

62163-7

62163-7

NO. 62163-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER CHARLES PURDY,

Appellant.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 AUG -7 PM 4:45

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE KIMBERLY PROCHNAU

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Did the trial court properly deny Purdy's motion for a mistrial after one witness observed a few minutes of another witness's testimony where (1) most of the testimony observed was irrelevant to her own, (2) the witness did not offer any sort of elaboration when testifying regarding her description of the suspect, and (3) the witness gained no advantage in regard to making an in-court identification by observing Purdy from the rear of the courtroom that she did not have when testifying from the witness box?

2. Was a witness's comment immediately following a positive montage pick that he was sure of his selection because he went to school with Purdy a nonhearsay statement of identification under ER 801(d)(1)(iii)?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Defendant Christopher Purdy was originally charged by information in King County Superior Court under cause number 07-1-11452-8 KNT with one count of Attempting to Elude a Pursuing Police Vehicle and one count of Hit and Run - Attended

Vehicle. CP 1-2. For trial, the State amended the information to charge as follows:

Count I: Attempting to Elude a Pursuing Police Vehicle

Count II: Hit and Run - Felony

Count III: Hit and Run - Felony or, in the alternative, Hit and Run - Attended Vehicle

Count IV: Hit and Run - Attended Vehicle

Count V: Driving While License Suspended/ Revoked in the First Degree

CP 64-67. Each of the Hit and Run counts involved a different victim, although they all occurred on the same day within a few minutes of each other. 10RP 33.¹ The State conceded at trial that the evidence for Count III would only support the misdemeanor charge. 10RP 5-6. The jury convicted Purdy of two felonies and three misdemeanors as charged. CP 109-13. He timely appealed the verdict. CP 130-42.

¹ The verbatim report of proceedings is cited as follows:

1RP (July 18, 2008)	7RP (July 24, 2008, p.m.)
2RP (July 22, 2008, a.m.)	8RP (July 28, 2008, a.m.)
3RP (July 22, 2008, p.m.)	9RP (July 28, 2008, p.m.)
4RP (July 23, 2008, a.m.)	10RP (July 29, 2008)
5RP (July 23, 2008, p.m.)	11RP (August 8, 2008)
6RP (July 24, 2008, a.m.)	

2. SUBSTANTIVE FACTS

On November 29, 2007, around 3:50 p.m., three different occupied vehicles were hit in quick succession by a black Chevrolet Caprice with tinted side windows. All three collisions occurred near the populated shopping area of the Fred Meyer and Renton Center in Renton. 6RP 79-88. At the time, Sergeant Sjolín of the Renton Police Department, on his marked police motorcycle, was attempting to stop the black Caprice in a routine traffic stop. 6RP 75-76.

The first collision victim was Paula Williams. 7RP 59-60. She had just left the Fred Meyer parking lot and was stopped at a red light when she was struck head-on by the black Caprice. 7RP 60-61. Almost immediately, the driver of the black Caprice threw the car into reverse, nearly running over Sergeant Sjolín who was behind the vehicle, and then pulled forward around Ms. Williams' car so that the driver's side windows were next to each other. 7RP 63. Ms. Williams made brief eye contact with the driver before he sped away. Id. To the police on the day of the incident, in a defense interview, and at trial, she described her memory of the driver as a white male, or very light-skinned black male, approximately 20 to 25 years old, with dark, curly hair or

perhaps wearing a hat. 7RP 64; 10RP 23-28. Although she admitted that at the time of the incident she thought she couldn't identify the driver, Ms. Williams testified at trial that she was certain Purdy was the driver of the black Caprice. 5RP 26; 7RP 70, 72-75.

The Williams collision was witnessed by Susan Oak and Lori Giometti, the driver and front passenger, respectively, of a vehicle waiting directly across the intersection. 6RP 59-63; 8RP 42. Both women testified that after the head-on collision, the black Caprice nearly backed over Sergeant Sjolín and then fled the scene. 6RP 64; 8RP 43. Ms. Giometti described how when the driver was backing up, he turned sideways and was looking through the windows. 8RP 43. She said:

I'm embarrassed to say this because I'm not prejudiced, but I thought he was a black person because he had like fuzzy kind of an afro looking hair. So when he was backing up and turned this way, I said out loud, oh, my God, he is a white guy....I recall curly hair but his was more "fro-ie" or fuzzy.

8RP 43-44. She later stated in court that she recognized Purdy, even though his hair was shorter at the time of trial. 8RP 53-54.

Sergeant Sjolín testified that as the black Caprice was backing toward him after the Williams collision, he could see that the driver was a male, alone, and with a "large afro-style hairdo."

6RP 86-87. Sjolín pursued the black Caprice at a high rate of speed, with lights and sirens, through the Fred Meyer parking lot.

6RP 86-87.

The second and third collisions happened moments later, involving the vehicles of Katherine Webster and Judith Krenzin. 5RP 46; 4RP 80-83. Neither Webster nor Krenzin saw the driver of the black Caprice. 4RP 86; 5RP 49.

Sergeant Sjolín and additional patrol cars pursued the black Caprice, but the chase was called off for safety reasons after police lost sight of the vehicle. 8RP 17. Officer Leaverton and Sergeant Sjolín located the black Caprice within minutes in a parking spot at the Sunset View apartment complex. The car was locked and empty except for a large flat-screen TV in the backseat that Purdy admitted was his. 5RP 16; 7RP 18; 8RP 33; 9RP 60. Purdy had purchased the vehicle a month before from his sister. 6RP 56.

Officer Hardin of the K-9 patrol was called to the Sunset View apartments with his dog, Kobi. 5RP 69. They initiated a scent track which led from the driver's door of the black Caprice, through a break in the fence between the Sunset View and the neighboring Creston Point apartment complex, angled through Creston Point, and ended at the N Building at 4:33 p.m.

5RP 71-75; 6RP 35. Purdy's cousin, Melissa, lived in #N-304. 9RP 72. Officers paused outside the door of #N-304 and heard what sounded like someone running around inside. 8RP 26. They heard a thud, and moments later Officer Hardin found Purdy, winded, sweaty and excited, outside the N Building after he presumably jumped off the balcony to the grass below. 6RP 38; 7RP 20-23. Purdy said that he ran because he had a warrant. 7RP 24.

At trial, Purdy denied making that admission and claimed to have just arrived at the building after having been out looking for Justin Chase. 9RP 34-40. Justin Chase was a maintenance worker at Creston Point. 8RP 67-68. He gave a statement to Detective Hyett that he had seen Purdy driving the black Caprice at approximately 3:15 p.m. that day and walking east through the complex, and he picked Purdy from a montage. 8RP 88.

Chase was highly uncooperative at trial and claimed to not remember anything, saying only that he "could have" seen Purdy driving the black Caprice that day. 8RP 67-80. The State recalled Detective Hyett to testify to Chase's prior identification of Purdy. The testimony was admitted under ER 801(d)(1)(iii). 8RP 82-89.

The trial court ruled that Detective Hyett could testify that Chase identified Purdy as driving the black Caprice and walking across the parking lot. In addition, the court ruled that Detective Hyett could repeat the questions he asked Chase in order to provide context for Chase's answers, finding that the questions were admissible as *res gestae*. 9RP 10-14.

After eliciting testimony from Detective Hyett about Chase's montage identification, the following exchange occurred:

MR. PELLICCIOTTI: Did you ask any additional questions related to the defendant's identity from Mr. Chase?

MR. HILL: Objection, Your Honor, it calls for a narrative.

THE COURT: It calls for a yes or no answer, but I'll caution you to answer on that question itself.

DET. HYETT: Yes.

MR. PELLICCIOTTI: What additional question did you ask?

DET. HYETT: If he was sure.

MR. PELLICCIOTTI: Okay. What did he say?

DET. HYETT: Yes, that he went to school with him.

At this point, the prosecutor moved to admit the montage, defense counsel "renew[ed] [his] previously noted objection," but

the court overruled the objection and admitted the exhibit. 9RP 17; Ex. 11 (attached as App. A).

Purdy testified immediately following Chase and Detective Hyett. He explained that Justin Chase “knows all of us,” including him (Purdy) and his cousin Melissa. 9RP 22-23. He testified to an elaborate story and alleged that Donell Neef was actually the driver of the black Caprice. 9RP 25-32. Donell Neef denied the allegation in rebuttal. 10RP 10-15. The jury convicted.

3. FACTS PERTAINING TO PURDY’S MOTION FOR A MISTRIAL.

Sergeant Sjolín testified in the morning until a fire drill interrupted the proceedings around 11:30 a.m. 6RP 72-90. Paula Williams entered and sat toward the back of the courtroom for at least five minutes prior to the fire drill and observed a portion of Sjolín’s direct examination. 7RP 78; 7RP 94-95. The prosecutor and defense attorney were unaware of this until told by the jail officer after Ms. Williams’ testimony, which occurred after lunch on the same day. 7RP 78. The trial judge, as well, noticed Ms. Williams and two other spectators enter just prior to the fire drill, but did not know that she was a State’s witness. 7RP 79.

The court had previously granted the State's motion to exclude witnesses pursuant to ER 615. 2RP 69. Two signs on the courtroom doors prohibited witnesses from entering. 7RP 96; 10RP 27. The prosecutor said he always instructed witnesses to wait outside prior to their testimony. 10RP 27. Ms. Williams was not recalled to testify as to what she heard. Instead, the court ordered the transcription of fifteen minutes prior to the fire drill for review, and provided copies of that transcript to the parties. 7RP 92-93.

Purdy moved for a mistrial because Ms. Williams may have heard Sjolín testify to his description of the driver of the Caprice ("male driver with a large afro style hairdo"). 10RP 20; 6RP 86. After a thorough review of the evidence, the trial judge denied the motion, citing three reasons why she believed that Purdy was not prejudiced by the violation of the court's order to exclude witnesses. 10RP 28-29. First, most of what Ms. Williams could have heard Sergeant Sjolín testify to in court was not relevant to her own testimony; the only relevant comment was his description of the driver. The court did not find this prejudicial given that Ms. Williams' testimony at trial was entirely consistent with all of her prior descriptive statements. 10RP 28. Second, Williams did not

elaborate on her original description in any way, even after seeing Purdy in the courtroom. 10RP 28. Finally, the court determined that seeing Purdy from the back and side did not give Williams any advantage in identifying him that she did not have when sitting in front of him in the witness box while testifying. 10RP 28-29. She concluded by saying, “So, although she certainly violated the Court’s rules, this was not precipitated by prosecutorial misconduct and it did not prejudice the defendant in any way.” 10RP 29.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY DENIED PURDY’S MOTION FOR A MISTRIAL BECAUSE THE WITNESS’S VIOLATION OF ER 615 DID NOT RESULT IN ANY PREJUDICE TO HIM.

Purdy contends that the court’s failure to declare a mistrial on the basis of witness misconduct—specifically, Paula Williams’ violation of Evidence Rule 615 excluding witnesses from the courtroom—violated his right to procedural due process and a fair trial. Because no prejudice resulted from Ms. Williams’ actions, this claim has no merit.

An accused person is guaranteed the constitutional right to due process and a fair trial. U.S. Const. amend. V, XIV. Where

trial irregularities occur, due process violations may warrant a mistrial. See, e.g., State v. Taylor, 60 Wn.2d 32, 371 P.2d 617 (1962) (mistrial appropriate where detective, in the presence of the jury, twice referred to another witness as defendant's parole officer). A demanding standard must be met, however, before a mistrial is granted:

A mistrial should be granted only when "nothing the trial court could have said or done would have remedied the harm done to the defendant." In other words, a mistrial should be granted only when the defendant has been so prejudiced that nothing short of a new trial can insure that defendant will be tried fairly. Only those errors which may have affected the outcome of the trial are prejudicial.

State v. Gilcrist, 91 Wn.2d 603, 612, 590 P.2d 809 (1979) (citations omitted). A trial court's ruling on a motion for a mistrial is reviewed for abuse of discretion. State v. Rodriguez, 146 Wn.2d 260, 269, 45 P.3d 541 (2002), *citing* State v. Hopson, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989).

In our case, the irregularity alleged by Purdy is a witness's failure to comply with the court's order to exclude witnesses under ER 615. Purdy correctly notes that most cases involving requests for mistrials on the basis of trial irregularities involve improper statements made by witnesses or the prosecutor that could

prejudice the defendant. See App. Br. at 8-9. These cases do not apply because in our case nothing improper was *said*; where something improper is said at trial there are generally remedies short of mistrial that can be imposed at the time to correct the irregularity – a limiting instruction, a motion to strike the testimony, etc.

However, in State v. Schapiro, 28 Wn. App. 860, 626 P.2d 546 (1981), this Court did examine ER 615 in relation to a request for mistrial. In Schapiro, a key witness in the case asked a friend to sit and tape-record the trial proceedings since he couldn't be in the courtroom himself. 28 Wn. App. at 863. At the time the recording was made, the witness had already testified. Id. Schapiro argued on appeal that the trial court should have excluded the witness's testimony or dismissed the case on its own motion (these motions were not made at the trial level). Id. at 867. The court first held that "questions concerning the exclusion of witnesses and the violation of that rule are within the broad discretion of the trial court and will not be disturbed, absent manifest abuse of discretion." Id. The court then found no abuse of discretion given that the defendant had an opportunity to question both the witness and his friend, and the recording was made after the witness testified so it

was not made with the intent to influence his own testimony. Id.
at 868.

In our case, like Schapiro, there was no abuse of discretion by the court in denying Purdy's motion for a mistrial. Paula Williams was in the courtroom for only a few minutes, in violation of ER 615 but not through any fault of the State. 10RP 27-28. Like Schapiro, there is no evidence that she intentionally listened to Sergeant Sjolin's testimony for the purpose of embellishing or altering her own, and most of what she could have heard was entirely irrelevant to her own testimony. Since Purdy's hair was much shorter at the time of trial, she gained no identification advantage by seeing him from the rear and side. Purdy did not ask to have Williams recalled for further cross-examination or questioning by the court. There is no evidence in the record that the jury was aware that Williams watched any portion of the trial prior to her testimony.

In this case, there was no prejudice to Purdy by Ms. Williams' brief and inadvertent violation of ER 615. She would have testified to the same description of the driver and made the same in-court identification of Purdy, who she likely recognized once on the witness stand despite the shorter hair because she had

made eye contact with him at the time of the crime. See 7RP 63-64. The trial court properly denied Purdy's motion for a mistrial because the outcome would have been the same. His claim should be rejected.

2. THE TRIAL COURT PROPERLY ADMITTED CHASE'S STATEMENTS PERTAINING TO HIS IDENTIFICATION OF PURDY AS THE DRIVER OF THE BLACK CAPRICE.

Purdy argues that Detective Hyett's testimony about Chase's montage pick went beyond the scope of identification evidence allowed under ER 801(d)(1)(iii). Because the statement was a statement of identification, this argument has no merit. Moreover, Purdy did not preserve this issue for review. Finally, even if the issue was preserved and the statement was improperly admitted, any error was harmless because the defendant's own testimony corroborated what Chase had said.

a. RAP 2.5(a) Bars Review Of Purdy's Hearsay Argument.

Under RAP 2.5(a), an appellate court may refuse to review any claim of error not raised below. However, an issue may be raised for the first time on appeal if it involves a manifest error

affecting a constitutional right. RAP 2.5(a)(3). The appellate court adopts a strict approach to the rule because trial counsel's failure to object robs the trial court of the ability to correct the error at the time and thus avoid a costly retrial. State v. Powell, 166 Wn.2d 73, 82, 206 P.3d 321 (2009). The burden is on the defendant to "identify the constitutional error and show how, in the context of the trial, the alleged error actually affected the defendant's rights; it is this showing of *actual prejudice* that makes the error 'manifest,' allowing appellate review." State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) (citations omitted). A party must make a specific objection to the admissibility of evidence at the trial court in order to preserve a claim of error on appeal. ER 103(a); State v. Davis, 141 Wn.2d 798, 849-50, 10 P.3d 977 (2000).

Purdy first objected generally to Detective Hyett testifying to Chase's montage identification of Purdy on the basis of relevance, given that there was no question that they knew each other. 8RP 86; 9RP 8-9. He then made a specific objection to "hearsay statements that go beyond the mere statement of identification, but further provides [*sic*] substantive evidence as to what ... Mr. Chase is alleged to have seen that day." 9RP 9. In response to this objection, the court limited the State to eliciting testimony that

Chase identified Purdy as driving the vehicle and that he saw Purdy walking across the parking lot.² 9RP 10. She also permitted Detective Hyett to testify to the questions he asked Chase in order to provide context. 9RP 14.

The direct examination regarding the montage pick passed without objection. Purdy then made a specific objection to the prosecutor asking Detective Hyett if he asked Chase any additional questions related to Purdy's identity. 9RP 17. Given that this is a yes or no question, the court overruled the objection and allowed the witness to answer. Id. The prosecutor then asked what question was asked, and the detective provided the question. No objection was raised. The prosecutor asked what the answer was, and the detective provided Chase's answer that he was sure of the identification because they went to school together. Id. Again, Purdy did not note an objection to either the prosecutor's question or the detective's answer.

From this record, it is clear that Purdy failed to object to the statement that Chase and Purdy went to school together. The failure to object raises neither a constitutional issue nor involves a

² The State never did elicit testimony from Detective Hyett regarding the parking lot observation.

manifest error since there is no actual prejudice (see harmless error analysis below). Thus, his appellate claim is barred.

b. Chase's Statements Were Admissible Under ER 801(d)(1)(iii) As Evidence Of Identification.

Under ER 801(d)(1)(iii), "a statement is not hearsay if ... [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is ... one of identification of a person made after perceiving the person." The federal rule is nearly identical. Fed. R. Evid. 801(d)(1)(C).³ Decisions as to the admissibility of evidence are reversible only where the trial court abused its discretion. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). Abuse of discretion occurs only where no reasonable person would have decided the issue as the trial court did. State v. Thomas, 150 Wn.2d 821, 856, 83 P.3d 970 (2004).

Where a witness claims memory loss at trial (whether real or not) regarding a prior identification, a person other than the

³ The federal rule, ER 801(d)(1)(C), is identical in all material respects: "A statement is not hearsay if ... [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is ... one of identification of a person made after perceiving him."

declarant may testify as to those prior statements of identification. In State v. Grover, 55 Wn. App. 252, 256, 777 P.2d 22 (1989), a detective testified to a witness's identification at the scene of the two suspected robbers because the witness claimed at trial that she no longer had a memory of it. Similarly, in United States v. Jarrad, 754 F.2d 1451, 1456 (9th Cir. 1985), an FBI agent testified to a witness's tentative montage pick of the suspect where the witness denied in her testimony earlier in the day of having identified any photographs of the suspect. This procedure is permitted because the rule is intended to "solve the problem of a witness who identifies a defendant before trial, but then at trial refuses to acknowledge the identification because of fear of reprisal." Jarrad, 754 P.2d at 1456.

Moreover, a statement of identification is not limited to the identification of a person; at a minimum, it can also include statements describing a person's clothing or other inanimate objects. See State v. Stratton, 139 Wn. App. 511, 161 P.3d 448 (2007), *review denied*, 163 Wn.2d 1054 (2008) (statement describing a person's clothing was admissible as identification evidence); State v. Jenkins, 53 Wn. App. 228, 766 P.2d 499 (1989) (statements identifying an automobile and photograph were admissible). Courts have declined to narrowly construe the rule to

be limited to identifications made only in montages and line-ups.

Grover, 55 Wn. App. at 256.

In Jarrad, *supra*, the FBI agent's testimony went beyond the witness's strict selection of the suspect from a montage and delved into the certainty of the identification. The FBI agent testified that the witness indicated that Jarrad's picture was "similar to or reminded her of" one of the men who brought a known accomplice to the robbery in for medical treatment. Jarrad, 754 F.2d at 1456.

In our case, the court ruled that Detective Hyett could testify to Chase's identification of Purdy under ER 801(d)(1)(iii), citing Grover, given that Chase was an uncooperative witness who claimed memory loss. 9RP 10-14. Purdy apparently does not challenge the admissibility of the montage pick itself, which includes Chase's written statement on the Montage Report where he positively identifies Purdy as "driving his black Caprice when he left before the incident involving police." App. Br. at 17-19⁴; Ex. 11 (attached as App. A). Instead, Purdy claims that the relationship statement immediately following the montage pick is hearsay and exceeds the scope of the rule. See App. Br. at 17-19.

⁴ "Had the trial court stopped with the identification of Mr. Purdy, there would not have been any error." App. Br. at 19.

But Justin Chase's identification of Purdy as a classmate was clearly an admissible nonhearsay statement of identification of a person under the rule. Like the statement testified to in Jarrad, this statement is part and parcel of the montage pick itself. Just because it happens immediately following a positive montage pick does not make it an inadmissible part of the identification.

Various hypothetical scenarios illustrate the potential absurdity of Purdy's claim. For example, had Justin Chase not been shown a montage, and instead merely offered a verbal statement to Detective Hyett that "I saw my former classmate Christopher Purdy driving the black Caprice at 3:15 on November 29, 2007," the entire statement would certainly be admissible under ER 801(d)(1)(iii). Similarly, had Chase forgotten Purdy's name, a prior statement that he "saw a guy I used to go to high school with driving the black Caprice at 3:15 p.m.; I work with his cousin Melissa," would also be admissible under ER 801(d)(1)(iii) because the statement as a whole identifies Purdy. This is no different from Stratton, where the victim identified the shooter by his yellow t-shirt. 139 Wn. App. 511, 517.

All evidence admitted by the court surrounding Justin Chase's positive identification of Purdy was admissible under

ER 801(d)(1)(iii) because the statements as a whole identified Purdy; the surrounding questions and answers about the identification were, as the court ruled, *res gestae*, merely providing context to the identification itself. For these reasons, this Court should reject Purdy's claim.

- c. Even If The Issue Was Preserved And The Statement Was Inadmissible Hearsay, Any Error Was Harmless.

An evidentiary ruling in violation of a hearsay rule is not a constitutional error. State v. Ashurst, 45 Wn. App. 48, 54, 723 P.2d 1189 (1986). Thus, an erroneous ruling on the admissibility of hearsay evidence is harmless if the reviewing court can conclude within reasonable probabilities that it did not materially affect the outcome of the trial. State v. Calegar, 133 Wn.2d 718, 727, 947 P.2d 235 (1997).

Purdy argues that any error is not harmless because "the trial turned on one issue: whether Mr. Purdy was the person driving the black Caprice that hit the three cars and then attempted to flee from police." App. Br. at 20. He goes on to argue that the State's case as to identity was circumstantial, discussing the in-court identifications of Williams and Giometti. However, any harmless

error analysis should focus only on any prejudice caused by the admission of the statement regarding Chase and Purdy's acquaintanceship from school, not on Chase's entire identification of Purdy as being seen driving the black Caprice prior to the crime (which was conceded properly admitted at App. Br. at 19).

In this case, there was no conceivable prejudice by the admission of the statement because Purdy, in his own testimony immediately following Detective Hyett's, agreed with Detective Hyett's testimony that Chase and Purdy knew each other. 9RP 18-54. In the beginning of his testimony, Purdy explained that he knew Chase and had been trying to get Chase to fix a broken appliance in his cousin's apartment. 9RP 22-23. He explained as follows:

There was a maintenance guy, Mr. Chase, who was just here. He worked for the apartment complex and he also works with Melissa. My cousin also works at the apartment complex with him. They work together. And he knew that that was my cousin and, you know, he knows all of us.

9RP 22.

Moreover, the fact that they knew each other was not a contested issue. Prior to Purdy's testimony, Mr. Hill pointed out in argument that a history existed between Purdy and Chase and that they clearly knew each other: "...Mr. [Chase's] knowledge of

Mr. Purdy extends beyond the day or the incident in question and his ability to pick him out of a photo montage does not make any fact at issue in this case more or less likely.” 9RP 8-9; see also 8RP 86 (Hill arguing on admissibility of montage: “I think that Mr. Chase’s identification of Mr. Purdy is not relevant. He said he knew him from the complex. The fact that he picked him out of a photo montage has no bearing on this case.”)

Whether they knew each other as former classmates or because they had been talking to each other earlier that day would have made no difference in this case. The bottom line is that Chase was unlikely to misidentify Purdy because they knew each other prior to the crime. Any error is harmless and Purdy’s claim should be rejected.

D. CONCLUSION

For all the reasons stated above, the State respectfully requests the court to affirm Purdy’s convictions.

DATED this 6th day of August, 2009.

Respectfully submitted,

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Appendix A

**Renton Police Department
Montage Report**

Case No:
2007-12622

Witness <u>CHASE JUSTIN</u>	Home Phone	Business Phone	
Address <u>13445 MLK WAY # T201</u>	City <u>SEATTLE</u>	State <u>WA</u>	Zip <u>98178</u>

On 11/29/07 at 22:27 AM/PM, I viewed a montage consisting of 6 photographs and, (initial one of the following witness' statements):

- I cannot identify any of the persons in the photographs before me.
- I recognize, but cannot positively identify the person(s) in photograph number(s) _____.
- I can positively identify the person in photograph number 6.

The photograph, which I recognize have positively identified, is of the same person, who WAS DRIVING HIS BLACK CABRIOLE WHEN HE LEFT BEFORE THE INCIDENT INCLUDING which occurred on 11/29/07, at about 15:15 AM/PM at the following location POLICE or address: 13455 MARTIN LUTHER KING WAY S, SEATTLE, WA 98178

 _____
 Witness' Signature Date: 11/29/07

FOLLOWING ENTRIES TO BE COMPLETED ONLY AFTER OBTAINING THE WITNESS' SIGNATURE

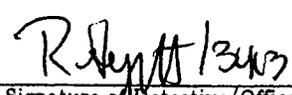
Photo Position	DOL/BA Number	Photo Position	DOL/BA Number
1		5	
2		6	
3		7	
4		8	

Location where witness(s) viewed montage:

Identify by name, address and phone number, all persons present at showing of montage:

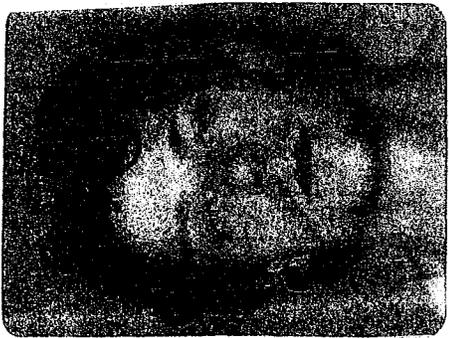
Comments: _____

Date: _____


 Signature of Detective/Officer showing montage

11/29/07
 Date

MINIUM IULIUE DEPAKIMENI



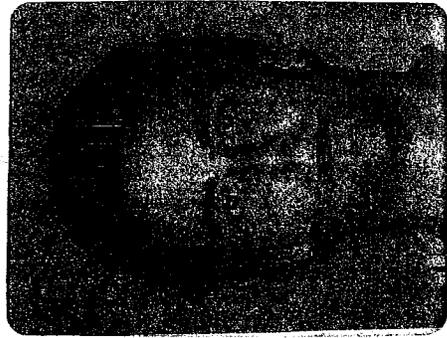
1



2



3



4



5



6

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 Thomas M. Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. CHRISTOPHER CHARLES PURDY, Cause No. 62163-7-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.



Name Bora Ly
Done in Seattle, Washington

08/06/2009

Date

FILED
CLERK OF COURT
STATE OF WASHINGTON
2009 AUG -7 PM 4:45