

67827-2

67827-2

NO. 67827-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DATHAN McCRARY,

Appellant.

COURT OF APPEALS OF THE STATE OF WASHINGTON
2012 JUN 27 11:10:46

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE PALMER ROBINSON

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED.

A criminal defendant does not have the absolute right to cross-examine State's witnesses about irrelevant information. Here, the trial court excluded evidence offered to impeach one of the State's witnesses. Did the trial court properly exercise its discretion?

B. STATEMENT OF THE CASE.

1. Procedural Facts.

Appellant Dathan McCrary was charged by amended information with one count of assault in the second degree by strangulation, one count of taking a motor vehicle without permission in the second degree, and one count of unlawful possession of a firearm in the first degree. CP 56-57; RP 1052-56. A jury found him guilty on the taking a motor vehicle without permission charge, guilty on the unlawful possession of a firearm charge, and guilty on a lesser assault charge of fourth degree assault. CP 92-94; RP 1153-54; 1160-66. The court trial court sentenced him to 67 months of total confinement. CP 128-38; RP 1215-16.

b. Substantive Facts

On 18 December, 2008, Tanya Mapp-Bynum reported to a 911 operator that Dathan McCrary had taken her vehicle without her permission from her place of work in Des Moines. RP 534, 544-45. Mapp-Bynum also reported that McCrary had assaulted her earlier that morning in her apartment in Skyway. *Id.*

The previous day Mapp-Bynum drove her car to Portland, Oregon to pick up McCrary and give him a ride back to Seattle. RP 516, 954-55. Terry Meyers and another male friend of McCrary's accompanied Mapp-Bynum on the drive to Portland. RP 518-19, 575, 956, 982-83. Tension developed between Mapp-Bynum and McCrary after he asked her to pick him up in the parking lot of a strip club, and after he greeted his male friends before he greeted her. RP 519-21, 984-87.

McCrary went with Mapp-Bynum to her apartment after she dropped off his two male friends in Federal Way. RP 578-79, 961. Before he went to sleep at Mapp-Bynum's apartment, McCrary unpacked his bag and put some belongings, including a gun box, into her dresser. RP 521,553-54, 579-80962-63.

The next morning Mapp-Bynum told McCrary to leave her apartment, and an argument ensued between the two parties when

McCrary started yelling about her bringing him up to Seattle and leaving him stranded. RP 523. During the argument McCrary twice grabbed Mapp-Bynum by the throat and applied so much pressure to Mapp-Bynum's neck that she felt something "pop" in her neck; she became unable to breathe; and she became lightheaded. RP 524-27. McCrary's grabbing Mapp-Bynum by the neck brought her to the point of passing out, and as a result of the incident she had pain in her neck for more than a week. *Id.*

After the argument, Mapp-Bynum said that she needed to go to work in order to get him out of her house. RP 530-32. On the way to her work, they stopped at her bank and she withdrew some money after McCrary told her she needed to give him money so he could get home. RP 529- 532, 965-66. Mapp-Bynum agreed to let McCrary sit in her car until his friends picked him up, but she told him not to take the car anywhere. RP 529, 533, 582-83.

Mapp-Bynum noticed her car was missing shortly after she began work; she called McCrary and told him to return it. RP 533-34. After about twenty minutes, Mapp-Bynum called 911 and reported that McCrary had stolen her car and had choked her. RP 534, 544-45.

As a result of the 911 call, Des Moines police officer Jay West went to Mapp-Bynum's work; she reported the vehicle theft and the assault to him. RP 484-85, 548. Officer West and Mapp-Bynum talked on the phone with McCrary to negotiate McCrary returning the car to her. RP 487, 489-91, 549. McCrary gave West directions to where he said the car was located, but when West and another officer searched the location they did not find the vehicle. RP 487.

King County Detectives Aaron Thompson and Benjamin Wheeler also responded to the 911 call. RP 548. Thompson observed that Mapp-Bynum was upset and that she had "fresh bruising" on her neck. RP 596.

Working with the officers, Mapp-Bynum continued phone and text message communication with McCrary to negotiate a meeting where he would return her car. RP 551-53. McCrary told Mapp-Bynum that he would give her back her car if she would drive him back to Portland and return his belongings that he had left at her apartment. RP 552-53. McCrary emphasized to Mapp-Bynum that he did not want to get arrested because he had an outstanding Department of Corrections warrant. RP 552, 970. He was worried that Mapp-Bynum was trying to set him up, and told her "you better

not set me up or else.” RP 558. After a few initial attempts at a meeting failed, McCrary agreed to meet Mapp-Bynum at a “Park and Ride” parking lot. RP 552-53, 558, 974, 998-99.

Detective Thompson of the King County Sheriff’s Department organized an operation for a team to arrest McCrary at the Park and Ride. RP 608-20, 693-707. McCrary arrived at the Park and Ride driven by Terry Meyers in Meyers’s Chevy Tahoe. RP 611-14, 694-707, 972-75. Police arrested McCrary, and the keys for Mapp-Bynum’s car were found on McCrary’s person at the arrest scene. RP 613-14, 620, 780-81. McCrary told the arresting officers where to locate Mapp-Bynum’s car. RP 782.

During the arrest operation, Detective Martin performed a protective sweep search of the vehicle because he heard over the radio that there was another vehicle occupant who had not yet been found. RP 693-98, 780. Detective Martin conducted the protective sweep by opening the driver’s side rear door of the Tahoe from where he observed a handgun located in the space beneath the backseat of the vehicle. RP 697-98. The Sheriff’s arrest team impounded the vehicle and obtained a search warrant to search the vehicle. RP 620-30, 698-701.

While the Tahoe was still at the Park and Ride, Terry Meyers approached and asked why his car was being towed. RP. 701. Meyers became "a little agitated, pissed off . . ." after Detective Martin told him that the car was being towed due to a gun being in the car, and Meyers did not indicate he had knowledge of the gun in the car. RP 701-03.

Mapp-Bynum provided police with a gun box along with other belongings that McCrary left at her house. RP 720, 784-87. The serial number on the gun box matched the serial number of the handgun found in the impounded Chevy Tahoe. RP. 792. Although no usable fingerprints were found on the gun or on the gun box, there was a usable fingerprint on a Report of Sale paper found inside the gun box that matched McCrary's fingerprint. RP 746-63.

After McCrary was taken into custody, the jail recorded him on the phone stating to an unknown female, ". . . they found my thing, man." RP 853. He told her to go get his stuff as soon as possible because he stated that if the police did not recover the gun box it would, ". . . just make it a whole lot more harder for them to get proof that is my shit." RP 867-68. Recordings of McCrary's jail calls revealed the following conversation about the gun box at Mapp-Bynum's house:

McCrary: But the box was [] the bitch house.

Unknown female: Okay, yeah, I know that you want me to pick it up.

McCrary: So if the bitch takes the shit down there, then it'll prove that that's my shit, and I get booked on it. You see what I'm saying?

Unknown female: Yeah.

McCrary: You going get my shit before the bitch take it down there [to police], whatever like that. Then, you can't say it's mine.

Unknown female: Where she staying?

McCrary: But if you have that going pick it up. She staying in Skyline apartments right across the street from the Champs. Where it blew--, where the new Boost Mobile store is?

Unknown female: Oh, in Skyway?

McCrary: Yeah.

Unknown female: Oh yeah, I really gonna pick that up.

McCrary: please, man, please?
RP 870.

On another recorded call, McCrary discussed Mapp-Bynum and the events leading to his arrest:

McCrary: Bitch said I beat her up, man. I stole her car? I came all the way from Portland beat you up and steal your car?

Unknown female: Yeah. After she gave you some money?

McCrary: After she gave me some money, and after she drove all the way to Portland to get me.

Unknown female: Well, that just don't make no sense. It really don't, because if that was the plan from the beginning, you would have just beat her down here.

McCrary: Exactly my point! I would have beat her ass down there.

RP 877-88.

McCrary was charged with the crimes of assault in the second degree by strangulation; taking a motor vehicle without permission in the second degree; and unlawful possession of a firearm in the first degree. CP 1-2; RP 1052-1056.

3. Summary of Pretrial Proceedings

During discovery, the State advised McCrary's defense counsel that Detective Martin was going to be a witness for the prosecution, and the State provided defense counsel with records regarding two previous sheriff's department disciplinary investigations into two separate incidents involving Detective Martin. RP 20-23; Pre-Trial Ex. 1, 2. The first investigation covered a 1999 incident where Detective Martin admitted that he omitted facts when reporting the theft of personal property during a burglary of his residence. Pre-Trial Ex. 1; RP 23. This investigation resulted

in a finding of conduct unbecoming and a one day suspension without pay. *Id.*

The 1999 investigation showed that on the day of the incident Detective Martin saw his ex-girlfriend driving his jeep. Pre-Trial Ex. 1; RP 23-26. At the time, she had been living with him for a couple of weeks and was an ex-girlfriend from a previous relationship. *Id.* She had been using the jeep without his knowledge; he stopped her, questioned her, and allowed her to continue using the vehicle. *Id.*

Detective Martin went to his apartment and found it had been burglarized. Pre-Trial Ex. 1; RP 23-26. The burglars took personal items and almost all of Detective Martin's sheriff's department issue items. *Id.* Detective Martin reported to a fellow sheriff's deputy that his jeep had been stolen; he omitted the fact that he knew his ex-girlfriend was driving vehicle. *Id.* On his own initiative and before any contradictory facts were discovered, Detective Martin corrected his verbal report. *Id.*

The suspects in the burglary were friends of Detective Martin's ex-girlfriend. Pre-Trial Ex. 1; RP 23-26. Although she admitted that she had taken these friends by Detective Martin's apartment that day, she claimed that she had no knowledge of their

plans to burglarize his apartment. *Id.* In his complaint investigation memorandum of the incident, the investigating Sheriff's Sergeant noted that when Detective Martin corrected his verbal report it was apparent that Detective Martin was, ". . . fearful, confused and embarrassed about King County equipment being taken during the burglary to his apartment." *Id.*

The second investigation was in regards to a 2000 incident where Detective Martin received a written reprimand for violating Sheriff Department courtesy standards. Pre-Trial Ex. 2; RP 23, 28. During pre-trial motions, Defense counsel stated about this 2000 incident that "you, uh, I wasn't go into that other one anyway, it's not false reporting." RP 22, 28. Defense counsel did not inquire into any details about the 2000 incident in its cross examination of Detective Martin during the pre-trial CrR 3.6 hearing. RP 138-62. The State argued that the 2000 incident had nothing to do with dishonesty. RP 270.

The State filed a pre-trial motion to prohibit questioning of Detective Martin regarding the two disciplinary proceedings in 1999-2000, pursuant to ER 402, ER 403 and ER 608. CP 161.

During an interview with a defense investigator and later under cross examination by defense counsel during pre-trial

hearings; Detective Martin recalled the 1999 incident involved him reporting his car stolen, involved an ex-girlfriend, and the incident resulted in him receiving a one day suspension without pay. RP 143, 148, 151. Other than those facts, Detective Martin testified that he did not remember any facts of the 1999 incident because it was 12 years ago. RP 142-43, 145-56.

During the pre-trial motion hearing, defense counsel argued it was important to cross examine Detective Martin about the prior disciplinary issues because of his role in the McCrary arrest, and because it would make him appear less credible as a witness for the state. RP25, 273-75. When the trial court asked defense counsel to explain why questioning Detective Martin on these past disciplinary investigations was admissible, defense counsel stated the fact that Detective Martin omitted facts to his employer in stolen car report is more relevant to his credibility because he was a law enforcement officer. RP 267-68, 273.

The State argued that the only rule that would make either of the disciplinary proceedings against Detective Martin potentially admissible would be ER 608. RP 271. The State added there was no character evidence by other witnesses regarding Detective Martin, and he did not have the memory to allow him to testify to

the discipline that led to the suspension; therefore the State's position was that the inquiry ends there in accordance with ER 608 (b). RP 271.

The State further advised the court that the past administrative disciplinary proceedings involving Detective Martin could have been made with a lesser finding and lesser burden of proof than a criminal conviction, and therefore these proceedings were less significant than a prior criminal conviction for a crime of dishonesty. RP 271-72. The State then pointed out that if the disputed motion was in regards to possible testimony regarding a crime of dishonesty outside of the ten year period, then it would be per se inadmissible. RP 272. The State went on to say that the 1999 proceeding against Detective Martin was in many ways less significant than a crime of dishonesty because it was something that happened 12 years ago and that it only led to a one day suspension. RP 272.

The State moved to exclude the disciplinary history based on Evidence Rule 608, based on the prejudice and confusion to the jury, and based on lack of foundation. RP 272.

Defense counsel responded to the State's argument by arguing that Detective Martin's failure to remember the 1999

incident when he remembered attending the police academy before that should be admitted. RP 272-3. Defense counsel further argued that Detective Martin had a higher standard of credibility to live up to because he is an officer of the law. RP 273. Defense counsel addressed the State's argument that questioning Detective Martin about the past incidents would lead to prejudice and confusion for the jury by stating:

And I don't think, I mean, the tremendous, you know, confusion and things of that matter, I think that I can be hopefully even clearer than I have been today. Um, in front of the jury in order to point out why it's important and how it goes to his credibility. RP 273-4.

The trial court made the observation that "I don't, uh, know of any authority for basically saying Evidence Rule 608 (b) doesn't apply to law enforcement." RP 274. It went on to say that it did not know why ER 608 (b) would not apply in this case when this was an incident that was not even a conviction and there was the "10 year issue." *Id.* And the trial court ruled preliminarily that it was not going to allow defense to go beyond whatever Detective Martin's answers were to the questions. *Id.*

Defense counsel discussed with the court the type of questions that she wished to ask Detective Martin. RP 275-80.

Defense counsel asked to be permitted to ask the questions, "So you don't remember, uh, being suspended one day?" and "that, that allegation was for false reporting?" RP 276. Defense counsel also asked the court that they would like to ask Detective Martin about how he had been court ordered to answer the questions to those disciplinary procedures and he answered that he did not remember any of it. RP 277.

The State objected to defense counsel's proposed questions, arguing that Defense counsel was trying to get around the court's ruling by asking questions that "seem designed simply to make the Detective look bad because he doesn't remember the answers to the question." RP 277. The State stated, "This disciplinary proceeding is only relevant if, if Counsel can, can show that it has to do with dishonesty, and Counsel can't based on his testimony." RP 278.

The State specifically objected to the question, "Have you been subject to disciplinary proceedings?" RP 278. The State argued that it was not a question that was going to lead to admissible evidence. RP 278-79. The State pointed out to the court that if State had sought to offer evidence under 404(b) and the Court had made a finding the State had not met it's burden of

proving by a preponderance of the evidence that such prior bad acts had occurred, it would be inappropriate for the State to try again in front of the jury and ask the witness has he ever been in any prior domestic violence case. RP 279. The Court told defense counsel that the State is “probably right” on this point. RP 279.

The Court ultimately granted the State’s motion in limine that there not be any questions about, the incidents reflected in either Pre-Trial Exhibits 1 or 2 (the 1999 and the 2000 investigations). RP 281.

Prior to Detective Martin’s trial testimony, defense counsel asked the trial court to reconsider its granting the State’s request to restrict questions of Martin. RP 690. The trial court denied the invitation to reconsider the issue. *Id.*

A jury found McCrary guilty of second degree taking a motor vehicle without permission, first degree unlawful possession of a firearm, and a lesser offense of fourth degree assault. CP 92-94; RP 1153-54, 1160-66. The trial court sentenced McCrary to concurrent sentences of 67 months on the unlawful possession of a firearm, 18 months on the taking of a motor vehicle without permission, and 364 days on the fourth degree assault. CP 128-38; RP 1215-16.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN NOT ADMITTING EVIDENCE OFFERED TO IMPEACH DETECTIVE MARTIN

McCrary contends that the trial court violated his right to present a complete defense and confront the witnesses against him when the court did not allow the defense to impeach Detective Martin with information obtained from an internal investigation file. This claim should be rejected. The information from the 12 year old Sheriff's Department investigation had no probative value towards any aspect of Detective Martin's involvement in the McCrary case.

Even if it had some minimal probative value, the court did not abuse its discretion in excluding it because Detective Martin's credibility was not central to any defense theory; Detective Martin's testimony only related to one of three criminal charges faced by the defendant; Detective Martin's testimony was only a small portion of the substantial evidence brought by the State against McCrary; and the State had a compelling reason to prevent evidence that would only prove to distract, confuse, and inflame the jury.

Although the right to present a defense and to confront and cross examine adverse witnesses is guaranteed by both the federal and Washington state constitutions, a criminal defendant has no

constitutional right to have irrelevant evidence admitted in his or her defense. U.S. CONST. amend VI; WASH. CONST. art. I § 22; *State v. Hudlow*, 99 Wn.2d 1, 15, 659 P.2d 514 (1983) (citing *Wash. v. Texas*, 388 U.S. 14, 16, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967)).

The right to cross-examine adverse witnesses is not absolute. *State v. Darden*, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). The confrontation right is subject to the following limitations: (1) the evidence sought must be relevant and (2) the defendant's right to introduce relevant evidence must be balanced against the State's interest in precluding evidence so prejudicial as to disrupt the fairness of the trial. *Hudlow*, 99 Wn.2d at 15.

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. ER 401. Evidence which is not relevant is not admissible. ER 402. Additionally, even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. ER 403.

Although the issue of whether a trial court has violated the confrontation clause is reviewed de novo, a trial court's ruling on

the admissibility of evidence is reviewed for abuse of discretion. *State v. Jones*, 168 Wn.2d 713, 723-24, 230 P.3d 576 (2010); *Darden*, 145 Wn.2d at 619. Furthermore, a court's limitation of the scope of cross-examination will not be disturbed absent a manifest abuse of discretion. *Darden*, 145 Wn.2d at 619. A court abuses its discretion if its ruling is manifestly unreasonable or based on untenable grounds. *Id.*

Impeachment with specific instances of misconduct is governed by ER 608(b). That rule provides that specific instances of conduct may, in the discretion of the court, be inquired into on cross-examination if probative of truthfulness or untruthfulness. ER 608(b). However, if the witness denies the specific instance on cross-examination, the inquiry is at an end. *State v. Barnes*, 54 Wn. App. 536, 540 P.2d 547 (1989). McCrary argues that the trial court should have allowed him to impeach Detective Martin with evidence of the 1999 disciplinary action under this rule. The trial court properly exercised its discretion in concluding that the evidence was not probative of Detective Martin's truthfulness because of the time elapsed, the lack of a nexus between those events and the facts of this case, and the fact that the prejudicial effect of 1999 events outweighed its probative value.

Detective Martin's conduct in the 1999 incident was essentially unrelated to his work as a sheriff's department detective. The focus of the initial report was concern over the theft of police equipment from Detective Martin's home. Pre-Trial Ex. 1; RP 20-23. To the extent that Detective Martin omitted the fact that he knew who had taken his vehicle in the initial report, he supplied that detail to other deputies on his own initiative shortly after the initial report. *Id.* They used the information to quickly locate that person, who was then able to provide the names of the people who had burglarized the home and taken the police equipment. *Id.* It was an emotional situation for Detective Martin involving a personal relationship; and a situation where he was fearful, confused, and embarrassed that his police equipment had been stolen. *Id.* The trial court's conclusion that this incident had no relevance to the Appellant's case was not manifestly unreasonable.

Appellant argues that the trial court's decision to exclude the evidence of the 1999 incident undercut a defense theory of the case. Appellant claims that its theory was that Detective Martin's personal belief that a protective sweep of the vehicle was required because the scene was not secure was an unreasonable one. RP169-71. However, defense counsel provided no foundation to

show that cross examining Detective Martin on the 1999 incident supported a defense theory of the case. During the cross-examination of Detective Martin in front of the jury, defense counsel focused its questions on Martin's interaction with Terry Meyers after the arrest and after the protective sweep. RP 704-07.

Furthermore, Defense counsel's closing argument included no mention of the unreasonableness of Detective Martin's actions. RP 1096. The defense theory presented in closing arguments was that Terry Meyers was another occupant of the car, that the car belonged to Meyers, and that the gun was accessible to Meyers. *Id.* Exclusion of Detective Martin's testimony on a 12 year old incident likely had no effect at all on the primary defense counsel theory regarding the gun charge. Nothing in Detective Martin's testimony related to proving the elements of the charge of assault and the elements of the charge of taking a motor vehicle without permission. RP 704-07. Defense counsel devoted the large majority of its closing argument to attacking the credibility of Ms. Mapp-Bynum's testimony and the testimony of other witnesses regarding the assault and taking a motor vehicle charges¹. RP 1084

¹ Defense counsel's closing argument covers 14 pages of the official trial transcript. RP1084-97. Within these 14 pages of closing arguments, only three

-97. In addition not being part of any defense theory regarding the unlawful possession of a firearm, the trial court's ruling to exclude Detective Martin's testimony regarding the 1999 incident had no effect whatsoever on defense counsel's arguments regarding the assault charge and the taking a motor vehicle without permission charge.

2. ANY ERROR IN FAILING TO ALLOW QUESTIONING REGARDING THE DISCIPLINARY HISTORY WAS HARMLESS

Even if the court erred by prohibiting questioning regarding the disciplinary history, the error was harmless given the extensive evidence confirming and corroborating the testimony of Detective Martin. Detective Thompson testified that he looked through the window of the Chevy Tahoe at the arrest scene and saw the gun on the floor of the vehicle underneath the rear seat. RP 620. The jury listened to recorded jail telephone calls in which McCrary clearly identifies his ownership of "my thing," and also in which he enlists a

paragraphs exhibit defense counsel's arguments against the unlawful possession of a firearm charge and there is no mention of Detective Martin. RP 1096.

female friend to get his gun box from Mapp-Bynum before she turns it over to the police. RP 853, 867-68. Mapp-Bynum testified that McCrary left the gun box at her house, and she turned the gun box over to the police. RP 553, 784-87. McCrary's fingerprints were found on a bill of sale that was located inside the gun box. RP 747-54. And the serial number of the gun found in the Chevy Tahoe that McCrary rode to the arrest location matched the gun box serial number. RP 792.

McCrary relies on *State v. York*, but that case is distinguishable from the present case. *State v. York*, 28 Wn. App. 33, 621 P.2d 784 (1980). Unlike *York*, this case was not simply a contest between the word of Detective Martin and the word of Mr. McCrary. The State's primary witness in this case was the victim, Ms. Mapp-Bynum. Detective Martin's testimony was just a portion of the substantial evidence produced against McCrary on the firearm charge. The evidence produced by the State regarding the assault charge and the taking the motor vehicle without permission charge did not involve Detective Martin. The evidence for those charges relied predominantly on the testimony of Ms. Mapp-Bynum and of the officers who interviewed her following her 911 call. RP 483-88, 510-70, 590-600, 709-718, 779.

Furthermore, Detective Martin's prior conduct was distinguishable from the undercover informant's in *York* and was significantly less relevant to this case. While the undercover informant in *York* was terminated from his employment for irregular work and his unsuitability for the job, the 1999 incident involving Detective Martin resulted in a one day suspension for conduct that was pretty much unrelated to his job as a detective. *York*, 28 Wn. App. at 34. Detective Martin's 1999 conduct in a personal matter had no relevance regarding his ability to testify in a trial of an individual he did not know, nearly 12 years later.

The State's interest in seeking a just trial by preventing evidence of no probative worth from distracting and inflaming jurors was sufficient to justify exclusion of the evidence. Because the evidence was not relevant, its exclusion did not deprive McCrary of his right to present a defense or to confront adverse witnesses. There was extensive evidence regarding the firearm charge, including a second Detective who saw the gun in the same place that Detective Martin found it, recorded calls from jail in which the defendant discussed his gun, and fingerprints of the defendant found in paperwork in the gun box.

D. CONCLUSION.

The trial court properly exercised its discretion in prohibiting questioning of Detective Martin regarding his disciplinary history. Even if the trial court erred, the error was harmless in the face of extensive evidence confirming and corroborating his testimony. Respondent respectfully requests that the Court affirm the trial court's decisions.

DATED this 26th day of July, 2012.

Respectfully submitted,

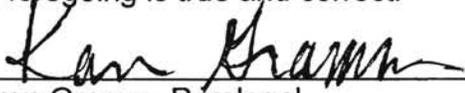
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jared Steed, 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 Notice of Appearance and the Motion for Extension of Time to File Brief, in STATE V. DATHAN MCCRARY, Cause No. 67827-2-1, 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.



Karen Gramm, Paralegal
Done in Seattle, Washington

7-27-12

Date 7/27/12

2012 JUL 27 AM 10:47
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STATE OF WASHINGTON