excluded at trial. RP 57-63.

At trial, Kelly testified that Mr. Taylor had admitted to her that he sometimes used methamphetamine. RP 71. She said that Mr. Taylor became "mean" when he used the drug. RP 72.

Kelly said that Mr. Taylor admitted to using methamphetamine the day before the alleged assault. RP 74-75. She claimed that he then asked her to have sex with him and she refused. RP 76. After that, she said, he hit her in the face multiple times. RP 83.

Kelly said that, after the alleged assault, she wanted to "break something of [Mr. Taylor's]," which is why the landlord found her hitting his car with a snow shovel. RP 84.

Kelly admitted that she did not remember significant portions of the events of the alleged assault. *See e.g.* RP 74, 77-84, 109-110, 115.

During cross-examination of Kelly, Mr. Taylor's defense attorney asked her whether she had called 911 after the alleged assault. RP 110. Kelly did not remember calling 911. RP 110.

The state argued that defense counsel had "opened the door" to the admission of the tape of Kelly's 911 call by asking her directly whether she had made the call. RP 184. The court agreed. RP 196-202. The tape was admitted and played for the jury. RP 205-210.

On the tape, Kelly claims that Mr. Taylor hit her. RP 207; Ex. 40. She also says that he broke the lock on the door to the house. RP 210; Ex. 40. Kelly is crying and distraught on the recording. RP 209; Ex. 40.

A sheriff's deputy who followed-up with Kelly the day after the alleged assault did not see any marks on her head or face. RP 167. But he returned again later that afternoon and some marks had started to develop. RP 170.

The deputy admitted that Kelly's injuries could, theoretically, have been caused by her "flailing" a snow shovel around. RP 180.

In closing, the prosecutor argued that Mr. Taylor turns from Dr. Jekyll into Mr. Hyde when he uses drugs. RP 239, 253. She claimed that

his drug use made him “mean,” which is why he assaulted Kelly. RP 237-38.

The jury convicted Mr. Taylor of felony Violation of a No-Contact Order. RP 263.

The prosecutor did not offer any evidence that Mr. Taylor had any prior felony convictions. *See* RP 271-82. Even so, at sentencing, the state claimed that Mr. Taylor had an offender score of eight. RP 271. The court sentenced Mr. Taylor with an offender score of eight for the No-Contact Order Violation. CP 62.

The court sentenced Mr. Taylor to sixty months of confinement and twelve months of community custody for the Class C felony. CP 63-64.

This timely appeal follows. CP 78.

### **ARGUMENT**

#### **I. THE TRIAL COURT ERRED BY REFUSING TO ACCEPT MR. TAYLOR’S STIPULATION TO THE EXISTENCE OF A VALID NO-CONTACT ORDER AND INSTEAD ADMITTING THE ORDER ITSELF, WHICH CONTAINED HIGHLY PREJUDICIAL INFORMATION.**

Evidence must be excluded if its probative value is substantially outweighed by the risk of unfair prejudice. ER 403.<sup>3</sup>

---

<sup>3</sup> Evidentiary rulings are reviewed for abuse of discretion. *State v. Johnson*, 90 Wn. App. 54, 62, 950 P.2d 981 (1998). A court abuses its discretion when its decision is based on untenable grounds. *City of Seattle v. Pearson*, 192 Wn. App. 802, 817, 369 P.3d 194 (2016).

Evidence is unfairly prejudicial if it is “likely to provoke an emotional response rather than a rational decision.” *Johnson*, 90 Wn. App. at 62.

Under ER 403, where the existence of a prior conviction is an element of an offense, the court must accept the accused’s offer to stipulate to the prior conviction. *Old Chief v. United States*, 519 U.S. 172, 117 S.Ct. 644, 650, 136 L.Ed.2d 574 (1997); *Johnson*, 90 Wn. App. 54;<sup>4</sup> ER 403. Once that stipulation has been entered, the state may not introduce extrinsic evidence of that prior conviction or of the name of the crime of which the accused was convicted. *Id.*

While the courts in *Old Chief* and *Johnson* recognized the general rule that the prosecution may choose how to present the state’s evidence in an attempt to prove guilt, they also noted that this rule has “virtually no application when the point at issue is a defendant's legal status, dependent on some judgment rendered wholly independently of the concrete events of later criminal behavior charged against him.” *Johnson*, 90 Wn. App. at 62-63 (quoting *Old Chief*, 519 U.S. at 190, 117 S.Ct. at 654-55).

The *Old Chief* court further explained that:

Proving status without telling exactly why that status was imposed leaves no gap in the story of a defendant's subsequent criminality,

---

<sup>4</sup> *Old Chief* analyses the federal ER 403, but its reasoning and holding were explicitly adopted and applied to Washington State’s ER 403 in *Johnson*.

and its demonstration by stipulation or admission neither displaces a chapter from a continuous sequence of conventional evidence nor comes across as an officious substitution, to confuse or offend or provoke reproach.

*Old Chief*, 519 U.S. at 190, 117 S. Ct. at 654–55.

As such, the prosecution does not suffer any prejudice when some extant legal status of the accused is proved by stipulation rather than by the admission of court documents. *Id.*

Indeed, the functional difference between the value of a stipulation to the existence of a prior conviction and of a court record naming the offense is “distinguishable only by the risk [of unfair prejudice] inherent in one and wholly absent from the other.” *Id.* (quoting *Old Chief*, 519 U.S. at 191, 117 S.Ct. at 655).

Evidence containing the crime of a prior conviction is inherently prejudicial because of the risk that the jury will “generaliz[e] the defendant’s earlier bad act into bad character” or “worse, ... call[] for preventative conviction even if [the accused] should happen to be innocent momentarily.” *Old Chief*, 519 U.S. at 180-81, 117 S.Ct. at 650. This risk is particularly high when the prior conviction is for an offense similar to the one for which the accused is currently on trial. *Id.* at 185.

Accordingly, when the accused offers to stipulate to the existence of a prior conviction, evidence the name of the offense and of related court

documents is inadmissible under ER 403 because it has no probative value and carries an inherent risk of unfair prejudice. *Johnson*, 90 Wn. App. 54, 62–63; *Old Chief*, 519 U.S. at 191, 117 S.Ct. at 655.

The logic of *Old Chief* and *Johnson* applies equally to Violation of a No-Contact Order cases in which the accused offers to stipulate to the existence of a valid no-contact order.

First, like a prior conviction, the existence of a valid no-contact order is a simple “judgment rendered wholly independently of the concrete events of later criminal behavior charged against [the accused].” *Johnson*, 90 Wn. App. at 62-63 (*quoting Old Chief*, 519 U.S. at 190, 117 S.Ct. at 654-55). Accordingly, it is not subject to the general rule that the state may attempt prove its case in whatever way it sees fit. *Id.*

In Mr. Taylor’s case, for example, the details of the no-contact order were inapposite to the prosecution’s theory and narrative about the alleged assault.

Second, once an accused person has stipulated to the existence of a valid no-contact order, the order itself has virtually no additional probative value. Like a stipulation to a prior conviction versus the name and documentation of the prior offense, the difference between a stipulation to a valid no-contact order and admission of the order itself is “distinguishable only by the risk [of unfair prejudice] inherent in one and

wholly absent from the other.” *Id.* (quoting *Old Chief*, 519 U.S. at 191, 117 S.Ct. at 655).

Finally, the admission of the actual no-contact order carries an inherent risk of unfair prejudice. Such orders generally allude to (or explicitly mention) prior charges, convictions, and/or allegations of violence against the accused. They also often include other language that makes the accused appear particularly dangerous or violent, such as the provision in Mr. Taylor’s case prohibiting him from possessing firearms. This creates the same risk as that recognized in *Old Chief* that the jury will “generaliz[e] the defendant’s earlier bad act into bad character” or “worse, ... call[] for preventative conviction even if [the accused] should happen to be innocent momentarily.” *Old Chief*, 519 U.S. at 180-81, 117 S.Ct. at 650.

Even so, the trial court in Mr. Taylor’s case ruled that *Old Chief* did not apply to his offer to stipulate to the existence of a valid no-contact order because that case is limited to offers to stipulate to prior convictions. RP 48. The trial court’s decision was based on untenable grounds and constituted an abuse of discretion. *Pearson*, 192 Wn. App. at 817.

Evidentiary error requires reversal if there is a reasonable probability that it materially affected the outcome of the trial. *State v. Hatch*, 165 Wn. App. 212, 219, 267 P.3d 473 (2011).

Here, Mr. Taylor was prejudiced by the court's improper refusal of his offer to stipulate and the admission of the no-contact order document. *Id.* The order specifies at the very top that it was entered "post-conviction" for "domestic violence." Ex. 35, p. 1. Accordingly, it informed the jury that Mr. Taylor had been previously convicted of a domestic violence offense against Kelly, which is the equivalent of the offense for which he was on trial. This is precisely the type of prejudice deemed unacceptable by the courts in *Old Chief* and *Johnson*. See *Old Chief*, 519 U.S. at 180-81, 117 S.Ct. at 650.

Exacerbating the prejudicial effect, the order admitted in Mr. Taylor's clarifies that it was entered less than a week before the alleged assault. Ex. 35, p. 1. It also states that Mr. Taylor is no longer permitted to possess guns. Ex. 35, p. 1. These provisions serve to make Mr. Taylor appear particularly dangerous at the specific moment during which he was accused of assaulting Kelly.

There is a reasonable probability that the court's error affected the outcome of Mr. Taylor's trial.

The trial court abused its discretion by refusing to permit Mr. Taylor stipulate to the existence of a valid no-contact order and by, instead, admitting the order itself. ER 403; *Old Chief*, 519 U.S. 172, 117

S. Ct. 644; *Johnson*, 90 Wn. App. 54. Mr. Taylor’s conviction for violating that order must be reversed. *Id.*

**II. MR. TAYLOR’S DEFENSE ATTORNEY PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY UNREASONABLY ACQUIESCING TO THE ADMISSION OF EXTENSIVE, HIGHLY PREJUDICIAL, INADMISSIBLE EVIDENCE.**

The state and federal constitutions both protect the right to the effective assistance of counsel. U.S. Const. Amends. VI, XIV; Wash. Const. art. I, § 22; *State v. Jones*, 183 Wn.2d 327, 339, 352 P.3d 776 (2015).<sup>5</sup>

In order to demonstrate ineffective assistance of counsel, the accused must show deficient performance and prejudice. *Id.* Performance is deficient if it falls below an objective standard of reasonableness. *Id.* The accused is prejudiced by counsel’s deficient performance if there is a reasonable probability<sup>6</sup> that counsel’s mistakes affected the outcome of the proceedings. *Id.*

A. Mr. Taylor’s defense attorney provided ineffective assistance of counsel by improperly waiving objection under ER 404(b) to the extensive, inadmissible, and highly prejudicial allegations that he

---

<sup>5</sup> Ineffective assistance of counsel claims are reviewed *de novo*. *Jones*, 183 Wn.2d at 338.

<sup>6</sup> A “reasonable probability” under the prejudice standard is lower than the preponderance of the evidence standard. *State v. Estes*, --- Wn.2d ---, 395 P.3d 1045, 1049 (2017). Rather, “it is a probability sufficient to undermine confidence in the outcome.” *Id.*; *see also Jones*, 183 Wn.2d at 339.

had been acting “mean” at the time of the alleged assault because of drug use.

Defense counsel provides ineffective assistance by waiving objection to inadmissible evidence that prejudices his/her client, absent a valid tactical reason. *State v. Hendrickson*, 138 Wn. App. 827, 833, 158 P.3d 1257 (2007), *aff’d*, 165 Wn.2d 474, 198 P.3d 1029 (2009).

An attorney waives evidentiary objection by objecting on the incorrect grounds. *State v. Powell*, 166 Wn.2d 73, 82–83, 206 P.3d 321 (2009).

Mr. Taylor’s defense attorney provided ineffective assistance of counsel by objecting to the highly prejudicial evidence of his drug use and “mean[ness]” under ER 401, 402, and 602 but not under ER 404(b) or ER 403. *Id.*; CP 23.

Evidence of uncharged crimes or other bad acts is not admissible “to prove the character of a person in order to show action in conformity therewith.” ER 404(b). Evidence is also inadmissible if its probative value is outweighed by the risk of unfair prejudice. ER 403.

When analyzing evidence of uncharged misconduct, a trial court must begin with the presumption that the evidence is inadmissible. *State v. McCreven*, 170 Wn. App. 444, 458, 284 P.3d 378 (2012) *review denied*, 176 Wn.2d 1015, 297 P.3d 708 (2013). The burden is on the state to

overcome this presumption. *State v. Slocum*, 183 Wn. App. 438, 448, 333 P.3d 541 (2014).

Before admitting misconduct evidence, the court must find by a preponderance of the evidence that the misconduct actually occurred, identify a proper purpose for the evidence, determine its relevance to prove an element of the offense, and weigh the probative value against the prejudicial effect. *Slocum*, 183 Wn. App. at 448. The court must resolve doubtful cases in favor of exclusion. *McCreven*, 170 Wn. App. at 458; *State v. Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002).

Evidence of uncharged crimes or misconduct can be admissible to prove, *inter alia*, “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” ER 404(b).

When applying these exceptions, however, courts:

must guard against using ‘motive and intent as magic passwords whose incantation will open wide the courtroom doors to whatever evidence may be offered in their names.’

*State v. Arredondo*, 188 Wn.2d 244, 259, 394 P.3d 348 (2017) (quoting *State v. Saltarelli*, 98 Wn.2d 358, 364, 655 P.2d 697 (1982)).

The state may not attempt to prove motive “by introducing evidence that the defendant committed or attempted to commit an unrelated crime in the past.” *State v. Fuller*, 169 Wn. App. 797, 829–30, 282 P.3d 126 (2012).

Indeed, even if evidence is, technically, relevant to show motive, it must still be excluded if the risk of undue prejudice outweighs the probative value. *Id.* at 830.

The evidence that Mr. Taylor sometimes used methamphetamine, that he acted “mean” when he used the drug, and that he had allegedly used the drug the day before the alleged assault was inadmissible under ER 404(b) and ER 403. *Id.*; *McCreven*, 170 Wn. App. at 458.

The evidence of Mr. Taylor’s alleged drug use and “mean[ness]” when he used drugs was not relevant to his motive for the alleged assault. Indeed, it was not even the state’s theory of the case regarding his motive. Rather, the prosecution argued that Mr. Taylor’s motive for the alleged assault was that Kelly had refused his sexual advances. RP 239.

Rather, the sole purpose of the drug evidence was to prompt the jury to conclude that, because Mr. Taylor became “mean” when he used drugs, and Kelly claimed that he had used drugs before the alleged assault, so he must have been “mean” at that time and actually committed the assault. This is precisely the type of propensity inference that ER 404(b) prohibits.

Even so, Mr. Taylor’s defense attorney objected to the evidence only under the rules regarding relevance and lack of personal knowledge. CP 23. Defense counsel provided ineffective assistance by waiving the

proper objection to the evidence: that under ER 404(b). *Hendrickson*, 138 Wn. App. at 833; *Powell*, 166 Wn.2d at 82–83.<sup>7</sup>

Defense counsel had no valid tactical reason to waive objection under ER 404(b). Indeed, counsel recognized the highly prejudicial effect of the drug evidence and moved *in limine* for its exclusion, albeit on the incorrect grounds.

Mr. Taylor was prejudiced by the admission of the drug evidence. The prosecutor relied heavily on the allegation during closing argument, telling the jury that Mr. Taylor turned from Dr. Jekyll into Mr. Hyde when he used drugs. RP 239, 253. She argued that Mr. Taylor was “mean” when he used drugs, which made him more likely to have assaulted Kelly. RP 237-39.

Mr. Taylor’s defense attorney provided ineffective assistance of counsel by failing to object to highly prejudicial, inadmissible evidence of his alleged drug use under the proper rule of evidence. *Hendrickson*, 138 Wn. App. at 833; *Powell*, 166 Wn.2d at 82–83. Mr. Taylor’s conviction for Violation of a No-Contact Order must be reversed. *Id.*

---

<sup>7</sup> If, however this Court concludes that the issue is preserved for review because the trial court ruled on the objection under ER 404(b), despite defense counsel’s failure to object on that basis, then Mr. Taylor’s conviction must, nonetheless, be reversed based on the prejudicial evidentiary error. *McCreven*, 170 Wn. App. at 458; *Thang*, 145 Wn.2d at 642.

B. Mr. Taylor’s defense attorney provided ineffective assistance of counsel by “opening the door” to the admission of a highly-prejudicial 911 tape that had been previously excluded.

Mr. Taylor successfully argued for the exclusion of the tape of Kelly’s 911 call because the state failed to provide it to the defense until the day of trial. RP 51-53, 57-63.

Even so, counsel directly asked Kelly on cross-examination whether she had called 911 after the alleged assault. RP 110. Kelly testified that she did not remember whether she had called. RP 110.

Defense counsel’s question opened the door to the admission of the previously excluded 911 tape, which was played for the jury. RP 184, 196-202, 205-210.

On the tape, Kelly claims that Mr. Taylor hit her. RP 207; Ex. 40. She also says that he broke the lock on the door to the house. RP 210; Ex. 40. Kelly is crying and distraught on the recording. RP 209; Ex. 40.

Mr. Taylor’s attorney provided ineffective assistance of counsel by unreasonable opening the door to the highly prejudicial, previously excluded tape of Kelly’s 911 call. *Hendrickson*, 138 Wn. App. at 833.

Defense counsel can “open the door” to previously excluded evidence by asking a witness about the evidence or related issues. *See e.g. State v. Gallagher*, 112 Wn. App. 601, 609, 51 P.3d 100 (2002).

Mr. Taylor's attorney provided deficient performance by opening the door to the admission of the 911 tape. *Hendrickson*, 138 Wn. App. at 833. She had no valid tactical reason to want the tape admitted. Indeed, she argued vigorously – and successfully – for its exclusion after the prosecutor's very late disclosure. RP 51-53, 57-63. Defense counsel's action of later opening the door to the admission of that tape fell below an objective standard of reasonableness. *Id.*

Mr. Taylor was prejudiced by his attorney's deficient performance. Kelly's memory of the events of the alleged assault was seriously compromised. *See e.g.* RP 74, 77-84, 109-110, 115. She did not remember calling 911 or when the police came to her house. RP 109-110. But the 911 tape, nonetheless, bolstered her credibility. It also made her appear more sympathetic to the jury who heard her crying and distraught on the recording. RP 209; Ex. 40. There is a reasonable probability that defense counsel's error affected the outcome of Mr. Taylor's trial. *Id.*

Mr. Taylor's defense attorney provided ineffective assistance of counsel by unreasonably opening the door to the admission of the highly prejudicial, previously excluded tape of Kelly's call to 911. *Id.* Mr. Taylor's conviction for Violation of a No-Contact Order must be reversed. *Id.*

**III. THE CUMULATIVE EFFECT OF THE ERRORS AT MR. TAYLOR’S TRIAL REQUIRE REVERSAL OF HIS CONVICTION FOR VIOLATION OF A NO-CONTACT ORDER.**

Under the doctrine of cumulative error, an appellate court may reverse a conviction when “the combined effect of errors during trial effectively denied the defendant [his/]her right to a fair trial even if each error standing alone would be harmless.” *State v. Venegas*, 155 Wn. App. 507, 520, 228 P.3d 813 (2010).

In Mr. Taylor’s case, the cumulative effect of the erroneous admission of the no-contact order (which contained highly prejudicial information), and of defense counsel’s failure to properly object to evidence of his drug use under ER 404(b) and defense counsel’s opening the door to the admission of Kelly’s 911 tape was to present the jury with an influx of inadmissible evidence that painted Mr. Taylor in an unfairly prejudicial light. The improperly admitted evidence, as a whole, worked to make Mr. Taylor appear particularly violent and drastically increased the risk that the jury would “generaliz[e] the [Mr. Taylor’s] earlier bad act[s] into bad character” or “worse, ... call[] for preventative conviction even if [Mr. Taylor] should happen to be innocent momentarily.” *Old Chief*, 519 U.S. at 180-81, 117 S.Ct. at 650.

The cumulative effect of the errors at Mr. Taylor's trial deprived him of a fair trial and requires reversal of his conviction for Violation of a No-Contact Order. *Id.*

**IV. MR. TAYLOR'S CONVICTION FOR ESCAPE FROM COMMUNITY CUSTODY MUST BE VACATED AND DISMISSED BECAUSE THERE WAS INSUFFICIENT FACTUAL BASIS FOR HIS GUILTY PLEA.**

Due process requires a guilty plea to be knowingly, voluntarily, and intelligently made. *State v. R.L.D.*, 132 Wn. App. 699, 705–06, 133 P.3d 505 (2006) (citing *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)); U.S. Const. Amend. XIV.

Absent an affirmative showing that a guilty plea is knowing, intelligent, and voluntary, the plea must be vacated. *See, e.g., State v. Sandoval*, 171 Wn.2d 163, 176, 249 P.3d 1015 (2011).

A guilty plea is not knowing, voluntary, and intelligent when the accused does not fully understand the nature of the charge. *R.L.D.*, 132 Wn. App. at 705–06 (citing *Bousley v. United States*, 523 U.S. 614, 618, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998)). A full understanding of the nature of a charge requires the accused to comprehend why his/her alleged acts satisfy the elements of the offense. *Id.* (citing *State v. Cherynell*, 99 Wn.2d 309, 317-18, 662 P.2d 836 (1983)).

Accordingly, the factual basis for a guilty plea must be developed on the record at the time the plea is taken. *State v. S.M.*, 100 Wn. App.

401, 415, 996 P.2d 1111 (2000). The factual basis for a plea is insufficient if it fails to satisfy all the elements of the offense. *R.L.D.*, 132 Wn. App. at 706.

Failure to sufficiently develop facts on the record at the time of a guilty plea requires vacation of the conviction and dismissal of the charge with prejudice. *Id.*

A. To convict Mr. Taylor of Escape from Community Custody, the state was required to prove that he committed a purposeful act.

In order to convict Mr. Taylor of Escape from Community Custody, the state was required to prove that he:

... willfully discontinu[e] making himself ... available to the department for supervision by making his ... whereabouts unknown or by failing to maintain contact with the department as directed by the community corrections officer...

RCW 72.09.310.

Willfulness is equivalent to knowledge unless a purpose to impose further requirements plainly appears. RCW 9A.08.010(4). Knowledge can be characterized as a “lack of mental intent requirement.” *State v. Hall*, 104 Wn.2d 486, 493, 706 P.2d 1074 (1985).

Escape is one of the contexts in which the willfulness element requires more than mere knowledge. *Id.* (citing *State v. Danforth*, 97 Wn.2d 255, 258, 643 P.2d 882 (1982)). In order to prove that a person has

willfully escaped from a work release facility, for example, the state must prove that s/he committed some “purposeful act.” *Id.*

The question of whether the “willful” element of Escape from Community Custody requires proof of a purposeful act is an issue of first impression.<sup>8</sup>

*Danforth* and *Hall*, however, construe the willfulness requirement of the now-repealed statute criminalizing escape from a work release facility. *See* former RCW 72.65.070. The willfulness requirement of that offense required the state to prove a “purposeful act” (beyond mere knowledge) in order to ensure that the accused is not convicted based on circumstances beyond his/her control. *Danforth*, 97 Wn.2d at 258. Otherwise, the *Danforth* court reasoned, a person could be impermissibly convicted of escape for failing to return to a work release facility as the result of “a sudden illness, breakdown of a vehicle, etc.” *Id.*

This logic applies with equal force to cases alleging Escape from Community Custody. Unlike escape by climbing over a prison wall, a

---

<sup>8</sup> Indeed, there are only three published cases addressing the offense, none of which construes the *mens rea* element. *See State v. Baker*, 194 Wn. App. 678, 378 P.3d 243 (2016) (regarding sentencing for escape convictions); *State v. Aguilar*, 153 Wn. App. 265, 271, 223 P.3d 1158 (2009) (regarding admissibility of the accused’s prior statements to show that he had willfully escaped from community custody); *State v. Rizor*, 121 Wn. App. 898, 901, 91 P.3d 133 (2004) (holding that people on community custody were “inmates” properly charged with Escape from Community Custody).

person could miss a meeting with his/her CCO through no fault of his/her own, due to a medical emergency or transportation issues. *See Id.*

Accordingly, unless there is a requirement of a “purposeful act,” a person could be convicted of willfully escaping from community custody simply because s/he knew that s/he missed a meeting while s/he was in the hospital being treated for an emergency. The Supreme Court rejected this result in *Danforth. Id.*

The requirement of a “purposeful act” in the context of Escape from Community Custody also comports with the tenet that a willful offense is one that is not inadvertent. *See State v. Sisemore*, 114 Wn. App. 75, 78, 55 P.3d 1178 (2002); *State v. LaRue*, 74 Wn. App. 757, 761, 875 P.2d 701 (1994).

While a requirement of proof of a knowing act protects against conviction for inadvertent or accidental conduct for some offenses, one could knowingly meet the elements of Escape from Community Custody based wholly on events outside of his/her control.

In the context of Escape from Community Custody, the element of willful conduct requires the state to prove that the accused committed some purposeful act. *Danforth*, 97 Wn.2d at 258.

- B. The factual basis for Mr. Taylor's plea to Escape from Community Custody was constitutionally deficient because it demonstrates that he did not commit a purposeful act.

The factual basis for Mr. Taylor's guilty plea to Escape from Community Custody is inadequate because it demonstrates that he did not commit a purposeful act. *Id.*

Mr. Taylor's written factual basis simply recounts the elements of the charge. CP 19. But his colloquy with the court clarifies that he missed the meeting with his Community Corrections Officer because he was "out of gas in Oregon" and that the written factual basis was only "basically true." RP 7-8.

Indeed, Mr. Taylor's circumstances appear to be exactly the type of non-purposeful act that the *Danforth* court deemed not to constitute a willful escape. *Danforth*, 97 Wn.2d at 258.

Mr. Taylor's guilty plea was not knowing, voluntary, and intelligent because it was not supported by an adequate factual basis. *Id.*; *R.L.D.*, 132 Wn. App. at 706. Mr. Taylor's conviction for Escape from Community Custody must be vacated and the charge must be dismissed with prejudice. *R.L.D.*, 132 Wn. App. at 706.

- C. The factual basis for Mr. Taylor's guilty plea is inadequate because it specifies that the alleged offense took place on a date in the future.

Mr. Taylor was charged for Escape from Community Custody based on alleged acts in December of 2016. CP 8. But both his written factual basis and his oral colloquy with the court refer to exclusively alleged acts taking place in December 2017. CP 19; RP 7.

Because it discussed only the future, the factual basis for Mr. Taylor's guilty plea was inadequate to prove that he had committed the alleged past offense. *R.L.D.*, 132 Wn. App. at 706.

Mr. Taylor's guilty plea is not supported by an adequate factual basis. The conviction for Escape from Community Custody must be vacated and dismissed with prejudice. *Id.*

**V. THE SENTENCING COURT EXCEEDED ITS AUTHORITY IN MR. TAYLOR'S CASE.**

- A. The court exceeded its authority by sentencing Mr. Taylor to a combined period of incarceration and community custody longer than the 60-month statutory maximum sentence for class C felonies.

Felony Violation of a No-Contact Order is a class C felony. RCW 26.50.110(4). It carries a maximum sentence of five years. RCW 9A.20.021(1)(c).

The five-year maximum includes the total combined period of incarceration and community custody. RCW 9.94A.701(9); *State v. Boyd*, 174 Wn.2d 470, 473, 275 P.3d 321 (2012).

Accordingly, a sentencing court exceeds its authority by imposing a sentence for a class C felony consisting of prison time and a period of community custody, which total to more than 60 months. *Id.*

The sentencing court in Mr. Taylor's case exceed its authority by doing just that: sentencing him (for a class C felony) to 60 months in prison and an additional 12 months of community custody. CP 63-64.

Mr. Taylor's case must be remanded for resentencing within the statutory maximum at RCW 9A.20.021(1)(c). *Boyd*, 174 Wn.2d at 473.

B. The sentencing court exceeded its authority by increasing Mr. Taylor's offender score based on alleged prior convictions, of which the state provided no evidence

In order for a prior conviction to be included in an offender score calculation, the state must prove that the conviction occurred by a preponderance of the evidence. *State v. Hunley*, 175 Wn.2d 901, 909, 287 P.3d 584 (2012). Bare assertions on the part of the state fail to meet this burden. *Id.* The state must introduce "evidence of some kind to support the alleged criminal history." *Id.*

Here, Mr. Taylor's Judgment and Sentence lists six alleged prior convictions. CP 62. But the state did not present any evidence at

sentencing that Mr. Taylor had ever been convicted of a crime. *See* RP 271-82. Even so, the court sentenced him with an offender score of eight for the No-Contact Order Violation. CP 62.

No evidence supports the court’s finding that Mr. Taylor had any prior felony convictions. Mr. Taylor’s case must be remanded for resentencing. *Hunley*, 175 Wn.2d at 909.

**VI. IF THE STATE SUBSTANTIALLY PREVAILS ON APPEAL, THE COURT SHOULD DECLINE TO IMPOSE APPELLATE COSTS ON MR. TAYLOR, WHO IS INDIGENT.**

At this point in the appellate process, the Court of Appeals has yet to issue a decision terminating review. Neither the state nor the appellant can be characterized as the substantially prevailing party. Nonetheless, the Court of Appeals has indicated that indigent appellants must object in advance to any cost bill that might eventually be filed by the state, should it substantially prevail. *State v. Sinclair*, 192 Wn. App. 380, 367 P.3d 612 (2016).<sup>9</sup>

Appellate costs are “indisputably” discretionary in nature. *Sinclair*, 192 Wn. App. at 388. The concerns identified by the Supreme Court in *Blazina* apply with equal force to this court’s discretionary decisions on appellate costs. *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

---

<sup>9</sup> Division II’s commissioner has indicated that Division II will follow *Sinclair*.

The trial court found Mr. Taylor indigent at the end of the proceedings in superior court. CP 74. That status is unlikely to change, especially with the imposition of a five-year prison term. The *Blazina* court indicated that courts should “seriously question” the ability of a person who meets the GR 34 standard for indigency to pay discretionary legal financial obligations. *Id.* at 839.

Accordingly, the trial court waived all non-mandatory LFOs in Mr. Taylor’s case. CP 66.

Additionally, the newly amended RAP 14.2 specifies that the trial court’s finding of indigency stands unless the state presents evidence that the accused’s financial circumstances have changed:

When the trial court has entered an order that an offender is indigent for purposes of appeal, that finding of indigency remains in effect, pursuant to RAP 15.2(f) unless the commissioner or clerk determines by a preponderance of the evidence that the offender's financial circumstances have significantly improved since the last determination of indigency.

RAP 14.2 (*as amended by 2017 WASHINGTON COURT ORDER 0001*).

If the state substantially prevails on this appeal, this court should exercise its discretion to deny any appellate costs requested.

### **CONCLUSION**

The trial court abused its discretion by refusing to permit Mr. Taylor to stipulate to the existence of a valid no-contact order and by

admitting the no-contact order against him. Mr. Taylor's defense attorney provided ineffective assistance of counsel by failing to object to inadmissible evidence of his alleged drug use under ER 404(b) and by opening the door to a previously-excluded tape of a 911 call. The cumulative effect of the errors at Mr. Taylor's trial requires reversal of his conviction for Violation of a No-Contact Order.

Additionally, Mr. Taylor's guilty plea to Escape from Community Custody is not supported by an adequate factual basis. That conviction must be vacated and the charge must be dismissed with prejudice.

Finally, the sentencing court exceeded its authority by sentencing Mr. Taylor to a term beyond the five-year statutory maximum and by increasing his offender score based on alleged prior conviction that were not proved by the state. In the alternative, Mr. Taylor's case must be remanded for resentencing.

In the alternative, if the state substantially prevails on appeal, this court should decline to impose appellate costs on Mr. Taylor who is indigent.

Respectfully submitted on August 4, 2017.



---

Skylar T. Brett, WSBA No. 45475  
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Brendan Taylor/DOC#395893  
Washington State Penitentiary  
1313 North 13th Ave  
Walla Walla, WA 99362

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Kittitas County Prosecuting Attorney  
prosecutor@co.kittitas.wa.us

Lise Ellner  
liseellnerlaw@comcast.net

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division III, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on August 4, 2017.



---

Skylar T. Brett, WSBA No. 45475  
Attorney for Appellant

# LAW OFFICE OF SKYLAR BRETT

August 04, 2017 - 12:57 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35172-6  
**Appellate Court Case Title:** State of Washington v. Brendan Reidy Taylor  
**Superior Court Case Number:** 16-1-00323-0

### The following documents have been uploaded:

- 351726\_Briefs\_20170804125609D3238279\_6587.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Taylor Opening Brief.pdf*
- 351726\_Designation\_of\_Clerks\_Papers\_20170804125609D3238279\_3997.pdf  
This File Contains:  
Designation of Clerks Papers - Modifier: Supplemental  
*The Original File Name was Taylor Supplemental Designation of Clerks Papers.pdf*

### A copy of the uploaded files will be sent to:

- Liseellnerlaw@comcast.net
- greg.zempel@co.kittitas.wa.us
- prosecutor@co.kittitas.wa.us

### Comments:

---

Sender Name: Valerie Greenup - Email: valerie.skylarbrett@gmail.com

**Filing on Behalf of:** Skylar Texas Brett - Email: skylarbrettlawoffice@gmail.com (Alternate Email: valerie.skylarbrett@gmail.com)

Address:  
PO Box 18084  
Seattle, WA, 98118  
Phone: (206) 494-0098

**Note: The Filing Id is 20170804125609D3238279**