

THE COURT OF APPEALS  
DIVISION II

No. 38888-0-II

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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

BY  DEPUTY

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**STATE OF WASHINGTON,**

Appellant,

Vs.

Candi Lee Bange,

Respondent.

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Appeal from the Superior Court of Washington, in and for Lewis  
County  
Cause No. 08-1-00730-2  
The Honorable James Lawler, Judge

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**Brief of the Appellant**

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## ASSIGNMENTS OF ERROR

1. The trial court erred by entering Conclusion of Law No. 1., which reads as follows:

The State's failure to provide the name of the correct forensic scientist and to provide a copy of the correct lab report materially affected the Defendant's right to a fair trial.

2. The trial court erred when it denied the State's motion to continue the trial to the following week to procure the correct crime lab witness and lab report when thirteen days of speedy trial time remained.

3. The trial court erred when it denied the State's alternative request request to commence the trial immediately so the State could present testimony with its available law enforcement witnesses, and then briefly recess until the following morning, when the correct crime lab witness could be present.

4. The trial court erred when it found that "the only appropriate remedy is to dismiss this case with prejudice."

5. The trial court erred when it dismissed this case because Bange would not be unfairly prejudiced by the less drastic remedy of a brief continuance.

## **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Did the trial court abuse its discretion when it dismissed this case for a discovery violation when there were thirteen days of speedy trial time remaining, where the late discovery would not interject any new material facts into the case because Bange was already on notice that the substance field-tested positive as methamphetamine and that a witness from the State Crime Lab would be testifying at trial, and where the witness could be available the following morning?

## **STATEMENT OF THE CASE**

On November 11, 2007, Centralia Police Detectives participated in a controlled purchase of approximately 1 gram of methamphetamine for \$100.00 from Stanley C. Davies. CP 39. Centralia Detectives used an undercover police operative, Officer Gary Byrnes, who met Davies in the parking lot of a local shopping center. CP 39.

Davies told Byrnes, who relayed to the Centralia Police surveillance detail, that they were waiting for a white Ford Explorer to deliver the methamphetamine. CP 40. An early 1990s model white Ford Explorer arrived at the location. CP 40. Byrnes recognized the driver as Candi Bange. CP 40. Additionally, one of the members of the surveillance detail, Detective Fitzgerald, also identified the driver of the white Ford Explorer as Bange. CP 40. A

record check indicated the registered owner of the vehicle was Candi Bange. CP 40.

Byrnes handed Davies \$100.00 of pre-recorded buy funds. CP 40. Davies then walked over to Bange's vehicle, talked for a few minutes, and returned to where Byrnes was waiting. CP 40. Davies then handed Byrnes a small plastic bindle of crystal substance. CP 40. A field test of the substance later indicated it was methamphetamine. CP 40. Bange was charged with one count of delivery of a controlled substance, methamphetamine. CP 31-32. The detailed Affidavit of Probable Cause stated that the substance delivered had field-tested positive for methamphetamine. DP 40.

Bange was arraigned on November 6, 2008, and pled not guilty to the charge of delivery of a controlled substance. An omnibus hearing was held on December 18, 2008. CP 36,37. According to the omnibus order, the Defendant would assert the defense of "general denial." Id. Trial was set for January 22, 2009. Speedy trial would not expire until February 4th, 2009. RP 2.

On January 22, 2009, the morning of trial, the State notified the trial court that it had inadvertently subpoenaed the wrong Crime Lab witness and had the wrong Crime Lab report. RP 2. At the

time, there were still thirteen days remaining before expiration of speedy trial. RP 2; CP 26. Unbeknownst to the State, the sample of the controlled substance for this case was sent to the Vancouver Crime Lab, which was "in transition," so Vancouver sent the sample to the Tacoma Crime Lab for analysis. RP 2. Apparently this fact could have been discovered by examining one of the bar codes on the back of the evidence envelope. CP 28. RP 2<sup>1</sup>. Then, when the State received the report containing the results of the analysis of the controlled substance, the prosecutor did not notice that the report was for the case involving the other defendant in this matter-- Mr. Davies (the person who bought the controlled substance from Bange)-- and not Bange. RP 2, 4; CP 40. This meant that the State had served Bange with the wrong crime laboratory report. RP 4, 5. It was not until the morning of trial that the prosecutor realized, after talking with the subpoenaed Crime Lab tech, that the State had brought the wrong forensic scientist to testify. RP 4. The prosecutor further informed the court that the correct Crime Lab scientist was "Ms. Keys," who was on maternity leave. RP 2. And, while the State did not have the correct Crime Lab witness present

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<sup>1</sup> The only Verbatim Report of Proceedings referred to in this brief is from January 22, 2009.

to testify on the first day of trial, the State did have all of its law enforcement officers present and ready to testify. RP 2. The State did not receive the correct, one-page Crime Lab report until the day of trial--after the trial court dismissed the case. CP 27.

Because there were still thirteen days remaining until the expiration of speedy trial, on the day of trial the State first requested a one-week set over in order to secure the correct Crime Lab scientist and lab report. RP 2, 7. The trial judge denied the State's request, stating:

If we were just talking about the witness not being here, that might be a different situation. But it's substantially more than that. We don't have the report, defense has not had the opportunity to look at the report or see if there are potential issues there. I think that's critical to this case for the defendant's rights . . .

RP 7. After the court made this ruling, the State in the alternative requested that it be allowed to commence the trial, putting the law enforcement officers on to testify that day, and then have a brief recess until the following day in order to bring the correct Crime Lab technician in to testify. RP 8; CP 27. Defense counsel objected to this request. RP 8. Defense counsel then sought dismissal of the case. RP 8,11.

The trial judge then granted the motion to dismiss, stating:

If this were just a matter of the witness not being available today and being available tomorrow, then I would agree with the State. But when you couple that with the discovery violation, I'm not making any finding that it was willful, but it was an oversight, and the major oversight puts the defendant at a huge disadvantage to hear and try the case and to start with the first witnesses of this case without knowing what the evidence -- what all of the evidence is going to be because the report has not been provided.

RP 12.

The State filed a timely motion for reconsideration and on February 4, 2009, the trial court denied the State's motion. CP 23, 26-30. The State filed a timely notice of appeal of the trial court's dismissal of the case. CP 4.

### **ARGUMENT**

#### **A. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPOSED THE EXTRAORDINARY REMEDY OF DISMISSAL RATHER THAN GRANTING A BRIEF CONTINUANCE WITHIN SPEEDY TRIAL TO ALLOW THE STATE TO PRODUCE THE CORRECT WITNESS AND LAB REPORT.**

A trial court's decision on a motion to dismiss and a motion for a continuance are reviewed for an abuse of discretion. State v. Blackwell, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993); State v. Miles, 77 Wn.2d 593, 597-98, 464 P.2d 723 (1970). Likewise, dismissal of a criminal prosecution for discovery violations is

discretionary and is reviewable only for a manifest abuse of discretion. State v. Hanna, 123 Wn.2d 704, 715, 871 P.2d 135, *cert. denied*, 513 U.S. 919, 115 S.Ct. 299, 130 L.Ed.2d 212(1994). A trial court abuses its discretion if its decision is “manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons.” Blackwell, 120 Wn.2d at 830. A decision is manifestly unreasonable “if the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take.’” State v. Lewis, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990). “A decision is based ‘on untenable grounds’ or made ‘for untenable reasons’ if it rests on facts unsupported in the record or was reached by applying the wrong legal standard.” State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting State v. Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)). Dismissal is an extraordinary remedy that allows the trial court to resort to only in “truly egregious cases of mismanagement or misconduct by the prosecutor.” State v. Duggins, 68 Wn. App. 396, 401, 844 P.2d 441, *aff’d*, 121 Wn.2d 524, 852 P.2d 294(1993)(emphasis added). In this way “[d]ismissal of a criminal case is a remedy of last resort, and a trial judge abuses discretion by ignoring intermediate remedial steps.” State

v. Koerber, 85 Wn. App. 1, 4, 931 P.2d 904 (1996). Whether dismissal is an appropriate remedy is a fact-specific determination that must be resolved on a case-by-case basis. State v. Ramos, 83 Wn.App. 622, 637, 922 P.2d 193 (1996). It is the defendant's burden to prove prejudice affecting his right to a fair trial. State v. Price, 94 Wn.2d 810, 814, 620 P.2d 994 (1980); State v. Brooks, 149 Wn. App 373, 387, 203 P.3d 397 (2009).

The purpose of discovery is to prevent a defendant from being prejudiced by surprise, misconduct, or arbitrary government action." State v. Cannon, 130 Wn.2d 313, 328, 922 P.2d 1293 (1996). If a party fails to comply with an applicable discovery rule, the trial court may "grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances." CrR 4.7(h)(7)(i). But dismissal for a discovery violation also requires the finding that the prosecution's action has prejudiced the defendant. State v. Cannon, supra. In considering sanctions under CrR 4.7, the court considers "(1) the effectiveness of less severe sanctions; (2) the impact of witness preclusion on the evidence at trial and the outcome of the case; (3) the extent to which [defense] will be surprised or prejudiced by the witness's testimony; and (4) whether the violation was willful or in bad faith." State v. Hutchinson, 135

Wn.2d 863, 883, 959 P.2d 1061 (1998). The "less severe sanction" of a continuance may be granted pursuant to CrR 3.3(h)(2) "when the administration of justice requires it and a defendant will not be substantially prejudiced in the presentation of his defense." State v. Guloy, 104 Wn.2d 412, 428, 706 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 89 L.Ed. 321, 106 S.Ct. 1208 (1986)(emphasis in original).

Dismissal is also permitted under CrR 8.3(b),<sup>2</sup> but is grounds for a court to dismiss criminal charges "only when, as a result of governmental mismanagement, there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial." Rohrich, 149 Wn.2d at 655(emphasis added). For example, This Court has said "the State cannot by its own unexcused conduct force a defendant to choose between his speedy trial rights and his right to effective counsel who has had the opportunity to adequately prepare a material part of his defense." State v. Brooks, 149 Wn. App 373, 387, 203 P.3d 397

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<sup>2</sup> CrR 8.3(b) reads: [t]he court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

(2009); accord State v. Price, 94 Wn.2d at 814. Nonetheless, "[t]he defendant. . . must prove by a preponderance of the evidence that *interjection of new facts into the case* when the State has not acted with due diligence will compel him to choose between prejudicing either of these rights." State v. Brooks, 149 Wn. App 373, 387, 203 P.3d 397 (2009)149 Wn. App at 387 (emphasis added).

Indeed, the case law is clear that dismissal is warranted only when State's mismanagement has prejudiced the defendant's right to a fair trial. See, e.g., Roerich, 149 Wn.2d at 655, Cannon, 130 Wn.2d at 328, State v. Price, 94 Wn.2d at 814, Brooks, 149 Wn. App. at 387. Furthermore, it is well-established that "[t]he mere possibility of prejudice is not sufficient to meet the burden of showing actual prejudice." State v. Norby, 122 Wn.2d 258, 264, 858 P.2d 210 (1993)(emphasis added);, accord State v. Ansell, 36 Wn. App. 492, 498-99, 675 P.2d 614, *review denied*, 101 Wn.2d 1006 (1984). And, while the State conceded mismanagement below, the defendant here has not shown how the mismanagement prejudiced her right to a fair trial. CP 28.

In a case with similar facts to the present case, Division One of this Court ruled that a trial court did not abuse its discretion by denying a defendant's motion to dismiss when the State failed to

timely provide discovery. State v. Smith, 67 Wn.App. 847, 851, 841 P.2d 65 (1992). In Smith, the Court affirmed the trial court's ruling, even though the prosecution had provided defense counsel with an additional lab report and an additional follow-up police report on the morning trial was scheduled to begin. *Id.* at 849. In Smith, the missing discovery merely confirmed information previously disclosed to defense counsel. *Id.* at 855. The court found that "the 'new' information did not constitute new evidence of guilt or deprive [the defendant] of any defense." *Id.* at 855. Thus, the trial court did not abuse its discretion in denying the defendant's motion to dismiss because the defendant was not prejudiced in preparing his defense. *Id.* at 856. The Smith court also noted that dismissal is not required "in every instance where untimely discovery by the State affects the defendant's ability to prepare the defense within the speedy trial period." Smith at 853 (emphasis added).

In another case similar to this case, the State made a late disclosure of a witness, with twelve days remaining before expiration of speedy trial, and the trial court dismissed the case. The reviewing Court reversed the trial court's dismissal, noting that there was "no showing . . . that substitute counsel could not have become prepared for trial during the twelve days remaining before

the speedy trial expiration date." State v. Ramos, supra, 83 Wn.App. at 638. Thus, in Ramos, the reviewing court theorized that even if new counsel had been appointed with twelve days of speedy trial time remaining, there was no showing that the defense could not be prepared before speedy trial expired. Id.

Similarly, in Koerber, supra, the appellate court found the trial court abused its discretion when it dismissed charges against the defendant without considering reasonable alternatives and without finding prejudice to the defendant. Koerber, 85 Wn. App. at 2. The trial court in Koerber dismissed the charges because the State's witness, who was critical to the State's case, was unavailable to testify on the morning of trial and the State could not inform the court when the witness would be available. Id. at 2. Division One of this Court reversed, stating that dismissal is an "extraordinary remedy . . . of last resort, and a trial judge abuses discretion by ignoring intermediate remedial steps." Id. at 4.

And, although adequate speedy trial time remained in the present case, our courts have also noted that trial courts may grant continuances beyond expiration of speedy trial, absent a showing that the Defendant would be substantially prejudiced by the continuance. State v. Smith, 67 Wn.App. 855. There, the court

further noted that had Smith needed additional time to meet the new discovery, a continuance beyond the speedy trial period would be permissible under Guloy and Price. Id. In Guloy, supra, the State had added the names of *six additional witnesses* two days before trial, and the trial court continued the trial for one day beyond the expiration of speedy trial to allow the defense additional time to prepare. The Washington Supreme Court found that the continuance was proper under CrR 3.3(h)(2). Guloy, supra.

The cases discussed above all support the State's argument that in the present case the trial court abused its discretion by summarily dismissing this case when thirteen days remained in speedy trial, and allowing the late discovery would not interject any new facts into the case. In other words, there was no showing that Bange would be prejudiced by allowing the late discovery. The facts in the Smith case are similar to the facts presented here. Like in Smith, the State here did not timely provide defense counsel with all of the discovery. In Smith, as here, the State provided a late lab report. Smith at 850. ( Although here, the State had given the defense a lab report pertaining to the codefendant (Mr. Davies) rather than for Bange. RP 2,4). Similarly, in Ramos, supra, the State was late disclosing an additional witness. Ramos at 637. In

Ramos, similar to the present case, there were twelve days remaining in the speedy trial period (here there were thirteen).

Ramos at 638; RP 2; CP 26.

Moreover, in the present case--even though the actual name of the scientist on the timely-provided witness list was incorrect--the defense was nonetheless on notice that *someone* from the Crime Lab would be testifying. Supp. CP. Additionally, the defense was already on notice from the probable cause statement that the substance delivered by Bange field tested positive for methamphetamine. CP 39-40. Thus, Bange already knew that the lab analysis of the substance would be at issue. Id. In this way, Bange's claim that she had no time to "prepare" simply because she didn't have the correct lab report, and didn't know the exact name of the scientist until the day of trial is disingenuous at best. See, e.g., Ramos, supra, where the Court found that even if new counsel had been appointed, there was "no showing . . . that substitute counsel could not have become prepared for trial during the twelve days remaining before the speedy trial expiration date." Ramos at 638 (emphasis added). But here, Bange had the same counsel from the inception of the case. Therefore, it is not as if counsel had no idea that the substance involved was

methamphetamine (again, the probable cause statement said the substance field tested as methamphetamine) or that the State would be calling a witness from the crime lab (the State's witness list indicated a forensic scientist would be testifying) . CP 39-40; Supp. CP.

What these facts show is that the trial court's finding that the late discovery "materially affected the Defendant's right to a fair trial" is not supported by the record. CP 21; CP 39-40; Supp. CP; RP 1-13. Additionally, Bange did not, and could not, show that the late-provided discovery "interjected new facts into the case" which compelled her to choose between her right to a speedy trial "or her right to be represented by counsel who has had sufficient opportunity to adequately prepare a material part of his defense." Brooks, supra; State v. Ramos, supra. In the instant case, there were thirteen days remaining in the speedy trial period. CP 26. This was a bench trial (CP 35), and the same defense attorney had been on the case since its inception. CP 36. Therefore, defense counsel knew all of the facts provided in the discovery up to the day of trial--including the fact that the controlled substance had field-tested positive as methamphetamine, and that a crime lab witness would be testifying. CP 39-40; Supp. CP. Therefore, "the extent to

which the [defense] will be surprised by" the late discovery was negligible if at all. State v. Hutchinson, 135 Wn.2d at 883. Moreover, the trial court agreed that the State's conduct here was not "willful or in bad faith." Id.; RP 9, 12. Nor is the State's conduct here a "truly egregious case of mismanagement." State v. Duggins, 68 Wn.App. at 401. Here, as in Smith, Bange "has not shown the late discovery 'impermissibly prejudiced' the preparation of his defense." Smith at 854. As mentioned before, here there was nothing in the late discovery that was inconsistent with facts already provided to Bange. CP 39-40; Supp. CP.

Here, receipt of the late discovery did not cause Bange to make the "Hobson's choice" of being forced to choose between her right to a speedy trial and her right to effective assistance of counsel. State v. Cannon, 130 Wn.2d at 329; State v. Ramos, 83 Wn.App. at 638. Here, there were thirteen days remaining before the expiration of speedy trial, and the late discovery would only confirm the earlier field test on the substance--rather than introducing entirely new facts. State v. Price, 94 Wn.2d 810, 814, 620 P.2d 994 (1980). Defense counsel thus had plenty of time to analyze the late discovery because it did not interject any new facts into the case. Ramos, supra, citing Price, 94 Wn.2d at 814. And,

although the correct lab report would confirm the substance Bange delivered was methamphetamine (CP 30), it is also true that the State would not necessarily even need the crime lab report, because the State could produce the correct forensic scientist the following morning, and could therefore prove that the substance was methamphetamine via the "live" testimony of the scientist. RP 6. While the information in the late, one- page lab report (RP 11) would be incriminating to Bange, late discovery of the information did not result in unjust prejudice to her because it would not interject new facts into the case, constitute new evidence of guilt, or deprive Bange of any defense. State v. Smith, 67 Wn.App. at 851. In short, the record here does not show that the late discovery would cause Bange to be "substantially prejudiced in the presentation of her defense." CrR 3.3(h)(2); State v. Guloy, supra.

Here, the State ultimately asked the trial court to allow it to immediately commence its case using the available police witnesses, and to simply recess until the following morning so the State could produce its forensic witness. RP 8. The trial court refused this request. RP 12. Whether dismissal is the appropriate remedy is a "fact specific" inquiry to be determined on a case-by-case basis. Ramos at 637. The facts here do not support the

draconian remedy of dismissal. Here, the trial court's decision to dismiss this case was based upon untenable reasons because it rested on facts unsupported in the record. Rohrick, supra, at 793; CP 19-22. This was an abuse of discretion.

In anticipation that the defendant will rely on this Court's decision in the Brooks case (also a Lewis County case), the State addresses it here. State v. Brooks, 149 Wn. App 373, 387, 203 P.3d 397 (2009). In Brooks, supra, this Court affirmed the trial court's dismissal of criminal charges based upon a discovery violation because the State failed to provide defense counsel with a substantial amount of discovery that prejudiced the defendant's right to a fair trial. Brooks, 149 Wn. App. at 375. The discovery not timely provided to defense counsel included the lead detective's report, the victim's statement, and the identities of additional witnesses. *Id.* at 376. Furthermore, the trial court had continued the trial twice before ultimately dismissing the charges. *Id.* at 377. In Brooks, this Court found that the missing discovery was material to the defense's case because it was necessary for defense counsel to see the lead detective's report to determine how to interview the detective at trial. *Id.* at 390. This Court said defense counsel was "prevented ... from preparing for trial in a timely

fashion” due to the missing discovery and, therefore, upheld the trial court’s dismissal of charges. *Id.* at 390.

But Brooks is distinguishable from the present case for two reasons: (1) in Brooks, unlike here, a *substantial amount* of discovery was not provided to defense counsel and (2) the defendant was prejudiced in that the missing discovery was material to his defense. Brooks, 149 Wn. App. at 375. This contrasts with the circumstances here, where the facts do not support the trial court's conclusion that the late discovery would "materially" affect Bange's right to a fair trial. CP 21. Put another way, the facts here do not show that had the late discovery been permitted, that Bange would be "substantially prejudiced in the presentation of her defense." Guloy, supra.

Here, unlike in Brooks, the late discovery consisted of information that merely confirmed what Bange already had notice of: a one-page laboratory report showing the substance was methamphetamine, and the correct Crime Lab scientist to testify with reference to that report. RP 4; RP 11; CP 39-40. Bange already knew via the affidavit of probable cause that the substance tested positive for methamphetamine, and the timely-provided witness list, at the very least, showed that the State intended to call

a forensic scientist from the Crime Lab--notwithstanding the incorrect name of the scientist. CP 39-40; Supp. CP. In this case, unlike in Brooks, neither defense counsel nor the trial judge set out any facts that the proved by a preponderance of the evidence that the interjection of new facts into the case would force Bange to chose between her right to a speedy trial and her right to adequately prepared counsel. Brooks, supra. That is because, in this case, such facts did not exist. RP 1-13; CP 39-40; Supp. CP; CP 26-30. Unlike in Brooks, Bange did not show how the late discovery would prejudice her. RP 2-13. Here, Judge Lawler merely stated in dismissing the charge, "I don't think the administration of justice is satisfied to force the defendant to start a trial . . . without knowing what the evidence is going to be." RP 13. But this conclusion is not supported by the record, because Bange did know "what the evidence [was] going to be" because the discovery already provided to her stated that the controlled substance field tested as methamphetamine, and that the State would be calling a witness from the Crime Lab. CP 39-40; Supp. CP. Such facts take this case out of the purview of Brooks, and its ruling accordingly does not apply here.

In sum, neither the above-cited case law or court rules, when applied to the facts of this case, support the trial court's decision to impose the last-resort remedy of dismissal. Therefore, the trial court abused its discretion when it refused the State's motion for a short continuance or recess, and instead imposed the draconian remedy of dismissal. This Court should reverse the trial court's dismissal and remand this case for trial.

### **CONCLUSION**

The trial court abused its discretion by dismissing this case for a discovery violation because when there were thirteen days remaining in the speedy trial period, and because the late discovery did not interject any new facts into the case. The facts show that the late discovery would only confirm that the substance Bange delivered was methamphetamine. This was not "new" information, because Bange was on notice of this fact since the inception of this case via the probable cause statement, which noted that the substance had field tested positive as methamphetamine. Therefore, Bange was not "surprised" or prejudiced by the information contained in the late discovery. Nor was Bange forced to choose between her right to a speedy trial and her right to adequately prepared counsel. The trial court's decision to dismiss

this case was an abuse of discretion, unsupported by the facts of this case. The trial court's dismissal should be reversed, and this matter should be remanded for trial.

RESPECTFULLY SUBMITTED this 17th day of July, 2009.

MICHAEL GOLDEN,  
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By:



LORI SMITH, WSBA 27961  
Deputy Prosecuting Attorney

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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vs. )  
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Appellant. )  
\_\_\_\_\_ )

NO. 38888-0

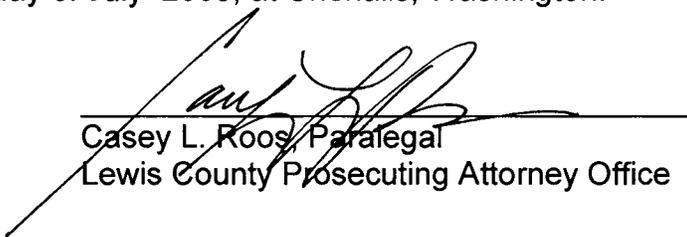
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DIVISION II

Ms. Casey Roos, paralegal for Lori Smith, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On July 17, 2009, the appellant was served with a copy of the **Respondent's Brief** by depositing same in the United States Mail, postage pre-paid, to the attorney for Appellant at the name and address indicated below:

Eric Nielsen  
NIELSEN BROMAN & KOCH, PLLC  
1908 E Madison St  
Seattle WA 98122

DATED this 17<sup>th</sup> day of July 2009, at Chehalis, Washington.

  
Casey L. Roos, Paralegal  
Lewis County Prosecuting Attorney Office

Declaration of  
Mailing