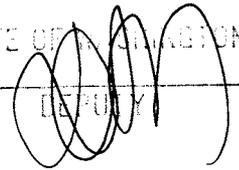


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DIVISION II

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STATE OF WASHINGTON  
BY 

36329-1-II  
COURT OF APPEALS  
Skamania County No. 06-1-00130-1

DIVISION II  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON, RESPONDENT

v.

KEVIN S. GREENE, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT OF SKAMANIA COUNTY

HONORABLE E. THOMPSON REYNOLDS

---

BRIEF OF RESPONDENT

---

Peter S. Banks, WSBA # 7174  
Attorney for Respondent  
Skamania County Prosecutor  
Box 790  
Stevenson WA 98648

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- B. MR. GREEN NOT DENIED COUNSEL.
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A. CONFESSION OF ERROR

The Respondent, State of Washington, confesses error as to the charge and conviction of Mr. Greene for Unlawful Possession of a Firearm. The Appellant is correct as to failure by the State to prove identity.

However, the appropriate remedy is to return the case for retrial on this charge, not dismissal.

B. MR. GREENE WAS NOT DENIED RIGHT TO COUNSEL

A trial courts referral to grant a continuance is reviewed for an abuse of discretion. State v. Campbell, 78 Wm App 813, 820, 501 P. 2d 1050 (1955). An abuse of discretion occurs only where exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons. State v. Kleist, 126 Wn 2d 432, 436, 895 P. 2d 398 (1995); Davis v. Globe Mach. Mfg. Co. 102, Wn2d 68, 76,684 P.2d 692 (1984).

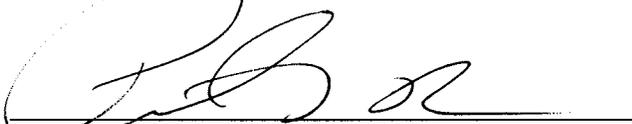
In the case at bar, Mr. Greene waited until the morning of trial, with a jury panel prepared

for Voir Dire, to indicate he wanted to hire an attorney. He had not contacted anyone, nor did he know the cost. Clearly the court exercised sound discretion in denying the continuance.

C. CONCLUSION

The case should be remanded for retrial on the Unlawful Possession of a Firearm charge. The issue of counsel should be denied.

Date this 2nd day of June, 2008

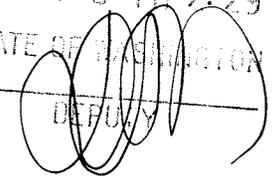
A handwritten signature in black ink, appearing to read 'P. S. Banks', written over a horizontal line.

Peter S. Banks, WSBA # 7174  
Prosecuting Attorney

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**COURT OF APPEALS STATE OF WASHINGTON  
DIVISION II**

STATE OF WASHINGTON  
BY  DEPUTY

STATE OF WASHINGTON,            )  
Respondent,                    )  
v.                                    )  
KEVIN S. GREENE,                )  
Appellant.                        )  
\_\_\_\_\_ ) **CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing Respondent's Brief on the following individuals, by mailing or causing to be mailed true copies thereof, certified as such, contained in a sealed envelope, with postage paid, addressed to them at their last known address, and deposited in the post office at Stevenson, WA on the 2ND day of JUNE, 2008.

ANNE CRUSER  
PO BO 1670  
KALAMA WA 98625

DATED this 2nd day of JUNE, 2008.

  
Pamela K. Bell, Legal Secretary  
Skamania County Prosecutor's Office