

65214-1

65214-1

NO. 65214-1-1

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

STATE OF WASHINGTON

Respondent

v.

JAMES O. WIGGEN,

Appellant

65214-1-1-1-1



BRIEF OF RESPONDENT

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I. ISSUES

1. The defendant did not object to a jury instruction that said all twelve jurors must be unanimous in order to return a verdict on the special verdict form. For the first time on appeal he argues this instruction was erroneous.

a. Has the defendant identified a manifest constitutional error which would permit review even though the defendant did not object to this instruction at trial?

b. If the Court considers this issue and reverses the special verdict is the proper remedy a new trial on the firearms enhancement?

2. When the trial court imposes community custody as part of the defendant's sentence the court is required to impose a condition that the defendant not possess or consume controlled substances except as permitted by lawful prescription unless the court specifically waives it. Here the trial court orally commented that the condition was not crime related, but then ordered all "the usual" conditions of community custody in its oral pronouncement of the judgment and sentence and then included that condition in the written judgment and sentence. The defendant did not object to

the written judgment and sentence on the basis that it did not reflect the trial court's oral pronouncement of sentence.

a. Is the question of whether the written judgment and sentence accurately reflects the trial court's intention in regard to the community custody condition a manifest constitutional error which can be raised for the first time on appeal?

b. If the Court does review the issue, is the trial court's oral pronouncement that the defendant be subject to all the usual community custody conditions accurately reflected in the judgment and sentence?

c. Where it is not clear from the record that the judgment and sentence does not accurately reflect the trial court's intention in regard to a particular community custody condition, is it appropriate for this Court to order the trial court to enter an order nunc pro tunc waiving that community custody condition?

II. STATEMENT OF THE CASE

On December 23, 2009 the defendant, James O. Wiggen, entered the Macy's department store located at the Alderwood Mall in Lynnwood, Washington. Brandon Smith is a loss prevention assistant manager for Macy's. Mr. Smith noticed the defendant on the security monitor when the defendant went to a rack of

expensive denim jeans, selected two pair without checking the price, and proceeded to the fitting room. Mr. Smith then left the office and went to the floor where he followed the defendant into the fitting room. 1 RP 56, 59-60, 64-65; 2 RP 163.

Mr. Smith went into the fitting room next to the one the defendant occupied. The divider between the two rooms had a six to twelve inch gap between the bottom of the divider and the floor. Through that gap Mr. Smith saw the defendant put the store jeans on, and then put his own jeans on over the store jeans. The defendant left the fitting room and put the second pair of jeans back on the rack. Mr. Smith followed the defendant out of the fitting room and checked the pocket of the second pair of jeans. Mr. Smith found the security tag for the other pair of jeans in the pocket of the second pair that had been put back on the rack. 1 RP 61-62.

Mr. Smith continued to follow the defendant around the store. He saw the defendant select a scarf from a display and put it on. The defendant then went to the fragrance counter where he picked up a tester bottle of men's cologne and concealed it in his jacket pocket. 1 RP 63-64.

Mr. Smith then saw the defendant headed for the exit. Mr. Smith allowed the defendant to leave the store before he

confronted the defendant. Mr. Smith showed the defendant his badge and identified himself as store security. Mr. Smith told the defendant he was aware the defendant had left the store without paying for merchandise and asked the defendant to come back in the store. The defendant responded by pulling his knife out of his pocket, opening it up and pointing it at Mr. Smith. Mr. Smith was about two to three feet away from the defendant. Mr. Smith felt threatened by the knife and retreated inside, telling the defendant that he was going to call 911. As he did so Mr. Smith saw the defendant go across the parking lot headed for the furniture store and the fitness center. 1 RP 66-72, 75.

Officer Miller arrived on scene about three minutes after Mr. Smith called 911. He located the defendant behind the fitness center. Officer Miller told the defendant to take his hands out of his pockets. The defendant replied that he did not take anything. The defendant also denied having a knife. Officer Miller located an open knife in the nearby bushes that Mr. Smith identified as the knife the defendant brandished when Mr. Smith confronted the defendant. 1 RP 72-72, 102-103, 105-107.

After he was arrested and read his Miranda warnings the defendant agreed to talk to Detective Adams. 2 RP 130-133. The

defendant admitted that he shoplifted a pair of pants and a pair of sunglasses. Ex. 22, page 2, 9. He admitted that he possessed a knife that he used to facilitate shoplifting. The defendant denied wielding a knife at Mr. Smith. The defendant said Mr. Smith told him to "take that knife and throw it on the ground," but that he did not do so. Ex. 22 page 6-7. The defendant admitted Mr. Smith may have perceived that the defendant was pulling a knife on him. Ex. 22, page 11.

The defendant was charged by amended information with one count of First Degree Robbery with a deadly weapon allegation. 1 CP 112-113.

At trial the defendant testified that he shoplifted the pants and sunglasses. He denied that he shoplifted the scarf and cologne. He testified that he always carried a knife; he identified the knife introduced into evidence as his knife that he carried on December 23. He said the blade was six inches long and was double edged. The defendant said he used the knife to remove security tags while shoplifting. The defendant testified that the knife was in the open position when he put it in his pocket. As he approached the exit he pulled it out of his pocket to close it. He then put it back in his jeans pocket with only the clip showing on the

outside of his pocket. The defendant denied pulling the knife out and displaying the blade to Mr. Smith. He said he only pulled it out of his pocket when Mr. Smith told him to do so and throw it on the ground. The defendant said he did not open the knife when he pulled it out of his pocket. He testified that the knife opened when he threw it on the ground in an attempt to hide the evidence after he ran behind the building. 2 RP 155, 161, 166-167, 179-186, 189-193, 197-204, 210-211, 222, 238-239.

The defendant was convicted of Robbery First Degree. The jury returned a special verdict finding the defendant was armed with a deadly weapon at the time of the commission of the crime. 1 CP 86-87.

III. ARGUMENT

A. WHETHER THE SPECIAL VERDICT INSTRUCTION WAS ERRONEOUS DOES NOT RAISE A QUESTION OF MANIFEST CONSTITUTIONAL ERROR. EVEN IF THE COURT WERE TO REVIEW THE ISSUE AND REVERSE THE SPECIAL VERDICT THE REMEDY IS NEW TRIAL ON THAT ISSUE.

The State proposed a jury instruction which stated

You will also be given a special verdict form for the crime of First Degree Robbery. If you find the defendant not guilty of First Degree robbery, do not use the special verdict form. If you find the defendant guilty of First Degree Robbery, you will then use the special verdict form and fill in the blank with the answer "yes" or "no" according to the decision you reach. Because this is a criminal case, all twelve of

you must agree in order to answer the special verdict form. In order to answer the special verdict form “yes,” you must unanimously be satisfied beyond a reasonable doubt that “yes” is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer “no”.

1 CP 141.

The defendant did not object to this instruction. 2 RP 168, 247, 250.¹ He now argues for the first time on appeal that this instruction was erroneously given because the jury was not required to be unanimous in order to answer “no” on the special verdict form. He relies on State v. Bashaw, 169 Wn.2d 133, 234 P.3d 195 (2010) and State v. Goldberg, 149 Wn.2d 888, 72 P.3d 2083 (2003). Bashaw held that a jury instruction that required all twelve jurors to agree on the answer to the special verdict was an incorrect statement of the law. While jurors need be unanimous to answer “yes”, they need not be unanimous in order to answer “no.” Bashaw, 169 Wn.2d at 147.

Generally, appellate courts do not consider issues raised for the first time on appeal. RAP 2.5(a), State v. McFarland, 127

¹ The defendant did object to the instruction that gave a single definition for deadly weapon. 2 RP 171. The defense proposed separate instructions defining deadly weapon for the definition of first degree robbery and for the definition of a deadly weapon enhancement. 2 RP 171-175. The court granted the defense request and gave the two different instructions. 1 CP 102, 111.

Wn.2d 322, 332-33, 899 P.2d 1251 (1995). An error which was not objected to at the trial level may be considered by the court if it is a “manifest error affecting a constitutional right.” RAP 2.5(a)(3), State v. Lynn, 67 Wn. App. 339, 342, 835 P.2d 251 (1992). Whether the Court will consider an asserted error under these circumstances is determined by a four part analysis set out in Lynn.

First, the reviewing court must make a cursory determination as to whether the alleged error in fact suggests a constitutional issue. Second, the court must determine whether the alleged error is manifest. Essential to this determination is a plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial of the case. Third, if the court finds the alleged error to be manifest, then the court must address the merits of the constitutional issue. Finally, if the court determines that an error of constitutional import was committed, then, and only then, the court undertakes a harmless error analysis.

Lynn, 67 Wn. App. at 345.

The instructional issue raised by the defendant does not raise a constitutional question. Bashaw noted that the rule it relied on in order to find the instruction erroneous was not compelled by double jeopardy protections. Bashaw, 169 Wn.2d at 147, n. 7. While this Court has recognized instructional errors may implicate constitutional due process,² that does not mean such errors do so

² Lynn, 67 Wn. App. at 343.

in every case. The defendant has not explained how the identified error implicates his due process rights under the circumstances of this case.

If the defendant does identify how this instruction could have affected his due process rights in his reply brief³ no manifest error exists. “Manifest” within the meaning of RAP 2.5(a)(3) requires the defendant to show that he was actually prejudiced. State v. O’Hara, 167 Wn.2d 91, 99, 217 P.3d 756 (2009), State v. Kirkman, 159 Wn.2d 918, 935, 155 P.3d 125 (2007). The actual prejudice standard differs from the harmless error standard in that under the former test the focus is on “whether the error is so obvious on the record that the error warrants appellate review.” O’Hara, 167 Wn.2d at 99-100.

To show actual prejudice the defendant must show that the error had a practical and identifiable consequence in the trial of the case. Id. “If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest.” McFarland, 127 Wn.2d at 333. Only after the Court concludes that manifest constitutional error has occurred does the Court then engage in a harmless error analysis. O’Hara,

167 Wn.2d at 99. Any error in this case does not satisfy the manifest requirement to justify review.

The defendant testified that he was carrying a knife at the time of the offense. He confirmed the knife retrieved by the officer from the bushes near where the defendant was located was his knife, and that he had thrown it in the bushes. The six inch blade made the knife a per se deadly weapon under the law. RCW 9.94A.825. The only issue for the jury to determine was whether the defendant brandished the knife when Mr. Smith confronted him rendering the knife a deadly weapon for the purposes determining that element of first degree robbery and whether it qualified as a deadly weapon for purposes of the special verdict. 1 CP 97, 102.

Given the nature of the charge the special verdict instruction could have had no practical and identifiable affect on the outcome of this case. As noted one of the elements of first degree robbery was that the defendant was armed with a deadly weapon. The jury was instructed to find all of the elements of the charge beyond a reasonable doubt in order to find him guilty of the charge. The jury was also instructed that in order to return a verdict they were

³ The State does not concede that the defendant's due process rights were affected by this instruction.

required to be unanimous. The unanimous verdict on the first degree robbery charge necessarily reflects a unanimous determination that the defendant committed first degree robbery with a deadly weapon. The only deadly weapon at issue was a knife.

The jurors were also instructed not to use the special verdict form unless they found the defendant guilty of the robbery charge. Thus the jury had already unanimously found the defendant possessed a deadly weapon before it considered the special verdict. Since the only evidence of a deadly weapon was a knife, there is no rational basis on which to conclude that the jury may have been split at any point in their deliberations on the special verdict.

The difference between the instruction defining deadly weapon for the underlying offense and for the special verdict is immaterial to this question. The definition of deadly weapon in each instruction is the essentially the same. The "to convict" instruction required that the defendant be armed with a deadly weapon and that he displayed that weapon during the commission of the crime or in immediate flight therefrom. 1 CP 97. The special verdict required that there be a connection between the defendant

and the weapon, and the weapon and the crime for the jury to find special allegation had been proved. 1 CP 111. If the jury unanimously found the defendant in possession of the knife during or in immediate flight from the commission of the robbery, then it necessarily found the required connections necessary to find sufficient evidence to support the deadly weapon allegation.

The defendant excuses his failure to object to the instruction by pointing out that the special verdict instruction in Bashaw was not objected to, but the Court considered the issue anyway. BOA at 8. However the State did not argue the defendant was precluded from raising the unanimity issue for the first time on appeal in either the Court of Appeals or in the Supreme Court. State v. Bashaw, 144 Wn. App. 196, 199, 182 P.3d 451 (2008), reversed, 169 Wn.2d at 145-147. Accordingly neither court addressed this procedural bar and instead directly addressed the merits of the defendant's issue.

The defendant's attempt to read into the Bashaw decision a new rule permitting review for the first time on appeal for issues relating to the special verdict instruction should be rejected. Any statement made by the Court which does not relate to the issue before the court is dicta and need not be followed. Pierson v.

Hernandez, 149 Wn. App. 297, 305, 202 P.3d 1014 (2009). Where, as here, the Court made no statement about an issue, this Court should not guess at what the Supreme Court might have said on the issue and then apply that guess to the facts of this case as if that guess had the same precedential value as what the Court actually said about the issue that it did address.

This Court should not presuppose the Supreme Court created a new rule for review of special verdict forms by implication in Bashaw for another reason. The Supreme Court has repeatedly recognized that the defendant's failure to object robs the trial court of the opportunity to correct an error and avoid a retrial. Kirkman, 159 Wn.2d at 935, State v. Powell, 166 Wn.2d 73, 82, 206 P.3d 321 (2009), Smith v. Shannon, 100 Wn.2d 26, 37, 666 P.2d 351 (1983). Permitting the defendant to raise the issue in absence of an objection is contrary to considerations of judicial economy, as well as it is contrary to the weight of precedential authority. This Court should not accept the defendant's invitation to read into the Court's decision in Bashaw that which simply is not there.

Finally, even if the Court considers the issue and reverses the special verdict, the Court should decide what the appropriate remedy should be. The usual remedy for erroneous jury

instructions is remand for a new trial. See, e.g., State v. Jackman, 156 Wn.2d 736, 745, 132 P.2d 136 (2008); State v. Johnston, 156 Wn.2d 355, 127 P.3d 707 (2006). This reflects fundamental considerations of justice:

Corresponding to the right of an accused to be given a fair trial is the societal interest in punishing one whose guilt is clear after he has obtained such a trial. It would be a high price indeed for society to pay were every accused granted immunity from punishment because of any defect sufficient to constitute reversible error in the proceedings leading to conviction.

United States v. Tateo, 377 U.S. 463, 466, 84 S. Ct. 1587, 12 L. Ed. 2d 448 (1964).

This observation is particularly applicable to the present case, where no objection was raised to the alleged error and there was strong credible evidence the defendant was armed with a deadly weapon at the time he committed the crime. The deadly weapon enhancement added 24 months to the defendant's term of confinement. 1 CP16. It would be unfair to allow the defendant to stand by silently and obtain an outright dismissal of the deadly weapon enhancement when it is not likely that he would obtain that result from a rational jury.

In Bashaw the Court decided that the remedy should be to vacate the special verdict on the basis of “policies of judicial economy and finality.” Bashaw, 163 Wn.2d at 146-147. When, however, a defendant successfully challenges his conviction, he loses any right to have that conviction treated as final. See State v. Ervin, 158 Wn.2d 746, 147 P.3d 567 (2006). It is certainly not a waste of time for a court to determine if a person deserves a sentence of 140 months or 116 months. Moreover it would be contradictory and completely unfair to decide that considerations of judicial economy did not preclude the defendant from raising this issue for the first time on appeal, but those same considerations should preclude retrial on that issue.

B. WHETHER THE WRITTEN JUDGMENT AND SENTENCE ACCURATELY REFLECTS THE TRIAL COURT’S INTENTION REGARDING IMPOSITION OF A COMMUNITY CUSTODY CONDITION HAS NOT BEEN PRESERVED FOR REVIEW. THE WRITTEN JUDGMENT AND SENTENCE DOES REFLECT THE TRIAL COURT’S DECISION IN REGARD TO THAT CONDITION.

At sentencing the State recommended that the court order the defendant not possess or consume controlled substances without a valid prescription as a condition of his community custody. 3 RP 313. Defense counsel objected to that condition. 3 RP 316. The trial court in its oral pronouncement of sentence

stated it thought the case law required there be some indication that drugs had played a part in the crime in order to impose the condition requested by the State. 3 RP 318. Ultimately the Court included the condition as part of the defendant's written judgment and sentence when it said " you shall follow the usual community custody conditions" and then signed the judgment and sentence with the requested condition in it. 3 RP 320-322; 1 CP 17, 21.

The defendant argues the trial court's statements indicate an intention to strike the condition from the judgment and sentence. He argues the remedy is to remand the case for an order nunc pro tunc striking the no drugs without a valid prescription condition.

After the court orally pronounced sentence the defendant and his attorney signed the written judgment and sentence. He allowed the trial judge to sign the written judgment and sentence without raising an objection that the written form did not accurately reflect the court's oral pronouncement in regard to the community custody conditions. The defendant has failed to preserve for review the precise question he now raises; whether the written judgment and sentence accurately reflects the trial court's intention in regard to whether the "no controlled substances" condition should be a condition of his community custody. Unless he can

demonstrate that including the condition in the judgment and sentences is manifest constitutional error, this Court should not review the issue. RAP 2.5(a)(3), McFarland, 127 Wn.2d at 333.

Whether the court did or did not intend to impose a condition of community custody does not raise a constitutional question. Moreover, it is not obvious from the record on review that the trial court actually intended to waive the condition. The record that does exist supports the conclusion that the trial court intended to include the condition when it said “you will follow the usual community custody conditions.” 3 RP 321. The condition falls within that category for two reasons. First it is a mandatory condition unless specifically waived by the court. RCW 9.94A.703(2)(c). Second, it is pre-printed on the felony judgment and sentence form. By custom parties in Snohomish County would know that the condition will be included unless the trial court specifically waives it. Thus there is no obvious error on the record warranting review.

This Court should also reject the defendant’s argument because the oral comments made by the trial court are not the final judgment of the court. Rather they are “ no more than a verbal expression of its informal opinion at the time... necessarily subject to further study and consideration and may be altered, modified, or

completely abandoned.” State v. Dailey, 93 Wn.2d 454, 458, 610 P.2d 357 (1980), quoting, Ferree v. Doric Co., 62 Wn.2d 561, 567, 383 P.2d 900 (1963). It is the court’s written decision which is considered the court’s final, binding decision. State v. Mallory, 69 Wn.2d 532, 533-534, 419 P.2d 324 (1966).

The Court applied this rule to find no double jeopardy violation in State v. Collins, 112 Wn.2d 303, 771 P.2d 350 (1989). There the trial court orally granted a Green⁴ motion but did not reduce that ruling to writing. After further argument the court reversed its decision and the case went to the jury which ultimately convicted the defendant. The Court held there was no double jeopardy violation because the trial court’s initial ruling was not the binding decision of the court. The Court observed “individual trial judges’ styles of ruling vary. Many judges will think out loud along the way to reaching the final result. It is only proper that this thinking process not have final or binding effect until formally incorporated into the findings, conclusions, and judgment.” Id. at 308.

The Court’s observations are particularly apt here. The trial judge’s initial comments suggested that he thought the condition

was inappropriate based on an initial belief that in order to be imposed it had to be "crime related" as permitted by RCW 9.94A.515(8) and RCW 9.94A.703(3)(f). "Crime related prohibition" is specifically defined as "an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted..." RCW 9.94A.030(10). A trial court may not impose a condition that does not relate to the circumstances of the crime. State v. Acrey, 135 Wn. App. 938, 346, 146 P.3d 1215 (2006), State v. Zimmer, 146 Wn. App. 405, 413, 190 P.3d 121 (2008), review denied, 165 Wn.2d 1035, 203 P.3d 381 (2009).

The trial court's initial observations were incorrect because the condition was mandatory unless the court specifically waived it. RCW 9.94A.703(2)(c). The court may have realized its initial mistake during the sentencing and decided it would be inappropriate to waive the conditions in this case. The defendant had testified that at the time of the robbery he was in possession of drug paraphernalia which contained drug residue. He also admitted attending narcotics anonymous meetings. 2 RP 205, 215, 217, 230. Since the defendant admittedly used illegal drugs at

⁴ State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980).

some time the court may have decided that it would better serve the purpose of community custody to keep that condition as part of the defendant's sentence. The court's oral and written order supports that conclusion. Ultimately it is the court's written order that reflects the court's final judgment.

The defendant asserts that the court's oral ruling indicates a contrary intent which justifies remanding the matter for an order nunc pro tunc deleting the community custody condition. A nunc pro tunc order is appropriate to "make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken." State v. Hendrickson, 165 Wn.2d 474, 478, 198 P.3d 1029, cert. denied, ___ U.S. ___, 129 S. Ct. 2873, 174 L.Ed.2d 585 (2009). It is appropriate when used to correct ministerial or clerical errors, not judicial errors. Id. at 479. It is inappropriate to use a nunc pro tunc order to change the court's decision or rectify a mistake of law. Id. Where the record reflects the court believed it was taking a particular action only to have that action thwarted by inartful drafting a nunc pro tunc order is appropriate to translate the court's intention into a written order. Id. at 479.

In Hendrickson it was clear the court intended to dismiss only one count of the information, and not the entire case; all the

other counts had been disposed of by either acquittal or conviction reduced to judgment. In that case a nunc pro tunc order was appropriate to clarify the order to indicate only count I had been dismissed. Id. at 479-480.

Unlike Hendrickson the record here does not clearly indicate the trial court intended to waive the condition. As discussed the court's initial comments indicate some confusion regarding the court's authority to impose the condition. The court ultimately and unequivocally ordered the condition as one of the "usual conditions" of community custody. Under these circumstances remanding the case to the trial court to enter a nunc pro tunc order waiving the condition would be an order requiring the trial court to change its decision and not to remedy a clerical or ministerial mistake. A nunc pro tunc order in this case would be inappropriate.

This Court should refuse to review the question of whether the written judgment and sentence accurately reflects the trial court's decision in regards to the "no controlled substances" condition. Even if this Court does review the issue remanding the case to the trial court with an order to enter a nunc pro tunc order eliminating the community custody condition would be inappropriate. If the defendant truly believes the judgment and

sentence does not reflect the trial judge's actual intent then his remedy is to file a motion to correct the judgment pursuant to CrR 7.8. The trial judge is in the best position to know what he intended at the time of sentencing.

IV. CONCLUSION

For the forgoing reasons the State asks the Court to affirm the special verdict and community custody condition. Alternatively, if the Court finds merit in the defendant's contention that he should be allowed to raise the deadly weapon instruction for the first time on appeal, and then concludes there is manifest constitutional error which requires reversal of the special verdict, then the State asks the Court to remand for trial on the deadly weapon allegation. The State further asks the Court to deny review of the community custody condition issue raised for the first time on appeal.

Respectfully submitted on December 9, 2010.

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December 9, 2010

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2010 DEC 13 AM 10:27

**Re: STATE v. JAMES O. WIGGIN
COURT OF APPEALS NO. 65214-1-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,

**KATHLEEN WEBBER, #16040
Deputy Prosecuting Attorney**

cc: Nielsen, Broman & Koch
Attorney(s) for Appellant

I hereby certify that I properly stamped and sealed this envelope and delivered it to the attorney for the defendant that I have a copy of this document. I am aware of the penalty of perjury under the laws of the State of Washington and I declare under oath that this is true.

10/6/10
DEC 10 2010

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

THE STATE OF WASHINGTON, Respondent, v. JAMES O. WIGGIN, Appellant.

No. 65214-1-I

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 10th day of December, 2010, 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

NIELSEN, BROMAN & KOCH
1908 EAST MADISON STREET
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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 10th day of December, 2010.

A handwritten signature in black ink, appearing to read "Diane K. Kremenich", written over a horizontal line.

DIANE K. KREMENICH
Legal Assistant/Appeals Unit