

No. 36173-6-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

KIRK SELFRIDGE

REPLY BRIEF

Thomas E. Weaver
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COURT OF APPEALS
DIVISION II
BY *[Signature]*
STATE OF WASHINGTON

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Cases

State v. Rempel, 114 Wn.2d 77, 785 P.2d 1134 (1990)2

A. Argument in Reply

The State, while conceding that “no single act by [Mr. Selfridge] was, in itself, criminal,” argues that his continuing course of conduct showed intent to tamper with a witness. Brief of Respondent, 12. The State points to Mr. Selfridge’s repeated calls to CPS and Animal Control, in addition to his graffitied vehicle, as evidence of this intent. They also point to two statements made by him to Ms. Meier. While this evidence demonstrates that Mr. Selfridge made a nuisance of himself, this Court should not lose sight of the State’s concession that “no single act by him was, in itself, criminal.”

The statements attributed to Mr. Selfridge by Ms. Meier are, at best, ambiguous and, at worst, irrelevant. Mr. Selfridge told her that his wife had “done it before and he was able to have her take it back and was going to make her take it back this time, as well.” RP, 43. The record does not state whether these statements were made before or after May 21, 2006, the date Mr. Selfridge wrote graffiti about his wife on his vehicle. The two statements refer to taking “it” back, without defining “it.” The issue came up during his discussions with Ms. Meier about whether he needed family and individual counseling and a psychological parenting assessment, services that he claimed he did not need. RP, 38. Even assuming the facts more favorable to the State, it is impossible to conclude

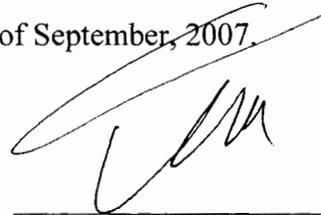
from these two statements that Mr. Selfridge intended to either induce a witness to testify falsely or to withhold testimony.

More importantly, the State makes no attempt to distinguish State v. Rempel, 114 Wn.2d 77, 785 P.2d 1134 (1990). In Rempel, the defendant called his long time girlfriend from jail after being arrested for attempted rape against her. He told her he was sorry, that he did not “mean it,” and asked her to drop the charges. The Supreme Court unanimously held that this did not constitute witness tampering, saying, “The entire context negates any inference that the request to ‘drop the charge’ was in fact an inducement to withhold testimony from a later trial.” Rempel at 84. Likewise, the context of Mr. Selfridge’s statements that he wanted his wife to “take it back” negate the inference that he intended for his wife to withhold testimony. The failure of the State to even attempt to distinguish Rempel is glaring in this case.

B. Conclusion

The tampering with a witness charge should be dismissed for insufficient evidence. This Court should also accept the State’s concession on his second assignment of error and dismiss the violation of no contact order offense for insufficient evidence.

DATED this 13th day of September, 2007.

A handwritten signature in black ink, appearing to read 'T. E. Weaver', written over a horizontal line.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant

COURT OF APPEALS
DIVISION II

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

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|-----------------------|---|----------------------------------|
| STATE OF WASHINGTON, |) | Case No.: 06-1-00387-8 |
| |) | Court of Appeals No.: 36173-6-II |
| Respondent, |) | |
| |) | AFFIDAVIT OF SERVICE |
| vs. |) | |
| |) | |
| KIRK DUFFY SELFRIDGE, |) | |
| |) | |
| Defendant. |) | |

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| STATE OF WASHINGTON |) |
| |) |
| COUNTY OF KITSAP |) |

THOMAS E. WEAVER, being first duly sworn on oath, does depose and state:

I am a resident of Kitsap County, am of legal age, not a party to the above-entitled action, and competent to be a witness.

On September 13th, 2007, I sent an original and a copy, postage prepaid, of the REPLY BRIEF, to the Washington State Court of Appeals, Division Two, 950 Broadway, Suite 300, Tacoma, WA 98402.

On September 13th, 2007, I sent a copy, postage prepaid, of the REPLY BRIEF, to the Kitsap County Prosecutor's Office, 614 Division St., MSC 35, Port Orchard, WA 98366-4683.

On September 13th, 2007, I sent a copy, postage prepaid, of the REPLY BRIEF, to Mr. Kirk Duffy Selfridge, 6210 Bethel Road S.E., Port Orchard, WA 98366.

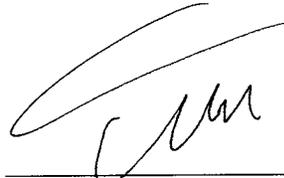
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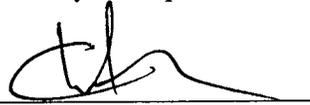
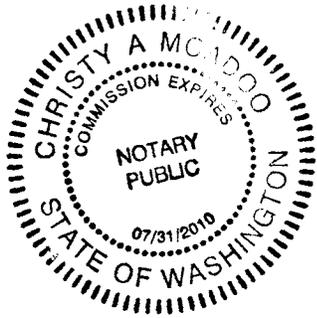
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Dated this 13th day of September, 2007.



Thomas E. Weaver
WSBA #22488
Attorney for Defendant

SUBSCRIBED AND SWORN to before me this 13th day of September, 2007.



Christy A. McAdoo
NOTARY PUBLIC in and for
the State of Washington.
My commission expires: 07/31/2010