

FILED
Court of Appeals
Division III
State of Washington
9/13/2018 3:53 PM

No. 96338-0
COA No. 34416-9-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

EUGENE LESTER STANDFILL,

Petitioner.

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

PETITION FOR REVIEW

THOMAS M. KUMMEROW
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. IDENTITY OF PETITIONER.....**ERROR! BOOKMARK NOT DEFINED.**

B. COURT OF APPEALS DECISION 1

C. ISSUE PRESENTED FOR REVIEW 1

D. STATEMENT OF THE CASE..... 2

E. ARGUMENT 4

The court’s instruction 25 constituted an impermissible
comment on the evidence contrary to the Washington
Constitution. 4

F. CONCLUSION**ERROR! BOOKMARK NOT DEFINED.**

TABLE OF AUTHORITIES

WASHINGTON CONSTITUTIONAL PROVISIONS

Article IV, section 16..... 1, 4

WASHINGTON CASES

State v. Becker, 132 Wn.2d 54, 935 P.2d 1321 (1997).....4, 5, 7

State v. Bogner, 62 Wn.2d 247, 382 P.2d 254 (1963)4

State v. Brush, 183 Wn.2d 550, 353 P.3d 213 (2015) 8

State v. Jackman, 156 Wn.2d 736, 132 P.3d 136 (2006).....4, 6

State v. Lane, 125 Wn.2d 825, 889 P.2d 929 (1995).....4, 5

State v. Levy, 156 Wn.2d 709, 132 P.3d 1076 (2006)5

State v. Walters, 7 Wn. 246, 34 P. 938 (1893)4

State v. Young, 48 Wn.App. 406, 739 P.2d 1170 (1987).....5

RULES

RAP 13.4..... 1

OTHER AUTHORITIES

WPIC 49A.04 6

A. IDENTITY OF PETITIONER

Eugene Standfill asks this Court to accept review of the Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), petitioner seeks review of the unpublished Court of Appeals decision in *State v. Eugene Lester Standfill*, No. 34416-9-III (August 14, 2018), finding Court's Instruction 25 not to be a comment on the evidence. A copy of the decision is in the Appendix.

C. ISSUE PRESENTED FOR REVIEW

Article IV, section 16 of the Washington Constitution bars the court from commenting on the evidence to a jury. A jury instruction which tells the jury that an element had been proven by the State as a matter of law is an impermissible comment on the evidence. The court in Mr. Standfill's matter instructed the jury in to-convict instruction 25 that a particular act constituted the act of possession, which unconstitutionally reduced the State's burden of proof. Is a substantial question under the United States and Washington Constitutions presented where the court's instruction constituted an impermissible

comment on the evidence entitling Mr. Standfill to reversal of his conviction and remand for a new trial?

D. STATEMENT OF THE CASE

Based upon allegations by 14-year-old K.J.S. that her grandfather, Eugene Standfill, had sexually assaulted her for several years, in November 2014 the Benton County Sheriff's Office began an investigation. RP 38, 43, 92. Deputy Scott Runge interviewed K.J.S., who alleged her grandfather had her use a personal massager to masturbate while he took photographs. RP 99. A subsequent search of Mr. Standfill's residence revealed a personal massager and two digital cameras. RP 107, 115. A memory card in one of the digital cameras was analyzed and revealed multiple photographs of K.J.S. RP 163-66.

Mr. Standfill was charged with one count of second degree rape of a child, one count of third degree child molestation, one count of sexual exploitation of a minor, one count of first degree possession of depictions of a minor engaged in sexually explicit conduct, one count of first degree rape of a child, and one count of first degree child molestation. CP 132-34.

At the request of the State, the court deviated from the WPIC instruction for possession of depictions of a minor engaged in sexually explicit conduct and instructed the jury in Instruction 25:

To convict the defendant of the crime of possession of depictions of a minor engaged in sexually explicit conduct, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the time intervening between the 20th day of August, 2011, and the 14th day of November, 2014, the defendant knowingly possessed visual or printed matter depicting a minor engaged in sexually explicit conduct;

(2) *The visual or printed matter depicts the minor masturbating her vagina;* and

(3) That the defendant knew the person depicted was a minor; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 295 (emphasis added).

The jury failed to reach a verdict on the count of first degree child rape but convicted Mr. Standfill of the remaining counts. CP 307-

12; 3/16/2016RP 74-75. The court declared a mistrial on the count upon which the jury failed to reach a verdict and subsequently dismissed the count. 3/16/2016RP 74; 5/11/2016RP 80.

The Court of Appeals found this instruction not to be a comment on the evidence and affirmed Mr. Standfill's convictions.

E. ARGUMENT ON WHY REVIEW SHOULD BE GRANTED

The court's instruction 25 constituted an impermissible comment on the evidence contrary to the Washington Constitution.

Under article IV, section 16 of the Washington Constitution, “[j]udges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.” This provision prohibits a judge from “conveying to the jury his or her personal attitudes toward the merits of the case’ or instructing a jury that ‘matters of fact have been established as a matter of law.’” *State v. Jackman*, 156 Wn.2d 736, 743-44, 132 P.3d 136 (2006), quoting *State v. Becker*, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997). “The touchstone of error in a trial court’s comment on the evidence is whether the feeling of the trial court as to the truth value of the testimony of a witness has been communicated to the jury.” *State v. Lane*, 125 Wn.2d 825, 838, 889 P.2d 929 (1995). “All remarks and observations as to the facts before the jury are

positively prohibited.” *State v. Bogner*, 62 Wn.2d 247, 252, 382 P.2d 254 (1963) (emphasis added), quoting *State v. Walters*, 7 Wn. 246, 250, 34 P. 938 (1893). A court may comment on the evidence when it incorporates specific facts in a jury instruction. *State v. Levy*, 156 Wn.2d 709, 721-23, 132 P.3d 1076 (2006).

“A statement by the court constitutes a comment on the evidence if the court’s attitude toward the merits of the case or the court’s evaluation relative to the disputed issue is inferable from the statement.” *Lane*, 125 Wn.2d at 838. While a trial court “may supplement an instruction with an explanatory instruction if the meaning of the language is unclear or if the language might mislead persons of ordinary intelligence,” *State v. Young*, 48 Wn.App. 406, 415, 739 P.2d 1170 (1987), an instruction “improperly comments on the evidence if it resolves a disputed issue of fact that should have been left to the jury.” *Becker*, 132 Wn.2d at 64-65. Judicial comments in jury instructions are presumed prejudicial and the State has the burden to show that the defendant was not prejudiced, unless the record affirmatively shows that no prejudice could have resulted. *Levy*, 156 Wn.2d at 725.

A court comments on the evidence when a jury instruction states as a fact an issue to be determined by the jury. *See Levy*, 156 Wn.2d at 721 (instruction described a location as a building but whether it was a building was a question for the jury); *Becker*, 132 Wn.2d at 64–65 (instruction described program as a school but whether it was a school was a disputed issue of fact); *Jackman*, 156 Wn.2d at 744 (instruction stated the victims’ birthdates but the State had the burden of proving the victims were minors).

The pattern jury instruction, WPIC 49A.04, sets forth the elements of the offense thusly:

To convict the defendant of the crime of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about ____, the defendant knowingly possessed visual or printed matter depicting a minor engaged in sexually explicit conduct;
- (2) That the defendant knew the person depicted was a minor; and
- (3) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Court's Instruction 25, which was given to the jury here, deviated from the pattern instruction in relevant part by stating:

To convict the defendant of the crime of possession of depictions of a minor engaged in sexually explicit conduct, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the time intervening between the 20th day of August, 2011, and the 14th day of November, 2014, the defendant knowingly possessed visual or printed matter depicting a minor engaged in sexually explicit conduct;

(2) The visual or printed matter depicts the minor masturbating her vagina; and

(3) That the defendant knew the person depicted was a minor; and

CP 295 (emphasis added).

It was for the jury that to determine what, if any, acts constituted the depictions that Mr. Standfill allegedly possessed. Contrary to the Court of Appeals' conclusion, this instruction removed that disputed issue of fact from the jury's consideration by stating as fact that the act of masturbation by K.S. constituted the possession, thus relieving the State of its burden to prove all elements of the offense. *Becker*, 132 Wn.2d 65.

In *Becker*, the “to-wit” reference in the special verdict form expressly stated that the youth program *was a school*, a fact that was a threshold issue that had to be established for there to be any crime at all. 132 Wn.2d at 64.

In *State v. Brush*, a jury instruction purporting to define “prolonged period of time” for the jury resolved a contested factual issue; whether the abuse occurred over a “prolonged period of time”. 183 Wn.2d 550, 557, 353 P.3d 213 (2015). As a consequence, the instruction constituted an improper comment on the evidence which effectively relieved the prosecution of its burden of establishing an element of the domestic violence aggravating factor. *Id.*

Here, the Court’s Instruction 25 resolved the contested issue of which photograph of K.S. engaged in sexually explicit conduct constituted possession by Mr. Standfill, thus impermissibly commenting on the evidence.

This Court should grant review and determine that the disputed instruction constituted an impermissible comment on the evidence and reverse Mr. Standfill’s conviction.

F. CONCLUSION

For the reasons stated, Mr. Standfill asks this Court to grant review of his petition and reverse his conviction for possession of depictions of a minor engaged in sexually explicit conduct as charged in Count 4.

DATED this 13th day of September, 2018.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)

tom@washapp.org

Washington Appellate Project – 91052

Attorneys for Petitioner

APPENDIX

FILED
AUGUST 14, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	
)	No. 34416-9-III
Respondent,)	
)	
v.)	
)	
EUGENE LESTER STANDFILL,)	UNPUBLISHED OPINION
)	
Appellant.)	

KORSMO, J. — A jury found Eugene Standfill guilty of five different felony charges involving the sexual abuse of a minor, K.S. His appeal challenges a jury instruction, the length and various conditions of community supervision, and the effectiveness of his trial attorney in not arguing that two offenses constituted the same criminal conduct. We affirm the convictions and remand for the trial court to amend and strike some portions of the judgment and sentence.

FACTS

One charge for the jury’s consideration was a count of possession of depictions of a minor engaged in sexually explicit conduct in the first degree, alleged to have occurred between August 20, 2011 and November 14, 2014. Among the evidence introduced at

No. 34416-9-III
State v. Standfill

trial were 16 pictures of K.S. partially or completely nude, and one picture of K.S. masturbating. The photos were taken over a ten year period beginning when the child was four.

In support of the depictions charge, the State proposed a variation on *11 Washington Practice: Washington Pattern Jury Instructions: Criminal* 49A.03.02, at 1023 (4th ed. 2016). Element two of the proposed instruction stated: “(2) The visual or printed matter depicts the minor masturbating her vagina.” The court gave the instruction to the jury as Instruction 25. Clerk’s Papers (CP) at 295.

Mr. Standfill was 86 at sentencing. His offender score was calculated at 12 on each of the five charges, with each of the four other offenses adding three points to the total. CP at 340. His attorney pointed out that the court had no discretion and that Mr. Standfill would be 100 upon completion of the minimum term. He stated that his client had nothing to tell the court. The court then imposed a life sentence, with a minimum term of 210 months on count 1, and lesser determinate amounts on the other four counts. All counts were to be served concurrently. The court imposed a community supervision term of life on count 1, and concurrent supervision terms of 36 months on the other four counts.

Mr. Standfill appealed to this court. A panel considered the case without hearing argument.

ANALYSIS

The sole trial challenge concerns the use of Instruction 25. Mr. Standfill also challenges the effectiveness of his counsel at sentencing and takes issues with the term of supervision on some counts and conditions of supervision. We address those four categories of challenges in the order listed.

Jury Instruction 25

Mr. Standfill argues that Instruction 25 constituted a comment on the evidence. The election of the depiction that the State was relying on to prove count 4 was not a judicial comment on the evidence.

Article IV, § 16 of the Washington Constitution prohibits judges from commenting on the evidence. It states:

Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

This provision “prohibits a judge from conveying to the jury his or her personal attitudes toward the merits of the case.” *State v. Becker*, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997). Its purpose “is to prevent the jury from being unduly influenced by the court’s opinion regarding the credibility, weight, or sufficiency of the evidence.” *State v. Sivins*, 138 Wn. App. 52, 58, 155 P.3d 982 (2007) (citing *State v. Eisner*, 95 Wn.2d 458, 462, 626 P.2d 10 (1981)). “A statement by the court constitutes a comment on the evidence if the court’s attitude toward the merits of the case or the court’s evaluation

relative to the disputed issue is inferable from the statement.” *State v. Lane*, 125 Wn.2d 825, 838, 889 P.2d 929 (1995). Thus, a jury instruction which removes a factual matter from the jury constitutes a comment on the evidence in violation of this section. *Becker*, 132 Wn.2d at 64-65. In determining whether a statement by the court amounts to a comment on the evidence, a reviewing court looks to the facts and circumstances of the case. *State v. Jacobsen*, 78 Wn.2d 491, 495, 477 P.2d 1 (1970). An improper judicial comment is presumed to be prejudicial. *State v. Levy*, 156 Wn.2d 709, 723-725, 132 P.3d 1076 (2006); *State v. Bogner*, 62 Wn.2d 247, 382 P.2d 254 (1963).¹

The defendant’s right to a unanimous verdict also is at issue. Whenever there is evidence establishing more different criminal actions were proven than were alleged, the constitution requires that the jury either be instructed on the need to agree on the specific act proven or the State must elect the specific act it is relying on in order to ensure that a unanimous verdict was returned. This type of error requires a new trial unless shown to be harmless beyond a reasonable doubt. *State v. Camarillo*, 115 Wn.2d 60, 64, 794 P.2d 850 (1990); *State v. Kitchen*, 110 Wn.2d 403, 405-406, 414, 756 P.2d 105 (1988).

¹ A comment on the evidence is harmless error where the record contains overwhelming untainted evidence to support the conviction. *Lane*, 125 Wn.2d at 839-840; *Sivins*, 138 Wn. App. at 60-61.

This court reviews allegations of instructional error de novo. *State v. Brett*, 126 Wn.2d 136, 171, 892 P.2d 29 (1995). Trial courts have an obligation to provide instructions that correctly state the law, are not misleading, and allow the parties to argue their respective theories of the case. *State v. Dana*, 73 Wn.2d 533, 536-537, 439 P.2d 403 (1968).

With these principles in mind, we conclude that Instruction 25 was not a judicial comment on the evidence. The instruction directed the jury that it must find, as one of the elements of the offense, that the State had proven beyond a reasonable doubt that the “visual or printed matter depicts the minor masturbating her vagina.” It did not state that any of the photos contained such an image, nor did the element interpret conflicting evidence. In situations where an instruction has commented on the evidence, it typically occurred because the instruction stated as fact something that was a contested issue of fact. For instance, in *Becker* the State was required to establish that an offense occurred near a school. 132 Wn.2d at 64. The jury instruction stated that the crime occurred near the “Youth Education Program School.” *Id.* The contested issue at trial had been whether or not the Youth Education Program was in fact a school. *Id.* at 63. The court concluded that the language of the instruction told the jury that the program was a school, leaving the jury only the question of whether the offense occurred near the school. *Id.* at 63-64. This constituted a comment on the evidence. *Id.* at 64-65.

Unlike *Becker*, the challenged language of Instruction 25 did not establish any fact. It simply identified the type of evidence the State needed in order to establish the crime. It was for the jury to determine whether the photo did show an underage K.S. masturbating and whether Mr. Standfill possessed the depiction. None of those issues was resolved as a matter of fact by the jury instruction. It did not constitute a comment on the evidence.

The instruction also served to preserve Mr. Standfill's right to a unanimous verdict on the depictions count. There were 17 photos of K.S. that were put before the jury. Clarifying the photo the State was using guaranteed that no issue arose concerning whether all jurors agreed on the same photo to support the conviction.

This assignment of error is without merit.

Assistance of Counsel

Mr. Standfill also argues that his attorney did not adequately represent him at sentencing when he failed to argue that the possession of depictions conviction constituted the same criminal conduct as the sexual exploitation of a minor charge. He cannot establish that he was prejudiced by this alleged failure.

Under the Sentencing Reform Act of 1981, ch. 9.94A RCW, a felon will be sentenced within a specified sentence range dependent on the seriousness of the offense and the offender's prior criminal history, unless aggravating or mitigating circumstances exist. RCW 9.94A.505(2)(x), .530(1), .535; *see generally State v. Jones*, 159 Wn.2d 231,

236-237, 149 P.3d 636 (2006); *State v. Nordby*, 106 Wn.2d 514, 516, 723 P.2d 1117 (1986). The offender score is calculated by counting the prior and current felony convictions in accordance with the rules for each offense. RCW 9.94A.525. Current felony offenses are treated as if they were prior offenses when scoring the other crimes being sentenced. RCW 9.94A.525(1); RCW 9.94A.589(1)(a).

The legislature capped the offender score side of the sentencing grid at “9 or more.” RCW 9.94A.510. In calculating the offender score, the trial court has discretion to count multiple offenses that encompass the same criminal conduct as one. RCW 9.94A.525(5)(a)(i); RCW 9.94A.589(1)(a). Crimes encompass the “same criminal conduct” if they occur at the same time and place, involve the same victim, and have the same criminal intent. RCW 9.94A.589(1)(a). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

An attorney must perform to the standards of the profession; failure to live up to those standards will require a new trial when the client has been prejudiced by counsel’s failure. *State v. McFarland*, 127 Wn.2d 322, 334-335, 899 P.2d 1251 (1995). In evaluating ineffectiveness claims, courts must be highly deferential to counsel’s decisions and there is a strong presumption that counsel was effective. A strategic or tactical decision is not a basis for finding error. *Strickland v. Washington*, 466 U.S. 668, 689-691, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Under *Strickland*, courts evaluate

counsel's performance using a two-prong test that requires courts to determine whether or not (1) counsel's performance failed to meet a standard of reasonableness and (2) actual prejudice resulted from counsel's failures. *Id.* at 690-692. When a claim can be disposed of on one ground, a reviewing court need not consider both *Strickland* prongs. *Id.* at 697; *State v. Foster*, 140 Wn. App. 266, 273, 166 P.3d 726 (2007).

The defendant bore the responsibility of asking the court to exercise its discretion to consider whether either set of crimes should be counted as a single offense. *State v. Graciano*, 176 Wn.2d 531, 536-541, 295 P.3d 219 (2013). His failure to do so waived the issue. *Id.* at 541. It is because of that waiver that he argues his trial counsel failed him at sentencing.

Even assuming that it was error to not raise the matter, the record does not establish prejudice for two reasons. First, in order to prevail, the record would need to show that the court likely would have granted the request. *See McFarland*, 127 Wn.2d at 333-334 (any error in failing to request suppression hearing was not manifest because defendants could not show that trial court would have granted the motion). This record does not establish that the two offenses were necessarily the same, nor is there reason to think that the court would have treated them as such if the issue had been raised. Thus, the ineffective assistance allegation is not manifest error in this context. *Id.*; RAP 2.5(a).

Second, the alleged error had no effect on Mr. Standfill’s sentence. Even if the two offenses should have been treated as one, the offender score on each crime would only have been reduced from 12 to 9. Since the legislature has capped offender scores at “9 or more,” the ranges for these offenses did not change once the offender score reached 9.² The alleged error was not prejudicial.

Mr. Standfill has failed to establish that he was prejudiced by his trial counsel’s alleged failure. He therefore has not met his burden of establishing ineffective assistance.

Term of Supervision

Mr. Standfill also argues that the trial court erred by imposing terms of supervision that exceed the maximum punishment for some of his offenses. The State concedes this argument in part. We agree with the concession and direct that the term of supervision be stricken for counts 2 and 3.

The combined sentence of incarceration and term of community supervision cannot exceed the statutory maximum sentence for the offense. Since 2009, the trial judge has been directed to reduce the term of supervision when the combined total exceeds the maximum. *State v. Winborne*, 167 Wn. App. 320, 329, 273 P.3d 454 (2012).

² We also are aware of no authority that requires a precise number when the offender score falls into the “9 or more” category.

As to count 4, the court also imposed a 36 month term of supervision on top of a 102 month sentence for an offense carrying a maximum term of 120 months. CP at 343-344. Mr. Standfill argues this is error, while the State contends that there was no error because the judgment and sentence expressly tells the Department of Corrections that the combined sentence of incarceration and supervision may not exceed the maximum term for the crime. CP at 344. However, the notation arguably only serves to render the error harmless.³ By the terms of RCW 9.94A.701(9), the court should have imposed a term of supervision totaling 18 months.

Because we remand for further proceedings in the final section of this opinion, the court should take the opportunity to amend the term of supervision on count 4 to 18 months.

Conditions of Supervision

Mr. Standfill also argues that some of the terms of community supervision imposed in Appendix F to the judgment and sentence are invalid. We agree in part with his arguments and remand for further proceedings to correct the judgment and sentence.

Generally, this court will review the terms of community supervision for abuse of the trial court's discretion. Any condition that is beyond the trial court's authority to impose constitutes an abuse of discretion. *State v. Valencia*, 169 Wn.2d 782, 791-792,

³ Since count 1 imposed a lifetime supervision on Mr. Standfill, any error on the length of supervision for the other three counts is harmless for that reason.

No. 34416-9-III
State v. Standfill

239 P.3d 1059 (2010). Other than legislatively specified conditions, the court has authority to impose conditions related to the crimes for which the defendant was convicted. *State v. Riley*, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993).

The State concedes that the conditions that prohibit Mr. Standfill from using computers or electronic devices that are capable of accessing the internet without authorization of his community corrections officer are not crime-related. We accept that concession and direct that the trial court strike those conditions on remand.


Mr. Standfill also argues that the condition requiring him to avoid places where children congregate is vague. CP at 349 (condition 9). We recently addressed an identical provision in *State v. Johnson*, No. 34928-4-III, slip op. at 8 (Wash. Ct. App. July 17, 2018), <http://www.courts.wa.gov/opinions/pdf/349284.pdf>. Mr. Standfill presents the same vagueness challenge to the condition as did the appellant in *Johnson*. As there, we conclude that the condition is not vague. *Id.* at 8-9.

However, *Johnson* also concluded that the term “children” needed defining. This court concluded that the condition needed to be amended to identify “children” as children under age 16. *Id.* at 9-10. We directed the trial court to amend the condition by directing that it read “places where children under 16 congregate.” *Id.* Consistently, we also remand Mr. Standfill’s case for the same amendment.

No. 34416-9-III
State v. Standfill

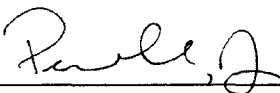
The convictions are affirmed. We remand for further proceedings to amend the judgment and sentence in accordance with this opinion.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

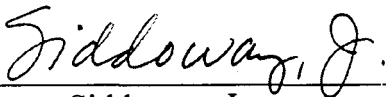


Korsmo, J.

WE CONCUR:



Pennell, A.C.J.



Siddoway, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON


STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	COA NO. 34416-9-III
)	
EUGENE STANDFILL,)	
)	
PETITIONER.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 13TH DAY OF SEPTEMBER, 2018, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> ANITA PETRA, DPA	()	U.S. MAIL
[prosecuting@co.benton.wa.us]	()	HAND DELIVERY
[anita.petra@co.benton.wa.us]	(X)	E-SERVICE VIA PORTAL
BENTON COUNTY PROSECUTOR'S OFFICE		
7122 W OKANOGAN AVE		
KENNEWICK WA 99336-2341		

SIGNED IN SEATTLE, WASHINGTON THIS 13TH DAY OF SEPTEMBER, 2018.

X _____ 

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

September 13, 2018 - 3:53 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 34416-9
Appellate Court Case Title: State of Washington v. Eugene Lester Standfill
Superior Court Case Number: 14-1-01343-8

The following documents have been uploaded:

- 344169_Petition_for_Review_20180913155203D3732179_5852.pdf
This File Contains:
Petition for Review
The Original File Name was washapp.091318-02.pdf

A copy of the uploaded files will be sent to:

- andy.miller@co.benton.wa.us
- anita.petra@co.benton.wa.us
- greg@washapp.org
- prosecuting@co.benton.wa.us

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Thomas Michael Kummerow - Email: tom@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 701
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20180913155203D3732179