

original

No. 34215-4-II

IN THE
COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JOHN PAUL REDMAN,
Appellant.

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STATE OF WASHINGTON
BY *Carroll*

APPELLANT'S BRIEF

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A. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred in finding that one rape was separate and distinct criminal conduct as compared to the other two because it occurred at a different time and place. Clerk's Papers (CP) at 16 (discussion regarding "additional rape" refers to vaginal penetration).

2. The trial court erred in finding that the other two rapes were separate and distinct criminal conduct because they occurred in different places and involved different types of penetration. CP at 16 (discussion regarding "first two" rapes, refers to oral and anal penetrations).

3. The trial court erred in concluding that the three penetrations should all be treated as separate and distinct criminal conduct so as to require consecutive sentences. CP at 17.

Issue Pertaining to Assignments of Error

Did the superior court abuse its discretion or misapply the law in imposing consecutive sentences for three convictions for rape in the first degree when the convictions arose from a continuous sexual attack, interrupted only by calls to the apartment, during one twenty-minute period involving one victim in her apartment?

Standard of Review

Appellate courts review a trial court's determination of what constitutes the same criminal conduct for abuse of discretion or misapplication of the law. *State v. Tili*, 139 Wn.2d 107, 122, 985 P.2d 365 (1999) (citation omitted) (reversing lower court's determination that three separate acts of rape were not the same criminal conduct).

B. STATEMENT OF THE CASE

Procedural History

By Corrected Amended Information, the State charged the defendant in this case, John Paul Redman, with six crimes arising from actions occurring on

November 8, 2004: 1) Burglary in the First Degree With Sexual Motivation while armed with a deadly weapon (a knife) in violation of RCW 9A.52.020(1)(a) and/or (b), RCW 9.94A.030(39), RCW 9.94A.602 and RCW 9.94A.533; 2) Kidnapping in the First Degree with Sexual Motivation while armed with a deadly weapon (a knife) with the intent to facilitate commission of first degree rape or flight thereafter in violation of RCW 9A.40.020(1)(b), RCW 9.94A.030(39), RCW 9.94A.602 and RCW 9.94A.533; 3) Rape in the First Degree by sexual intercourse (vaginal) by means of forcible compulsion while armed with a deadly weapon (a knife) in violation of RCW 9A.44.040(1)(a) & (d), RCW 9.94A.602 and RCW 9.94A.533; 4) Rape in the First Degree by sexual intercourse (oral) by means of forcible compulsion while armed with a deadly weapon (a knife) in violation of RCW 9A.44.040(1)(a) & (d), RCW 9.94A.602 and RCW 9.94A.533; 5) Rape in the First Degree by sexual intercourse (anal) by means of forcible compulsion while armed with a deadly weapon (a knife) in violation of RCW 9A.44.040(1)(a) & (d), RCW 9.94A.602 and RCW 9.94A.533;

and 6) Attempted Murder in the First Degree while armed with a deadly weapon (a knife) in violation of RCW 9A.32.030(1)(a), RCW 9A.28.020, RCW 9.94A.602 and RCW 9.94A.533. CP at 6-9. Each of the last five charges noted that it was "a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others." CP at 7-9.

Mr. Redman elected to have a stipulated-facts bench trial. The court, the Honorable John A. McCarthy presiding, found him guilty of the first five counts and not guilty of attempted murder. CP at 26-29. The court further found that the burglary and kidnapping were sexually motivated. CP at 26-27. It also found that Mr. Redman was armed with a deadly weapon, a knife, during all of the crimes of conviction. CP at 27-29.

Sentencing was held on December 2, 2005. See *Verbatim Report of Proceedings* (RP). In calculating the offender score, the court ruled that the three counts of rape were each separate and distinct criminal conduct requiring consecutive sentences. RP at 17. It further held that the kidnapping merged with the rapes and the burglary. RP at 24, CP at 33. However, it applied the burglary anti-merger statute to hold that the burglary did not merge with the rapes. RP at 24, CP at 33.

Under the Sentencing Reform Act (SRA), the top of the sentence range for all the crimes, given the sexual motivation, was the statutory maximum sentence. RCW 9.94A.712. That maximum was life for all the crimes, all class A felonies. RCW 9A.20.021.

Mr. Redman's offender score for the burglary was determined to be 9. The seriousness level was VII, resulting in a standard sentence range of 87-116 months to life. CP at 34. The court sentenced him to 116 months to life in prison. CP at 36. His offender score for the first count of rape was 3, with a

seriousness level of XII. The resulting standard sentence range was 120-160 months to life. The second and third rapes received an offender score of 0, resulting in standard sentence ranges of 93-123 months to life. CP at 34. The court sentenced Mr. Redman to 123 months to life in prison on each of the rape counts. CP at 36.

As Rape in the First Degree is a serious violent offense, RCW 9.94A.030, but Burglary in the First Degree is not, the sentences for the three rape counts were imposed to run consecutively to each other and the first was to run concurrently with the burglary. CP at 37, RCW 9.94A.589.

In addition, four consecutive 24-month sentence enhancements were imposed for the commission of the crimes with a deadly weapon other than a firearm. CP at 37; RCW 9.94A.533. The resultant period of confinement was 465 months to life in prison. CP at 37. MR. Redman was also sentenced to community custody for life. CP at 38. The court imposed a total of \$1,960.36 in costs, fees and restitution. CP at 35.

Prior to the instant incident, Mr. Redman had no criminal record.

This appeal followed. CP at 47.

Substantive Facts

Introduction

On this appeal of his sentence, Mr. Redman argues that when the three charged rapes were committed against the same victim, during a 20-minute continuous sexual attack in the victim's apartment, the superior court abused its discretion or misapplied the law in concluding that the rapes constituted separate and distinct criminal conduct so as to require consecutive sentences.

The Court's Findings Regarding the Rapes

Shortly after 6:05 p.m., Mr. Redman accosted the victim, M.S., in her apartment building (where he also lived), outside the door of her third-floor apartment. As she opened her door, he grabbed her from behind, held a knife to her throat and told her to do as he said and not ask questions. He forced her into the apartment and closed the door behind them. CP at 18.

Mr. Redman forced M.S. into the bedroom where he made her take off her clothes and put on a black shirt and white panties he had brought with him. He then ordered her to take those off and began kissing her, putting his tongue in her mouth and sucking on her breasts. He told her to "shut up, be quiet, and do as I say." CP at 19.

He then pushed M.S. to the floor, took off his pants, and ordered her to put her mouth on his penis while he sat on the floor. He pushed her mouth down to his penis, forcing her head down so far she gagged. M.S. was not sure if Mr. Redman ejaculated, but at one point she felt something "slimy" in her mouth. "After a period of time," he sat on the bed, held the knife to her throat, and forced her mouth down on his penis again. During this act, he penetrated M.S.'s vagina and anus with his finger. CP at 20.

During the oral rape, M.S.'s telephone rang. Mr. Redman escorted her to the phone in the living room and told her to answer it. It was from the telephone company. CP at 20-21.

Seeing a VCR in the living room, Mr. Redman directed M.S. to play a tape he had brought with him. It was a pornographic movie depicting a woman performing fellatio. Mr. Redman directed M.S. to "do what they are doing." He sat on the floor, leaned against a couch, and made M.S. perform oral sex again. Again the telephone rang. The answering machine began recording a message from M.S.'s mother and Mr. Redman ordered M.S. to answer the phone. CP at 21.

M.S.'s mother was waiting in her car in front of the apartment building with M.S.'s 16-month-old daughter. She had gone grocery shopping with M.S. and was then waiting for her to return to the car. CP at 18. She placed the call to her daughter at 6:23 p.m. CP at 21.

After M.S. hung up the phone, Mr. Redman penetrated M.S.'s vagina with his penis for "a few moments." He had difficulty maintaining an erection. CP at 22.

At this point, the rape was over. However, M.S.'s ordeal was not. Mr. Redman dragged M.S. by her

ponytail back into her bedroom, where he began strangling her with a leather belt. M.S. screamed and struggled; Mr. Redman ordered her to stop and said he would kill her and that she would never see her daughter again if she did not stop screaming. While M.S. continued to scream for help, Mr. Redman pushed her to her side, shoved her up against a dresser and struck her in the head. He finally stopped, telling her she was "lucky this time." CP at 22. He left the apartment. CP at 23.

At 6:27, M.S. called her mother and told her she had been raped. Her mother called 911. CP at 23.

The Court's Conclusions Regarding the Rapes

The court held that the first rape conviction was based on the vaginal intercourse occurring in M.S.'s living room after the phone call from her mother. CP at 27 & 22. It held that the second rape conviction was based on the act of oral sex occurring in M.S.'s bedroom while Mr. Redman sat on the floor. CP at 27 & 20. The third rape conviction was based on Mr. Redman's penetration of M.S.'s anus with his finger

during the act of oral sex in the bedroom while Mr. Redman sat on the bed. CP at 28 & 20.

Sentencing

At sentencing, Mr. Redman argued that the three rapes constituted the same course of criminal conduct for sentencing purposes. CP at 10-16; RP at 11-12. He pointed out that the events occurred over a period of about twenty minutes and that he had the same continuing criminal intent – sexual intercourse – for all three crimes. RP at 11-12. The State argued that intervening events, changing locations, changing positions, and changing the manner of penetration made the crimes distinct as they gave Mr. Redman sufficient time to reformulate intent. RP at 13-15.

The court compared the facts of the instant case to those in *State v. Tili*, 139 Wn.2d 107, 985 P.2d 365 (1999), discussed the analysis in *Tili*, and concluded that *Tili* required a finding that the rapes in this case were separate conduct. Specifically, the court held that the vaginal rape was separate from the other rapes because it occurred at a different time and place

and that the oral rape and the anal rape were not the same conduct because they occurred in different places and involved different types of penetration:

The facts in this case, the first two rapes are a closer case, as opposed to the second and the third. After the second rape had occurred, the victim, after a telephone call, submitted to an additional rape in another room.

Clearly, in looking at *Tili* in the analysis, it is separate conduct. I likewise find that even though the first two rapes may have been close in time, there was a change in position, if you will, and a change in activity and a movement from one place where the first rape occurred, to the second rape.

So I am of the conclusion that the *Tili* case is distinguishable, and that this is and was three separate rapes for purposes of a same criminal conduct analysis. They are separate and distinct criminal conduct and should be sentenced consecutively.

RP at 16-17, see RP at 15-17.

C. ARGUMENT

The Court Misapplied *Tili* and Other Precedent in Holding That Three Penetrations During a Continuous Sexual Attack in the Victim's Apartment in a Twenty-Minute Period Occurred at Different Times and Places, Constituted Separate and Distinct Conduct, and Required Consecutive Sentences

The superior court misapplied the law in imposing consecutive sentences in this case. Generally, a court imposing sentence for two or more concurrent crimes

must impose concurrent sentences, absent exceptional circumstances. RCW 9.94A.589(1)(a). However, when sentencing for two or more "serious violent offenses arising from separate and distinct criminal conduct," a court must impose consecutive sentences for those crimes. RCW 9.94A.589(1)(b).

The determination of what constitutes "separate and distinct criminal conduct" under RCW 9.94A.589(1)(b) requires ascertaining that the conduct was *not* the "same criminal conduct" as defined in RCW 9.94A.589(1)(a). *State v. Tili*, 139 Wn.2d at 122 (*Tili I*). Thus, if the crimes a) involved the same victim, b) were committed at the same time and place, and c) involved the same objective criminal intent, the crimes are *not* "separate and distinct criminal conduct." RCW 9.94A.589(1)(a); *Tili I*, 139 Wn.2d at 122. "One clear category of cases" - "the repeated commission of the same crime against the same victim over a short period of time" - meets the "same criminal conduct" criteria:

Although the statute is generally construed narrowly to disallow most claims that multiple offenses constitute the same criminal act, there is one clear category of

cases where two crimes will encompass the same criminal conduct -- "the repeated commission of the same crime against the same victim over a short period of time."

State v. Porter, 133 Wn.2d 177, 181, 942 P.2d 974 (1997) (citation omitted) (involving two drug sales to same person ten minutes apart).

In this case, only the rape convictions qualify as serious violent offenses. RCW 9.94A.030. The rape convictions arose from multiple penetrations during one twenty-minute period involving one victim in her apartment, in other words, "the repeated commission of the same crime against the same victim over a short period of time." *Porter*, 133 Wn.2d at 181. However, the lower court found that the multiple penetrations did not constitute the same criminal conduct.

The court held the vaginal rape to be separate from the other two rapes because it occurred at a different time and place: "After the second rape had occurred, the victim, after a telephone call, submitted to an additional rape in another room." RP at 16. Similarly, it found that the oral rape and the anal rape were not the same conduct because they occurred in

different places and involved different types of penetration: "I likewise find that even though the first two rapes may have been close in time, there was a change in position, if you will, and a change in activity and a movement from one place where the first rape occurred, to the second rape." RP at 16. In reaching these conclusions, the lower court misapplied the law. The conduct in this case involved the same victim, occurred at the same time and place, and involved the same criminal intent; accordingly, this Court should reverse the lower court's decision and order Mr. Redman to be resentenced to concurrent sentences.

A. The Rapes Occurred at the Same Time for Purposes of the "Same Criminal Conduct" Test

When the penetrations in this case occurred one after the other over a continuous twenty-minute period, interrupted only by telephone calls to the apartment, the rapes occurred at the same time. For crimes to be committed at the same time under RCW 9.94A.589(1)(a), they need not be simultaneous but may even be sequential. *Porter*, 133 Wn.2d 177 (two separate drug

sales occurring ten minutes apart occurred at the same time for purposes of former RCW 9.94A.400(1)(a)). Indeed, in *Porter*, the Supreme Court explicitly held that sequential crimes meet the "at the same time" test: "Sequential crimes . . . do qualify as 'same criminal conduct,' assuming the other statutory elements are met." 133 Wn.2d at 183.¹

Along these lines, sequential rapes have been held to have occurred "at the same time" under the statutory predecessor to RCW 9.94A.589(1)(a), former RCW 9.94A.400(1)(a). *State v. Palmer*, 95 Wn. App. 187, 975 P.2d 1038 (1999). In *Palmer*, two rapes were committed. First the defendant orally raped the woman. Then, over the course of a "few minutes," he took off his clothes, threatened her, and physically abused her. Finally, he vaginally raped her, changing positions twice before stopping. 95 Wn. App. at 190, 191. In reversing the lower court's decision, the appellate court held that

¹ Effective July 2001, RCW 9.94A.400 was recodified as RCW 9.94A.589.

the crimes occurred at the same time for purposes of the statute:

The few minutes between the rapes is sufficiently close so that it satisfies the RCW 9.94A.400(1)(a) time prong, because in this time [the defendant's] activity exclusively involved threats and use of force in preparation for the penile/vaginal rape which immediately followed the oral rape.

95 Wn. App. at 191.

Similarly, a completed oral rape, followed by an attempted anal rape, were held to have occurred at the same time for purposes of the statute. *State v. Walden*, 69 Wn. App. 183, 847 P.2d 956 (1993). The court held that the crimes, occurring "nearly at the same time," were the same criminal conduct. 69 Wn. App. at 188; see *Tili I*, 139 Wn.2d at 124, citing, *Walden*, 69 Wn. App. at 184-85, 188. When the penetrations in this case were not sequential, but occurred as part of one continuous sexual attack, they clearly occurred at the same time for purposes of the "same criminal conduct" test.

Regarding the oral rape and the anal rape, both occurring in the bedroom, there is no evidence that any

time whatsoever passed between them. (While the court did not base its holding on this ground, the State argued it as a reason to find the crimes distinct. CP at 12-15.) Mr. Redman began orally raping M.S. on the floor of her bedroom and, "after a period of time," moved to the bed and forced M.S. to perform oral sex there. It was at this time that he also penetrated M.S.'s anus with his finger. CP at 20. These penetrations happened as part of a continuous course of conduct, "in short succession," just as was true in *Walden* and *Palmer*. When the rapes in *Walden* and *Palmer* were held to have occurred at the same time, the rapes in this case occurred at the same time as well.

Similarly, the continuous, ongoing nature of the assault, interrupted only by outside calls, compels the conclusion that the vaginal rape in the living room occurred at the same time as the other rapes for purposes of the "same criminal conduct" test. While an unknown period of time passed between the beginning of the sexual attack in the bedroom and the conclusion of the attack in the living room, during the interval, as

was true in *Palmer*, Mr. Redman's actions were directed exclusively toward pursuing his sexual assault.

From the beginning of the sexual attack, Mr. Redman did not stop raping M.S. except when interrupted by the two phone calls. While M.S. dealt with the calls, Mr. Redman remained focused on his objective for being in her apartment: sexual intercourse. While M.S. was on the phone the first time, Mr. Redman looked for a VCR on which to play the pornographic tape he had brought. When she got off the phone, he forced her to put the tape on and then used the tape in furtherance of the rape, telling her to "do what they are doing." CP at 21. After that rape was interrupted by another call, Mr. Redman resumed the assault where he had left off, this time vaginally raping her with his penis. CP at 21-22. Thus, like the defendant in *Palmer*, Mr. Redman spent the intervals "in preparation for the . . . rape which immediately followed the [prior] rape." For these reasons, as was true in *Palmer*, the vaginal rape in this case occurred at the same time as the other rapes for purposes of determining whether the

rapes constitute the same criminal conduct. See *Porter*, 133 Wn.2d at 183 (holding sequential drug sales occurred at same time).

B. The Rapes Occurred at the Same Place for Purposes of the "Same Criminal Conduct" Test

In addition, the rapes, all occurring in M.S.'s apartment, occurred in the same place for purposes of the "same criminal conduct" determination. While the State did not argue that the crimes did not occur in the same place, the superior court apparently supported its holding with the finding that the crimes occurred in different places. CP at 16 ("additional rape in another room;" "a movement from one place where the first rape occurred, to the second rape"). This finding cannot stand. To suggest that adjacent rooms in a one-bedroom apartment or the floor and bed of the same room are different places for purposes of RCW 9.94A.589(1)(a) would lead to absurd results. For example, under such reasoning, a court would have to impose consecutive sentences for multiple kidnappings if the defendant led the victim from one part of a room to another or to an adjacent room in the same

apartment. Further, the court cited no authority to support its position. Thus, to the extent the trial court held that the crimes were separate and distinct because they occurred in different places, it abused its discretion or misapplied the law.

In this regard, the superior court also apparently supported its holding on the oral rape and the anal rape with the finding that the type of penetration changed. CP at 16 ("there was a change in position, if you will, and a change in activity"). While such a finding supports convictions for two separate crimes, it clearly does not support a finding that the crimes are "separate and distinct" for sentencing purposes. See, e.g., *Tili I*, 139 Wn.2d 107 (three different methods of penetration supported convictions on three crimes but required sentencing as "same criminal conduct").

Because the superior court failed to articulate "any viable basis" to find Mr. Redman's conduct "separate and distinct," it abused its discretion and this Court should reverse Mr. Redman's sentence and

remand for resentencing under 9.94A.589(1)(a). *Tili I*, 139 Wn.2d at 124-25.

Although the superior court did not explicitly find that Mr. Redman's objective intent changed during the incident, its reliance on *Tili I* indicates that it may have considered the matter. For these reasons, and since the issue was debated by the parties below, Mr. Redman also maintains that the rapes all involved the same objective criminal intent: sexual intercourse.

C. The Rapes Involved the Same Objective Criminal Intent: Sexual Intercourse

Finally, Mr. Redman's objective intent did not waiver during the sexual assault; it consistently remained sexual intercourse. In a rape case, changing the manner of penetration is not sufficient to indicate a change in the objective intent of the perpetrator. *Tili I*, 139 Wn.2d at 111-12, 124 (holding defendant who separately penetrated woman's vagina and anus with his finger and vagina with his penis had the same objective intent for each crime). A change in objective intent can only be shown if the defendant ended one criminal episode before beginning the next. *Tili I*, 139 Wn.2d

at 123-24. As the rapes in this case were part of a continuous sexual assault, the rapes involved the same objective intent.

In *Tili I*, the Supreme Court "resolved" what had been "unsettled" law regarding multiple penetrations in rape cases. *State v. Tili*, 108 Wn. App. 289, 297, 29 P.3d 1285 (2001) (appeal after remand) (*Tili II*). Prior to *Tili I*, Division Two had held that "two different acts of sexual penetration did not constitute the same criminal conduct for sentencing purposes." *Tili II*, 108 Wn. App. at 297, citing, *State v. Grantham*, 84 Wn. App. 854, 932 P.2d 657 (1997). On the other hand, Division One had held that "one act of sexual penetration and a second act of attempted sexual penetration constituted the same criminal conduct for sentencing purposes." *Tili II*, 108 Wn. App. at 297, citing, *State v. Walden*, 69 Wn. App. 183, 847 P.2d 956 (1993).

In reconciling the divergent opinions in Divisions One and Two, *Tili I* limited *Grantham* to factual situations where a rape was completed before another

was begun: "The evidence in *Grantham* supported a conclusion that the criminal episode had ended with the first rape. . . . Thus, [the defendant] was able to form a new criminal intent before his second criminal act because his 'crimes were sequential, not simultaneous or continuous.'" *Tili I*, 139 Wn.2d at 123-24, quoting, *Grantham*, 84 Wn. App. at 856-57, 859.

In the first criminal episode in *Grantham*, the defendant violently raped a woman anally. After he concluded the anal rape, he began a generalized assault:

Grantham then started kicking her legs and telling her to get up and turn around. He called her names and repeatedly told her to "hurry up." When she didn't respond, he started kicking her harder, on the thigh, then in her ribs. L.S. remained on her knees until finally Grantham grabbed her face and chin and turned her to face him. At this point he was standing over her and threatening her not to tell. L.S. testified that Grantham then "kept like grabbing my face and I kept, you know, trying to stay as far back from him as I could. I'm grabbing my face and he said come here. And I look up and I was like what? Will you take me home? Will you please stop? I was crying and I asked him to please stop."

84 Wn. App. at 856. After this torrent of abuse, the defendant determined to rape the woman orally. He used additional violence to force her to comply with this demand. *Id.* Thus, in *Grantham*, the defendant completed a rape, switched to a different type of physical abuse altogether, and then began the second rape.

In *Tili I*, the Court held that its facts, where the defendant committed three different rapes through three sequential penetrations over about a two-minute period, came closer to *Walden* than *Grantham*. In *Walden*, an attempted rape followed a completed rape "in short succession." *Tili I*, 139 Wn.2d at 124. The Supreme Court quoted *Walden's* conclusion: "When viewed objectively, the criminal intent of the conduct comprising the two charges is the same: sexual intercourse. Accordingly, the two crimes of rape in the second degree furthered a single criminal purpose." *Tili I*, 139 Wn.2d at 124, quoting, *Walden*, 69 Wn. App. at 188 (internal quotes omitted).

After discussing the two cases, the *Tili I* Court analyzed the defendant's objective intent within the framework it created in its discussion of *Grantham* and *Walden*: "As in *Walden*, [the defendant's] unchanging pattern of conduct, coupled with an extremely close time frame, strongly supports the conclusion that his criminal intent, objectively viewed, did not change from one penetration to the next. This conclusion is consistent with both *Walden* and *Grantham*." *Tili I*, 139 Wn.2d at 124. In both *Tili I* and *Walden*, there was no intervening episode of generalized violence as occurred in *Grantham*.

For the same reasons the defendants' objective intent did not change in *Tili I* and *Walden*, Mr. Redman's objective intent did change here. He too demonstrated an "unchanging pattern of conduct" within a "close time frame." Although the overall time frame was greater in this case, twenty-minutes as compared to approximately two minutes in *Tili I* and an unspecified but short time frame in *Walden*, like the defendants in those case Mr. Redman did nothing but rape or prepare

for raping M.S. during those twenty minutes. Indeed, the time from one penetration to the next in this case must have been momentary.

Further, the momentary interruptions in this case did not indicate the conclusion of a criminal act, as occurred in *Grantham*. Unlike in *Grantham*, at no time during the sexual assault in this case did Mr. Redman decide to stop the attack – the interruptions came from outside. Moreover, again unlike in *Grantham*, Mr. Redman never interrupted the sexual abuse to abuse M.S. in a new way. (His attack with the belt around M.S.'s neck occurred after the sexual assault had concluded, not during that assault. CP at 22.)

Instead, he persisted in his sexual attack, making each new penetration part of a continuous series, each furthering the unchanging objective of sexual intercourse. Throughout the entire incident, as was true of the defendants in *Walden* and *Tili I*, Mr. Redman remained focused on pursuing his objective of sexual intercourse, even as his attack was interrupted by the telephone or moves around the apartment. Thus, Mr.

Redman's "unchanging pattern of conduct," moving from one penetration to the next, stopping only when interrupted by an outside call, was similar to the situation in *Tili I* and *Walden* and requires the same conclusion: his objective intent did not change. See Part A, above (discussion of interruptions).

Indeed, as was true in *Walden* and possibly *Tili I*, each penetration in this case furthered the next, and all were part of a general sexual assault on M.S. Under these circumstances, no changing intent can be found: "If one crime *furthered* another, and if the time and place of the crimes remained the same, then the defendant's criminal purpose or intent did not change and the offenses encompass the same criminal conduct." *State v. Lessley*, 118 Wn.2d 773, 777, 827 P.2d 996 (1992) (citation omitted) (emphasis in original).

For these reasons, Mr. Redman's objective intent, sexual intercourse, remained the same throughout his attack on M.S. When the conduct in this case involved the same victim, occurred at the same time and place,

and involved the same criminal intent; this Court should reverse the lower court's decision and order Mr. Redman to be resentenced.

D. CONCLUSION

For all of these reasons, John Paul Redman respectfully requests this Court to hold that the superior court abused its discretion or misapplied the law in imposing consecutive sentences and direct that he be resentenced to concurrent sentences.

Dated this 26th day of May, 2006.

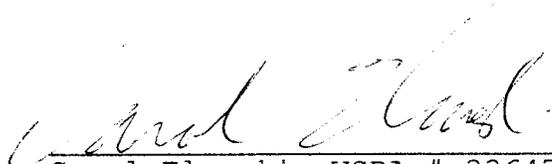
Respectfully submitted,



Carol Elewski, WSBA # 33647
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on this 26th day of May 2006, I mailed one copy of the attached brief, postage prepaid, to the attorney for the Respondent, Kathleen Proctor, Deputy Prosecuting Attorney, 930 Tacoma Avenue S, Tacoma, Washington, 98402-2102, and one copy of the brief, postage prepaid, to Mr. John Paul Redman, DOC # 887317, MCC-SOU C-408, P.O. Box 514, Monroe, WA 98272-0514.


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