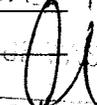


NO. 38885-5-II

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY  DEPUTY

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

STATE OF WASHINGTON, RESPONDENT

v.

EFRAIN MEDINA, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chuschoff

No. 08-1-04112-5

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Do the common law definitions of assault constitute alternative manners of committing the crime, not essential elements?
2. Did the State adduce sufficient evidence to support defendant's second degree assault conviction?

B. STATEMENT OF THE CASE.

1. Procedure

On September 4, 2008, the State charged Efrain Medina, hereinafter "defendant," in Pierce County cause no. 08-1-04112-5, with the crimes of second degree assault and fourth degree assault. CP 1-2. On January 26, 2009, defendant appeared before the Honorable Bryan Chushcoff for trial. RP 1. The court held a CrR 3.5 on January 26, 2009, and found defendant's statements to Pierce County Sheriff's Deputy Scott Mock were admissible. RP 62.

The jury found defendant guilty of both charges on February 3, 2009. RP 422, CP 40-42. Additionally, the jury returned a special verdict finding defendant was armed with a deadly weapon during the assault in the second degree. CP 43. A sentencing hearing was held on February 13, 2009. RP 430. The trial court judge sentenced defendant to a mid-

range standard sentence of 38 months in prison for the second degree assault in charge, plus 12 months for the deadly weapon enhancement, for a total of 50 months. CP 66-77. Defendant received a one-year suspended sentence for the fourth degree assault charge, with standard costs and fines. CP 78-82. Defendant filed a timely notice of appeal on February 13, 2009. CP 61.

2. Facts

Cassie Gepford testified that she dated and lived with defendant prior to this incident. RP 83. Gepford's ex-girlfriend Myhanh Poland also lived with Gepford and defendant for a short period of time. RP 84. Neither Gepford nor Poland resided with defendant on the day of the incident. RP 171. At the time of trial, Gepford and defendant had resumed their relationship, and Gepford admitted she did not want to testify against defendant. RP 85, 99. Additionally, Gepford suffers frequent seizures, often brought on by stressful situations. RP 99.

Gepford testified that she visited defendant's apartment to retrieve some belongings on September 2, 2008. RP 86. Gepford had a Chihuahua, given to her as a gift from defendant, with her when she arrived at the apartment. *Id.* While at the apartment, defendant, who Gepford described as very drunk, forced Gepford into a corner and took the dog. *Id.* She and Poland left the apartment and went to the hotel where they were staying. RP 87.

Gepford testified that shortly thereafter, defendant began calling her cell phone and leaving multiple messages regarding the dog. *Id.* Gepford and Poland met up with Barbara Stephens, and the three decided to drive to defendant's apartment to retrieve the dog. *Id.* At the apartment complex, Stephens accompanied Gepford to defendant's apartment door while Poland remained in the vehicle. RP 88. Defendant opened his door and began arguing with Gepford. RP 89. Gepford walked into the apartment and picked up the dog while Stephens remained outside. *Id.*

After she entered the apartment, Gepford testified defendant shut and locked the door then stood in front of it and began yelling at her. RP 90. Gepford said she attempted to leave the apartment and began screaming because she was scared. RP 91. Defendant had a knife in his hand and told Gepford he was going to hurt her. RP 97. Gepford testified she felt concerned about the statement, and felt threatened by defendant's body language while he held the knife. RP 98, 114. When Gepford asked if defendant planned on stabbing her, he threw the knife, which landed on the couch. RP 97. Gepford began screaming for help and finally managed to run out the apartment door. RP 108, 112. As Gepford left the apartment, defendant grabbed her by the hair. RP 112. Poland, having left the vehicle, tackled defendant when he got outside. *Id.* Shortly after freeing herself from defendant's grip, Gepford had a seizure and testified to forgetting many details of what happened after the direct confrontation with defendant. RP 99.

Poland testified similarly to Gepford. Poland said she accompanied Gepford to defendant's apartment on September 2, 2008, to retrieve some of Gepford's belongings. RP 174. Defendant wouldn't let the women leave with the dog, and Gepford didn't feel well, so the women went to their hotel, leaving the dog behind. RP 175. After they left, defendant, who Poland believed to be intoxicated, began constantly calling Gepford's cell phone. RP 176. Poland and Gepford went to Stephens house, but when Gepford received a voicemail from defendant, threatening to kill the dog, all three women decided to go back to defendant's apartment. RP 181, 184.

Poland testified the women parked the vehicle at the base of the stairs leading to defendant's apartment door. RP 188. Poland remained in the vehicle, with the window cracked so she could hear, while Stephens and Gepford went upstairs. RP 185-86. Poland watched Gepford go inside, but said Stephens was shut out of the apartment. RP 188. Poland heard Gepford yell, "Let go. What are you doing," at which point Stephens began dialing 911 as Poland ran up the stairs and started banging on defendant's door. *Id.* While trying to get help from neighbors, Poland heard Gepford yell, "What are you doing, Efrain? Let me go." RP 189-191.

Poland testified that when defendant's door finally opened, Gepford was facing her. RP 191. Defendant was behind Gepford, trying to pull her back into the apartment by her hair. *Id.* Poland grabbed

defendant and pulled him down on the front porch. RP 197. She began struggling with defendant, who maintained a grip on Gepford's hair and was attempting to kick Gepford. RP 198. Eventually, defendant released Gepford and began punching Poland. *Id.* At this point, Stephens and Gepford took the dog and went down the stairs. *Id.* Defendant ran down the stairs as police officers began to arrive at the scene. RP 199. Around this time, Gepford had a seizure. RP 203.

Stephens testified that she accompanied Poland and Gepford to defendant's apartment. RP 298. Stephens said she followed Gepford to defendant's front door and saw defendant walk up behind Gepford, holding a large knife behind his back. RP 300. Stephens identified Exhibit 1 as the knife she saw defendant holding during the incident. RP 311. Stephens said when defendant realized she was there, he came at her with the knife and shut the door. RP 301. She could hear Gepford yelling from inside the apartment. RP 311. Stephens called 911, and then ran down the stairs to find the apartment complex address. RP 304. The 911 tape was played for the jury during Stephens's testimony. RP 303-04. Stephens testified that after calling 911 she saw Poland, Gepford, and defendant struggling outside the apartment. RP 305. Defendant had Gepford by the hair and Poland was holding onto defendant. *Id.*

Pierce County Sheriff's Deputy Buddy Mahlum testified he arrived at the scene and saw defendant standing over a female on the ground. RP 238. Poland told Deputy Mahlum that defendant stabbed Gepford with a

knife, which was still in the apartment. RP 241. Deputy Mahlum arrested defendant and searched the apartment, finding the knife on defendant's couch. RP 241, 248.

Deputy Mock testified he arrived at the scene and saw Stephens and Poland attending to Gepford. RP 258. Gepford told Deputy Mock defendant tried to stab her but did not succeed. RP 259. Deputy Mock moved defendant to his patrol car and read him his Miranda rights. RP 260-61. Deputy Mock testified defendant described Gepford as an ex-girlfriend now dating Poland. RP 262-63. Defendant admitted to arguing with Gepford about the dog, but denied having a knife. RP 263. Deputy Mock testified defendant smelled strongly of intoxicants but could still coherently answer questions. RP 268.

Defendant did not testify at trial.

C. ARGUMENT.

1. DEFENDANT WAIVED HIS RIGHT TO CHALLENGE THE ASSAULT JURY INSTRUCTIONS BY FAILING TO OBJECT TO THE INSTRUCTIONS AT ISSUE DURING TRIAL. ALTERNATIVELY, THE DEFINITIONS OF ASSAULT GIVEN TO THE JURY ARE NOT ESSENTIAL ELEMENTS OF THE CRIME.

Generally, a failure to object to jury instructions precludes review of the issue on appeal. RAP 2.5(a); *State v. Scott*, 110 Wn.2d 682, 685-86, 757 P.2d 492 (1988). CrR 6.15 requires a party objecting to the giving

or refusal of an instruction to state the reason for the objection. CrR 6.15(c). The purpose of this rule is to afford the trial court an opportunity to correct any error. *State v. Colwash*, 88 Wn.2d 468, 470, 564 P.2d 781 (1977). Consequently, it is the duty of trial counsel to alert the court to his or her position, and obtain a ruling before the matter will be considered on appeal. *State v. Rahier*, 37 Wn. App. 571, 575, 681 P.2d 1299 (1984) (citing *State v. Jackson*, 70 Wn.2d 498, 424 P.2d 313 (1967)). Only those exceptions to instructions that are sufficiently particular to call the court's attention to the claimed error will be considered on appeal. *State v. Harris*, 62 Wn.2d 858, 872, 385 P.2d 18 (1963). Defendant now asserts the jury instructions relieved the State from proving the essential elements of assault.

During the discussion of jury instructions, defendant objected to the court's refusal to give defendant's proposed instructions on defendant's out of court statements¹ and voluntary intoxication². RP 340, 343. Defendant neither objected to, nor expressed any concern over, the instructions pertaining to the essential elements of assault. Nor did defendant propose alternative jury instructions for the assault charges. CP

¹ Defendant's proposed instruction number 6 states, "you may give such weight and credibility to any alleged out-of-court statement by the defendant as you see fit, taking into consideration the surrounding circumstances." CP 3-16

² Defendant's proposed jury instruction number 9 states, "no act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, evidence of intoxication may be considered in determining whether the defendant acted intentionally." CP 3-16.

3-16. Because defendant did not object or propose alternative jury instructions, he has waived his right to a review of this issue on appeal.

However, claimed errors affecting a constitutional right may be raised for the first time on appeal if the error is “manifest.” In other words, it must be “truly of constitutional magnitude.” *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). This exception “is not intended to afford criminal defendants a means for obtaining new trials whenever they can identify some constitutional issue not raised before the trial court.” *Id.* The burden is on the defendant to identify a constitutional error and show how, in the context of the trial, the alleged error actually affected the defendant’s rights. *Id.*

When viewed in their entirety, jury instructions must inform the jury that the State bears the burden of proving any essential element of a criminal offense beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995), citing *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 368 (1970). It is reversible error to instruct the jury in a manner that would relive the State of its burden of proving all elements of the crime charged beyond a reasonable doubt. *Id.*, citing *State v. Allen*, 101 Wn.2d 355, 358, 678 P.2d 798 (1984). The Washington appellate courts review a challenged jury instruction de novo, evaluating it in the context of the jury instructions as a whole. *Id.*, citing *State v. Brett*, 126 Wn.2d 136, 171, 892 P.2d 29 (1995).

Defendant alleges that jury instructions 7 and 11, when read together, relieve the State of its burden to prove essential elements of the crime of assault. Appellant's Brief 8. The trial court instructed the jury on the essential elements of second degree assault in jury instruction number 11. CP 17-39. To convict defendant of second degree assault, the jury had to find beyond a reasonable doubt that:

- (1) on or about the 2nd day of September, 2008, the defendant assaulted Cassie Gepford with a deadly weapon; and
- (2) the acts occurred in the State of Washington.

CP 17-39, Jury Instruction No. 11. The to convict instruction provided to the jury is consistent with RCW 9A.36.021(1)(c), which states "a person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree: ...assaults another with a deadly weapon."

In Washington, the "assault" element is defined by the common law. *State v. Wilson*, 125 Wn.2d 212, 218, 883 P.2d 320 (1994). The courts have arrived at three definitions of assault: actual battery, attempted battery, and creating an apprehension of bodily harm. *Id.*, *State v. Bland*, 71 Wn. App. 345, 353, 860 P.2d 1046 (1993) (*citing State v. Walden*, 67 Wn. App. 891, 893-94, 841 P.2d 81 (1992)). To define assault, the trial court properly instructed the jury as follows:

An assault is an intentional touching or striking or cutting of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking or cutting is offensive, if the touching or striking or cutting would offend an ordinary person who is not unduly sensitive.

An assault is also an act, done with the intent to inflict bodily injury upon another, tending, but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehensions and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

CP 17-39, Jury Instruction No. 7.

These common law definitions do not constitute essential elements of the crime. *State v. Smith*, 159 Wn.2d 778, 788, 154 P.3d 873, 878 (2007), Appellant's Brief 12. In *State v. Linehan*, 147 Wn.2d 638, 56 P.3d 542 (2002), the Washington Supreme Court held that alternative means of committing crimes are provided for in the Revised Code of Washington, not in the common law definitions. In *Smith*, the court further clarified the issue by holding that as the common law assault definitions are not alternative means of committing assault, they do not constitute essential elements of the crime; rather, the definitions "are merely descriptive of a term, "assault," that constitutes an element of the

crime of second degree assault.” *Smith*, 159 Wn.2d at 788. Therefore, these definitions, or “manners,” are not essential elements of assault which the State must support with sufficient evidence. *Id.* With assault, the crime can be accomplished with actual force, a failed attempt at using force, or a threat of force. It does not matter in the laws’ eyes which manner the assault is committed, as long as the jury agrees that an assault occurred. *See Smith*, 159 Wn.2d at 789 (common law definitions of assault do not require jury unanimity or substantial supporting evidence on the record). This approach is logical given that it is often the case all three ways of committing the assault may occur simultaneously.

Instruction 7 and instruction 11 follow the Washington Pattern Jury Instructions’ recommended “definition” and “to-convict” instructions for second degree assault. *See* 11 WAPRAC WPIC 35.19; 11 WAPRAC WPIC 35.50. Jury instruction 7 properly instructed the jury on the elements they had to fulfill to convict defendant of second degree assault. Jury instruction 11 properly instructed the jury on the common law definitions of the element “assault.” The instructions as presented to the jury did not constitute a manifest constitutional error.

Defendant’s reliance on *State v. Byrd*, 72 Wn. App. 774, 782, 868 P.2d 158 (1994), *aff’d*, 125 Wn.2d 707 (1995), is misplaced. *Byrd* was convicted of second degree assault with a deadly weapon. *Byrd*, 125

Wn.2d at 710. When instructing the *Byrd* jury, the trial court included an assault definitional instruction stating,

An assault is an act, with unlawful force, done with intent to inflict bodily injury upon another, tending, but failing to accomplish it, and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted, but it is sufficient if an apprehension and fear of bodily injury is created in another.

An assault is also an intentional act, with unlawful force, which creates in another a reasonable apprehension and fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

Byrd, 72 Wn. App. at 776. On appeal, Byrd challenged the second paragraph, stating the definition did not establish that Byrd must have *intentionally* caused apprehension and fear of harm in the victim. *Id.* The appellate court agreed, and the Washington Supreme Court affirmed, holding the instructions, taken in their entirety, must inform a jury the defendant had to act with an intent to create in the victim's mind a reasonable apprehension of harm. *Byrd* 125 Wn.2d at 714, *citing State v. Bland*, 71 Wn. App. 345, 350-51, 860 P.2d 1046 (1993). In defendant's case, the court properly instructed the jury that "an assault is also an act, done with the intent to create in another apprehension and fear of bodily injury..." CP 17-39, Jury Instruction No. 7.

Next, *Byrd* held the State has a burden to prove this definition of assault. *Byrd*, 125 Wn.2d at 714. *Smith*, however, disapproves of this

holding in *Byrd*. *Smith*, 159 Wn.2d at 785. *Smith* holds that the common law definitions of assault do not constitute alternative means of committing the crime, and therefore do not constitute essential elements of assault. *Smith*, 159 Wn.2d at 792. In making this ruling, *Smith* specifically disapproves of *State v. Bland*, 71 Wn. App. 345, 350-351, 860 P.2d 1046 (1993), on which *Byrd* relies for its holding that “reasonable apprehension of harm” is an essential element of assault that must be proved by the State. *Smith*, 159 Wn.2d at 787; *Byrd*, 125 Wn.2d at 714. *Smith* distinguished *Bland* because *Bland* primarily focuses on finding sufficient evidence to support statutory alternatives. *Smith*, 159 Wn.2d at 787. Additionally, *Smith* disapproved of *Bland’s* holding because *Bland* was devoid of any analytical analysis of why common law definitions of assault constitute alternative means, and predates *State v. Linehan*, which held that common law definitions do not create alternative means of committing crimes. *Id.* Therefore, in the present case the court properly listed the elements of second degree assault in the “to convict” instruction, and defined the term assault in instruction 7. Defendant’s claim in this matter is without merit.

2. THE STATE ADDUCED SUFFICIENT EVIDENCE TO SUPPORT THE SECOND DEGREE ASSAULT CONVICTION.

Defendant challenges the sufficiency of the evidence for the second degree assault conviction. Appellant's Brief 23. Specifically, defendant challenges the sufficiency of the evidence pertaining to the following emphasized portions of the third assault definition provided in jury instruction 7:

An assault is also an act, done with the *intent to create in another apprehension and fear of bodily injury*, and which in fact creates in another a *reasonable apprehensions and imminent fear of bodily injury* even though the actor did not actually intend to inflict bodily injury.

CP 17-39, Jury Instruction No. 7; Appellant's Brief 23. Additionally, defendant asserts the State did not present sufficient evidence to prove defendant attempted to inflict substantial bodily injury. Appellant's Brief 25.

For this argument, defendant relies exclusively on the ruling in *Byrd*, disapproved in *Smith*, that classifies the common law definitions of assault as essential elements of the crime. As discussed above, this reliance is misplaced. The elements of second degree assault are (1) assault (2) with a deadly weapon. RCW 9A.36.021(1)(c). To assist in deliberations, the court instructed the jury on the three common law definitions of assault. CP 17-39, Jury Instruction No. 7. As discussed

above, these definitions do not constitute elements of second degree assault; they are merely means within a means, or manners, of committing assault. Defendant pinpoints only one of these “manners” provided to the jury in his sufficiency of the evidence challenge. A defendant cannot simply point to an instruction “phrased in the disjunctive in order to trigger a substantial evidence review” of his conviction. *Smith*, 159 Wn.2d at 783. This includes instructions containing means within a means alternatives. *Id.* By not assigning error to the two remaining definitions, defendant accepts the State presented sufficient evidence to fulfill those definitions, and therefore, defendant accepts a second degree assault occurred.

If the court disagrees with the State’s argument, the State asserts it adduced sufficient evidence to prove defendant committed the crime of second degree assault. Due process requires the State to bear the burden of proving each element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 489, 656 P.2d 1064 (1983); *see also Seattle v. Gellhein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the State met the essential elements of the crime beyond a reasonable doubt.

State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Challenging the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (*citing State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)); *State v. Turner*, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *Id.* at 192; *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (*citing State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. Credibility determinations are necessary because witness testimony can conflict; these determinations should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

[G]reat deference...is to be given the trial court's factual findings. It, alone, has had the opportunity to view the witness' demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (*citations omitted*). Therefore, if the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

To convict defendant of second degree assault, the jury had to find beyond a reasonable doubt that:

- (3) on or about the 2nd day of September, 2008, the defendant assaulted Cassie Gepford with a deadly weapon; and
- (4) the acts occurred in the State of Washington.

CP 17-39, Jury Instruction No. 11.

The State adduced sufficient evidence for a reasonable jury to conclude defendant assaulted Gepford. Gepford testified defendant held a knife in his hand and told her he intended to hurt her. RP 97. Gepford also testified to feeling threatened by defendant's body language when he was holding the knife. RP 114. When asked during cross examination if defendant threatened Gepford with the knife, she responded, "not verbally," indicating defendant made threatening physical motions with the knife towards Gepford while the two were alone in the apartment. *See* RP 103. Additionally, the night of the incident, Gepford told Deputy Mock defendant tried to stab her. RP 259. By holding the knife in a threatening manner, and verbally expressing an intent to hurt Gepford,

defendant clearly intended to cause bodily harm to Gepford, and had the present ability to do so. These facts sufficiently fulfill the second assault definition provided in jury instruction 7³.

In addition to defendant's comments and threatening motions showing defendant intended to inflict bodily injury, they also show his intent to create fear of bodily injury in Gepford. Despite admitting she did not want to testify against defendant, Gepford testified that she felt threatened and scared by defendant's actions, including when defendant had the knife in his hand. RP 91, 98, 114. Additionally, Poland testified to hearing Gepford's screams coming from inside the apartment. RP 188-189. While defendant correctly asserts that Poland's fear during Gepford's assault is irrelevant, the testimony about Gepford's screams indicates Gepford also feared the defendant. Appellant's Brief 24. In further support of that inference, Gepford testified she began screaming because she was scared. RP 91. These facts sufficiently fulfill the third definition of assault provided in jury instruction 7⁴. Accepting the State's

³ An assault is also an act, done with the intent to inflict bodily injury upon another, tending, but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

⁴ An assault is also an act, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehensions and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

evidence as true, and viewing the evidence in the light most favorable to the State, the jury had sufficient evidence to find defendant guilty of second degree assault.

D. CONCLUSION.

For the reasons stated above, the State respectfully asks this Court to affirm defendant's convictions.

DATED: August 28, 2009.

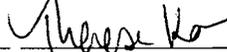
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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8/29/09 
Date Signature

09 AUG 29 PM 3:23
STATE OF WASHINGTON
BY  DEPUTY
COURT CLERK
PROSECUTOR II