

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

36381-0-II

STATE OF WASHINGTON
RESPONDENT,

VS.

RICHARD DEAN YORK
APPELLANT.

FILED
COURT OF APPEALS
DIVISION II
OCT 18 2011
AM 9:34
STATE OF WASHINGTON
DEPUTY

BRIEF OF RESPONDENT

DAVID J. BURKE
PROSECUTING ATTORNEY
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80-62-2 WY

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A.

RESPONSE TO ASSIGNMENTS OF ERROR

1. Richard York was not denied his right to be free from double jeopardy under Article 1, Section 9 of the Washington State Constitution and the Fifth Amendment to the U.S. Constitution.

2. Mr. York's additional grounds for relief in his *pro se* supplemental brief are without merit.

B.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Richard York contends that the prosecutor intentionally tried to create a mistrial by failing to secure the jury room. Mr. York alleges that the prosecutor's actions were so egregious that the trial court should have dismissed the charges with prejudice. The State denies that it intentionally tried to create a mistrial. The State also asserts that the

failure of the bailiff to secure the jury room does not constitute a basis for dismissing the charges with prejudice.

2. The additional issues raised in Mr. York's *pro se* supplemental brief (speedy trial, ineffective assistance of counsel, probable cause, and equal protection) are unpersuasive. Mr. York's request for relief should be denied. See Appendix A.

C.

STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Richard York knowingly delivered methamphetamine in Pacific County, State of Washington, on October 11 and 12, 2007. CP 74-81; RP (5-15-07) 16-39. The State alleged that these crimes took place within 1,000 feet of the perimeter of school grounds. CP 18-20.

After Mr. York delivered methamphetamine, the whereabouts of Mr. York were unknown. The State filed a probable cause declaration and asked the Court to issue a warrant for Mr. York's arrest. CP 3-7; *See* Appendix A. The court issued an arrest warrant on January 18, 2007. *See* Appendix A. The arrest warrant was subsequently served on Mr. York.

A jury trial began on March 19, 2007. RP (3-19-07) *passim*. After the jury was selected and placed under oath, a mistrial was declared. RP (3-19-07) 62-68. Mr. York's defense counsel was allowed to withdraw from the case. RP (4-20-07) 1-18.

On May 15, 2007, the State filed an amended information omitting the school zone sentencing enhancements. Mr. York, with the assistance of a new attorney, pled guilty to the amended information. CP 74-81;

RP (5-15-07) 16-39. The court imposed a sentence within the standard range of 105 months. CP 82-97; RP (5-15-07) 36-38. Mr. York then appealed. CP 129.

2. SUBSTANTIVE FACTS.

On October 11 and 12, 2006, Rod Oleachea, acting as a police informant, bought methamphetamine from Richard York. CP 3-7; RP (05-15-07) 36-38. Mr. Oleachea was searched prior to the transactions and was observed by at least two officers during the transactions. CP 3-7. There was no mention of Danyelle Stigar being present at the scene of these controlled buys. CP 3-7.

On February 2, 2007, defense counsel was sent initial discovery in Mr. York's case. CP 21-28. Included in the discovery were police reports that indicated that Danyelle Stigar was involved in the delivery of narcotics with Mr. York. CP 21-28. On March 2, 2007, the court entered an omnibus

application setting a discovery deadline on March 7, 2007.

See Appendix B. Defense counsel was ordered to provide to the State a list of all defense witnesses and to delineate the general nature of the defense by the discovery deadline. *See* Appendix B.

On March 16, 2007, a discovery compliance hearing was held. While the court was in recess, defense counsel indicated that he intended to call Danyelle Stigar to testify. Defense counsel stated that Ms. Stigar was going to claim that she was the one who in fact committed the crimes for which the defendant was charged. CP 21-28. On the day of trial, March 19, 2007, Ms. Stigar was in the Pacific County Jail on charges of possession of methamphetamine, possession with intent to deliver marijuana, and possession of marijuana over forty grams. CP 21-28.

Before *voir dire* began on the morning of trial, Rod Oleachea, a prosecution witness, asked the prosecutor to indicate the location of the men's bathroom. The prosecutor told Mr. Oleachea that there was a bathroom in the jury room. RP (3-19-07) 57-58. At the time this conversation occurred, prospective jury members would have been in the courtroom waiting for the trial to begin.

Before the trial began, the State filed a motion to preclude Danyelle Stigar from testifying. CP 21-28. The court ordered defense counsel to refrain from mentioning Ms. Stigar during the opening statement. RP (3-19-07) 33, 34. Furthermore, the court reserved ruling on the State's motion for preclusion of testimony until after the State had presented its case. RP (3-19-07) 32, 33. The State indicated that the presentation of its case would bolster the motion for preclusion of testimony. RP (3-19-07) 32, 33.

The jury was picked and placed under oath. RP (3-19-07) 26. The jury was released to the bailiff, Millie Clements. The court told the jury that court proceedings would reconvene after lunch. RP (3-19-07) 27. The State released its witnesses for lunch, including Rod Oleachea. RP (3-19-07) 57.

Before adjourning for lunch, it came to the court's attention that the bailiff, Millie Clements, had failed to secure the jury room. RP (3-19-07) 34-35. The bailiff brought the jury into the jury room and found Rod Oleachea using the telephone. RP (3-19-07) 35. This was reported to the court by Chief Deputy Clerk Dawn Lorton. RP (3-19-07) 34. The trial court made the following statement on the record:

It's the State's witness. I expect the State to ask him about . . . [going into the jury room] and to make sure that no witnesses from the State during any trial go into that jury room the day of trial ever for any

reason, unless there's an direct order of the Court.

RP (3-19-07) 35.

The trial court did nothing on the record to ensure that the bailiff was aware of her responsibility to secure the jury room prior to the court adjourning for lunch. RP (3-19-07) *passim*. The prosecutor and Pacific County Deputy Sheriff Pat Matlock were unable to locate Rod Oleachea.

RP (3-19-07) 57.

After the lunch break, the bailiff, Millie Clements, was called to testify by the court. Ms. Clements stated that she saw a person (later identified as Rod Oleachea) on the telephone in the jury room with all the jurors present. RP (3-19-07) 42-43. This incident occurred at the start of the lunch break. She was not paying attention to what Rod Oleachea was saying because she was more concerned with

counting jurors. RP (3-19-07) 42-43. She never said anything to him and did not ask him to leave. RP (3-19-07) 43-44. After lunch, Millie Clements saw Rod Oleachea in the hallway. RP (3-19-07) 44. At this point she was aware that Mr. Oleachea was a witness. RP (3-19-07) 47. Rather than secure the jury room, the bailiff decided to abandon her post and walked into the Clerk's Office. RP (3-19-07) 45. When she returned to the jury room, Rod Oleachea was standing in the jury room. RP (3-19-07) 45. Only at this point did the bailiff inform Mr. Oleachea that he would have to leave and could not return to the jury room. RP (3-19-07) 45.

When these details became known to the defense, defense counsel moved for a mistrial. RP (3-19-07) 59. The court granted defense counsel's request for a mistrial. RP (3-19-07) 62.

D.

ARGUMENT

1. ALLOWING MR. YORK TO BE RETRIED AFTER THE MISTRIAL DID NOT VIOLATE THE PRINCIPLE OF DOUBLE JEOPARDY UNDER EITHER THE STATE OR FEDERAL CONSTITUTION.

a. Introduction.

The initial comment by the prosecutor to Mr. Oleachea concerning the location of a bathroom did not cause Mr. Oleachea to have any contact with prospective jurors. Further, there is no evidence that the prosecutor committed egregious misconduct in subsequently failing to locate Rod Oleachea so that he could have been prevented from having contact with jurors in the jury room. The bailiff's incompetence, not misconduct by the prosecutor, forced the court to declare a mistrial. Under these circumstances, this appeal should be denied.

- b. When a mistrial is declared, the principle of double jeopardy only bars retrial in limited circumstances where there has been egregious prosecutorial misconduct.

The principle of double jeopardy precludes any person from being twice put in jeopardy for the same offense. This principle is contained in the Fifth Amendment to the U.S. Constitution and in Article 1, Section 9 of the Washington State Constitution. The State constitutional double jeopardy clause does not provide greater protection than its federal counterpart. *State v. Gocken*, 127 Wash.2d 95, 896 P.2d 1267 (1995).

To determine whether a retrial would violate Mr. York's constitutional rights, a reviewing court must first determine whether jeopardy had attached at the time the mistrial was declared. *State v. Eldridge*, 17 Wash.App. 270, 275, 562 P.2d

276 (1977). Jeopardy attaches once a jury has been selected and placed under oath. *Id.*, at 276. Here the jury had been selected and placed under oath. Therefore, jeopardy had clearly attached.

Once jeopardy has attached, a reviewing court must determine if a retrial is barred. *Id.* If the defendant consents to the mistrial, a second trial is barred only when the “prosecutor’s conduct was motivated ‘in bad faith in order to goad the respondent into requesting a mistrial or to prejudice his prospects for an acquittal.’” *State v. Jones*, 33 Wash. App. 865, 870, 658 P.2d 1262 (1983), quoting *United States v. Dinitz*, 424 U.S. 600, 611, 96 S.Ct. 1075, 1080, 47 L.Ed.2d 267 (1976).

Since the defense moved for a mistrial, it follows that the defense consented to a mistrial when the trial court granted the mistrial. Therefore, in order for Mr. York to

prevail, he must demonstrate that the State acted in bad faith.

This question turns on whether the alleged governmental misconduct is purposefully aimed at forcing the defendant to ask for a mistrial. *Oregon v Kennedy*, 456 U.S. 667, 676, 102 S.Ct. 2083, 72 L.Ed.2d 416 (1982). A reviewing court must focus on judicial or prosecutorial intent which may be inferred from objective facts. *Kennedy*, at 675. As pointed out by Justice Stevens in his concurring opinion, “[i]t is almost inconceivable that a defendant could prove that the prosecutor’s deliberate misconduct was motivated by an intent to provoke a mistrial” *Kennedy*, at 688. According to Justice Stevens, only in a “rare and compelling case” would prosecutorial misconduct bar a retrial *Id.* at 690. Normally, a reviewing court still would have to find that “deliberate misconduct” occurred and “that the prosecutorial

error virtually eliminated, or at least substantially reduced, the probability of acquittal in a proceeding that was going badly for the government.” *Id.*

- c. The record does not show that the State engaged in behavior which would justify invoking the principle of double jeopardy.

Mr. York cannot prove deliberate governmental misconduct aimed at goading the defendant into moving for a mistrial. There are simply no objective facts to support Mr. York’s argument. Because the mistrial was declared before the State’s opening statement, it cannot be said that the case was going badly for the government.

Contrary to Mr. York’s assertions, the record does not show that the prosecutor’s actions were motivated by bad faith or undertaken to harass or prejudice the respondent. Appellant’s Opening Brief at 8, 9. While the prosecutor could have been more cautious by not telling Rod Oleachea that

there was a bathroom in the jury room, this oversight does not demonstrate animus/deception with the intention of trammeling upon Mr. York's rights. All that the record reflects is that prior to the jury being picked, Mr. Oleachea used the bathroom in the jury room. The record also shows that bailiff failed to secure the jury room on two separate occasions. Mr. Oleachea had contact with jury members before and after lunch, but this contact was not instigated by the prosecutor.

Mr. York alleges that the motivation of the prosecutor was to prevent Danyelle Stigar, a "last minute" defense witness, from testifying, and that by causing a mistrial, this witness would be unavailable for a subsequent trial. Appellant's Opening Brief at 8, 9. This contention is nothing but pure speculation and conjecture by Mr. York and is utterly without merit.

First, it is not a foregone conclusion that Danyelle Stigar would have been allowed to testify. A defendant's discovery obligation under CrR 4.7(b) requires the defendant to disclose to the prosecuting attorney no later than the omnibus hearing the names and addresses of persons whom the defendant intends to call as witnesses at trial, together with any written or recorded statements and the substance of any oral statements of such witnesses. In this case the omnibus application was filed, and a discovery deadline of March 7, 2007, was ordered by the court. The trial was set for March 19, 2007.

In direct violation of CrR 4.7(b) and the trial court's order, Mr. York not only failed to disclose witnesses but also failed to disclose the general nature of his defense. Under *Taylor v. Illinois*, 484 U.S. 400, 108 S.Ct. 646, 98 L.Ed. 2d 798 (1988) and *State v. Hutchinson*, 135 Wash. 2d 863, 959

P.2d 104 (1998), the trial court has authority to restrict defense testimony as a sanction for willful discovery violations. The trial court specifically delayed ruling on the State's motion to preclude Ms. Stigar's testimony. Hence, one can infer that the trial court thought that the motion at minimum had some degree of validity. Under such circumstances, Mr. York's supposition is just that -- a supposition. The trial court clearly had the authority to prevent Ms. Stigar from testifying as a sanction for discovery violations.

More importantly, if witness unavailability truly were a relevant concern for Mr. York (Appellant's Opening Brief at 9), nothing prevented Mr. York from obtaining a material witness warrant. *See* CrR 4.10. A material witness warrant would have ensured that Ms. Stigar was available to testify at a subsequent trial. Consequently, the imputed deleterious

motivation of the prosecutor would not have likely produced a salutary result for the State. In sum, the belief that the prosecutor adopted a feckless strategy in order to “manufacture” a mistrial is little more than an excursion into fatuous credulity.

- d. The double jeopardy clause of the Washington State Constitution should not be read more broadly than the double jeopardy clause of the U.S. Constitution.

The final precatory argument discussed at length by Mr. York in his opening brief is that the double jeopardy clause of the Washington Constitution should be interpreted in a manner analogous to the Oregon Constitution. Although Mr. York engages in an extensive historical and textual analysis under *State v. Gunwall*, 106 Wash. 2d 54, 720 P.2d 808 (1986) (Appellant’s Opening Brief at 9–14), his argument amounts to “whistling past the graveyard.”

As mentioned previously, *supra* at 11, *State v. Gocken*, 127 Wash.2d 95, 896 P.2d 1267 (1995), definitively settled the question of whether the sweep of double jeopardy clause in the Washington Constitution is broader than that of the United States Constitution. In answering this question in the negative, the Washington State Supreme Court slammed the door shut on Mr. York's state constitutional analysis. To the extent that Mr. York seeks to reopen the decision handed down in *Gocken*, the State requests that the Court of Appeals decline any such invitation.

- e. CrR 6.7(b) places a duty on the bailiff to keep jurors separate from other persons.

Next, the State would point out that CrR 6.7(b) addresses questions of jury sequestration. In pertinent part, CrR 6.7(b) reads as follows:

Unless the jury is allowed to separate, the jurors shall be kept together under the

charge of one or more officers until they agree upon their verdict or are discharged by the court. The officer shall keep the jurors separate from other persons and shall not allow any communication which may affect the case to be made to the jurors, nor make any himself, unless by order of the court, except to ask the jurors if they have agreed upon their verdict. . . .

As rule CrR 6.7(b) clearly indicates, the bailiff was responsible for the custody of the jury during Mr. York's trial. The comment by the prosecutor to Rod Oleachea pertaining to the location of a bathroom was innocuous. The jury was yet to be selected, and there is no evidence that prospective jury members were in the jury room when the comment was made. Without a doubt, there was no deliberate misconduct by the prosecutor. Any error which resulted from the subsequent contact between Mr. Oleachea and the jury should be directly attributable to an inattentive bailiff.

Therefore, any alleged misconduct by the prosecutor does not give rise to a viable double jeopardy argument.

2. MR. YORK'S *PRO SE* SUPPLEMENTAL BRIEF FLEETINGLY TOUCHES ON MANY ISSUES; IN EVERY INSTANCE HIS *PRO SE* BRIEF REACHES SPURIOUS CONCLUSIONS.

Mr. York's quixotic rambling *pro se* supplemental brief covers many issues; however, much of what is addressed already has been analyzed in his opening brief.

Nevertheless, it appears that Mr. York alleges the following additional grounds for relief in his *pro se* supplemental brief:

(1) a violation of the right to a speedy trial; (2) ineffective assistance of counsel; (3) lack of probable cause to prosecute this case; and (4) a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. In making these arguments, Mr. York exudes neither perspicacity nor gravitas.

- a. No speedy trial right violation occurred.

Mr. York's lubricous analysis of CrR 3.3 totally misses the mark. Appellant's *Pro Se* Supplemental Brief at 6-8.

A mistrial was declared on March 19, 2007. Mr. York subsequently chose to plead guilty to the charges without the school zone sentencing enhancements. Mr. York's pleas took place on May 15, 2007. Pursuant to CrR 3.3(c)(2)(iii), the entry of an order granting a mistrial resets the commencement date. Since less than 60 days had elapsed between the date of the mistrial and the date when Mr. York entered his guilty pleas, no speedy trial violation occurred under CrR 3.3.

- b. Mr. York has not demonstrated that his trial attorneys were ineffective.

To sustain a claim of ineffective assistance of counsel, Mr. York must show that trial counsel's performance was

deficient and that this deficiency prejudiced the defendant.

Strickland v. Washington, 466 U.S. 668, 687–688, 104 S.Ct. 2052 80 L.Ed. 2d 674 (1984). Representation is deficient if it falls below an objective standard of reasonableness, based on a consideration of all of the circumstances. *State v. McFarland*, 127 Wash. 2d 322, 334–35, 899 P.2d 1251 (1995). Mr. York is prejudiced if there is a reasonable probability that but for the deficiency the trial result would have differed. *McFarland*, 127 Wash. 2d at 335. The reviewing court presumes that trial counsel’s representation fell within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689; *In Re Pirtle*, 136 Wash. 2d 467, 487, 965 P.2d 593 (1998). Ineffective assistance of counsel claims are reviewed de novo. *State v. Shaver*, 116 Wash. App. 375, 382, 65 P.3d 688 (2003). Strategic or tactical reasons for adopting a certain cause of

action do not support an ineffective assistance of counsel claim. *McFarland*, 127 Wash. 2d at 336.

Mr. York's analysis of his ineffective assistance of counsel claim is desultory at best. Appellant's *Pro Se* Supplemental Brief at 11-13. Hence, it is difficult for the State to respond. Nonetheless, what is clear is that Mr. York's counsel moved for a mistrial when it became clear that Rod Oleachea had engaged in inappropriate contact with the jury. While Mr. York's dissatisfaction with his trial counsel appears genuine, nothing in the record demonstrates that trial counsel's performance was objectively unreasonable. This is especially the case since there is a presumption that trial counsel's representation fell within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689; *In Re Pirtle*, 136 Wash. 2d at 487.

Moreover, it is hard to envision how Mr. York's second attorney was objectively deficient when he engineered a plea bargain that eliminated two school zone enhancements that could have added four years to Mr. York's sentence. Thus, Mr. York's ineffective assistance of counsel argument fails to pass muster.

c. The State's Information was supported by probable cause.

When this case was initiated, the trial court issued an arrest warrant because the defendant's whereabouts were unknown. The court would not have taken such action unless it believed that probable cause existed. Mr. York seems to be arguing that probable cause did not exist, because from his perspective, the State's case was weak. Appellant's *Pro Se* Supplemental Brief at 13–15. Mr. York seems to confuse the notion of probable cause with the

requirement that the trier of fact must determine material issues of fact. Hence, even if one were to agree *arguendo* that the State's case was weak, that belief would have little bearing on whether probable cause existed. In essence, Mr. York has presented nothing to demonstrate that probable cause did not exist. His argument is a red herring.¹

d. Mr. York's comments pertaining to the equal protection clause of the Fourteenth Amendment ignore the body of law that must be consulted in order to determine the merit of equal protection claims.

Mr. York's amorphous reference to an equal protection violation, Appellant's *Pro Se* Supplemental Brief at 17, fails to address how Mr. York was invidiously discriminated against. By not referencing the typical "tools of the trade," i.e., "strict

¹ It is interesting to note that when Mr. York pled guilty to two counts of delivery of a controlled substance on May 15, 2007, he agreed that a jury likely would have convicted him if they believed the State's evidence. RP (5-15-07) 35, 36. Mr. York's admission, which was part of his *Alford* plea, is nothing less than a tacit acknowledgment that the State had probable cause to file an Information.

scrutiny,” “rational basis,” intermediate scrutiny,” “suspect class,” etc., Mr. York’s argument does not cogently address how an equal protection violation occurred. It is unclear how the application of the statute in this case was unfairly discriminatory. Since Mr. York has not shown how any alleged dissimilar/disparate treatment is violative of the Fourteenth Amendment, his argument is without merit.

E.

CONCLUSION

The bailiff’s incompetence precipitated the mistrial. Double jeopardy principles do not entitle Mr. York to relief. Additionally, the arguments raised in Mr. York’s *Pro Se* supplemental brief are unsubstantial. Mr. York’s convictions therefore should be affirmed.

RESPECTFULLY SUBMITTED BY:

David J. Burke

DAVID J. BURKE - WSBA #16163

PROSECUTING ATTORNEY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
RICHARD D. YORK,)
)
Defendant.)
_____)

NO. **07 1 00014 1**

AFFIDAVIT OF
MICHAEL ROTHMAN

AFFIDAVIT

MICHAEL ROTHMAN, being first duly sworn upon oath, deposes and

says:

The whereabouts of the defendant are unknown. Therefore, a warrant
should be issued for Mr. York's arrest and bail should be set at \$50,000.00.

Dated this 18 day of January, 2007.

Michael Rothman
AFFIANT

SUBSCRIBED AND SWORN to before me this 18 day of January, 2007.

Bonnie Walker
NOTARY PUBLIC in and for the
State of Washington, residing at
Raymond.

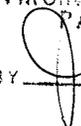
Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

APPENDIX 'A'

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
RICHARD D. YORK,)
)
Defendant.)
_____)

NO. *07-1-00014-1*

ORDER DIRECTING
ISSUANCE OF WARRANT AND
FIXING BAIL

I. BASIS

This court has considered a motion for an order directing issuance of a warrant filed by the
Prosecuting Attorney for this county.

II. ORDER

IT IS ORDERED that:

- 1. The clerk of this court issue a warrant for the arrest of the defendant.
- 2. The warrant may be served by teletype or telegraph in accordance with RCW 10.31.060. **WILL EXTRADITE NORMAL COOPERATIVE TRANSPORT AREA**

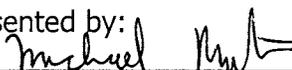
Bail

- Is set at **\$50,000.00**, surety or property bond, or cash. Defendant must appear in the above court at 1:30 p.m. on the first Friday after posting bail.
- Will not be accepted.
- The defendant, after booking, will be released on his/her personal recognizance and promise to appear for arraignment at a scheduled time and date. (_____)

Dated this *18th* day of January, 2007.



JUDGE

Presented by: 
MICHAEL ROTHMAN, WSBA#33048
Chief Deputy Prosecuting Attorney

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RICHARD D. YORK,

DOB: 01/10/70

Defendant.

NO. 07-1-00014-1

ARREST WARRANT

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON OR OREGON:

An Information has been filed in this court accusing the defendant of the crime of:
DELIVERY OF METHAMPHETAMINE (2 COUNTS).

The court has ordered the issuance of this warrant.

YOU ARE COMMANDED in the name of the state of Washington to arrest and bring the defendant forthwith before this court to answer the above accusations.

This warrant may be served by teletype or telegraph. **WILL EXTRADITE NORMAL COOPERATIVE TRANSPORT AREA.**

Bail:

Is set at \$ **50,000.00** conditions of release are:
 The defendant must appear in the above Court at 1:30 p.m. on the first day following the posting of bail.

No Bail Will Be Accepted.

Dated: 1/18/07

By direction of the Honorable MICHAEL SULLIVAN Judge of the Pacific County Superior Court.

VIRGINIA LEACH
CLERK of Pacific County Superior Court

By Glenn Buchanan
DEPUTY CLERK

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON,)	
)	NO. 07-1-00014-1
Plaintiff,)	
)	OMNIBUS APPLICATION
Vs.)	
)	
RICHARD D. YORK,)	
)	
Defendant.)	
_____)	

15 NOTICE TO: DAVID HATCH, Attorney for Defendant

17 DATE: March 2, 2007

19 PURPOSE: To prepare for trial or plea; to determine the extent of discovery to be granted each party.

21 FROM: Pacific County Prosecuting Attorney
22 PO Box 45
23 South Bend, WA 98586

I. MOTION BY DEFENDANT

26 COMES NOW defendant and makes the following applications:

GRANTED DENIED

29 ___ 1. To dismiss for failure of information _____
30 to state an offense _____

31 ___ 2. To sever defendant's case for separate _____
32 trial. _____
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GRANTED DENIED

3. To sever counts and for a separate trial _____

4. To make more definite and certain _____

X 5. For discovery of all oral, written or recorded statements made by defendant to investigative officers or to third parties and in the possession of plaintiff _____

X 6. For discovery of the names and addresses of plaintiff's witnesses and their statements. *INCLUDING CONFIDENTIAL INFORMANTS* _____

X 7. To inspect physical or documentary evidence in plaintiff's possession. _____

8. To suppress physical evidence held by plaintiff for 1) illegal search, 2) illegal arrest. hearing _____

9. For a hearing under Rule 3.5. _____

10. To suppress evidence of the identification of defendant. _____

11. To take the deposition of witness. _____

12. To secure the appearance of a witness at trial or hearing. _____

13. To inquire into the conditions of pretrial release. _____

TO REQUIRE THE PROSECUTION

X 14. To state (a) If there was an informer involved; (b) Whether he will be called as a witness at trial; (c) to state the name and address of the informer or claim the privilege. _____

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15. To disclose evidence in plaintiff's possession, favorable to defendant on the issue of guilt. X

16. To disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge of guilt. X

17. To advise whether any expert witness will be
 a. Name of witness, qualifications & subject of testimony;
 b. Report

18. To supply any reports or tests of physical or mental examinations in the control of the prosecution. X

19. To supply any reports of scientific tests, experiments or comparisons and other reports to experts in the control of the prosecution, pertaining to this case.

20. To permit inspection & copying of any books, papers, documents, photographs or tangible objects which the prosecution:
 a. Obtained from or belonging to defendant or
 b. Which will be used at the hearing or trial.

21. To supply any information known concerning a prior conviction of persons whom the prosecution intends to call as witnesses at the hearing or trial. X
INCLUDING CONFIDENTIAL INFORMATION

22. To inform the defendant of any information he has indicating entrapment of the defendant X

DATED: 3-2-07

DATA #21302
Attorney for Defendant
DAVID S. HATCH

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GRANTED DENIED

II. MOTION BY PLAINTIFF

The Plaintiff makes the applications or motions checked:

- X 1. Defendant to state the general nature of his defense.
- X 2. Defendant to state whether he will rely on an alibi and, if so, furnish a list of his alibi witnesses and their addresses and phone numbers.
- X 3. Defendant to state whether he will rely on a defense of insanity at the time of the offense;
 - X a. If so, defendant to supply names of his witnesses.
 - X b. If so, defendant to permit prosecution to inspect and copy all medical reports pertaining thereto.
 - X c. Defendant to state whether he will submit to a psychiatric examination by a doctor selected by the prosecution.
- X 4. Defendant to furnish results of scientific tests experiments or comparisons and the names of persons who conducted the tests.
- 5. Defendant to appear in a lineup.
- 6. Defendant to speak for voice identification by witness.
- 7. Defendant to be fingerprinted.
- 8. Defendant to pose for photographs (not involving a re-enactment of the crime).
- 9. Defendant to try on articles of clothing.

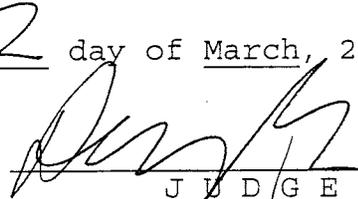
1		<u>GRANTED</u>	<u>DENIED</u>
2	<u> </u> 9a. Defendant to state whether he needs or desires		
3	clothing for trial.	<u> </u>	<u> </u>
4			
5	<u> </u> 10. Defendant to permit taking of specimens of		
6	material under fingernails.	<u> </u>	<u> </u>
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8	<u> </u> 11. Defendant to permit taking samples of blood,		
9	hair, and other materials of his body which		
	involve no unreasonable intrusion.	<u> </u>	<u> </u>
10			
11	<u> </u> 12. Defendant to provide samples of his		
12	handwriting.	<u> </u>	<u> </u>
13			
14	<u> </u> 13. Defendant to submit to a physical external		
15	inspection of his body.	<u> </u>	<u> </u>
16			
17	<u> X </u> 14. Defendant to state whether there is any/claim of		
18	incompetency to stand trial.	<u> ✓ </u>	<u> </u>
19			
20	<u> X </u> 15. For discovery of the names and addresses/		
21	defendant's witnesses and their	<u> ✓ </u>	<u> </u>
22	statements.		
23			
24	<u> X </u> 16. To inspect physical or documentary evidence in		
25	defendant's possession.	<u> ✓ </u>	<u> </u>
26			
27	<u> </u> 17. To take the deposition(s) of witness(es).	<u> </u>	<u> </u>
28			
29	<u> X </u> 18. To secure the appearance of a witness at trial		
30	or hearing.	<u> ✓ </u>	<u> </u>
31			
32	<u> X </u> 19. Defendant to state whether his prior convictions		
33	will be stipulated or need to be proved.	<u> ✓ </u>	<u> </u>
	<u> X </u> 20. Defendant to state whether he will stipulate to		
	the continuous chain of custody of evidence		
	from acquisition to trial.	<u> ✓ </u>	<u> </u>
	DATED: <u> 3/2/07 </u>		
		<u> Michael H. [Signature] </u>	
		(Deputy) Prosecuting Attorney	

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DISCOVERY COMPLIANCE

Both parties are ordered to have exchanged all discovery
by 3/7/07, or, in no case less than 7
days prior to trial.

IT IS SO ORDERED this 2 day of March, 2007.



J U D G E
JUDGE PRO-TEM

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

STATE OF WASHINGTON,)
)
 Respondent.)
)
 vs.)
)
 RICHARD DEAN YORK,)
)
 Petitioner.)
 _____)

NO 36381-0-II
AFFIDAVIT OF MAILING

FILED
COURT OF APPEALS
DIVISION II
08 MAR -3 AM 9:34
STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON)
) ss.
COUNTY OF PACIFIC)

VICKI FLEMETIS, being first duly sworn on oath, deposes and says:

I am the Office Administrator for the Pacific County Prosecutor.

That on 2/29, 2008, I mailed two copies of the State's Brief of Respondent to Christopher H. Gibson and Ellen L. Arbetter, Attorneys for Appellant at the following addresses:

Christopher H. Gibson
Attorney at Law
1908 East Madison
Seattle, WA 98122

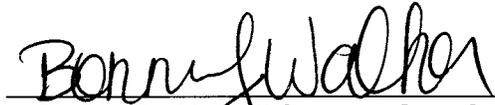
Ellen L. Arbetter
Attorney at Law
P.O. Box 15714
Seattle, WA 98115-0714

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

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VICKI FLETMETIS

SUBSCRIBED & SWORN to before me this 29th day of
February, 2008.


NOTARY PUBLIC in and for the State
of Washington, residing at Raymond

Pacific County Prosecuting Attorney
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Phone: (360) 875-9361
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