

NO. 65519-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH JONES,

Appellant.

2/11/2019 10:01 AM
W

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES CAYCE

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. A defendant's right to be present is limited to critical stages of trial, when the defendant's presence would affect his ability to defend against the charge. A defendant does not have the right to be present when his presence would offer no benefit to him or his defense. Here, the trial court allowed the deliberating jury to watch DVDs in the court's presence. Would Jones's presence have been useless when neither the court nor the jury was allowed to speak during the viewings?

2. An issue may not be considered for the first time on appeal unless the error involves manifest constitutional error. An error is manifest only if it results in actual prejudice. At trial, Jones did not object to the court's procedure for allowing jurors to watch DVDs during deliberations. Jones cannot establish that he was prejudiced by the trial court's procedure. Has Jones waived his challenge where the alleged constitutional error is not manifest?

3. Jurors may replay video evidence during deliberations. The trial court may facilitate viewings without the defendant present, provided that the defendant has prior notice. Here, the trial court advised the parties as to its procedure for

allowing the jurors to watch videos. Jones's counsel agreed to this procedure and Jones did not object. Was the trial court's procedure proper when Jones had prior notice?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Joseph Jones was charged by amended information with two counts of Rape of a Child in the First Degree. CP 9-10. Specifically, the State alleged that Jones raped L.H. between the period of June 1 and July 5, 2005 (count I), and that he raped S.M. between September 22, 2003, and July 25, 2005 (count II).

Trial occurred in April 2010. The jury found Jones guilty on count II, but acquitted him on count I. CP 50-51. The court imposed a standard range sentence. CP 70-80.

2. SUBSTANTIVE FACTS.

In 2003, Joseph Jones began dating Salita Haywood, a single mother of three. 5RP 85.¹ By October of 2003, Salita Haywood and her children had moved in with Jones. Id. Salita Haywood and Jones married on July 3, 2004. 5RP 90. They lived together in Des Moines, Washington, until June 2005, when they moved to Federal Way. 5RP 92. Salita Haywood worked long hours and depended on her extended family and Jones for assistance with childcare. 5RP 87.

S.M. is Salita Haywood's oldest child. 5RP 83. She was seven years old when her mother first started dating Jones.² 5RP 83, 85. Although Jones expected S.M. to do more chores than before, S.M. initially thought that Jones was "cool." 7RP 44. She was pleased that her mother, who had a history of bad relationships, had found someone who made her happy. 7RP 57. However, when Jones began raping S.M., her opinion of him changed. 7RP 47-48.

¹ The verbatim report of proceedings will be referred to as follows: 1RP (April 13, 2010), 2RP (April 14, 2010), 3RP (April 15, 2010), 4RP (April 19, 2010), 5RP (April 20, 2010), 6RP (April 21, 2010), 7RP (April 22, 2010), 8RP (April 26, 2010), 9RP (April 28, 2010), 10RP (April 29, 2010), and 11RP (June 4, 2010).

² S.M. was born in September 1996.

Jones assaulted S.M. multiple times.³ Id. One incident occurred when Salita Haywood was on hospital bed rest with her fourth child. 7RP 50. Jones sometimes cared for the children during this period. 5RP 89. While they were lying in bed one night, Jones inserted his penis in S.M.'s vagina. 7RP 50.

A second incident occurred in the kitchen, when Jones pulled down S.M.'s pants as well as his own. 7RP 48. Jones started to "do something," but was interrupted when Salita called his name from the other room. 7RP 49.

Initially S.M. did not report the incidents to her mother, for fear of disrupting Salita Haywood's relationship with Jones. 7RP 57. On July 24, 2005, S.M. was visiting her godparents, Anthony Owens and Marlenia Alexander. 5RP 17. The godparents noticed that S.M.'s mood was different and that she was irritable with her cousin, L.H. 5RP 18-20. After some discussion about her disagreement with L.H., S.M. confided in Owens and Alexander, explaining that Jones had been raping her. 5RP 20.

³ By the time she testified at trial, S.M. was not able to remember the details of all of the times when Jones assaulted her. 7RP 55.

Jones and Alexander immediately contacted S.M.'s maternal grandmother, Carolyn Haywood. 5RP 21, 137. Because she was afraid that Salita Haywood would not do anything about it, Carolyn Haywood did not immediately notify her. 5RP 138. Carolyn Haywood and Marlenia Alexander took S.M. to the emergency room, but doctors declined to examine S.M. without a parent present to give permission. 5RP 21, 137. Carolyn Haywood then reported the incident to the police. 5RP 138.

On July 28, 2005, S.M. was examined by Dr. Rebecca Weister. 6RP 56. Weister, who works at the Harborview Sexual Assault Center, specializes in examining and treating child abuse victims. 6RP 49-54. S.M. told Weister about a time when Jones came into her bedroom and started "humping" her. 6RP 70. S.M. described how Jones pulled her pants down and touched her "private part" with his "private part." 6RP 70-71. After Jones was finished, there was "white stuff" in S.M.'s underwear. 6RP 72. Although she did not experience any bleeding, S.M.'s vagina hurt after the incident. Id. S.M. explained that Jones had done this more than once, and that it continued even after they moved to Federal Way. 6RP 75. Nobody else had ever touched her in the way that Jones did. Id.

Weister's physical examination of S.M. revealed irregularity in her hymenal tissue that was consistent with a healed injury from a vaginal penetrating trauma. 6RP 92. Such an injury is only seen when a patient falls on something that impales her or as a result of penetrating sexual abuse. 6RP 92. It is possible for such an injury to result from falling on a fence, but the fence would have to protrude into the genital area. 6RP 95. Because such an injury is more serious than a simple straddle injury, a patient would typically need medical attention. Id. Neither S.M. nor her mother reported that S.M. had been impaled by anything. 6RP 109. Weister explained to Salita Haywood that the results of S.M.'s examination, combined with the information provided by S.M., were concerning for sexual assault. 6RP 108. Salita Haywood became very upset after hearing from Weister, but still did not claim that S.M. had been injured recently on a fence.⁴ 6RP 109-10.

S.M. was later interviewed by Child Interview Specialist Ashley Wilske on August 3, 2005. 7RP 29. The interview was

⁴ Salita Haywood later testified that S.M. fell on a wire fence shortly before the examination. 5PR 103. However, according to Salita Haywood, S.M. was not seriously injured and did not receive medical attention. Id.

recorded and transferred to DVD. Ex. 11; 7RP 29. S.M. described how Jones raped her on two occasions: once in Des Moines and once in Federal Way. Ex. 10 at 6-10.

In September 2005, S.M. moved out of Jones's home and began living with Carolyn Haywood. 7RP 108. Salita Haywood and Jones divorced in 2009. 5RP 110.

S.M.'s first cousin, L.H., is seven months younger than S.M. 5RP 43. The two were relatively close, spending time together at family gatherings. L.H.'s mother, Talita Haywood, is Salita Haywood's older sister. 5RP 42.

Just before July 4, 2005, L.H. spent the night at S.M.'s house. 8RP 31. Salita Haywood left in the morning with S.M. and the other children, allowing L.H. to sleep in. 8RP 31-32. L.H. awoke to Jones flicking water on her face. 8RP 31. Jones pulled down his pants and then pulled down L.H.'s pants. 8RP 34. L.H. began to struggle, but was overpowered by Jones. Id. Jones tied her hands to the bed frame. 8RP 35. Jones raped L.H., putting his "private" in her "private." 8RP 36. L.H. was in pain and crying a lot. 8RP 37. After he was finished, Jones told L.H. not to tell anyone. Id.

Despite overhearing what S.M. told Owens, L.H. did not report the incident because she was scared. 8RP 42. On Christmas Eve 2006, L.H. decided that she could not keep the secret any longer. 8RP 44. L.H. told her mother what Jones had done. 5RP 54. On December 26, 2006, L.H. saw Dr. Carla Ainsworth at the Carolyn Downs Medical Center. 6RP 20. L.H. again reported what Jones had done. 6RP 23. Unfortunately, the doctor did not refer L.H. for a forensic exam. 6RP 34. L.H. was interviewed by Child Interview Specialist Carolyn Webster on January 9, 2007. 8RP 71. That interview was recorded on a DVD. Ex. 15.

At trial, both DVDs were admitted into evidence and played for the jury. Ex. 11, 15. Because the sound quality was poor, the trial court allowed the jury to reference transcripts of the interviews while the videos were played. 7RP 30. The transcripts were not admitted as substantive evidence. Id.

Following closing arguments, the court discussed its procedure for allowing jurors to review the DVDs:

THE COURT: So with respect to [Exhibits 11 and 15], do you have any objection to the jury, first of all, viewing each of those once?

[PROSECUTOR]: No.

THE COURT: All right. How about more than once?

[DEFENSE COUNSEL]: No, your honor.

[PROSECUTOR]: I--I don't have an objection.

THE COURT: Okay. And what will happen is if they do want to view those, then, I will close the courtroom, have them come in. I won't say anything other than that they are not to talk while we play the videos. We'll hand out the transcripts, I will tell them again they can only look at the transcripts while they are observing the video, and that as soon as the video is stopped, take the transcripts from them, send them back into the jury room.

[PROSECUTOR]: Is that going to be done with us present or --

THE COURT: If you want to be present, yes. Normally, no.

[PROSECUTOR]: Okay.

[DEFENSE COUNSEL]: I don't have any desire to be present.

[PROSECUTOR]: I don't, either.

10RP 76-77. Jones was present during this conversation. CP 97-98.

The jury deliberated for five days. CP 98-103. During the course of deliberations, the jury watched S.M.'s interview three times and L.H.'s interview twice. Id.

C. ARGUMENT

1. JONES DID NOT HAVE A RIGHT TO BE PRESENT WHEN THE JURY WATCHED THE VIDEOS BECAUSE IT WAS NOT A CRITICAL STAGE.

Jones appears to argue that the replaying of the DVDs during deliberations was a critical stage of the proceedings. Therefore, he argues, the trial court violated his right to be present during all critical stages when it allowed the jury to watch the DVDs without him present. Jones's argument fails because he cannot show that the DVD viewings were a critical stage.

Defendants have a right under the confrontation clause of the Sixth Amendment, the due process clause of the Fourteenth Amendment, and article I, § 22 of the Washington constitution, to be present during all critical stages of trial. Illinois v. Allen, 397 U.S. 337, 338, 90 S. Ct. 1057, 25 L.Ed.2d 353 (1970); State v. Wilson, 141 Wn. App. 597, 603-04, 171 P.3d 501 (2007); CrR 3.4. The core of the constitutional right is the right to be present when evidence is being presented. United States v. Gagnon, 470 U.S. 522, 526, 105 S. Ct. 1482, 84 L.Ed.2d 486 (1985). Beyond that, the defendant has a "right to be present at a proceeding 'whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge. . . .'" State v. Irby,

170 Wn.2d 874, 880, 246 P.3d 796 (2011) (quoting Gagnon, 470 U.S. at 526). A defendant does not have a right to be present when his or her presence would be "useless, or the benefit but a shadow." Irby, 170 Wn.2d at 880 (quoting Snyder v. Massachusetts, 291 U.S. 97, 106-07, 54 S. Ct. 330, 78 L.Ed. 674 (1934)).

A defendant does not have the right to be present when a deliberating jury watches videos that were admitted into evidence. State v. Gregory, 158 Wn.2d 759, 846-48, 147 P.3d 1201 (2006); see also CrR 6.7(b) (jurors shall be kept separate from other persons and shall be shielded from outside communications). Jones offers no authority to support his argument that he had a right to be present if the viewings occurred in the court's presence.

Here the trial court discussed its procedure for DVD viewing in advance, with Jones present. The court explained that it would not talk to the jury, beyond instructing the jury on the use of the transcripts and admonishing them not to talk while in the courtroom. Because Jones could not have done or gained anything had he been present when the jury watched the DVDs, his constitutional right to be present was not infringed. See Gagnon, 470 U.S. at 527. Furthermore, even if the proceeding was a critical stage, by

remaining silent after being advised of the procedure, Jones waived his right to be present. State v. Elmore, 139 Wn.2d 250, 299 n.22, 985 P.2d 289 (1999) (quoting Gagnon, at 529).

2. JONES DID NOT PRESERVE HIS OBJECTION TO ALLOWING THE JURY TO WATCH THE VIDEOS WITHOUT HIM PRESENT.

Jones objects to the trial court allowing the jury to watch the DVDs without him present. Despite being given the opportunity to object, Jones did not object. Because he cannot show manifest constitutional error, this Court should decline to consider Jones's assignment of error.

Under RAP 2.5(a)(3), appellate courts may consider an issue raised for the first time on appeal only when it involves a "manifest error affecting a constitutional right." To raise an issue not previously preserved, an appellant must show that (1) the error is manifest, and (2) the error is truly of constitutional dimension. State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009). Jones must identify a constitutional error and must show how the asserted error actually affected his rights at trial. State v. Kirkman, 159 Wn.2d 918, 926-927, 155 P.3d 125 (2007). An error is "manifest" where it had "practical and identifiable consequences in the trial of

the case." State v. Kirkpatrick, 160 Wn.2d 873, 880, 161 P.3d 990 (2007). Only if the court determines that the claim constitutes a manifest constitutional error does it move on to a harmless error analysis. State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

Jones has alleged a constitutional error. As discussed below, it is improper for a trial court to have ex parte communications with jurors without prior notice to the defendant. State v. Caliguri, 99 Wn.2d 501, 508, 664 P.2d 466 (1983). Improper communication with the jury is an error of constitutional magnitude. State v. Rice, 110 Wn.2d 577, 613, 757 P.2d 889 (1988). However, Jones has not established that any alleged error had identifiable, practical consequences.

"Manifest" error in RAP 2.5(a)(3) requires a showing of actual prejudice. O'Hara, 167 Wn.2d at 99. An expansive reading of "manifest" sends a message to trial counsel not to worry about overlooking constitutional claims, since such claims can always be asserted on appeal. State v. Lynn, 67 Wn. App. 339, 343, 835 P.2d 251 (1992). Thus, it is important that "manifest" be a "meaningful and operational screening device" in order to preserve the integrity of the trial and reduce unnecessary appeals. Id. at 344.

This case highlights the importance of requiring a defendant to object at trial when the alleged error may be cured. The record is clear that the trial court would have allowed Jones to be present had he objected.⁵ 10RP 77. Beyond speculating that the trial court engaged in improper behavior, Jones offers no evidence that he was *actually* prejudiced by the trial court's procedure. Jones argues that "there is simply no way to determine the court did not make a comment beneficial to the prosecution and detrimental to Jones regarding the recorded interviews." App. Br. at 14. The trial court advised what it would say and there is no evidence that the court strayed from its procedure. Thus, Jones cannot show that manifest constitutional error. This Court should decline to consider Jones's belated objection.

3. THE TRIAL COURT PROPERLY NOTIFIED JONES PRIOR TO REPLAYING THE DVDS FOR THE JURY.

Jones argues that the trial court erred when it replayed the DVDs without him present. Jones's argument fails because he did

⁵ In the alternative, the trial court could have arranged for the viewing proceedings to be recorded. However, because the proceedings were not recorded, Jones cannot show that he was prejudiced.

not have a right to be present when the deliberating jury viewed evidence that was admitted at trial. Because the trial court notified Jones before facilitating the viewing, no improper communication occurred. Finally, any error was harmless because Jones was not prejudiced by the proceedings.

a. The Procedure For Replaying The DVDs Was Proper.

During deliberations, the jury shall have access to all exhibits received in evidence. CrR 6.15(e). It is proper for jurors to have unrestricted access to video or audio recordings that have been admitted into evidence. Gregory, 158 Wn.2d at 848. Although recordings can be viewed in the jury room during the normal course of deliberations, the trial court may make alternative arrangements for the viewing of such recordings. Id.; State v. Smith, 85 Wn.2d 840, 853, 540 P.2d 424 (1975). The procedure for playing tapes to the jury is "in some measure" up to the discretion of the trial court. Smith, at 853.

Contrary to Jones's claim, a defendant does not have the right to be present during the viewing, even if it occurs in the

courtroom. Gregory, 158 Wn.2d at 848. However, it is error for a court to communicate with the jury in the absence of the defendant without providing prior notice to the defendant. Caliguri, 99 Wn.2d at 508. Therefore, the trial court may err if, without prior notice to the defendant, it communicates with the jury in the course of playing the video. Id.

Jones relies on Caliguri and Rice to support his claim that the trial court erred when it played the videos without him present. Both cases are distinguishable. In Caliguri and Rice, the procedure for playing videos was improper because the court communicated with the jury during the viewing *without prior notice* to the defendant.

Caliguri was charged with conspiracy to commit murder and arson. Caliguri, 99 Wn.2d at 503. The most important evidence against Caliguri was recorded conversations between him and an undercover federal agent. Id. at 504. At the jury's request, the trial court had an FBI agent replay the tapes during deliberations. Id. at 505. The proceedings were not recorded and only the court, the FBI agent, and the jury were present. Id. Caliguri was not notified until afterward and he then moved to arrest judgment. Id. The trial

court denied his motion. Id. Noting that "it is settled in this state that there should be no communication between the court and the jury in the absence of the defendant," the Supreme Court held that the procedure used by the trial court was improper *without prior notice* to Caliguri. Id. at 508 (emphasis added).

The Supreme Court dealt with a similar scenario in Rice. Rice was charged with aggravated first-degree murder. Rice, 110 Wn.2d at 590. During its penalty phase deliberations, the jury asked to listen to Rice's taped confession. Id. at 613. After conferring with counsel, the trial court replayed the tape for the jury in the presence of the judge, the bailiff, the court clerk, and the court reporter. Id. All counsel waived the right to be present when the tape was replayed. Id. Due to a "mix-up in communication," Rice--who was in custody--was not advised of the jury's request or the trial court's proposed procedure. Id. Relying on Caliguri, the Supreme Court held that the trial court's procedure was improper. Id. at 613-14.

The analysis in Gregory helps to understand the holding in Caliguri and Rice, and clarify that those holdings turn on improper communications between the court and the jury. It is not error to replay a video for a deliberating jury without the defendant present.

Rather, it is error if (a) the viewing procedure involves ex parte communications between the court and the jury and (b) the defendant was not notified in advance.

In Gregory, one of the exhibits admitted at trial was a video of the crime scene. 158 Wn.2d at 846. The trial court asked if the defense had any objections to the jury replaying the video during deliberations. Id. The defense replied that it did not object. Id. The trial court also mentioned that the jury might be able to use the courtroom for deliberations. Id. Gregory was present during discussion of both of these matters. Id.

During deliberations, the jury did request to watch the video. Id. Because of issues with the video equipment, the jury was allowed to watch the video in the courtroom. Id. at 847-48. The judicial assistant escorted the jury into the courtroom, exited the courtroom, and remained outside in the hallway where she could see the jurors, but could not hear what was being said. Id. at 847.

On appeal, Gregory argued that the trial court had violated his right to be present at all critical stages, and that the judicial assistant had improper ex parte contact with the jury. The Supreme Court rejected both of these claims. The court distinguished the case from Caliguri, holding that bailiff "merely

facilitated" the viewing, and that no improper communication had occurred.⁶ Gregory, at 847. Relying on CrR 6.15(e) and State v. Elmore, 139 Wn.2d 250, 985 P.2d 289 (1999), the court also reasoned that the jury was entitled to view the video during deliberations; the fact that the video was played in the courtroom did not transform the viewing into a critical stage. Gregory, at 847-48.

Here, the trial court first inquired whether either side objected to the jury viewing the videos multiple times. 10RP 76. Neither side objected. Id. The court then advised the parties of its procedure and offered either side the option of being present during the viewing. Id. Defense counsel was the first to respond, saying, "I don't have any desire to be present." 10RP 77. Jones, who was present during this conversation, never objected or expressed any interest in being present during the video viewings. CP 97-98; 10RP 76-77.

⁶ Because the proceedings were not recorded, it is not clear what, if anything, the bailiff said to the jury during the course of facilitating the viewing. Gregory, 158 Wn.2d at 847.

Unlike in Caliguri and Rice, Jones, who was out of custody, had advance notice of the trial court's plans and was given the opportunity to be present. 10RP 76-77. The court advised Jones that it would not say anything other than admonishing the jury from talking and reminding them that the transcripts were only for use while viewing the video. 10RP 77. The court's proposed remarks were circumspect and did not amount to secret communications. See Smith, 85 Wn.2d at 852 (defendant was not prejudiced by the trial court's circumspect remarks prior to playing audio tape, particularly when the trial court consulted with the parties in advance). Because Jones had prior notice, the trial court's procedure for playing the DVDs was proper.

b. Any Error Was Harmless.

Even if the trial court erred when it allowed the jury to watch the video without Jones present, reversal is not necessary unless Jones was prejudiced. Caliguri, 99 Wn.2d at 508. The court will not reverse if the State can show the error was harmless beyond a reasonable doubt. State v. Bourgeois, 133 Wn.2d 389, 407, 945 P.2d 1120 (1997).

In this case, the trial court advised the parties that it would instruct the jury only on the use of the transcripts and that they should not talk while in the courtroom. 10RP 76-77. There is no reason to believe that the trial court made any other remarks. Further, the procedure employed was agreed to in Jones's presence. This was not a situation where the trial court employed an entirely new procedure without consulting with Jones.

In both Caliguri and Rice, the Supreme Court upheld the convictions, despite finding that the trial court had communicated improperly with the jury. In Caliguri, the jury heard portions of the tape that were not admitted into evidence. The court held that any error of playing tapes outside the defendant's absence was harmless error because the tape was admitted into evidence, a third party was present during the communication between the judge and jury, and the portions of the tape that were not admitted, but were played to the jury, were not prejudicial to the defendant. 99 Wn.2d at 508-09. In Rice, the Supreme Court held that playing the audiotape outside the defendant's presence was harmless error because the proceedings were recorded by a court reporter and "nothing was replayed to the jurors that they had not heard earlier in the trial." 110 Wn.2d at 614. Rice and Caliguri support rejecting

Jones's argument. As in Rice, the jury only viewed admitted evidence; Jones has not claimed that the jury watched something that was not shown in trial, as in Caliguri.

Jones argues that the error was not harmless because the jurors were "left to speculate that Jones did not care enough about his trial to attend this portion of the proceedings or declined to attend based on his perception conviction was inevitable." App. Br. at 14-15. To support this argument, Jones relies on Commonwealth v. Kane, 19 Mass. App. Ct. 129, 472 N.E.2d 1343 (1984) and People v. Brisbane, 205 A.D.2d 358, 613 N.Y.S.2d 368 (1994). However, in both of those cases, the defendant stopped attending proceedings in the *middle of trial*. Kane, at 131; Brisbane, at 358. In each of those cases, the defendant's absence would be noticeable, particularly because his attorneys were still present and there had been no significant change in the nature of the proceedings.⁷

In this case, the DVDs were played during the course of deliberations and neither the prosecutor nor defense counsel was

⁷ In fact, in Kane, both the court and the prosecutor called attention to the defendant's absence and encouraged the jury to draw inferences from his absence. Kane, 19 Mass. App. Ct. at 131-134, 136.

present. The jury would have no reason to notice Jones's absence, much less make inferences from his absence.

Jones also argues that without a recording, "there is simply no way to determine the court did not make a comment beneficial to the prosecution and detrimental to Jones regarding the recorded interviews." App. Br. at 14. Jones offers no reason to support such bold speculation, and this Court should not presume that the trial court engaged in improper communications.⁸

Any alleged error in this case was harmless beyond a reasonable doubt. The jury only viewed evidence that had been admitted at trial. As neither attorney was present during the viewing, the jury would not have drawn a negative inference from Jones's absence. Finally, defense counsel's agreement with the procedure indicates that he did not believe it was prejudicial.

⁸ The clerk's minutes support an inference that the trial court followed its proposed procedure. On May 3, 2010, the jury asked to view Exhibit 15, the DVD interview of L.H. CP 102. According to the minutes, the jury watched short portions of the video in the courtroom, returned to deliberate for a few minutes, and then returned to court to watch portions of the DVD again. Id. The jury repeated this practice multiple times over the course of an hour. Id. It is logical to infer that the jury was returning to the jury room to discuss portions of the video, in accordance with the procedure outlined by the court.

D. CONCLUSION

For the reasons cited above, this Court should affirm Jones's conviction.

DATED this 20 day of May, 2011.

Respectfully submitted,

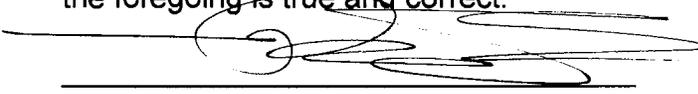
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Office WSBA #91002

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 David Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. JOSEPH JONES, Cause No. 65519-1-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.



Bora Ly
Done in Seattle, Washington

05/23/11

Date

2011 MAY 23 PM 1:01

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COURT OF APPEALS
DIVISION I
SEATTLE, WA