72017-1

72017-1

NO. 72017-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

D.A.G. (DOB: 10/1/1996),

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

Did the court abuse its discretion when it found the victim competent under the Allen factors based on evidence that showed he was able to receive and retain sufficient memory of the molestation?

Did the court abuse its discretion when it admitted the victim's statements to his mother, a forensic nurse, and a child interview specialist after determining that each statement was reliable under the Ryan factors?

II. STATEMENT OF THE CASE

Mrs. G began dating her former childhood sweetheart Mr. G in 2010 and married him in May 2012. 1RP 99, 2RP 94. Each had children from previous marriages including Mr. G's son, DG ("the juvenile") (born October 1996), and Mrs. G's son, DW (born March 2004). Id., 1RP 25, Exhibit 1.

In the two years Mr. and Mrs. G dated, she and DW lived first in Rochester and then in Tenino. 1RP 122, 124. He and the juvenile lived in Granite Falls, sometimes visited Rochester, but never visited Tenino. 1RP 124.

In May 2012, Mr. and Mrs. G combined families in a home in Granite Falls where Mr. G had been living with the juvenile. 1RP

99. The living room was furnished with a love seat, a couch, and a TV. 1RP 101-02.

The incident occurred on October 30, 2012. That night, DW was asleep in his room when the juvenile awakened him and took him to the living room. 1RP 29. They got on a love seat and covered themselves with a blanket. 1RP 32. The juvenile pulled down DW's pants and touched DW's "front privates" with his hands. 1RP 29-30. (DW demonstrated what the juvenile did with his hands in what the court called "the motions for masturbation". 3RP 54.

While this was happening, Mr. and Mrs. G were in their bedroom. Mrs. G went to the kitchen and noticed DW and the juvenile under the blanket. 1RP 32, 104-07. Mrs. G pulled off the blanket. 1RP 32, 108. The juvenile wrapped himself in the blanket; DW's pants were undone and unzipped. 1RP 109. Mrs. G sent DW to his room and told the defendant she has better not find out anything more was going on. 1RP 145.

Mrs. G told DW not to lie to her and asked if the juvenile had touched him; DW said, yes. 1RP 32-33, 110. Mrs. G asked no more questions but DW later told her about another incident when the juvenile was babysitting and tried to have anal sex with him.

1RP 112. The next morning, DW told her the abuse had been going on for two years. 1RP 33, 149.

At trial, DW testified about other times the juvenile had touched him and put his penis into DW's bottom (which hurt). 1RP 35. Once in a closet, the juvenile touched DW's privates and attempted anal sex. 1RP 40. The juvenile would spit on his hands and rub them together before masturbating DW. 1RP 40.

DW met with Tierra Phillips, a forensic registered nurse, the next day. 1RP 164, 167. Nurse Phillips talked first to Mrs. G separately from DW. 1RP 167. She talked to DW to determine what his concerns were and to determine what sort of examination was required. 1RP 172-73.

DW told Nurse Phillips that he was there because the juvenile had tried to touch his privates the night before, something that had been happening for two years. 1RP 174-75. Nurse Phillips would have liked to perform a rectal and genitourinary examination but DW declined. 1RP 169, 170, 171, 173.

Carolyn Webster, a child interview specialist, met with DW on November 1, 2012. 2RP 17. Webster described her training and the ground rules she establishes with each child. 1RP 88-89. She said she was more concerned with suggestibility when

interviewing children of pre-school age. A video recording of her interview with DW was admitted as Exhibit 3. 1RP 93.

In the interview, DW was at first reluctant to talk about what happened but instead wrote a note that said, "My brother is gay. He tried to touch me in my privates." 1RP 91. DW reiterated that the abuse been going on for two years. He again described how the juvenile invited him onto the couch, reached into his pants, and touched him. Exhibit 3.

DW told about the juvenile's attempts to anally rape him, how it hurt, how the juvenile had "humped" him while they were lying on their sides. He said the juvenile would spit on his hands and rub them together before touching him. He said the juvenile's privates were big and hairy and curved. Exhibit 3.

Det. Ross testified about his investigation. 2RP 12-61. The court admitted a video-taped interview conducted with the juvenile. Exhibit 1. That interview contained a litany of wrongs the juvenile believed he had suffered since Mrs. G and DW moved in with Mr. G. Mrs. G and DW disliked him and were mean to him. Someone was going through his room, stealing things from his car, and hiding his keys. DW was lying about him to get rid of him and to get

attention. He was sad that Mr. G was "wrapped up" with Mrs. G and her children. Exhibit 1.

The juvenile denied that anything sexual had happened with DW because he did not like guys. In fact, he was disgusted even seeing DW without a shirt. The molestation incident was misunderstood. DW had joined *him* on the couch. DW had tried to get under the juvenile's blanket and the juvenile had to yell and fight him off until fought him off and yelled until Mrs. G came out. DW hid behind the juvenile and undid his own pants, then jumped up and yelled that the juvenile had touched him. Exhibit 1.

The juvenile said that a similar incident was also a misunderstanding. That time, when the juvenile had inadvertently hit DW in the stomach, DW had lied and said the juvenile had hit him in the stomach and the privates. Exhibit 1.

During the trial, there was testimony that DW knew the difference between the truth and a lie (a lie was dishonest) and did not want to tell anyone except his mom what had happened. 1RP 83. DW had some problems in school but never problems with dishonesty and was never known to be dishonest. 1RP 115. DW was able to experience things, communicate about them, and accurately describe things that had happened to him. 1RP 116.

Defense vigorously cross-examined the 10-year old witness about statements he had made in a defense interview. DW was unclear if the abuse had begun in Rochester or Tenino. 1RP 58. DW had a hard time remembering details of the abuse because it happened so often. 1RP 63. DW agreed that he had told defense that on the night of October 30, 2012, the juvenile had also asked DW to masturbate him and performed oral sex on DW. 1RP 75.

The court entered written findings on competency, child hearsay, and ER 803(a)(4). CP 41-46. The court found that all five Allen factors for admissibility had been met and DW was competent to testify. Id. The court found that all the Ryan factors had been met so DW's hearsay statements to Mrs. G, Nurse Phillips, and the child interview specialist were admitted. Id. The court admitted DW's statements to Nurse Phillips under ER 803(a)(4) as well. Id. 3RP 6.

The court found the defendant not guilty of four additional counts of First Degree Child Rape and Attempted Child Rape, also alleged to have occurred between March and October 30, 2012, incidents on which DW's testimony was uncorroborated and contradictory. Id.; 3RP 18-19.

The court found the defendant guilty of one count of First Degree Child Molestation based on the October 30, 2012, incident. Id. This appeal follows.

III. ARGUMENT

A. TEN-YEAR OLD DW WAS COMPETENT TO TESTIFY.

The court conducted the competency hearing as part of the bench trial and ruled after hearing from, Mrs. G, Nurse Phillips, child interview specialist Carolyn Webster, and Detective Ross. The court correctly ruled that DW was competent to testify.

All witnesses, regardless of their age, are presumed to be competent. State v. SJW, 170 Wn.2d 92, 118, 239 P.3d 568 (2010). "A party challenging the competency of a child witness has the burden of rebutting that presumption with evidence indicating that the child is of unsound mind... [or] incapable of receiving just impressions of the facts, or incapable of relating facts truly." Id. at 120.

A witness is competent if he has the mental capacity to understand the meaning of an oath and has "sufficient mind and memory to observe, recollect, and narrate the things he has seen or heard." State v. Ryan, 103 Wn.2d 165, 171, 691 P.2d 197 (1984) quoting, State v. Morrison, 43 Wn.2d 23, 28-29, 259 P.2d

1004 (1953). The court determines child competency using the five-part test of State v. Allen, 70 Wn.2d 690, 424 P.2d 1021 (1967). The five factors are whether the child has:

> (1) an understanding of the obligation to speak the truth on the witness stand;
>
> (2) the mental capacity at the time of the occurrence concerning which he is to testify, to receive an accurate impression of it;
>
> (3) a memory sufficient to retain an independent recollection of the occurrence;
>
> (4) the capacity to express in words his memory of the occurrence; and
>
> (5) the capacity to understand simple questions about it.

Allen, 75 Wn.2d at 692. The factors are merely a guide. Id

A competency determination lies within the trial court's discretion and should not be disturbed on appeal absent an abuse of discretion. State v. Smith, 97 Wn.2d 801, 803, 650 P.2d 201 (1982). An abuse occurs when the court's decision rests on untenable grounds or is made for untenable reasons. State v. Sanchez, 60 Wn. App. 687, 696, 806 P.2d 782 (1991).

When evaluating whether the trial court has abused its discretion, the reviewing court should consider the entire record. State v. Avila, 78 Wn. App. 731, 737, 899 P.2d 11 (1995). The trial

court is in the best position to observe body language, manner of speaking, and other intangibles that do not show in the written record. State v. Borland, 57 Wn. App. 7, 11, 786 P.2d 810 (1990), overruled on other grounds, State v. Rohrich, 132 Wn.2d 472, 939 P.2d 697 (1997). For that reason, the reviewing court should place "particular reliance" on the trial court's ruling. State v. Kennealy, 151 Wn. App. 861, 878, 214 P.3d 200 (2009), review denied, 168 Wn.2d 1012 (2010).

The juvenile claims that the second and third Allen factors were unmet, that is, that DW lacked the capacity to receive and retain memory of the abuse. That claim is belied by the record.

The court may rely on the testimony of other people when assessing a child's competency to testify. State v. Wilson, 1 Wn. App. 1001, 1003-1004, 465 P.2d 413, review denied, 78 Wn.2d 994 (1970) (no abuse of discretion when two children found competent to testify when their testimony was corroborated by witnesses whose competency was not questioned.)

A review of all the testimony shows that DW could form and retain memory of the incident. DW, Mrs. G, and the juvenile all agree in large part as to what happened. The event occurred on October 30, 2012, the last night the juvenile lived in the home. The

juvenile and DW were in the living room, on a couch, covered by a blanket, and watching TV. Mrs. G interrupted them, was upset, and confronted both boys. DW's pants were unzipped and undone. DW went to his room and later disclosed; the juvenile stayed in the living room but then left the home. Thus, testimony from both Mrs. G and the juvenile shows that DW was credible. The only issue that was not corroborated was what happened under the covers. Even there, the court rejected the juvenile's version of events.

Any argument that DW's testimony about October 30 was inconsistent goes to credibility, not admissibility. See State v. Woods, 154 Wn.2d 613, 521, 114 P.3d 1174 (2005) (child victim competent when inconsistent about where she was molested but other testimony showed her capable of receiving accurate impressions); see also State v. Woodward, 32 Wn. App. 204, 207-08, 646 P.2d 135 (1982) (child victim competent when testimony was inconsistent but she was "unwavering" that she had intercourse with defendant); Kennealy, 151 Wn.2d at 861 (child victim confused about details but still competent when accurate about other things that occurred at around the same time.)

In the present case, the court did not err when it addressed the inconsistencies in DW's testimony. "The question... is whether

[DW] is competent to testify, not whether he's credible." 2RP 72. The court found DW to be a reader, precocious, and capable of receiving an accurate impression of what had occurred. 2RP 74-75. "Clearly there was enough detail which would lead me to believe that he understood what happened, he remembered what happened, and he could relate what happened based on his memory." 2RP 75.

DW was unwavering in his statements that the juvenile masturbated him on the couch on October 30, 2012. He knew where he lived, with whom, where he went to school, what grade he was in, and what his teacher's name was. More was not required.

Because the court's decision was not based on untenable grounds, its ruling on child competency should not be disturbed on appeal.

B. DW'S STATEMENTS TO HIS MOTHER, THE RN, AND THE CHILD INTERVIEW SPECIALIST WERE PROPERLY ADMITTED UNDER THE CHILD HEARSAY EXCEPTION.

A statement made by a child under 10 that describes an act or attempted act of sexual contact is admissible if the court finds the time, content, and circumstances of the statement provide sufficient indicia of reliability and the child testifies. RCW

9A.44.120(1), (2)(a). Nine factors are relevant when determining whether the statement is reliable:

> (1) whether there is an apparent motive to lie; (2) the general character of the declarant; (3) whether more than one person heard the statements; (4) whether the statements were made spontaneously; (5) the timing of the declaration and the relationship between the declarant and the witness; (6) whether the statement contains any express assertion about a past fact; (7) whether cross-examination could not show the declarant's lack of knowledge; (8) the possibility of the declarant's faulty recollection is remote; and (9) the circumstances surrounding the statement are such that there is no reason to suppose the declarant misrepresented the defendant's involvement.

State v. Ryan, 103 Wn.2d 165, 175-176, 691 P.2d 197 (1984).

A trial court has considerable discretion when evaluating reliability. State v. Swan, 114 Wn.2d 613, 628, 790 P.2d 610 (1990), cert. denied, 498 U.S. 1046, 111 S.Ct. 752, 112 L.Ed.2d 772 (1991). "The trial court is in the best position to make the determination of reliability as it is the only court to see the child and the other witnesses." State v. Pham 75 Wn. App. 626, 631, 879 P.2d 321 (1994). A court's decision admitting child hearsay should not be reversed absent a showing of manifest abuse of discretion. State v. Woods, 154 Wn.2d 613, 623, 114 P.3d 1174 (2005), State v. Jackson, 42 Wn. App. 393, 396, 711 P.2d 1086 (1985).

Not every Ryan factor must be met. State v. Justiniano, 48 Wn. App. 572, 580, 740 P.2d 872 (1987). It is sufficient if the factors are substantially met. Woods, 154 Wn.2d at 623-24, Swan, 114 Wn.2d at 652.

In the present case, the juvenile argues that the hearsay statements were not reliable because five of the Ryan factors were not met. The evidence shows otherwise.

1. DW Had No Motive to Lie.

The juvenile suggests that DW had a motive to lie to get the defendant in trouble and to avoid his mother's anger at what she had just seen. There is nothing in the record to support either suggestion.

First, there is nothing in the record, except the juvenile's statement, to suggest DW was interested in getting anyone in trouble. DW said nothing about disliking the juvenile or wanting him out of the house. It was the juvenile who said there was animosity between the two stepbrothers, a fact the court noted in its findings. 3RP 3.

Second, there is nothing in the record to show that DW was trying to avoid his mother's anger. DW appreciated that his mother was angry but said it was because DW was only 8 and the juvenile

was 16. Exhibit 3. DW knew what it was to be in trouble and talked about being in trouble at school. 1RP 49. He never expressed fear of being in trouble at home.

The Supreme Court found that child victims had a motive to lie in Ryan, 103 Wn.2d at 176. The girls had been found with candy that they were not supposed to have and feared being in trouble. Each told a different story before accusing the defendant of giving them the candy in exchange for sexual favors. Id. The court said that the fear of being in trouble was their motive to lie.

The court reached the opposite result in In re S.S., 61 Wn. App. 488, 814 P.2d 204, review denied, 117 W.2d 1011, 816 P.2d 1224 (1991). The child SS told her mother and grandmother that her father had molested her. She had previously told her caseworker that she did not like visiting her father. The court found that without evidence that SS believed disclosing the abuse would stop the visits, the statements did not show a motive to lie. Id. at 497.

There is no evidence of a motive to lie in the present case. The record does not show that DW feared being in trouble for being on the couch with the juvenile. No one but the juvenile even hinted

that DW was trying to redirect his mother's understandable anger toward the juvenile.

2. DW's General Character Was Good.

A child's general character is good when the child has a reputation for truthfulness. Swan, 114 Wn.2d at 648. In the present case, the trial court found DW trustworthy because he was competent, precocious, logical, reasonable, with no propensity to lie or manipulate. 3RP 4. The trial court found that any inconsistencies in his testimony were minor and did not affect DW's reliability.

The record supports this finding. Mrs. G testified that DW had never had problems with dishonesty. DW testified that he knew the difference between the truth and a lie. 1RP 87.

The trial court, in the best position to judge, found that DW's general character was good. 3RP 5. That finding should not be disturbed on appeal.

3. Taken In Context, DW's Statements To Mrs. G, The Nurse, And Child Interview Specialist Were Spontaneous.

If a child responds to non-leading questions, that is, questions that are not suggestive, then his answers are spontaneous for purposes of the Ryan factors. State v. Henderson, 48 Wn. App. 543, 550, 740 P.2d 329 (1987). Whether a question is

leading depends on the amount of detail encompassed in the question. If the question supplies the declarant with so many details that it suggests an answer the declarant can adopt by simply saying yes or no, it is leading. State v. Scott, 20 Wn.2d 696, 698, 149 P.2d 152 (1944).

Mrs. G's question really asked only if what was happening was sexual, nothing more. In Henderson, a detective asked a child sexual assault victim why it hurt her when her father touched her vagina. The court found the answer spontaneous because the victim volunteered the detail that it hurt because her father put his finger in her vagina. 48 Wn. App. at 550.

The Henderson ruling broadened the definition of "spontaneous" to include the context in which the child makes the statement. State v. Young, 62 Wn. App. 895, 898 and 901, 802 P.2d 829, 817 P.2d 412 (1991) (social worker's asking child whether her father hurt her with a stick, whether she had seen him naked, and whether father put his penis near her face considered non-leading questions); see also State v. McKinney, 50 Wn. App. 56, 59, 63, 747 P.2d 1113 (1987), review denied, 110 Wn.2d 1016 (1988) (mother's question to daughter whether anyone had touched her in her private part was not leading.).

Sometimes the situation in which a disclosure occurs may not be spontaneous but the statements made still may be. State v. Madison, 53 Wn. App. 754, 770 P.2d 662, review denied, 113 Wn.2d 1002 (1989). There a foster mother, suspecting abuse, looked at a book on reproduction with the child victim. She asked the child if anyone had touched her; the child answered that Uncle Steve had and added details. The court found that the setting was not spontaneous but the details were and upheld the trial court's decision on child hearsay. Id. at 759.

The present case is similar. The setting, a living room where a sexual encounter had just occurred, was not spontaneous. But, under the circumstances, DW's answer that his stepbrother had touched him was. The details DW later provided were not in answer to suggestive questioning.

The present case is different from State v. Griffith, 45 Wn. App. 728, 727 P.2d 247 (1986). There, a mother suspected her daughter had been abused. After two hours of questioning, the girl said that, yes, daddy had abused her. The crucial issue in that trial was not whether the child had been abused but rather who had abused her. Id. at 736.

In the present case, the question was the inverse. The question was not if the juvenile had done something but rather what he had done under the blanket. Under the circumstances, for Mrs. G to ask, "Did he touch you?" was no more leading than to have asked, "What happened on the couch?" While leading, under the circumstances, the answer was still spontaneous.

The juvenile suggests that DW's statement to Mrs. G taints all of his other hearsay statements. This suggestion is completely unsupported by the record. The disclosures DW made in the following days were detailed, dealt with two years of on-going abuse, and could not have been tainted by his answer of yes to one question by his mother.

Not each of the Ryan factors must be met in order for a child hearsay statement to be admissible. Woods, 154 Wn.2d at 626. The trial court, in the best position to evaluate the testimony, found DW's statements to his mother, Nurse Phillips, and the child interview specialist to be spontaneous. His decision was not an abuse of discretion and his should not be reversed.

4. The Timing Of The Disclosures And The Relationships Between DW And His Mother, Nurse Phillips, And The Child Interview Specialist Show That The Hearsay Is Reliable.

Each of DW's hearsay statements was made within three days of the October 30 molestation. Thus, the timing of the disclosures shows that the statements were reliable.

DW had no prior relationship with either of the two professionals with whom he spoke. Thus, the relationships show that the statements were reliable. For the same reasons discussed before, there is no evidence that the disclosure to Mrs. G tainted the later statements.

The juvenile argues that DW's statement to Mrs. G is unreliable because Mrs. G posed the question just after she found the defendant in the act of molesting her child. As the trial court noted that he saw nothing "unwarranted" in the relationship between DW and Mrs. G. 3RP 10. Nobody, the court said, had an ax to grind. Id.

5. The Circumstances Surrounding Disclosures Show That DW Did Not Misrepresent The Juvenile's Involvement.

Mrs. G found the 16-year old juvenile on a couch under a blanket with then-8-year old victim. The victim's pants were undone. When Mrs. G removed the blanket, the juvenile wrapped it around himself as DW ran down the hallway, zipping his pants.

Within moments, DW answered his mother's question. Yes, the juvenile had just touched him. .

As the court noted, under the circumstances, DW and the juvenile were caught in an "encounter". 3RP 11. DW could not have misrepresented the juvenile's involvement because only DW and the defendant were there. Id. Whatever happened, it necessarily involved the juvenile.

C. DW'S STATEMENT TO THE FORENSIC NURSE WAS ADMISSIBLE AS A STATEMENT MADE FOR MEDICAL DIAGNOSIS.

The court admitted DW's statement to Nurse Phillips under two hearsay exceptions, child hearsay and a statement for medical diagnosis. That ruling was correct.

ER 803 provides exceptions to the hearsay rule. One of those is statements made for purposes of medical diagnosis or treatment. ER 803(a)(4). These are statements commonly made to a medical provider; reliability is established by the incentive to obtain proper care. State v. Sims, 77 Wn. App. 236, 239, 890 P.2d 521 (1995). A statement of fault by a child abuse victim that names a family member is relevant and admissible to prevent the recurrence of injury. Id.

That is precisely what occurred here. Nurse Phillips was a registered nurse, a forensic sexual assault examiner for eight and a half years. 164-65. When DW first came in, she interviewed him to find out his areas of concern and to determine further treatment steps. 1RP 173. Based on what DW told her, she believed genitourinary and rectal exams were called for but DW declined. 1RP 170. It is very common for boys to refuse anal examinations. 1RP 187. Nurse Phillips conducted a head-to-toe examination on DW. 1RP 169. Although she found nothing concerning, she told Mrs. G that DW should have a follow-up exam. 1RP 185.

The juvenile argues that DW had no incentive to be truthful since he refused more invasive examination. He made no such objection at trial. In fact, defense twice objected to lack of foundation with no argument about motivation. 1RP 168, 172. Since the defendant did not raise the issue when the statements were admitted, the challenge should not be considered on appeal. See Sims, 77 Wn. App. at 241.

Even if it is considered, the trial court did not abuse its discretion when it admitted DW's statements to the nurse. DW was brought to the nurse to obtain a diagnosis and treatment, if necessary, as a result of his molestation. He told the nurse he

knew why he was there; he told her what had happened; he permitted her to conduct a physical examination. That further treatment was not necessary does not change the purpose of DW's statements.

Arguments similar to this juvenile's have been rejected before. Dependency of MP, 76 Wn. App. 87, 882 P.2d 1180 (1994), review denied, 126 Wn.2d 1012 (1995). There, the court noted that child abuse treatment providers must be attentive to issues of psychological, emotional, and physical harm. Id. at 93. There is "no sound basis for presuming young children lack the ability to understand that certain statements they might make are for the purpose of getting help for sickness, pain, or emotional discomfort." Id. at 94.

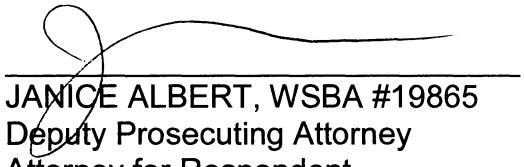
The same is true in the present case. There is nothing in the record that shows DW had any ulterior motive in telling the nurse what he had experienced. The court did not abuse its discretion when it admitted the nurse's statement under ER 803(a)(4).

IV. CONCLUSION

For the foregoing reasons, the defendant's challenges to the evidence should be denied and the conviction should be affirmed.

Respectfully submitted on March 3, 2015.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 

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February 25, 2015

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Re: STATE v. D.A.G. (DOB: 10/1/1996)
COURT OF APPEALS NO. 72017-1-I

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

JANICE C. ALBERT, 19865
Deputy Prosecuting Attorney

cc: Washington Appellate Project
Attorney(s) for Appellant

24th Feb 15

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

THE STATE OF WASHINGTON, Respondent, v. **D.A.G. (DOB: 10/1/1996),** Appellant.	No. 72017-1-I AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 26th day of February, 2015, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

WASHINGTON APPELLATE PROJECT
1511 THIRD AVENUE, SUITE 701
SEATTLE, WA 98101

containing an original and one copy to the Court of Appeals, and one copy to the attorney for the appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 16th day of February, 2015

DIANE K. KREMENICH
Legal Assistant/Appeals Unit