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COURT OF APPEALS  
DIVISION II

08 MAY -8 AM 11:38

No. 36665-7-II

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

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STATE OF WASHINGTON,

Respondent,

vs.

**ROBERT LEWIS RAY, III,**

Appellant.

---

**RESPONDENT'S BRIEF**

L. MICHAEL GOLDEN  
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by

Lori Smith  
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## STATEMENT OF THE CASE

Appellant's statement of the case is adequate for purposes of responding to this appeal.

## ARGUMENT

### I. RAY'S PLEA WAS ENTERED VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WITH FULL KNOWLEDGE OF ALL OF THE CONSEQUENCES OF HIS ALFORD PLEA.

A trial court's denial of a motion to withdraw a plea is reviewed for an abuse of discretion. State v. S.M., 100 Wn. App. 401, 409, 996 P.2d 1111 (2000)(citing State v. Padilla, 84 Wn.App. 523, 525, 928 P.2d 1141 (1997)). Likewise a trial court's denial of a motion to withdraw an Alford plea is reviewed for an abuse of discretion. State v. D.T.M., 78 Wn.App. 216-220, 896 P.2d 108(1995). A court abuses its discretion if its decision is based on clearly untenable or manifestly unreasonable grounds. State v. Martinez-Lazo, 100 Wn.App. 869, 872, 999 P.2d 1275 (2000). "The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice." CrR 4.2(f). A manifest injustice is "an injustice that is obvious, directly observable, overt, [and] not obscure." State v. Smith, 74 Wn.App. 844, 847, 875 P.2d 1249

(1994). A manifest injustice exists where counsel is ineffective in guiding the defendant through the plea process. State v. Moon, 108 Wn.App. 59, 62, 29 P.3d 734 (2001). The defendant has the burden of proving a manifest injustice. State v. Ross, 129 Wn.2d 279, 283-84, 916 P.2d 405 (1996). An involuntary plea creates a manifest injustice. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004).

Before accepting a defendant's guilty plea, the trial court must determine that the plea is voluntary and intelligent. State v. Ross, 129 Wn.2d 279, 284 \*\* (1996); CrR 4.2(d). When a defendant fills out a written plea statement under CrR 4.2(g) and acknowledges that he has read and understands it and that its contents are true, it is presumed that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810 (1998) (citing State v. Perez, 33 Wn.App. 258, 261, 654 P.2d 708 (1982)). A defendant's signature on the plea agreement is "strong evidence" that the agreement is voluntary. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). Additionally, "[w]hen the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable." State v.

Perez, 33 Wn.App. 258, 262, 654 P.2d 708 (1982). When the Information notifies a defendant of the nature of the crime to which he ultimately pleads guilty, the court presumes that the plea is voluntary. State v. Ness, 70 Wn.App. 817, 821 (1993), *review denied*, 123 Wn.2d 1009 (1994) (citing In re Hews, 108 Wn.2d 579, 596 (1987)). An Information that details the acts and the state of mind necessary to commit the crime adequately informs a defendant of the nature of the charged crime. Ness, 70 Wn.App. at 821 (citing In re Montoya, 109 Wn.2d 270, 278 (1987)). The State bears the burden of proving the validity of a guilty plea, including the defendant's "[k]nowledge of the direct consequences' of the plea, which the State may prove from the record or by clear and convincing extrinsic evidence." State v. Knotek, 136 Wn.App. 412, 423, 149 P.3d 676 (2006), quoting State v. Ross, 129 Wn.2d 279, 287, 916 P.2d 405 (1996). To determine whether the defendant is informed of the nature of the charges, the trial court may consider any reliable source of information in the record, including a statement of probable cause. Ness, 70 Wn.App. at 824.

Superior Court Criminal Rule 4.2(f) allows a defendant to withdraw his or her plea "whenever it appears that the withdrawal is necessary to correct a manifest injustice," but this is a very high

standard. CrR 4.2(f). A manifest injustice is one that is direct, obvious, and observable. State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974). In addition, a "[m]anifest injustice includes instances where "(1)the plea was not ratified by the defendant; (2) the plea was not voluntary; (3) effective counsel was denied; or (4) the plea agreement was not kept." State v. Zhao, 157 Wn.2d 188, 197, 137 P.3d 835 (2006)(quoting State v. Marshall, 144 Wn.2d 266, 281, 27 P.3d 192 (2001). ). A defendant who later tries to retract his admission of voluntariness made in open court bears a heavy burden in trying to convince a court that his plea was coerced. State v. Frederick, 100 Wn.2d 550, 558, 674 P.2d 136 (1983), overruled on other grounds by Thompson v. State Dep't of Licensing, 138 Wn.2d 783, 982 P.2d 601 (1999). A bare allegation of coercion is insufficient. Osborne, 102 Wn.2d. 87,97, 684 P.2d 683 (1984).

Ray entered an Alford/Newton plea to the charges in this case. "An Alford/Newton plea allows a defendant to plead guilty in order to take advantage of a plea bargain even if he or she is unable or unwilling to admit guilt." Zhao, 144 Wn.2d at 197, citing State v. Newton, 87 Wn.2d 363, 372, 552 P.2d 682 (1976) (citing N. Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162

(1970)). A defendant who enters an Alford plea concedes that the State's evidence would likely result in a conviction. State v. Ice, 138 Wn.App. 745, 748, 158 P.3d 1228 (2007). However, even where the defendant does not admit guilt, CrR 4.2(d) requires that the trial court find a factual basis supporting the plea. Zhao, at 198. In general, in an Alford plea the factual basis must include evidence sufficient for a jury to conclude that the defendant committed the crimes charged. State v. Arnold, 81 Wn.App. 379, 383, 914 P.2d 762, *review denied*, 130 Wn.2d 1003 (1996). The court must also find that the plea of guilty was made "voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea" and must also be satisfied that there is a factual basis for the plea. Id. When determining whether there is a factual basis for the plea, the trial court does not have to be convinced beyond a reasonable doubt, "there must only be sufficient evidence from any reliable source for a jury to find guilt. Id., citing Newton, 87 Wn.2d at 370. The factual basis need not be established from the defendant's admissions; any reliable source may be used, so long as the material relied upon by the trial court is made a part of the record. State v. Osborne 102 Wash.2d 87, 95, 684 P.2d 683 (1984), citing, In re Keene, 95 Wash.2d 203, 210 n.

2, 622 P.2d 360 (1980). However, "one need not be informed of every element of the charged offense; notice as to the 'critical elements' will suffice." In re Personal Restraint of Hews, 108 Wn.2d 579, 592,593, 741 P.2d 983 (1987) (emphasis added), quoting Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976); In re Pers. Restraint of Keene, 95 Wn.2d 207, 622 P.2d 360 (1980) (constitutional notice of the charge does not require a description of every element of the offense). A defendant need not be informed of all possible consequences of a plea, but rather, only the direct consequences. State v. Ross, 129 Wn.2d at 284. "An information which notifies a defendant of the nature of the crime to which he pleads guilty creates a presumption that the plea was knowing, voluntary and intelligent." State v. Ness, 70 Wn.App. 817, 821, 855 P.2d 119(1993). citing Hews, 108 Wn.2d at 596; State v. Osborn, 102 Wn.2d 87, 684 P.2d 683 (1984). For a plea to be truly voluntary, a defendant must also have an understanding of the law in relation to the facts. In re Pers. Restraint of Keene, 95 Wn.2d 203, 209, 622 P.2d 360 (1980); McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969). A review of the record and an examination of any discussions between the trial court and the defendant will show

whether the defendant had proper notice of the charges to which he is pleading. State v. Ridgley, 28 Wn.App. 351, 354-57, 623 P.2d 717 (1981) (defendant's statement and responses to questions from the trial court showed that the defendant understood the nature of the charges).

In the present case the trial judge cited to the Ridgley case when he was making his decision on the motion to withdraw the plea. Because the judge's analysis is excellent and covers all of the bases for deciding whether to allow a defendant to withdraw his plea, the entire text of the Judge's analysis for his decision denying the motion is set out below.

THE COURT: I'm going to deny the motion to withdraw the plea. There is a high burden of proof here and the defendant's allegation and attempted proof simply do not amount to the --or overcome the high burden of proof. I'm finding that the withdrawal is neither necessary nor manifest and the main reason comes from the process in which we go through to get a plea of guilty.

I'm going to refer to a case that neither counsel has cited, it's State v. Perez, 33 Wn.App. 258, at page 261, says, the rule provides further that there must be a factual basis for the plea and requires the trial judge to make sure the plea is voluntary. He must be sure the defendant reads and signs a statement on plea of guilty in substantially the form and covering many of the details prescribed in CrR 4.2(d). We have previously suggested that the court should also personally interrogate the defendant concerning these

matters. Goes on to say, once the safeguards of the rules have been employed, however, a defendant will be permitted to withdraw a plea only upon a showing of withdrawal as necessary to avoid a manifest injustice. The court then goes on to talk about the significance of the written plea and the colloquy. So when a defendant fills out a written statement of plea of guilty in compliance with the rule, that acknowledges that he or she has read it and understands it and that its contents are true. The written statement provides prima facie verification of the plea's voluntariness. When the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria, voluntariness, the presumption of voluntariness is well nigh irrefutable. And here's what happened in that case, the court asked whether there were any other arrangements or plea deals that might influence the chance of plea. The defendant said no. So your plea here today would be free and voluntary of your own volition, is that correct? The defendant said yes. Now it turns out there is an undisclosed agreement, the question is what to do about this plain violation of CrR 4.2(b). They found in this case we find no basis for allowing withdrawal of the plea.

Well, that's the standard that we have to go through, and we did that in this case. It would be very difficult to understand how anyone could say, well, I didn't really mean it when the very first question that I asked him after receiving the statement of defendant on plea of guilty and a summary from Mr. Meyer as to what's occurring is, I'm told you're considering entering a plea of guilty to Counts I and II of the Fourth Amended Information, that is Burglary in the First Degree Domestic Violence, and Indecent Liberties Domestic Violence, is that what you think you are doing? The answer is, yes sir. And we go through the Alford plea business as to what an Alford plea is, is that what you think you're going? Yes sir. We go on further, do you understand --well, is anyone forcing

you to do this? No, sir. Has anyone threatened harm of any kind to you or anyone else to cause you to enter these pleas? No, sir.

Then perhaps most significant is after I accepted the plea, then we realize that the Attachment A on the statement of defendant on plea of guilty which has to do with sexual offender registration has not been attached. So we go through it again. My client has signed Attachment A, says Mr. Meyer. I asked, Mr. Ray, this has to do with the sex offender registration requirement. Do you understand that is a requirement of any sentence that is pronounced as a result of this plea, is that your understanding? Yes. Does that change anything about what you're doing today? No. So despite multiple times of having an opportunity to say, you know, I'm really confused about this, I want to go slow, I don't want to do this, anything that would bring my attention to the fact that he felt he was confused or distraught, none of which he showed by the way, because I remember this hearing, it is very rare that we have a plea of guilty while the jury is waiting and so I remember it. And, frankly, it just was not that way. It was not the way it's been portrayed here. Mr. Ray knew exactly what he was doing and has now changed his mind.

But there are other factors to look at and I referred to a couple of them, one, he was not distraught, although he says that now. I understand he might have had some difficulty with making a tough decision, but he made it. And then a very interesting admission in his testimony that he was not forced to do this, it was only his belief that he had no choice. That to me does not rise to an involuntary plea. Then we get to the issue of the two factors to be considered, the first is the strength of the case. And for that I look not so much what the state has proffered here, but to the affidavit of probable cause as the defendant indicated that's what we would be relying on and it was an accurate statement of the

evidence that's available to the state. And the evidence here was in my view is [sic] overwhelming. The phone records, some of them Mr. Cordes has already indicated that the later calls probably wouldn't be admissible in any event.

The other thing is that the objection here or the request for the continuance was not about phone calls it was about phone records. I don't quite understand why it was the phone records that were the issue here. . . . But, nonetheless, Mr. Meyer was only unprepared because of the phone records and he was otherwise ready. It seems to me . . . that he was exaggerating the need for a continuance just because his client at that point wanted one or had just come up with evidence that he knew was not going to be, or that might have been helpful but may not have been but was not likely to carry the day in a motion for continuance, so he asked for a continuance to set up just this kind of a hearing. Well, I'm just going ahead here and I'm not prepared and it is ineffective assistance of counsel. So we set up the record and essentially what we would have here is that every time a defense attorney comes in who's been presented with evidence late and says, I'm not prepared, its going to be ineffective assistance of counsel, we may as well just say, okay, well, you get a continuance then because that's exactly what would have happened here. So we have the strength of the case is entirely in the state's favor, then we have the beneficial plea offer. . . .

Finally, also in the case that's not cited by either counsel, I think it's State v. Ridgely, they talk about the amount of contact with an attorney is not controlling as to the issue of withdrawal of a plea. So I'm going to find here that while I might have had some different ways--I personally have had some different ways of preparing for this trial, but there was no deficient performance, and in any event it didn't prejudice the defendant, and that this plea was

voluntary despite what Mr. Ray's statements are right now. So I'm denying the motion to withdraw the plea.

8/6/07 RP 131-136. The court's decision and reasoning for denying Ray's motion to withdraw his plea was obviously well researched and well thought out. And, as further explained below, Ray's responses to the court's questions during the plea hearing also demonstrate that Ray's plea was knowingly and voluntarily entered with full knowledge of the consequences of the plea.

**A. There was A Factual Basis For the Plea and There is No Evidence From the Plea Hearing to Support Ray's Claim that He Was "Coerced" Into Entering His Pleas.**

Ray claims there was no factual basis for the entry of his Alford plea and that he was otherwise "coerced" into entering his plea. Ray is wrong.

"Whether a plea is knowingly, intelligently, and voluntarily made is determined from a totality of the circumstances." State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). Moreover, "[w]hen a defendant fills out a written statement on plea of guilty. . . and acknowledges that he . . . has read it, understands it, and that its contents are true, the written statement provides prima facie verification of the plea's voluntariness." Branch, 129 Wn.2d at 642 n.2. In general, in an Alford plea the factual basis must include

evidence sufficient for a jury to conclude that the defendant committed the crimes charged. State v. Arnold, 81 Wn.App. 379, 383, 914 P.2d 762, *review denied*, 130 Wn.2d 1003 (1996).

Another case further discussed in more detail the extent to which a judge must recite on the record the various elements of the plea, citing to In re Personal Restraint of Keene, 95 Wn.2d 203, 204-09, 622 P.2d 360 (1980), and explaining:

[The Keene court] found no due process requirement that the court *orally* question the defendant to ascertain whether he or she understands the consequences of the plea and the nature of the offense. . . . the court emphasized that neither CrR 4.2 nor prior case law explicitly required *oral* inquiries. . . . Knowledge of the direct consequences of the plea can be satisfied by the plea documents. *In re Pers Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001). The defendant must understand the facts of his or her case in relation to the elements of the crime charged, protecting the defendant from pleading guilty without understanding that his or her conduct falls within the charged crime. . . . But so long as the documents relied upon are made part of the record, the trial court can rely on any reliable source, including the prosecutor's statement of the facts if adopted by the defendant, to establish that there is a factual basis for the plea.

State v. Codiga, 162 Wn.2d 912, 923-924, 175 P.3d 1082 (2008)

(emphasis in original; some internal citations omitted). The trial court in the present case has done all of what the Codiga Court recommended.

In the present case the plea paperwork listed the elements of each crime. CP 275. At page 281, number 11, appears the following handwritten statement: "Although I do not admit guilt, I admit that given all of the evidence, I would likely be found guilty. As a result, I want to take advantage of the State's favorable plea offer. CP 281. Paragraph number 12 of this document states

My lawyer has explained to me and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

CP 281. Just under this paragraph 12 appears the defendant's signature. His attorney's signature also appears on this page. CP 281. Additionally a box is checked towards the bottom of the page which says "The defendant had previously read the entire statement above and that the defendant understood it in full." The form is signed by the judge. CP 281. The elements of Burglary First Degree and Indecent Liberties with Forcible Compulsion are written on the first page of the plea agreement. CP 275. The standard ranges for these offenses are written in this document as well. CP 276. The prosecutor's recommendation appears at page 278 of the document. The plea statement also indicates that Ray

was pleading guilty to counts I and II of the 4th Amended Information and that Ray had received a copy of that Information. CP 280.

Then, during the court hearing when Ray entered his plea, his attorney stated that he had reviewed the Statement of Defendant on Plea of Guilty and that he had explained to Ray the Alford plea process. 1/16/07 RP 24. Ray's attorney also testified at the August 6, 2007, hearing that he went over the plea form line by line with Ray and that he did not recall Ray saying that he did not want to plead. 8/6/07 RP 53, 54. At the plea hearing, Ray's attorney also told the court that he had explained to his client that his sentence on Count II was "life in prison with the possibility of getting out on the recommendation of the state here, 72 months. The court is free to sentence him to as much as 82 pursuant to the range." 1/16/07 RP 25. Then the trial court asked Ray if he understood and agreed with everything that his attorney had just said. Ray responded, "yes, sir." Id. The judge then explained the Alford plea process to Mr. Ray and Ray said that he understood. Id. As to the factual basis, the trial court inquired, "And as the factual basis for these pleas I am to rely on the affidavit of probable cause, as Mr. Meyer has said. Do you understand that? To which

Ray responded, "Yeah. Yes, I do. 1/16/07 RP 26 (emphasis added) The judge asked Ray whether he had gone over "each and every line of this Statement of Defendant on Plea of Guilty" with his attorney. Id. 27. Ray responded yes. Id. Ray was asked if he had any questions about the form. Ray said no. Id. The court then referred to the portion of the statement on plea where the elements of the crimes are listed and asked Ray if he had gone over these as well. Ray responded yes. Id. The judge asked Ray if he "understood them all." Ray said, "yeah, sir." Id. The judge inquired again, "Do you understand the elements of the offense are what the state has to prove beyond a reasonable doubt for you to be found guilty of these offenses? Do you understand that?" Id. 28. Ray said yes. Id. The judge then inquired of Ray, "On the second page there is a list of your rights. Did you review your rights with Mr. Meyer?" Ray said, "yes, sir." Id. Ray was asked if he understood those rights and he said yes. Ray acknowledged that he was giving up those rights by pleading guilty. Id. 28. The judge asked Ray if anyone had forced him to plead guilty and if anyone had threatened him to cause him to enter the pleas. Ray said, "no, sir." Id. 29. The judge inquired, "Now, after having reviewed the affidavit of probable cause, do you agree that it accurately

states the evidence available to the prosecution?" Id. 30. Ray replied, "yes, sir." Id. Ray then pled guilty to Counts I and II. Id. 30. The judge then stated, "I will find that your pleas are knowingly, intelligently, and voluntarily made with an understanding of the charges and the consequences of the pleas, there is a factual basis for the pleas pursuant to the State v. Alford [sic] procedure, and that you are guilty as charged. Id. 30, 31. The judge then asked Ray if he understood the sex offender registration requirement and Ray said "yes." Id. 31. Then, one last time the judge asked Ray, "Does that change anything about what you are doing today?" Ray said, "no." Id. 31.

Never once during the taking of the pleas on January 16, 2007, did Ray express in any way that he was confused, that he did not understand what he was doing, that he was "coerced" or that he felt pressured into pleading guilty. Ray said he understood the proceedings on the day he entered his pleas and the rights he was giving up, and that he agreed that the court could review the affidavit of probable cause for the factual basis for the plea. Nothing in Ray's behavior that day showed that he was distressed or confused about the plea in any way. In short, this record of the plea hearing clearly shows that the judge covered all of the bases

in his colloquy on the record with Ray and that Ray's plea was entered intelligently, knowingly and voluntarily. Ray's arguments to the contrary are without merit and his pleas of guilty should be upheld.

As for Ray's claim that the affidavit of probable cause does not support the element of "sexual contact," this claim is particularly ridiculous. Ray now claims that the sentence in the probable cause affidavit, "He then flipped her over, covered her mouth and grabbed at her genital area" does not show that this act was done "for the purpose of gratifying sexual desire" (emphasis added). Frankly, the phrase "grabbed at her genital area" speaks for itself--*Res ipsa loquitur*. Why else would a person cover a person's mouth and grab at her genital area if it was not done for sexual gratification? Ray cites no authority stating that this act could not be for sexual gratification. Furthermore, in addition to the probable cause statement, Ray admitted that he had read and agreed with the elements of Indecent Liberties with Forcible Compulsion listed in the Statement of Defendant on Plea of Guilty. 1/16/07 RP 27, 28. Consequently, these two documents combined, together with Ray's statements at the plea hearing constitute the factual basis to support all of the elements of the Indecent Liberties charge. Ray's

argument to the contrary is without merit and his plea to this charge should stand.

**II. TRIAL COUNSEL WAS NOT INEFFECTIVE AND HIS ACTIONS DID NOT "COERCE" THE DEFENDANT INTO PLEADING GUILTY.**

In essence, Ray now appears to be claiming that his trial counsel was ineffective for failure to prepare an adequate defense and that because the court denied his attorney's motion to continue, this "coerced" Ray into entering a guilty plea "against his will." Brief of Appellant 16.

A reviewing court presumes that counsel's representation fell within the wide range of reasonable professional assistance. In re Pers. Restraint of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1998) (citing Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). The Strickland test thus applies to claims of ineffective assistance of counsel in the plea process. In re Pers. Restraint Petition of Peters, 50 Wn.App. 702, 703, 750 P.2d 643 (1988)(other citations omitted). In the context of a guilty plea, the defendant must show that counsel failed to substantially assist him in deciding whether to plead guilty, and that but for counsel's failure to properly advise him, he would not have

pleaded guilty. State v. McCollum 88 Wn.App. 977, 982, 947 P.2d 1235 (1997).

First of all, as previously discussed, there is nothing in the transcript of the plea hearing that supports Rays claim that he was being "coerced" into pleading guilty because supposedly his attorney was not prepared to go to trial at the time. And Ray's responses to the court's colloquy at the plea hearing also show he was not "coerced," and, at the August hearing on the motion to withdraw the plea, Ray's trial counsel said that he believed that Ray had entered the plea willingly. 8/6/07 RP 37. Ray's trial attorney also said, "I can't force anybody to take a deal." 8/6/07 RP 55. Most importantly, Ray cannot show that his counsel failed to assist him in deciding to plead guilty, nor can he show that but for his counsel's alleged failure to advise him that he would not have pleaded guilty. McCollum, supra. Ray's arguments that his counsel's actions ultimately "coerced" him into pleading guilty are baseless. Ray's guilty pleas are solid and should be upheld.

### **CONCLUSION**

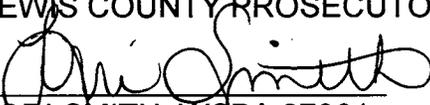
The trial court did not abuse its discretion when it denied Ray's motion to withdraw his plea. Ray's signature appears on the plea paperwork. And the court's colloquy at the plea hearing and

Ray's responses thereto demonstrate that Ray was fully aware of the rights he was giving up by pleading guilty and that he was aware that the court could rely upon the affidavit of probable cause for the factual basis for the plea. The affidavit of probable cause combined with the setting out of the elements in the plea paperwork form the factual basis for the plea. Ray acknowledged he was aware of the contents of both documents. The same documents support the factual basis for all of the elements of Indecent Liberties with Forcible Compulsion. There is no evidence that Ray's counsel was ineffective or that his alleged ineffectiveness coerced Ray into pleading guilty. Accordingly, this Court should affirm Ray's convictions in all respects.

RESPECTFULLY SUBMITTED this 7 day of May, 2008.

L. MICHAEL GOLDEN  
LEWIS COUNTY PROSECUTOR

by:

  
LORI SMITH, WSBA 27961  
Deputy Prosecutor

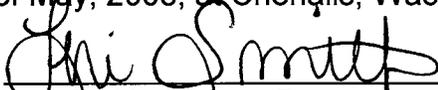
**COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II**

STATE OF WASHINGTON,	)	NO. 36665-7-II
Respondent,	)	
vs.	)	
	)	
ROBERT LEWIS RAY, III	)	DECLARATION OF MAILING
Appellant.	)	
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LORI SMITH, Deputy Prosecutor for Lewis County, Washington, on behalf of Respondent State of Washington, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On this 7<sup>th</sup> day of May, 2008, I served a copy of the RESPONSE BRIEF upon the Appellant by depositing the same in the United States Mail, postage pre-paid, addressed to the attorney for the Appellant addressed as follows:

John A. Hays  
1402 Broadway  
Suite 103  
Longview, WA 98632

Dated this 7<sup>th</sup> day of May, 2008, at Chehalis, Washington.



Lori Smith, Deputy Prosecutor  
WSBA No. 27961  
Attorney for the Respondent  
Lewis County Prosecuting Attorney's Office