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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

NO. 33674-0-II

STATE OF WASHINGTON,

Respondent,

vs.

MICHELLE R. POWERS

Appellant.

JEFFERSON COUNTY CAUSE NO. 04-1-00001-2

BRIEF OF RESPONDENT

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pm 7-10-06

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<u>State v. Barnes</u> , 85 Wn.App, 638, 932 P.2d 669 (1997).....	5

STATEMENT OF THE CASE

The facts of the case are as set out in Appellant's brief on pages one through eight. Appellant raises two issues. One, did Court Commissioner Richard Shaneyfelt have the authority to declare a hung jury and declare a mistrial. Two, if he had the authority, did the Commissioner abuse his discretion by declaring a hung jury and declaring a mistrial.

ARGUMENT AS TO ISSUE NUMBER ONE

The parties agreed to have Commissioner Shaneyfelt take the verdict of the jury. RP 380, 417. The authority to take a verdict naturally includes the authority to determination that a jury is deadlocked and unable to agree upon a verdict. Commissioner Shaneyfelt acting as a de facto judge by agreement of the parties had the necessary authority to use his discretion and determine that the jury was deadlocked. In re Barrett-Smith v. Barrett-Smith, 110 Wn.App. 87, 90, 91. (2002).

ARGUMENT AS TO ISSUE NUMBER TWO

Prior to the commencement of Appellant's second trial, this issue was argued before Judge Anna Laurie pursuant to Appellant's motion to dismiss. RP 410-420. In denying Appellant's motion, Judge Laurie found

that Commissioner Shaneyfelt had not abused his discretion in declaring the first jury deadlocked and declaring a mistrial. RP 419, 420.

Judge Laurie's decision was based upon good law. In the 1997 case State v. Barnes, 85 Wn.App 683, 932 P.2d 669, this court summarized the applicable law beginning at page 656:

Extraordinary and striking circumstances are required to justify a mistrial. A trial judge is accorded broad discretion in making this determination. A trial judge's belief that the jury is deadlocked is the classic basis for declaring a mistrial.

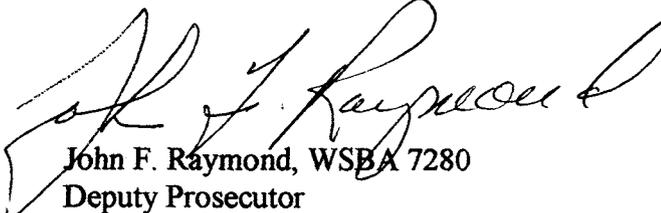
In determining whether a jury is deadlocked, the judge may consider the length of jury deliberations relative to the length of the trial and the complexity of issues and evidence. In questioning the jury, the court must avoid coercing or interfering with the deliberations and must reject instructions that might coerce an agreement. Further, the court may rely upon the representations of the presiding juror regarding whether the jury is deadlocked. There are no particular procedures that the court must follow in determining the probability of the jury reaching an agreement. (Citations omitted)

In the case at bar, the jury had been deliberating for two days on a case with basically one issue. RP 415. The presiding juror represented to the court that the jury could not reach a verdict. RP 377, 378. No coercing questions were asked and it is clear that the Commissioner believed that the jury was deadlocked. RP 380.

CONCLUSION

Commissioner Shaneyfelt had the authority to act and acted properly in finding the jury deadlocked and declaring a mistrial. Appellant's subsequent conviction on retrial should be affirmed.

Respectfully submitted July 10, 2006.



John F. Raymond, WSB# 7280
Deputy Prosecutor

1 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
2 DIVISION II

3
4 STATE OF WASHINGTON,
5 Plaintiff/Respondent,
6 vs.
7 MICHELLE R. POWERS,
8 Defendant/Respondent.

) Case No.: 33674-0-II
) Superior Court No.: 04-1-00001-2

) DECLARATION OF MAILING

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STATE OF WASHINGTON
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9
10 Janice N. Chadbourne declares:

11 That at all times mentioned herein I was over 18 years of age and a citizen of the United
12 States; that on the 10th day of July, 2006, I mailed a copy of the State's Brief of Respondent, to
13 the following:

14 David C. Ponzoha, Clerk
15 Court of Appeals, Division II
16 950 Broadway, Suite 300
Tacoma, WA 98402-4454

Thomas E. Weaver
Attorney at Law
P.O. Box 1056
Bremerton, WA 98337

17
18 I declare under penalty of perjury under the laws of the State of Washington that the
19 foregoing declaration is true and correct.

20 Dated this 10th day of July, 2006, at Port Townsend, Washington.

21
22 *Jan Chadbourne*
23 Janice N. Chadbourne
24 Legal Assistant

25
26
27 DECLARATION OF MAILING
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