

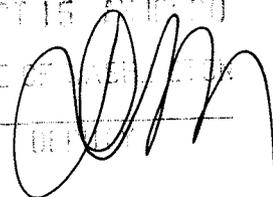
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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II



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STATE OF WASHINGTON,

Respondent,

vs.

DONALD E. JEFFERSON,

Appellant,

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APPEAL FROM THE SUPERIOR COURT  
FOR THURSTON COUNTY  
The Honorable Christine A. Pomeroy, Judge  
Cause No. 05-1-02201-2

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

01. The trial court erred in granting the mistrial over Jefferson's objection.
02. In granting the mistrial over Jefferson's objection, the trial court erred in entering Findings of Fact Nos. 3, 8, 10, 11 and 13, as fully set forth herein at pages 3-5.
03. In granting the mistrial over Jefferson's objection, the trial court erred in entering Conclusions of Law Nos. 1 and 2, as fully set forth herein at page 5.
04. The trial court erred in not taking count I, identity theft in the first degree, from the jury for lack of sufficiency of the evidence.
05. The trial court erred in not taking count V, tampering with a witness, from the jury for lack of sufficiency of the evidence.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

01. Whether the granting of the mistrial over Jefferson's objection violated double jeopardy because it was not justified by a manifest necessity? [Assignment of Error Nos. 1-3].
02. Whether there was sufficient evidence that Jackson committed the offense of identity theft in the first degree as alleged in count I? [Assignment of Error No. 4].
03. Whether there was sufficient evidence that Jackson committed the offense of tampering with a witness as alleged in count V? [Assignment of Error No. 5].

C. STATEMENT OF THE CASE

01. Procedural Facts

Donald E. Jefferson (Jefferson) was charged by seventh amended information filed in Thurston County Superior Court on February 1, 2007, with identity theft in the first degree, count I, theft in the first degree, count II, criminal impersonation in the first degree, count III, unlawful possession of cocaine with intent to deliver, count IV, and two counts of tampering with a witness, counts V and VI, contrary to RCWs 9A.35.020(1)(2), 9A.56.030, 9A.56.020(1)(a) or (b), 9A.60.040(1)(a), 69.50.401 and 9A.72.120(1)(a), respectively. [CP 481-82].

Jefferson's first trial, over his objection, ended in a mistrial on May 8, 2006. [RP 05/08/06 34-35, 40]. The court entered the following FINDING OF FACT, CONCLUSION OF LAW, AND ORDER FOR MISTRIAL:

This matter came on for trial on May 2, 2006, before the undersigned judge. The State was represented by David H. Bruneau, Senior Deputy Prosecuting Attorney for Thurston County. The defendant was present throughout and represented by his counsel, Richard Woodrow. On May 8, 2006, the trial resumed, and the proceedings were interrupted. Thereafter the court made these findings:

1. Vanessa Molina was charged with: Robbery in the First Degree (4 counts); Identity Theft in the First Degree (2 counts); Theft in the

First Degree (2 counts); Identity Theft in the Second Degree; Theft in the Second Degree; Criminal Impersonation in the First Degree; and Unlawful Possession of a Controlled Substance – Cocaine, with Intent to Deliver.

2. Molina was the co-defendant of Donald Jefferson, and CrR 3.2 orders prohibited her contact with the defendant. Likewise, 3.2 orders in this case prohibited contact by this defendant with Ms. Molina.
3. On May 1 2006, Vanessa Molina pleaded guilty as charged in the Third Amended Information. When called as a witness by the Plaintiff the witness refused to be sworn. Because the witness was adamant in her refusal to testify she was held in contempt by the court. Thereafter, the court entered Findings of Fact and Conclusions of Law (for contempt) of witness Vanessa Molina, a copy of which is attached hereto and incorporated by reference into the findings herein.
4. On May 8, 2006 Vanessa Molina, as charged (in cause #05-1-02202-1), was called as a witness by the Plaintiff at the trial of the above-entitled case.
5. Vanessa Molina took the witness stand in the presence of the jury, whereupon the undersigned judge administered the oath by which a witness acknowledge to “swear or affirm to tell the truth, the whole truth, and nothing but the truth...” When the court administered the oath the witness refused to take the oath by affirmatively stating “No.” She refused to take an oath. The jury was excused.

6. When given the opportunity to reconsider her refusal (by the court) the witness again refused to be sworn. She refused to answer questions of the prosecutor when he was given the opportunity to attempt any examination.
7. The court adjourned until 1:00 p.m., when the parties returned to open court and the witness Vanessa Molina was called to the stand. The court inquired of her whether she had reconsidered her refusal to be sworn and the witness again refused to take the oath.
8. Vanessa Molina was a material witness to the matters alleged to have been committed by the co-defendant, Donald Jefferson. Having entered pleas of “guilty” to those same crimes, the witness had no Fifth Amendment privilege to invoke her right to remain silent. Furthermore, the court had ordered in limine that matters alleged to have been committed by the witness in California or in Pierce County, Washington would not be subject to inquiry. Finally, the court concluded that based upon the representations of the U.S. Attorney’s Office, the witness was in no federal jeopardy for the bank robberies she committed here (and pleaded guilty to).
9. The witness has no legal authority to refuse as a witness. The witness’s refusal to be sworn was committed in the presence of the court and was contemptuous. Her refusal was willful and intentional.
10. In spite of the 3.2 orders of this court the defendant, Donald Jefferson, on a number of occasions communicated with Vanessa Molina. Such communication was

accomplished indirectly – by use of agents – telephonically and by letter. During a pre-trial hearing on March 13, 2006, the defendant was seen to be mouthing words and communicating with Ms. Molina.

11. On May 8, 2006, when the court attempted to administer the oath to Vanessa Molina, the defendant communicated to her by words and expression: “No”, after the court completed the inquiry: “Do you swear/affirm to tell the truth, the whole truth, and nothing but the truth.” The witness complied with the defendant’s communication with her.
12. The court conducted a hearing during which testimony was taken from Detective Sam Costello and the bailiff, Ms. Donna Altman. Both observed communications by the defendant to the witness, Vanessa Molina.
13. The refusal of the witness to be sworn made her unavailable as a witness and her refusal to be sworn was a result of the misconduct of the defendant communicating with the witness. She has been influenced by the misconduct of the defendant.

Based upon the foregoing, the Court concluded:

1. Because of the misconduct of the defendant a mistrial should be granted to the State.
2. Because of the misconduct of the defendant jeopardy should not attach and the matter should proceed to trial in accordance with the court rule.

[CP 298-300; RP 05/08/06 37-40; RP 08/31/06].

On September 28, 2006, another judge in the same court denied Jefferson's motion to dismiss on double jeopardy grounds, ruling that it didn't have authority to review the issue:

(T)he matter is not properly before me, that the issue of jeopardy is inherent in the decision made by Judge Tabor granting the mistrial, and that decision is reviewable by a Court of appeals and not by this court.

[RP 09/28/06 31].

Jefferson's second trial commenced on January 29, 2007, the Honorable Christine A. Pomeroy presiding. Neither exceptions nor objections were taken to the jury instructions. [RP Vol. IV 459].

The jury returned verdicts of guilty as charged of all counts except unlawful possession of cocaine with intent to deliver, for which it returned a verdict of guilty of the lesser-included offense of unlawful possession of cocaine. [CP 530-32, 534-36].

Notice of this appeal was timely filed following imposition of an exceptional sentence.<sup>1</sup> [CP 540, 551-56, 549, 557].

02. Substantive Facts: Motion to Dismiss Hearing: May 8, 2006

When called as a witness on the morning of

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<sup>1</sup> Sentencing issues have been bifurcated by motion for accelerated review under RAP 18.15.

May 8, 2006, Vanessa Molina declined to swear or affirm that the testimony she was about to give would be the truth, the whole truth, and nothing but the truth. [Supplemental RP 05/08/06 33]. The court then excused the jury and informed Molina that she had no Fifth Amendment right not to testify because she was only to be questioned about circumstances surrounding the events for which she had entered pleas of guilty. [Supplemental RP 05/08/06 34]. Molina consulted her attorney and again informed the court that she was not prepared to testify. [Supplemental RP 05/08/06 36]. When she again refused to testify, the court found her in contempt, imposed a penalty of six months, and left open the possibility that she could purge the contempt by complying with the court's order to testify. [Supplemental RP 05/08/06 39].

Detective Sam Costello testified that he was aware of an order prohibiting contact between Jefferson and Molina and that in the last several weeks he had monitored seven or eight short telephone calls made by Jefferson from the Thurston County Jail to Mark Keend, Sr. [RP 05/08/06 12-15]. Jefferson eventually sent a letter to Keend who, using another's person's address, forwarded it to Molina in the Lewis County Jail using another person's return address. [RP 05/08/06 16-18]. The letter, which was intercepted by the jail staff, told Molina "rather

forcefully that she needed to plead guilty and tell everyone involved that she didn't intend to testify against her boyfriend." [RP 05/08/06 18].

When Molina appeared in court to testify during trial earlier that morning, Costello observed the following between her and Jefferson:

He raised his hand to his mouth in an attempt, I think, to shield my view. That didn't work out as well as I think he planned because I watched him say, "Don't say anything," to her.

[RP 05/08/06 14].

Later that day, during discussions with the jail staff, Costello learned that there was further communication between the two in the jail.

I think each of them said, "I love you," to each other loudly, yelling to each other as they were in different places relative to each other. One was in a holding cell and the other in a booking area.

[RP 05/08/0614].

Donna Altman, the bailiff during trial, observed the following communication between Jefferson and Molina:

When the judge was asking Ms. Molina if she was willing to testify under oath, he said - - he mouthed the words "no" to her on more than one occasion, and then she responded "no" immediately. And then she seemed to respond in a manner that he wished, he would go like that (indicating) and wink at her and smile at her.

[RP 05/08/06 20].

Following Altman's testimony, the following colloquy ensued between Molina and the court:

THE COURT: Ms. Molina, I'll indicate that I've given you some time to think about the circumstances surrounding your appearance here in court earlier today in which you refused to take an oath and this Court directed you to offer testimony finding that you had no fifth amendment right in this particular matter that would allow you to decline to testify. I indicated that you were in contempt by refusing to testify. Have you had some time to think about it now?

MS. MOLINA: Yes.

THE COURT: Are you willing to testify?

MS. MOLINA: No.

[RP 05/08/06 26-27].

Molina then refused to answer questions posed by the State. [RP 05/08/06 28-29]. When she was later brought back to court during the afternoon session and again asked by the court "one last time" if she was going to testify, she responded, "No." [RP 05/08/06 31].

03. Substantive Facts: Trial Beginning January 29, 2007

03.1 Identity Theft: Count I

Jefferson used the identification of Eric Phillips, without Phillips's permission, to rent a U-Haul truck that was used to transport furniture from Ideal Home Furnishings to the duplex

Molina had rented, which was paid for up front by Jefferson who was a cosigner on the rental agreement under the name Eric Phillips. [RP Vol. II 179-80, 210-11, 214-223; RP Vol. III 363].

### 03.2 Theft: Count II

On September 11, 2005, over \$3,000 of furniture was purchased from Ideal Home Furnishings by a person identified as Angeline Le, later identified as Molina, who signed the financing contract. [RP Vol. I 21-22, 25-26, 37; CP 366]. Eric also signed the sales order issued on the same date. [RP Vol. I 25]. The merchandise was subsequently picked up on September 13 and 17 by Eric Phillips, later identified as Jefferson, who used a U-Haul truck during the first pick up. [RP Vol. I 27, 37-39, 44, 49-50]. In mid-September, a U-Haul truck was observed backed up to the sidewalk in front of Molina's duplex and there were people unloading boxes. [RP Vol. I 88-89].

Ideal Home Furnishings was never paid for the transaction. [RP Vol. I 37, 44, 52; CP 367, 375, 381]. The furniture, which couldn't be resold because it was damaged, was eventually retrieved from the duplex Molina had rented. [RP Vol. I 52-53; RP Vol. II 185-86].

Jefferson denied he was with Molina when she purchased the furniture and had no idea she had purchased it by use of a false name. [RP Vol. II 180; RP Vol. III 374].

### 03.3 Criminal Impersonation: Count III

On September 12, 2005, Vanessa Molina signed a rental application with Cycle Real Estate to rent a duplex, which was paid for up front by Eric Phillips, later identified as Jefferson, in a cash payment of approximately \$4,500. [RP Vol. I 54-56, 67, 72, 74, 76]. The agreement was consummated on September 15. [RP Vol. I 76]. Because Molina did not qualify on her own for approval, Phillips, who was with her and who was identified as her brother, was required as a cosigner. [RP Vol. I 55-58, 73]. Cycle Real Estate would not have rented the duplex to Molina with a cosigner. [RP Vol. I 58, 75]. The picture on Phillips's identification was the same picture as that on the identification of Phillips provided to Ideal Home Furnishings in count II, though the information was different. [RP Vol. I 62-63]. Jefferson admitted that he had "criminally impersonated." [RP Vol. III 366].

### 03.4 Possession of Cocaine: Count IV

On September 26, 2005, the police executed a search warrant on the duplex rented by Molina. [RP Vol. II 106, 116]. One of the items seized was a glass vial with residue that tested positive for cocaine. [RP Vol. II 127-29, 272-73]. Also seized from the location were fake ID's and a social security card for Jefferson. [RP Vol. II 120-23].

### 03.5 Tampering with a Witness: Count V

In April 2006, Mark Keend received a couple of telephone calls from a person identifying himself as J.R. [RP Vol. II 148-49, 151]. “He asked me to take a letter and send it to a girl and that was it, so I took it and sent it.” [RP Vol. II 149]. Jefferson admitted to talking to Keend because he had sent him two or three letters to send to Molina. [RP Vol. III 379]. He denied any knowledge of the letter read to the jury, which he believed was written by Molina’s cousin who was referring to him as Molina’s boyfriend. [RP Vol. III 378-79; RP Vol. IV 432].

The letter read to the jury was dated April 12, 2006. [RP Vol. III 311-18]. It encouraged Molina to plead guilty and to tell people she won’t testify against her boyfriend.

Tell him you won’t lie on your boyfriend like they want you to and you do not want to go to trial.

[RP Vol. III 314].

The letter went on to note that Molina’s “boyfriend” was looking at “life in prison for something he had nothing to do with” [RP Vol. III 314] and that it was assumed her pockets would be fat when she got to prison before closing with the admonishment that she should stop asking what she should do. [RP Vol. III 318].

### 03.6 Tampering with a Witness: Count VI

Donna Altman, the bailiff at the hearing on May 8, 2006, testified that when Molina was called to the stand as a witness and the court attempted to administer the oath to tell the truth, she observed Jefferson mouth the word “No” to Molina, “to say no, that she would not testify.” [RP Vol. II 230]. Molina then said “no” to the court, with the result that she never testified. [RP Vol. II 230]. Detective Costello made a similar observation, saying that Jefferson mouthed the words “Don’t say anything.” [RP Vol. II 243]. Jefferson admitted that he had said, “You know, I love you” to Molina but that he wasn’t trying to influence her because she had told his attorney and investigator “she was not going to testify months before that.” [RP Vol. III 381].

#### D. ARGUMENT

##### 01. THE GRANTING OF THE MISTRIAL OVER JEFFERSON’S OBJECTION VIOLATED DOUBLE JEOPARDY BECAUSE IT WAS NOT JUSTIFIED BY A MANIFEST NECESSITY.

###### 01.1 Review of Applicable Law

A trial court’s decision whether or not to grant a mistrial is reviewed for an abuse of discretion. State v. Post, 118 Wn.2d 596, 620, 826 P.2d 172, 837 P.2d 599 (1992). In determining whether a trial should be terminated prior to verdict, a court must engage

in a “scrupulous exercise of judicial discretion.” United States v. Jorn, 400 U.S. 470, 485, 91 S. Ct. 547, 558 L. Ed. 2d 543 (1971). More than that, when the State seeks a mistrial over the defendant’s objection, “‘extraordinary and striking circumstances’ must exist before the judge’s discretion can come into play.” State v. Jones, 97 Wn.2d 159, 164, 641 P.2d 708 (1982). And if discretion is “exercised improperly, a mistrial is tantamount to an acquittal and frees the defendant from further prosecution.” State v. Browning, 38 Wn. App. 772, 775, 689 P.2d 1108 (1984).

Article 1, section 9 of the Washington State Constitution and the Fifth Amendment to the United States Constitution provide that no person should twice be put in jeopardy for the same offense. “The traditional view is that double jeopardy will attach after a jury is empaneled and sworn and the first witness for the prosecution has taken the stand, been sworn, and has been asked one question and has answered that question.” State v. Morlock, 87 Wn.2d 767, 770, 557 P.2d 1315 (1976). A defendant has a “valued right to have his trial completed by a particular tribunal.” Wade v. Hunter, 336 U.S. 684, 689, 93 L. Ed. 974, 69 S. Ct. 834 (1949).

Where a mistrial is granted over the defendant’s objection, as here, retrial is barred by double jeopardy standards unless the mistrial was justified by a “‘manifest necessity.’” State v. Graham, 91 Wn. App. 663,

667, 960 P.2d 457 (1998) (quoting State v. Eldridge, 17 Wn. App. 270, 276, 562 P.2d 276 (1997)). It is no wonder that “(w)hen a mistrial is declared and the jury discharged without the consent of the defendant or over his objection, serious double jeopardy problems arise.” State v. Browning, 38 Wn. App. at 775.

#### 01.2 Application of Law to Case

Based on the facts previously set forth herein under the heading “Motion to Dismiss Hearing: May 8, 2006,” supra at 6-9, the State successfully argued that a “mistrial would be appropriate” based on Jefferson’s actions of “tampering with the witness, Vanessa Molina.” [RP 05/08/06 32-33]. In the prosecutor’s words:

Your Honor, in order to - - well, not only because the defendant apparently has been successful in his tampering, but allowing time for further reflection and perhaps provide the parties with an opportunity to see a fair trial, which right now has been thwarted by the defendant’s conduct.

[RP 05/08/06 33].

Also the State argued that Molina had previously given a taped interview that was “inculpatory to herself and somewhat inculpatory to the defendant(,)” and that she had informed law enforcement “that if called upon to testify, she would testify consistent with what she had previously told the police.” [RP 05/08/06 36].

This persuaded the trial court to grant the State's motion. "The fact that she has chosen not to testify is the problem in this case." [RP 05/08/06 39]. Finding that Molina had been influenced by Jefferson's contacts with her and that there was no way the court could make her testify, the court concluded that it was "not going to require the State to go forward without the testimony of this important witness." [RP 05/08/06 39].

In the procedural framework of this case, before the trial court could even exercise its discretion to discharge the jury, it had to be confronted with "extraordinary and striking circumstances," State v. Jones, 97 Wn.2d at 164, which has been understood to mean completely unforeseen circumstances arising during a trial that makes its completion impossible. Wade v. Hunter, 3336 U.S. at 688. The presence of which is missing from this case and from this record.

While the court found that Molina was a "material witness" [CP 299 Finding of Fact 8] and that the State should not be required to prosecute Jefferson without "this important witness" [RP 05/08/06 39], the record is incongruent with this picture. Apparently Molina's refusal to testify presented the State with a problem, though the prosecutor never indicated how big a problem nor developed by offer of proof or other means how her testimony would assist in the presentation of his case,

other than to inform the court that Molina had told the police within the last week that she would testify “consistent with what she had previously told the police(,)” which presumably was to be gleaned from her taped interview in which she had made “somewhat inculpatory” statements relating to Jefferson. [RP 05/08/06 36]. It’s fair to ask: Somewhat inculpatory?

It is worthy to note, too, that based on this record the probative value, if any, of Molina’s requested testimony is unknown, especially since the prosecutor never mentioned her as a witness during opening statement [CP 470-74], being content to refer to her merely as a person who is easily deceived or cheated: the “defendant’s dupe.” [CP 471].

There is no doubt that Molina refused to testify. She was found in contempt, not Jefferson. And there is also no doubt that the record does not demonstrate what her sworn testimony would have been. Would it have come in as substantive or impeachment evidence or ruled inadmissible? The difference is obviously substantial. The record provides no answer.

At the core of the trial court’s reasoning in granting the mistrial was the belief that the State could not prosecute Jefferson without Molina’s testimony, no matter the cause of her failure to do so. But consider this hypothetical: Molina is sworn in at trial and then claims not

to remember anything relevant to the case. Same problem for the State.<sup>2</sup>

And the State would had to prosecute Jefferson without Molina's testimony had she remained a co-defendant and not testified. See Bruton v. United States, 391 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620 (1968).

There is no way to determine how this would affect the presentation of the State's case. This is not irrelevant. Without knowing the specifics of what Molina was going to say, both in the hypothetical and in this case, it cannot be determined that her failure to testify was completely unforeseen and rendered the completion of the trial impossible.

The record does not support the trial court's reasoning in granting the mistrial and, in any event, it was not the product of "extraordinary and striking circumstances" resulting in a manifest necessity warranting dismissal of the jury.

### 01.3 Result

There was not a manifest necessity for the mistrial. And because Jefferson's second trial was barred by double jeopardy principles, his convictions must be reversed and the matter

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<sup>2</sup> See State v. Allen S., 98 Wn. App. 452, 461-62, 989 P.2d 1222 (1999) (proposed hearsay testimony was inadmissible for impeachment purposes because the credibility of the witness being impeached was not a "fact of consequence," since the witness did not provide any "substantive testimony" which "affirmatively supported" the non-impeaching party's position).

remanded to the trial court for entry of an order of dismissal with prejudice.

02. THERE WAS INSUFFICIENT EVIDENCE THAT JEFFERSON COMMITTED THE OFFENSE OF IDENTITY THEFT IN THE FIRST DEGREE AS CHARGED IN COUNT I.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

To convict Jefferson of identity theft in the first degree as charged and instructed and argued in this case, the State, in part, had to prove

beyond a reasonable doubt that on the dates in question Jefferson or an accomplice used Eric Phillips's means of identification or financial information and obtained anything of value in excess of \$1,500. [CP 481, 504].

This did not happen. No evidence was presented that anything of value in excess of \$1,500 was "obtained" through the use of Phillips's identification, which Jefferson used to rent the U-Haul truck to transport furniture and as a cosigner on the rental agreement for the duplex, after paying for the rent up front.

03. THERE WAS INSUFFICIENT EVIDENCE THAT JEFFERSON COMMITTED THE OFFENSE OF TAMPERING WITH A WITNESS AS CHARGED IN COUNT V.<sup>3</sup>

To convict Jefferson of tampering with a witness in this count the State, in part, had to prove beyond a reasonable doubt that on the dates in question Jefferson attempted to induce Molina to testify falsely or withhold testimony. [CP 482, 524].

The charge was based on the letter that was read to the jury, which, as previously set forth, encouraged Molina not "to lie on her boyfriend"

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<sup>3</sup> For the sole purpose of avoiding needless duplication, the prior discussion relating to the test for sufficiency of the evidence presented earlier in this brief is hereby incorporated by reference.

and not to go to trial in her case. [RP Vol. III 314]. And while it informed her that her “boyfriend,” by all accounts Jefferson, was looking at life in prison, it carefully noted that this was “for something he had nothing to do with.” [RP Vol. III 314]. In fact the letter closed by telling her that she should stop asking what she should do. In this context, the parenthetical comment that it was assumed her pockets would be fat when she got to prison, whatever that means, cannot be read as sufficient inducement to warrant conviction of this charge.

There was no request that Molina make a false statement, to recant prior information she had given to the police, or to withhold information of any kind from the police. It is this “evidence” that distinguishes this case from State v. Lubers, 81 Wn. App. 614, 622-23, 915 P.2d 1157 (1996), where this court found sufficient evidence of tampering with a witness based on testimony that the defendant had asked a witness to make a false statement and thereby effectively recant a prior signed statement the witness had given to the police. In contrast, the testimony here was insufficient evidence for a rational trier of fact to find the statutory requirements for witness tampering beyond a reasonable doubt.

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E. CONCLUSION

Based on the above, Jefferson respectfully requests this court to reverse and remand for the entry of an order of dismissal with prejudice consistent with the arguments presented herein.

DATED this 12<sup>th</sup> day of October 2007.

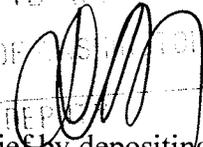
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