

66429-8

66429-8

NO. 66429-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

GERARDO ORTIZ,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAY WHITE

BRIEF OF RESPONDENT

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A. ISSUES

1. Where a defendant does not object at trial to the admission of evidence on the basis of ER 404(b), the defendant may not assert on appeal that the trial court erred by admitting such evidence. Here, Ortiz's counsel did not object when the victim testified about a prior uncharged assault that occurred a week before the charged offenses. Has Ortiz waived any claim of error by failing to preserve it below?

2. To prevail on an ineffective assistance of counsel claim based on the failure to object, the defendant must show: (1) an absence of legitimate strategic or tactical reasons for failing to object; (2) that the objection would likely have been sustained if raised; and (3) that the result of the trial would have been different had the evidence not been admitted. Legitimate trial strategy, including counsel's decision not to object to certain testimony, cannot constitute ineffective assistance. Here, Ortiz's counsel made a tactical decision not to object to the victim's testimony regarding a prior uncharged assault. Has Ortiz failed to establish that counsel's strategic decision not to object to certain trial testimony was so deficient that it prejudiced him?

B. STATEMENTS OF FACT

1. PROCEDURAL FACTS

The State charged Gerardo Ortiz by Amended Information with Burglary in the First Degree—Domestic Violence, Assault in the Second Degree (substantial bodily harm)—Domestic Violence, and Kidnapping in the First Degree. CP 4-6. The State also added a sentencing aggravator to the Assault in the Second Degree charge, alleging that the assault had taken place within the sight or sound of the victim's minor child. CP 5. The victim of each crime was Nikilyn Love. CP 4-6. A jury convicted Ortiz of Burglary in the First Degree, and Assault in the Second Degree, and found that the aggravating circumstance had been proven as to the assault charge. CP 35-36, 38; Supp. CP ___ (Sub No. 41) (special verdict form); 4RP 8-9.¹ The jury acquitted him of Kidnapping in the First Degree. CP 37; 4RP 9.

The court imposed a standard range sentence of 34 months of confinement for the burglary conviction and 26 months of confinement for the assault conviction, to be served concurrently. CP 40-44.

¹ The Verbatim Report of Proceedings consists of four volumes. The State has adopted the following reference system: 1RP (10/19/10), 2RP (10/21/10), 3RP (10/25/10), and 4RP (10/26/10). The sentencing hearing on December 17, 2010 was not transcribed.

2. SUBSTANTIVE FACTS

Nikilyn Love and Gerardo Ortiz met through an internet dating website in November 2009. 2RP 16. After an exchange of emails, Love and Ortiz agreed to meet for lunch at BB McGraw's, a sports bar and restaurant in Auburn. 2RP 16-17. Even though it was only their first date, Love told Ortiz that she had a young² son and asked if he wanted to come with her to pick up her son from her mother's house. 2RP 13, 18-19, 128. Ortiz agreed. 2RP 19. Love also showed Ortiz her Auburn apartment. 2RP 12, 19. Love next saw Ortiz at Thanksgiving when he invited her over for the holiday. 2RP 20. Their relationship quickly progressed and they began seeing each other several times a week. 2RP 19-21.

About three weeks into the relationship, Love and Ortiz went to a shopping mall. 2RP 22. Ortiz took Love to a jewelry store where he instructed her to pick out a ring. 2RP 21-23. Love picked out a diamond ring and tried it on. 2RP 22, 24. Ortiz told Love to wear it on her ring finger, which gave the appearance of the two being married. 2RP 24-25. Ortiz did not formally propose, but talked about getting married in the near future. 2RP 21, 25-26, 74. Love felt obliged to reciprocate and bought Ortiz a ring the same day. 2RP 25, 75. Around the same time,

² Love testified that her son was two and a half years old at the time of trial in October, 2010. 2RP 13.

Ortiz became very possessive of Love. 2RP 27. He wanted her to move in with him, quit her job, and allow him to be her sole source of financial support, which Love was not comfortable with. 2RP 27, 74-75, 83.

During the second weekend in January, 2010, Love and Ortiz went to a party at the home of one of Ortiz's friends where Love consumed alcohol. 2RP 28, 32, 76. Love and Ortiz were talking with a few of Ortiz's friends, who were telling stories about "weird stuff" that they had done. 2RP 28, 76. Love told a story—with a slightly sexual theme—about going backstage at a David Lee Roth concert when she was younger. 2RP 29, 76. The story angered Ortiz and he decided to leave the party, taking Love with him. 2RP 28-30, 76-77.

Once they returned to Ortiz's house, Ortiz told Love that she had embarrassed him in front of his friends and accused her of being "a loose whore." 2RP 28-30. When Love responded that her story was no different from the ones told by his friends, Ortiz punched her in the right arm, which left a substantial bruise. 2RP 30-31; Ex. 4. Love then slapped Ortiz, who slapped her back. 2RP 31. Ortiz later apologized to Love for hitting her. 2RP 33.

Over the following week, Love and Ortiz had numerous conversations about whether to continue their relationship. 2RP 33. On Friday, January 16th, Love was scheduled to work from 5:00 p.m. to

10:00 p.m. at the Muckleshoot Casino. 2RP 33. Ortiz had previously offered to babysit Love's son but called that morning to say that he needed time alone. 2RP 33. Love agreed to make other arrangements for her son. 2RP 33. A short time later, Ortiz called back and then came over to Love's apartment for about an hour. 2RP 34, 77, 79. They got into another argument about their relationship, and eventually Ortiz left. 2RP 34-35, 77-78. Love dropped her son off at Michelle Freeman's apartment, where Freeman regularly babysat Love's son, and went to work. 2RP 14, 33-36.

Love returned to Freeman's apartment between 10:30 and 11:00 p.m. 2RP 108-09. Freeman then told Love that Ortiz had called her about picking up Love's son. 2RP 34, 109-10. Love called Ortiz and eventually agreed to have him come over Freeman's apartment. 2RP 35. Freeman's neighbors were having a small party, so Freeman, Love and Ortiz went next door. 2RP 36-37. Both Love and Ortiz had drinks at the party: Love had two, and recalled that Ortiz had at least one. 2RP 39-40, 83. Love spoke to a man at the party for several minutes, which angered Ortiz. 2RP 37-38. Ortiz and Love went out to the patio of the neighbor's apartment where they argued about Love talking to another man. 2RP 39. Ortiz then told Love that he was going to take her son home. 2RP 38. Love did not agree but Ortiz had already retrieved her son from Freeman and was

walking to his truck. 2RP 38, 120. Love followed Ortiz to her apartment in her own car, arriving home some time between midnight and 12:30 a.m. 2RP 42, 45.

As Love set her groceries down on the kitchen counter, Ortiz smacked her in the back of the head. 2RP 43, 91; Ex. 2, 7, 8, 11. Ortiz then pushed and hit Love multiple times while calling her “a loose whore.” 2RP 43. Ortiz knocked Love down onto the living room floor and repeatedly hit Love in the side of her head while her son watched from a nearby couch. 2RP 44-45; Ex. 1-4, 7-11. Ortiz also punched Love in the eye and put his hand over her nose and mouth and said, “You’re going to die, bitch.” 2RP 44; Ex. 1, 2, 4, 7-8, 13. Love repeatedly told Ortiz to leave, but he refused. 2RP 45. Love also attempted to leave a few times, but Ortiz would not allow her to leave. 2RP 46. During Love’s last attempt to flee the apartment, around 4:00 a.m., Love took her son, ran out the front door to her next door neighbor’s and pounded on the front door three or four times, shouting for help. 2RP 46-47, 59, 62, 92. No one answered. 2RP 46-47, 59, 62, 92.

Ortiz dragged Love back into her apartment by her hair. 2RP 47. Ortiz put Love back down on the floor and covered her mouth and nose again. 2RP 47, 93; Ex. 9-11. Ortiz said, “What are you, dead, bitch?” 2RP 47, 93. Ortiz then kicked her and walked out the front door around

4:30 a.m. 2RP 47, 93; Ex. 1-8, 13. Love was too exhausted to call the police so she went to sleep. 2RP 64, 94. Love awoke around 8:30 a.m. and called her mother, Theresa O'Brien. 2RP 65, 94, 128, 131. O'Brien immediately went to Love's apartment and saw that Love had been badly beaten. 2RP 131-32; Ex. 2. O'Brien first called Ortiz to confront him about hitting her daughter; Ortiz denied assaulting Love. 2RP 133. O'Brien then called the police. 2RP 65, 94, 133.

Auburn Police Officer Renfred Kapule went to Love's apartment, took a statement from Love, and photographed Love's injuries. 2RP 67, 134. Officer Kapule described Love as scared and confused when he spoke to her that morning. 3RP 31. The following day, Love went to the hospital for her injuries. 2RP 72.

Love's left eye was red and swollen shut, and the entire left side of her face and her left ear were black and blue. 2RP 66; 3RP 30-31; Ex. 1, 3-4, 7-8, 13. Love had bruises all over her legs and buttocks. 2RP 66; Ex. 2. Love's arms were also covered in bruises. 2RP 66; Ex. 5-6. The bruising was painful and took over a month to heal. 2RP 66-67, 95. Love also had ringing in her left ear that lasted for three weeks. 2RP 66.

At trial, Ortiz testified that there were three instances during their relationship where Love's drinking caused him embarrassment and that he ultimately broke up with her because of her drinking. 3RP 68, 75. One of

the incidents Ortiz testified about occurred on January 9th when he and Love went to a party at his neighbor's house. 3RP 61. He left early to take Love's son back to his house and put him to bed. 3RP 63. Love stayed at the neighbor's house until approximately 2:00 a.m. when the neighbors asked her to leave. 3RP 64. Ortiz stated that he was embarrassed by Love drinking until she got kicked out. 3RP 64, 68.

Ortiz further testified that a week later, on the evening of January 16th, he called Freeman to say that he would pick up Love's son and take him home as he had done on previous occasions. 3RP 70. Ortiz said that after speaking to Freeman, Love called and invited him to the party at Freeman's neighbor's apartment. 3RP 70. Love further told Ortiz that she had already been drinking. 3RP 70-71. After about a half hour, Ortiz was upset with Love, so he took her out onto the neighbor's patio and told her that he wanted to leave the party because he did not know anyone and Love was talking to another man. 2RP 117-18; 3RP 72. The argument continued for several minutes. 3RP 72-74, 118-19. Ortiz stated that afterward, he left the apartment and walked out to where he had parked his truck. 3RP 75.

Ortiz also testified that he saw Love put her son into her car and decided to meet Love at her apartment. 3RP 75-76. When Love arrived, Ortiz told her that he wanted to end their relationship. 3RP 76-77. Ortiz

got back in his truck to leave, but then decided that he should not drive home to Federal Way because he was tired and had consumed alcohol. 3RP 46, 77-78. Ortiz moved his truck to a parking stall about 20 feet from Love's front door and tried to sleep. 3RP 78-79.

Ortiz told the jury that he saw a red pickup truck drive by and stop in front of Love's apartment. 3RP 80. Ortiz further stated that he saw Love run out of her apartment and get into the truck, which then drove away. 3RP 80. Forty-five minutes later, Ortiz saw Love return and walk toward her apartment. 3RP 82. Ortiz said that he followed a partially-clothed Love inside her apartment and asked her, "Where the F have you been?" 3RP 80. According to Ortiz, Love swung at him, scratched him, and yelled at him that she was going to call the police. 3RP 82. Ortiz then got in his truck and left. 3RP 83. Later that morning, Ortiz received an angry call from Love's mother and decided that he should call the police because Love's mother had accused him of causing Love's injuries. 2RP 132-33; 3RP 85-86.

On cross examination, Ortiz denied ever arguing with Love about her flirtatious behavior, but admitted to telling Officer Kapule he was disgusted and upset by Love's flirtatious behavior, in contrast to his trial testimony. 3RP 103-09.

In closing, the prosecutor made only one minor reference to Love's testimony about the previous assault in which he stated that Ortiz was angry from the party the he and Love went to the week before the charged assault. 3RP 161. Ortiz's counsel did not reference Love's testimony about the earlier assault during closing, but did argue that it was suspicious that she did not call the police immediately after being assaulted for four hours. 3RP 180.

C. ARGUMENT

1. **ORTIZ WAIVED ANY CLAIM OF ERROR REGARDING THE ADMISSION OF LOVE'S TESTIMONY ABOUT A PRIOR UNCHARGED ASSAULT.**

Ortiz asserts that the trial court erred in allowing Nikilyn Love to testify about an uncharged assault that took place a week before the charged offenses because it was a prior bad act under ER 404(b). This argument should be rejected because Ortiz waived any claim of error by failing to object. Moreover, this claim of error cannot be raised for the first time on appeal as it is not a manifest error of constitutional magnitude.

Generally, an issue raised for the first time on appeal will not be reviewed by the appellate court. RAP 2.5(a). Accordingly, in order to

challenge a trial court's admission of evidence on appeal, a party must raise a timely and specific objection at trial. State v. Gray, 134 Wn. App. 547, 557, 138 P.3d 1123 (2006), rev. denied, 160 Wn.2d 1008 (2007). The reason for this rule is to afford the trial court with an opportunity to correct errors, thereby avoiding unnecessary appeals and retrials. Smith v. Shannon, 100 Wn.2d 26, 37, 666 P.2d 351 (1983). An exception to the rule is made when the appellant demonstrates that the error complained of constitutes manifest constitutional error. RAP 2.5(a)(3); State v. Kirkman, 159 Wn.2d 918, 926–27, 155 P.3d 125 (2007).

“Evidentiary errors under ER 404 are not of constitutional magnitude.” State v. Jackson, 102 Wn.2d 689, 695, 689 P.2d 76 (1984). Thus, where a defendant does not object at trial to the admission of evidence on the basis of ER 404(b), the defendant may not assert on appeal that the trial court erred by admitting such evidence. State v. Mason, 160 Wn.2d 910, 933, 162 P.3d 396 (2007); State v. Guloy, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985).

Here, although neither the prosecutor, nor the defense attorney addressed the testimony complained of during the motions in limine, Love testified that about a week before the charged offenses occurred, she and Ortiz went to a get-together at Ortiz’s friend's house. 1RP 17-53; 2RP 28,

32; CP 48-60.³ While at the party, Love told a story to Ortiz's friends about going backstage at a David Lee Roth concert. 2RP 28-29. Immediately after Love finished the story, Ortiz became jealous and decided that they needed to leave. 2RP 29-30. Ortiz and Love walked back to Ortiz's house where they got into an argument. 2RP 28, 32. Ortiz called Love a "loose whore" and told her that she had embarrassed him in front of his friends. 2RP 28-30. When Love responded that she was just telling a story, he punched her in her upper right shoulder. 2RP 31; Ex. 4. Love further testified that Ortiz later apologized to her. 2RP 33.

Ortiz did not object to Love's testimony, and in fact later testified himself that Love's frequent intoxication at social gatherings, including the party a week before the charged assault, was the reason that he ended the relationship with Love. 2RP 28-33, 76; 3RP 62, 64, 66, 106-07. Because the admissibility of evidence pursuant to ER 404(b) cannot be raised for the first time on appeal, Ortiz has waived this claim of error. Mason, 160 Wn.2d at 933; State v. Chirinos, No. 64725-3-I, 2011 WL 1833462, at *6 (Wn. App. May 16, 2011).

³ Although referenced by the trial court, no trial brief or memorandum is listed in the Electronic Court Record as being filed by the defense with the King County Superior Court Clerk's Office. 1RP 40.

2. ORTIZ'S COUNSEL MADE A TACTICAL DECISION NOT TO OBJECT TO LOVE'S TESTIMONY ABOUT THE PRIOR UNCHARGED ASSAULT AND THE TESTIMONY WAS PROPERLY ADMITTED UNDER ER 404(b).

Ortiz argues that his counsel was deficient for failing to object to Love's testimony about the prior uncharged assault and that this failure prejudiced him because the outcome of the trial hinged on who the jury found more credible, and the evidence of the uncharged assault improperly disparaged his credibility. This argument should be rejected because Ortiz's counsel made a strategic decision to use Love's failure to report the first incident to discredit her testimony regarding the charged offenses. Furthermore, even if this Court found counsel's tactical decision unreasonable, Ortiz cannot establish prejudice because the court would have admitted Love's testimony under ER 404(b) to assist the jury in evaluating Love's credibility.

To prevail on a claim of ineffective assistance of counsel, a defendant must show: 1) that trial counsel's representation was deficient; and 2) that counsel's deficient representation prejudiced the defendant. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995); Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Failure to establish either prong of the test defeats the claim. State v. Garcia, 57 Wn. App. 927, 932, 791 P.2d 244,

rev. denied, 115 Wn.2d 1010 (1990). In assessing performance, “the court must make every effort to eliminate the distorting effects of hindsight.” State v. Nichols, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007) (quoting In re Rice, 118 Wn.2d 876, 888, 828 P.2d 1086 (1992)). To prevail on an ineffective assistance of counsel claim based on the failure to object, Ortiz must show: (1) an absence of legitimate strategic or tactical reasons for failing to object; (2) that the objection would likely have been sustained if raised; and (3) that the result of the trial would have been different had the evidence not been admitted. State v. Saunders, 91 Wn. App. 575, 578, 958 P.2d 1251 (1995).

a. Ortiz Has Not Established That Trial Counsel's Performance Fell Below An Objective Standard Of Reasonableness.

Competency of counsel is evaluated from the trial counsel’s perspective at the time of the alleged error and in light of the entire record below. State v. Riofta, 134 Wn. App. 669, 693, 142 P.3d 193 (2006); McFarland, 127 Wn.2d at 335. Counsel’s performance is deficient only when it falls below an objective standard of reasonableness. Riofta, 134 Wn. App. at 693. A reviewing court engages in a strong presumption that counsel's performance was effective and within the wide range of reasonable professional assistance. McFarland, 127 Wn.2d at 335. The

decision of when or whether to object is a classic example of trial strategy. State v. Madison, 53 Wn. App. 754, 763, 770 P.2d 662, rev. denied, 113 Wn.2d 1002 (1989). “Only in egregious circumstances, on testimony central to the State's case, will the failure to object constitute incompetence of counsel justifying reversal.” Id.

Here, to meet the first prong of the Strickland test, Ortiz must show the absence of a legitimate trial strategy for failing to object to Love’s testimony about the prior assault and that if his counsel had objected, the objection would have been sustained.

Ortiz never contested that Love had been assaulted. 1RP 28; 2RP 73-85, 88-97; 3RP 175-84. Rather, Ortiz’s theory of the case was that someone else had assaulted Love, but that she claimed that Ortiz was responsible in retaliation for breaking up with her. 3RP 57-68, 74-75, 80-81, 106-07. Because there were no independent eyewitnesses to the incident, the primary component of Ortiz’s defense strategy at trial necessarily was discrediting Love’s testimony. 3RP 175-84. To do that, Ortiz needed Love to testify about the uncharged assault so that he could later argue three things: 1) Love's purposeful effort to make Ortiz jealous by drinking and flirting with other men was the reason Ortiz broke off the relationship; 2) Love did not immediately report the assault to police and falsely accused Ortiz in retaliation for the break up; and 3) because there

were no other witnesses or physical evidence to corroborate her testimony that it was Ortiz who violently assaulted her that night, Love's testimony was not credible. 3RP 177-81. Thus, Ortiz had valid tactical reasons for not objecting to Love's testimony regarding the prior uncharged assault.

Ortiz has also failed to establish that had his counsel objected to that portion of Love's testimony, it would have been sustained by the court. Evidence of a prior bad act is not admissible to prove the defendant's propensity to commit the charged crime, but it may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ER 404(b). The list of reasons for admissibility is not exclusive. State v. Kidd, 36 Wn. App. 503, 505, 674 P.2d 674 (1983). This Court has further ruled that another permissible reason to admit prior acts is to explain a domestic violence complainant's recantation at trial. State v. Grant, 83 Wn. App. 98, 920 P.2d 609 (1996); see also State v. Magers, 164 Wn.2d 174, 184-86, 189 P.3d 126 (2008) (adopting the rationale set forth in Grant as to admissibility of prior acts of domestic violence to evaluate the victim's credibility).

As this Court stated in Grant:

The jury was entitled to evaluate [the victim's] credibility with full knowledge of the dynamics of a relationship marked by domestic violence and the effect such a relationship has on the victim.

Grant, 83 Wn. App. at 107-08.

To admit evidence of other wrongs under ER 404(b), the trial court must: 1) find by a preponderance of the evidence that the misconduct occurred; 2) identify the purpose for which the evidence is sought to be introduced; 3) determine whether the evidence is relevant to prove an element of the crime charged; and 4) weigh the probative value against the prejudicial effect. State v. Thang, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002) (citing State v. Lough, 125 Wn.2d 847, 853, 889 P.2d 487 (1995)).

Here, the trial court did not engage in the ER 404(b) analysis because neither the prosecutor, nor Ortiz's counsel, raised the issue before or during Love's testimony. 1RP; 2RP 11-99. However, had Ortiz objected and had the court engaged in the ER 404(b) analysis, it would likely have admitted Love's testimony about the prior uncharged assault for the purpose of helping the jurors assess Love's credibility with full knowledge of the dynamics of her relationship with Ortiz, and to explain her delay in reporting and seeking medical treatment. See, e.g., State v. Wilson, 60 Wn. App. 887, 808 P.2d 754, rev. denied, 117 Wn.2d 1010

(1991) (evidence of physical abuse of victim by defendant admissible in trial for child molestation to explain delay in reporting sexual abuse).

Although Love did not recant or minimize the severity of the assault, she did testify that Ortiz was jealous and controlling of her even before the charged offenses occurred, that she did not contact the police immediately after Ortiz left her apartment, but instead went to bed and slept for approximately four hours before calling her mother. 2RP 27-33, 64-65. Love also testified that she did not seek medical treatment until two days after the assault. 2RP 64-65, 72. As with the prior assault, Love did contact the police. Rather, it was Love's mother who ultimately called the police some time after 9:40 a.m., approximately an hour after Love called her. 2RP 65-66, 133; 3RP 24-26. Furthermore, the probative value of this evidence outweighed any prejudicial effect given the nature of Ortiz's crimes and his defense that another unknown person assaulted Love. Thus, the trial court would likely have admitted Love's testimony regarding the prior uncharged assault, even if Ortiz's counsel had objected.

b. Even If This Court Finds That Counsel's Performance Was Deficient, Ortiz Has Failed To Establish Prejudice.

As discussed above, the second prong of the Strickland test requires the defendant to prove that he was so prejudiced by defense counsel's deficient performance that there is a reasonable probability that the outcome of the proceedings would have been different. Nichols, 161 Wn.2d at 8. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. "A defendant must *affirmatively prove prejudice*, not simply show that 'the errors had some conceivable effect on the outcome.'" State v. Crawford, 159 Wn.2d 86, 99, 147 P.3d 1288 (2006) (quoting Strickland, 466 U.S. at 693) (emphasis in original).

Here, Ortiz must show that had his counsel objected to Love's testimony, the outcome of the trial would have been different. For the reason discussed above, even if Ortiz's counsel had objected, the trial court would have admitted Love's testimony to assist the jurors in assessing Love's credibility. Moreover, in the context of all of the evidence presented and particularly the photos of Love's injuries, Love's testimony about the prior uncharged assault was only one small part of the evidence presented. Thus, Ortiz cannot show that but for Love's

testimony about the prior uncharged assault, the outcome of the trial would have been different and his argument fails.

D. CONCLUSION

For the foregoing reasons, the State respectfully requests that Ortiz's convictions for Burglary in the First Degree and Assault in the Second Degree be affirmed.

DATED this 25th day of July, 2011.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Suzanne Elliott, the attorney for the appellant, containing a copy of the Brief of Respondent, in STATE V. GERARDO ORTIZ, Cause No. 66429-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

April Nieman
Name April Nieman
Done in Seattle, Washington

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