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NO. 39825-7

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

STATE OF WASHINGTON,
Respondent,
v.
MARK EDWARD STANSFIELD,
Appellant.

BY 
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COURT OF APPEALS
DIVISION II

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

- I. ISSUES PERTAINING TO APPELLANT’S ASSIGNMENTS OF ERROR1
- II. STATEMENT OF THE CASE.....2
 - A. Facts2
 - B. Procedure6
- III. LAW AND ARGUMENT.....18
 - A. The trial court properly overruled a hearsay objection during Richard’s testimony because the testimony was offered to explain how the case came to the attention of law enforcement and not for the truth of the matter asserted.....18
 - 1. The Trial Court Properly Overruled the Objection18
 - 2. Any error was harmless20
 - B. Richard’s testimony that Defendant implicitly told her not to attend court was properly admitted under ER 701 and ER 704 because Richard’s testimony was based upon personal knowledge of Defendant’s actions and behaviors.....21
 - 1. Richard’s testimony was admissible under ER 701 because her testimony was rationally based upon her personal perceptions, helpful to the jury, and supported by appropriate foundation.....21
 - 2. Richard’s testimony was properly admissible under ER 704 because she did not make a direct comment on Defendant’s guilt.24
 - C. The State presented sufficient evidence to support a conviction on Count II.25

D.	The State concedes that Defendant’s two phone calls constituted one count of witness tampering and the case should be remanded for resentencing.	27
E.	The trial court properly exercised its discretion by refusing to re-open evidence after both parties had rested because the defense offered no compelling reason to reopen evidence.	28
F.	The trial court properly denied the motion to dismiss on due process grounds because there was no record that the State knowingly presented false testimony.....	31
1.	The State did not present false testimony.....	31
2.	The State had no reason to believe that Lee’s testimony was false.....	34
G.	The trial court properly denied the motion to dismiss because there was no record supporting the defense claim that the State mismanaged the case by knowingly presenting false testimony from Teddy Chow and Angus Lee.	35
H.	The trial court properly refused to strike Juror Eight because she was able to serve as a fair and impartial juror.....	38
1.	The trial court properly denied Defendant’s attempt to exercise a peremptory challenge against Juror No. 8 at the close of trial because Defendant had already accepted Juror No. 8.	38
2.	The trial court properly refused to strike Juror No. 8 for cause because Juror No. 8 had no relation to any party or witness in the case and was able to try the case fairly and impartially.	44
IV.	CONCLUSION	49

TABLE OF AUTHORITIES

Cases

<i>Brown v. United States</i> , 411 U.S. 223, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973).....	44
<i>City of Seattle v. Heatley</i> , 70 Wn. App. 573, 854 P.2d 658 (1993).....	22, 23, 24, 25
<i>Hansen v. Walker</i> , 46 Wn.2d 499, 282 P.2d 829 (1955).....	28
<i>In re Stansfield</i> , 164 Wn.2d 108, 187 P.3d 254 (2008).....	18
<i>Jackson v. Brown</i> , 513 F.3d 1057, (9 th Cir. 2008)	31
<i>Napue v. Illinois</i> , 360 U.S. 264, 79 S.Ct. 1173 (1959).....	31
<i>Ottis v. Stevenson-Carson School Dist. No. 303</i> , 61 Wn. App. 747, 812 P.2d 133 (1991).....	45
<i>State v. Bird</i> , 136 Wn. App. 127, 148 P.3d 1058 (2006).....	41
<i>State v. Brinkley</i> , 66 Wn. App. 844, 837 P.2d 20 (1992).....	28, 29
<i>State v. Carlin</i> , 40 Wn. App. 698, 700 P.2d 323 (1985).....	24, 25
<i>State v. Etenhoffer</i> , 119 Wn. App. 300, 79 P.3d 478 (2003).....	40
<i>State v. Hall</i> , 168 Wn.2d 726, 230 P.3d 1048 (2010).....	27, 49

<i>State v. Head</i> , 136 Wn.2d 619, 964 P.2d 1187 (1998).....	36
<i>State v. Howard</i> , 127 Wn. App. 862, 113 P.3d 511 (2005).....	30
<i>State v. James</i> , 138 Wn. App. 628, 158 P.2d 103 (2007).....	18, 19
<i>State v. Koerber</i> , 85 Wn. App. 1, 931 P.2d 904 (1996).....	36
<i>State v. Latham</i> , 100 Wn.2d 59, 667 P.2d 56 (1983).....	44
<i>State v. Mason</i> , 125 Wn. App. 554, 126 P.3d 34, (2005).....	19
<i>State v. Michielli</i> , 132 Wn.2d 229, 937 P.2d 587 (1997).....	36
<i>State v. Moses</i> , 129 Wn. App. 718, 119 P.3d 906 (2005).....	19
<i>State v. Noltie</i> , 116 Wn.2d 831, 809 P.2d 190 (1991).....	45
<i>State v. Parris</i> , 98 Wn.2d 140, 654 P.2d 77 (1982).....	28
<i>State v. Persinger</i> , 62 Wn.2d 362, 382 P.2d 497 (1963).....	38
<i>State v. Powell</i> , 62 Wn. App. 914, 816 P.2d 86 (1991).....	25
<i>State v. Rempel</i> , 53 Wn. App. 799, 707 P.2d 1058 (1989), <i>reversed on other grounds</i> , 114 Wn.2d 77 (1990).....	45, 46

<i>State v. Rose</i> , 17 Wn. App. 308, 563 P.2d 1266 (1977).....	44
<i>State v. Rupe</i> , 108 Wn.2d 734, 743 P.2d 210 (1987).....	45
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992).....	26
<i>State v. Thomas</i> , 16 Wn. App. 1, 553 P.2d 1357 (1976).....	38
<i>State v. Wigley</i> , 5 Wn. App. 465, 488 P.2d 766 (1971).....	21, 22, 23
<i>State v. Williamson</i> , 100 Wn. App. 248, 996 P.2d 1097 (2000).....	42, 43, 44
<i>State v. Wilson</i> , 149 Wn.2d 1, 65 P.3d 657 (2003).....	35

Constitutional Provisions

U.S. Const. amend VI	28
----------------------------	----

Statutes

RCW 4.44.120	39
RCW 4.44.210	38, 39, 40, 41, 42, 43, 44

Rules

CrR 6.1(b)	40
CrR 6.4.....	39
CrR 6.4(e)(1).....	40
CrR 6.4(e)(2).....	38, 39, 41, 44

CrR 6.5.....	40
CrR 8.3(b).....	35, 36
ER 701	21, 22
ER 704	21, 24, 25
ER 801	18
ER 801(c).....	19
ER 801(d)(1)(ii)	20
ER 802	18

Other Authorities

WPIC 4.66.....	29
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I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Did the trial court properly allow the State to elicit the out-of-court statement of a witness where the statement was not offered for the truth of the matter asserted?
2. Did the trial court properly allow a lay witness to express an opinion where the lay opinion was helpful to the trier of fact and supported by sufficient foundation?
3. Did the trial court properly deny the defendant's motion to dismiss Count II where a rational trier of fact could conclude from the evidence that the defendant was guilty of Count II?
4. Should the court vacate one of the defendant's two convictions for witness tampering, and remand for resentencing, where a recent Washington Supreme Court decision necessitates a finding that the two counts constitute one ongoing crime?
5. Did the trial court properly deny the defendant's motion to reopen the defense case, after both parties had rested and appeared for closing arguments, where there was no compelling reason to reopen evidence?
6. Did the trial court properly deny the defendant's motion for mistrial where there was no evidence that the State knowingly presented false testimony?

7. Did the trial court properly deny the defendant's motion to dismiss for alleged "government misconduct" where the record was clear the State did not commit any misconduct?

8. Did the trial court properly deny the defendant's motion to strike Juror No. 8 where there was no cause established that necessitated removal of Juror No. 8?

II. STATEMENT OF THE CASE

A. Facts

On the evening of February 28, 2006, Moses Lake police officers responded to a reported DUI and hit-and-run. RP 413, 422. When the officers arrived at the scene of the one-car crash, only a woman named Lona Richard was present. RP 413, 423. Richard told the officers that a man named "Roger" was the driver of a car that had crashed. RP 415, 424. Richard was dating a man named Roger Hinshaw at that time. RP 177.

Roger Hinshaw was subsequently charged with DUI and hit-and-run in Grant County District Court. RP 243-44. Hinshaw retained counsel, the appellant in the present case, Mark Edward Stansfield (hereinafter "Defendant"). RP 243-44, 352. Hinshaw's trial was set for December 4, 2006. RP 358.

In late November 2006, Richard was served a subpoena signed by Grant County deputy prosecutor Angus Lee. RP 184-185. As directed by the subpoena, Richard called the Prosecutor's Office and spoke with Lee about the upcoming trial. RP 185; Exhibit 4. Richard intended at that time to appear for trial. RP 186.

After Richard's phone conversation with Lee, Defendant called Richard at her home in Grant County. RP 187. Defendant told Richard "not to come to court" and asked her "if there was somewhere [she] could go." RP 189. Richard told Defendant she could go to her mother's home in Federal Way, King County, in order to "get out of town" and "not be around for the trial." RP 189, 191. However, Richard was quite concerned because the subpoena instructed her to appear in court on December 4 and she expressed this concern to Defendant. RP 190. Defendant responded, "Don't worry about it." RP 190.

On Friday, December 1, 2006, Lee called Richard again to confirm her attendance at trial on Monday, December 4. RP 185-86, 361-62. Richard was uncooperative during this phone call and told Lee that she was not coming to court. RP 362. On Saturday, December 2, 2006, Richard took her children and drove to her mother's home in King County so that she would not be in Grant County during the trial. RP 191.

On December 4, 2006, trial in *State v. Hinshaw* commenced. RP 362. Lee tried the case for the State along with deputy prosecutor Teddy Chow. RP 258. Richard did not appear in court on December 4. RP 264. Defendant moved the court to dismiss the charges on grounds that the State could not produce a witness who could identify Hinshaw as the driver of the car. RP 362-363. The motion was denied. RP 517.

Richard did not appear on the second and last day of trial, December 5, 2006. RP 264. The prosecution requested a material witness warrant during the morning of December 5, 2006. RP 265-66. After the court authorized the warrant, Chow called police from the telephone in the courtroom and requested that police find Richard and arrest her. RP 268, 524. Defendant and his client Hinshaw were present in the courtroom when Chow made this phone call. RP 268-69, 524. Immediately afterward, Defendant asked Hinshaw for Lona Richard's phone number and then dialed his phone. RP 367, 525. Lee and Chow heard Defendant ask to talk to "Lona." RP 367.

Chow and Lee were immediately concerned about Defendant's motive for contacting Richard while police were in the midst of attempting to arrest her. RP 270. The two prosecutors followed Defendant outside of the courtroom, but Defendant walked away from them. RP 270, 272, 367. The prosecutors, and a police officer who was also present, overheard

Defendant tell Richard, “Lona, this is Mark. The police have a material witness warrant for you and I think they are coming to arrest you.” RP 268, 368, 429, 521. Defendant later admitted that he made this statement to Richard because he realized that “the police might actually bring her to court [to] testify.” RP 521. Defendant asked Richard, “Why are you back in town? Why did you come back?” RP 194. Defendant was upset when Richard told him that she returned to Grant County because her minor children needed to attend school. RP 194.

After the recess, Chow and Lee asked Defendant who he spoke to on the phone. RP 273, 371. Defendant told them he talked to “my mother.” RP 273, 371. It was known to Chow that Defendant’s mother was long deceased.¹ RP 273.

Police arrived at Richard’s home to serve the material witness warrant, but Richard did not answer the door even though she was home. RP 195. Richard never testified at Hinshaw’s trial. RP 275. The jury nevertheless found Hinshaw guilty on the afternoon of December 5, 2006. RP 275.

Defendant filed an appeal on behalf of Hinshaw. RP 375. Defendant argued in the appeal that Hinshaw’s case should have been

¹ See generally, *Stansfield v. Douglas County*, 146 Wn.2d 116, 43 P.3d 498 (2002) (Defendant’s father was accused of murdering Defendant’s mother in a case publicized in the Grant County area).

dismissed “because the State failed to bring Lona Richard in to testify” at the trial. RP 375.

One year after the Hinshaw trial, on December 6, 2007, Richard appeared in Grant County district court for a hearing. RP 204, 600-01; Exhibit 32; Exhibit 35; CP 61 (Exhibit G). Lee was present and approached Richard after hearing her name called. RP 376. This was the first time Lee had ever met Richard in person. RP 375-76, 381. Lee asked Richard why she did not appear for the Hinshaw trial a year prior. RP 376. Richard responded that Defendant told her not to show up for court and she followed his request. RP 189, 191, 198-199.

Richard voluntarily provided a statement to police. RP 376. Richard told police that Defendant told her not to come to court. RP 237. Richard was never offered or promised anything by anyone for providing her statement or testifying at trial against Defendant. RP 201, 377.

B. Procedure

On July 29, 2008, the State filed an information charging Defendant with two counts of witness tampering. CP 144-146. The State was represented by the Washington State Attorney General’s Office due to a conflict of interest recognized by the Grant County Prosecuting Attorney. CP 144-146. Count I alleged that during the period of time between December 1-4, 2006, Defendant attempted to induce Lona

Richard to absent herself from an official court proceeding. CP 144-146. Count II alleged that on December 5, 2006, Defendant again attempted to induce Richard to absent herself from an official court proceeding. CP 144-146.

Defendant was arraigned on September 3, 2008. CP (Appendix A).² Defense counsel advised the State that his theory of the case was that the Grant County Prosecutor's Office made a "deal" with Richard to give Richard a benefit on her criminal cases in exchange for her agreement to provide statements incriminating the defendant. CP (Appendix A). The State thereafter inquired of the various prosecutors in Grant County who had handled Richard's if they ever gave a "deal" to Richard related to Defendant. CP (Appendix A). All flatly denied that a "deal" ever existed. CP (Appendix A). Lona Richard also denied the existence of any agreement. CP (Appendix A). Lona Richard's criminal defense attorney, Mr. Brett Hill, confirmed that there was no "deal." CP (Appendix A). The State inspected the court records, the court docket entries, and the prosecutor's office's files on Richard's cases and found no evidence of a "deal." CP (Appendix A).

² Appendix A is the "State's Declaration Re: Motion for New Trial." The State designated this clerk's paper but it was not assigned a number prior to the filing of this brief.

On October 16, 2008, the State advised defense counsel that all parties involved denied that any “deal” ever existed between Lona Richard and Grant County. CP (Appendix A). The State repeated this information to defense counsel numerous times between October 2008 and the trial in May 2009. CP (Appendix A).

In January 2009, defense counsel and his investigator interviewed Angus Lee³ about his contacts with Richard after the Hinshaw trial and any “deals” that may have been made. Exhibit 24. Lee told defense counsel that he may have been in court on occasions where Richard was present in court after the Hinshaw trial, but he never talked to her about defendant Stansfield. Exhibit 24.

In February 2009, the State provided to the defense the district court docket entries, district court documents, and excerpts of prosecutor’s files showing the various contacts between the Grant County Prosecutor’s Office and the State’s primary witness, Lona Richard, during the time period from the Hinshaw trial to the present. Exhibits 29-36; CP 72-130 (Exhibit G); CP (Appendix A). These documents were provided well in advance of trial. CP 72-130 (Exhibit G); CP (Appendix A); RP 613.

On May 4, 2009, the defendant filed a pretrial motion to compel discovery of all materials the State was constitutionally required to

³ By 2009 Lee was the Grant County Prosecutor.

provide. CP 1-11. The State responded that it had provided all required documents. RP 591; CP (Appendix A). The State advised the defense:

As has been stated to you before, both by me and the witnesses themselves during your interviews, the Grant County Prosecutor's Office denies that any "deals" were made with Lona Richard in exchange for her cooperation in the present case. Angus Lee, Teddy Chow, and Jennifer Cafferty, the three DPA's who were involved in Ms. Richard's cases, have all denied to me that they ever gave Ms. Richard any consideration in exchange for her cooperation in the present prosecution (or the investigation thereof).

A month or so ago I telephoned attorney Brett Hill . . . Hill told me that he never negotiated anything for Ms. Richard that involved the Stansfield investigation or prosecution.

...

Finally, Ms. Richard herself has denied ever receiving any benefit for making a statement implicating Stansfield or cooperating with the State in its prosecution of Mr. Stansfield.

CP (Appendix A).

The case was tried to a Grant County jury May 27-29, 2009, before the Honorable Scott Sparks, visiting judge from Kittitas County Superior Court.⁴ RP 1-643. Prior to jury selection, defense counsel acknowledged that a party could not exercise peremptory challenges against a juror if that party had accepted a panel that included that juror. RP 49-51. Defendant did not exercise a peremptory challenge against Juror No. 27 in the venire, who became one of the first 12 jurors and was later seated as Juror No. 8

⁴ The Grant County Superior Court bench recused itself because Defendant was a local lawyer who practiced regularly in Grant County.

for trial. CP 194. After the remaining jurors were passed for cause and each party exercised peremptory challenges, defense counsel told the court, “Your Honor, we accept the jury.” CP 194; RP 152.

Lona Richard was the first witness to testify for the State. RP 176-242. Richard testified that she did not appear for the Hinshaw trial in 2006 because Defendant told her not to. RP 182-196. The prosecutor attempted to ask Richard if she explained to prosecutor Lee in 2007 why she did not appear for the Hinshaw trial in 2006. There were several hearsay objections and the court asked the prosecutor to restate the question. RP 198-199. The prosecutor asked Richard, “When you talked to Mr. Lee a year after the trial and told him why you didn’t come to court, did you tell him the same thing you’ve told us here today?” RP 199. There was no objection. RP 199. Richard responded, “Yes.” RP 199.

On cross-examination, defense counsel asked Richard to review a transcript of a taped statement (Exhibit 10) Richard gave to police on April 27, 2008. RP 210-212. Defense counsel then asked Richard, “Is there anywhere in your response to Sergeant Bohnet’s question that you told – that you said that Mark [Stansfield] told you not to come to court?” RP 212. Richard answered “no.” RP 212.

The prosecutor followed-up on this line of questioning during redirect, showing Ms. Richard the same transcript (Exhibit 10). RP 233.

The prosecutor referred Richard to an additional passage in the transcript where Richard told police that during the phone call midtrial on December 5, 2006, Defendant “asked me why am I in town, I was supposed to be out of town . . .” RP 233, 234. The prosecutor then asked Richard, “How is that different from the defendant telling you not to show up in court?” RP 236. The trial court overruled a defense objection to the question. RP 236. Richard responded, “That is the same.” RP 236. Defense counsel recrossed Richard on the subject and again established that Defendant never used the exact words “don’t come to court” during the phone call on December 5, 2006. RP 239-241.

Grant County Deputy Prosecutor Teddy Chow testified for the State. RP 255-278, 318-346. Chow testified that it was typical to work a district court docket and never notice or have personal contact with a particular defendant. RP 257. Chow testified he never spoke to Lona Richard about the case. RP 276. Chow testified that he never gave Lona Richard any benefit in exchange for providing information against Defendant. RP 337.

On cross-examination, Chow testified that he had limited contact with Richard as a district court prosecutor between December 2006 and December 2007. RP 325. Defense counsel confronted Chow with the electronic docket entries provided by the State to show that Chow was

listed as having been present in court with Richard on several occasions during the one-year time period when Chow said he did not talk to Richard. RP 325-333. Chow explained that the docket court entries are not always accurate; and that he did not pay attention to defendants who were present during a lengthy district court docket. RP 257-258 (“As far as I’m concerned, they’re just a name and a number”).

During a recess in Chow’s testimony, defense counsel reported to the court that someone had observed Juror No. 8 greet a deputy prosecutor named Brad Thonney outside of court. RP 298. The trial judge brought Juror No. 8 into the courtroom and questioned her. RP 313. The trial court asked Juror No. 8 if she was acquainted with any of the local county prosecutors. RP 313. Juror No. 8 reported that she “knew a kid named Brad Thonney, I didn’t know he worked here.” RP 313. The trial court asked Juror No. 8 when it was that she realized that Thonney worked in the courthouse. RP 313. Juror No. 8 responded she did not know who Thonney worked for, stating, “the last I had talked to him, he was still looking for a job.” RP 313-314. Juror No. 8 reported that when she greeted Thonney outside of court, Thonney immediately said, “Hey, don’t talk to me.” RP 314. Juror No. 8 responded to Thonney, “What did I do?” RP 314. Thonney responded, “You can’t talk to me.” RP 314. No further conversation took place. RP 314.

The trial court gave defense counsel an opportunity to question Juror No. 8 but he declined. RP 314. The trial court asked defense counsel, “Any issues remain on that?” RP 315. Defense counsel responded, “No,” and added, “I think it settled it.” RP 315-16. Defense did not move to excuse Juror No. 8 for any reason and the trial continued. RP 316.

Grant County Prosecutor Angus Lee testified for the State. RP 346-411. Lee testified that Richard never had a “deal” with the Grant County Prosecutor’s Office to provide information against defendant Stansfield, stating emphatically: “Lona Richard has been offered nothing by me or anyone in my office or promised anything.” RP 377.

On cross-examination, defense counsel elicited that Lee never met Richard until talking to her in court one year after the Hinshaw trial. RP 381. Defense counsel further elicited that Lee handled some of Richard’s district court cases during this same one year time period. RP 408. Lee testified on cross-examination that he did handle some of Richard’s cases, but he only interacted with Richard’s lawyers on those occasions and not Richard herself. RP 408. At the close of Lee’s testimony, the trial court asked the parties, “Any reason we should keep this witness subject to recall?” RP 410. Defense counsel responded,

“No,” and the court announced that Lee was excused from further appearance. RP 410.

The defense moved to dismiss Count II for insufficient evidence after the State rested. RP 465-467. The motion was denied. RP 471.

The defense presented the testimony of six witnesses, including the defendant. RP 472-570. The defense called Lona Richard’s criminal defense attorney, Brett Hill, as the last witness of the case. RP 563. Hill admitted on cross-examination that Richard was never offered a plea agreement by Grant County related to defendant Stansfield. RP 567. Hill further testified that in his opinion Richard did not receive any preferential treatment from the Grant County Prosecutor’s Office. RP 568.

Defendant did not call Angus Lee as a witness in the defense case. After Hill’s testimony, defense counsel rested. RP 570. The State responded that it would recall Angus Lee for specific rebuttal testimony. RP 570-571. Defense counsel objected to Lee being recalled as a witness for the purpose identified by the State. RP 572. The trial court sustained the objection and the State advised it had no rebuttal evidence if Lee were not allowed to testify. RP 573.

The jury was excused for the day. RP 574-75. The parties remained in court for another 45 minutes in order to discuss jury instructions and address any other remaining legal issues prior to closing

arguments. RP 573-585, 618-619. Defense counsel had no further motions to present to the court. RP 573-586. The court adjourned after advising the parties that closing arguments would begin first thing the next morning. RP 586.

The next morning, instead of closing arguments, defense counsel brought an unexpected litany of motions. Without explanation, defense counsel handed to the court document after document that the State had provided to the defense as discovery; specifically the documents that were provided as potential impeachment evidence related to Chow, Lee, and Richard. Exhibits 29-36; RP 590-628. Defense counsel spent a lengthy period of time identifying each document and explaining the contents of the document to the court. RP 590-612. Eventually, defense counsel moved to dismiss the case on grounds that the State somehow committed a discovery violation. RP 613.

The State pointed out that every document in question was provided to the defense by the State months prior to trial. RP 613. The court stated:

I'm having a hard time understanding why in the world I'd dismiss this when they [the State] complied with their discovery obligations under *Brady* and *Giglio*. You're proving to me that they did by handing me these documents, aren't you?

RP 614. Defense counsel abandoned the “discovery violation” motion and asked the court to consider it a motion to dismiss on grounds that the State suborned perjury and, according to defense counsel, the discovery provided by the State proved it. RP 614-616. Defense counsel admitted to the court that he intentionally refrained from using the discovery at issue to discredit Lee because he wanted Chow and Lee “to dig their own graves.” RP 615. The court could find no basis to conclude that any witness committed perjury and denied the motion. RP 616-617.

As the jury continued to wait patiently in the jury room for closing arguments, defense counsel next moved to reopen evidence so he could recall Lee. RP 617. The State objected. RP 618. The trial court denied the motion, reminding defense counsel that he could have cross-examined Lee further when Lee was on the stand in the State’s case; he could have called Lee in the defense case; and he in fact objected when the State attempted to call Lee as a rebuttal witness. RP 618. The court further reminded defense counsel that the defense could have asked to recall Lee the day prior when the parties met for 45 minutes to dispense with any remaining legal issues. RP 618-619. The court noted that all parties left court the day prior with the understanding that evidence was concluded and closing arguments would be presented first thing in the morning.

RP 618-619. The trial court denied the motion and readied the parties for closing arguments. RP 619, 621.

Instead of closing arguments, defense counsel brought another motion, a motion to disqualify Juror No. 8. RP 622. The trial court found no cause to strike Juror No. 8 and denied the motion. RP 626.

Finally, the case proceeded to closing arguments. 2RP⁵ 626. Defense counsel suggested to the jury that Lee used his prosecutorial powers to strong-arm Richard into providing false information about the defendant. 2RP 51-52, 64-65. Without any evidence to support his theory, defense counsel argued that there was a “deal” between Richard and Grant County. 2RP 53. Defense counsel argued that Chow was not credible because he insisted that he did not talk to Richard after the Hinshaw trial, but there were docket entries showing that the two had been in the same courtroom at the same time. RP 70-72. Defense counsel mocked the State for not calling Lee as a rebuttal witness to challenge the testimony of Defendant. RP 74. Defense counsel called Lee “patently unbelievable,” “patently biased,” and “sociopathically biased.” RP 74.

The jury returned verdicts of guilty on both counts. RP 634-35. At sentencing the State asked the court to impose a high-end sentence of 8 months because Defendant had recently been disciplined by the

⁵ The State will cite the verbatim report of proceedings for closing arguments as 2 RP.

Washington Supreme Court for other misconduct.⁶ CP 157-183. The court entered judgment for two convictions and imposed a mid-range sentence of 5 months jail. CP 184-193. This appeal follows. CP 132-143.

III. LAW AND ARGUMENT

A. The trial court properly overruled a hearsay objection during Richard's testimony because the testimony was offered to explain how the case came to the attention of law enforcement and not for the truth of the matter asserted.

1. The Trial Court Properly Overruled the Objection

Hearsay is an out-of-court statement offered for the truth of the matter asserted and is generally inadmissible. ER 801; 802. An out-of-court statement by a witness may be admissible, however, to explain how the allegations against the defendant came to light and why the police proceeded to investigate. *See, e.g., State v. James*, 138 Wn. App. 628, 158 P.2d 103 (2007).

In the present case, the State called Lona Richard as the first witness of the case. Richard testified and explained the circumstances surrounding the Hinshaw trial in 2006 and what the defendant did prior to and during the Hinshaw trial. The State then attempted to have Richard explain to the jury how the case first came to the attention of law enforcement, i.e., that Richard told Lee about Defendant's illegal conduct

⁶ *See In re Stansfield*, 164 Wn.2d 108, 187 P.3d 254 (2008).

in December 2007. RP 199. The prosecutor asked Richard if she had explained those circumstances to Mr. Lee back in 2007. RP 199. Richard responded “yes.” RP 199.

Richard’s statement to Lee in 2007 describing Defendant’s actions in 2006 was not offered for the truth of the matter asserted. ER 801(c). Richard’s statement was not hearsay and was admissible for the limited, nonhearsay purpose of providing background and context for how the allegations against Defendant came to light, and why and when law enforcement began investigating. *E.g., State v. James*, 138 Wn. App. 628, 158 P.2d 103 (2007); *State v. Moses*, 129 Wn. App. 718, 732, 119 P.3d 906 (2005); *State v. Mason*, 125 Wn. App. 554, 126 P.3d 34, 40-41 (2005).

The record further demonstrates that the State did not elicit this evidence to “bolster” Richard’s credibility. The declarant of the “statement,” such that it was, was Richard. Richard was on the stand and the defense was afforded the opportunity to cross-examine Richard about the statement. The State did not ask Richard to recite to the jury what she told Lee in 2007; rather, the State asked a “yes or no” question about whether Richard reported to Lee the facts she had described for the jury. RP 199. Later in the trial, the State elicited testimony from Lee regarding this same encounter with Richard. RP 376. The State elicited from Lee

that he asked Richard to tell him what had happened during the Hinshaw trial. RP 376. The prosecutor then asked, “*without telling me what she said*, did she give you an answer?” RP 376 (emphasis added). Lee replied that she had without reciting what Richard said. RP 376.

The State limited any potential “bolstering” by not asking either Richard or Lee to repeat what Richard told Lee; rather, the State simply had Richard describe the events that occurred in 2006, and then testify that she reported those events to Lee in 2007. The State did not “bolster” Richard’s credibility.

2. Any error was harmless

To the extent that Richard’s testimony “bolstered her credibility,” it was harmless. Richard’s testimony that she reported to Lee in December 2007 the same information she provided to the jury in May 2009 was an inconsequential moment in the trial. Thereafter, defense counsel vigorously cross-examined Richard and impeached her credibility by attempting to show inconsistencies in her prior statements and her trial testimony. RP 203-220. Indeed, after defense counsel’s vigorous cross-examination challenging the credibility of Richard’s trial testimony, the State would have been permitted (and *was* permitted—RP 233-234) to introduce prior consistent statements to rehabilitate her on redirect examination. ER 801(d)(1)(ii). The evidence in question would have

been admissible on redirect; any error in admitting it on direct was harmless.

B. Richard's testimony that Defendant implicitly told her not to attend court was properly admitted under ER 701 and ER 704 because Richard's testimony was based upon personal knowledge of Defendant's actions and behaviors.

Richard testified that when Defendant telephoned her on December 5, 2006, he was upset and asked, "Why are you back in town? Why did you come back?" RP 194. Thereafter, the trial court allowed Richard to testify that she believed that these statements were Defendant's way of again telling her not to show up for court. The trial court appropriately overruled the defense objection because Richard's testimony (1) was a proper lay opinion under ER 701, and (2) was proper under ER 704.

1. Richard's testimony was admissible under ER 701 because her testimony was rationally based upon her personal perceptions, helpful to the jury, and supported by appropriate foundation.

A lay witness may offer an opinion or inference if the opinion or inference is (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific or specialized knowledge. ER 701; *State v. Wigley*, 5 Wn. App. 465, 468, 488 P.2d 766 (1971).

Here, Richard's interpretation of what Defendant meant when he told her that she "wasn't supposed to be in town" was admissible under ER 701. Richard's testimony was rationally based on Richard's perception of Defendant's statements when considered in light of the fact that police were on their way to arrest Richard, Defendant's "upset" demeanor on the phone, and Richard's prior conversations with Defendant about not appearing for court. Richard's testimony was helpful to the jury's clear understanding of what Defendant meant when he talked to Richard on December 5, 2006. Richard's opinion was not based upon specialized technical knowledge, but rather her own rational perceptions.

Two cases are instructive. In *State v. Wigley*, two police officers testified that a defendant accused of assaulting his infant son with a knife was "serious" when he told the police he would harm the child if the police did not leave. *Wigley*, 5 Wn. App. at 465-66. The court held that it was not error to allow the testimony because the prosecutor established that the officers were personally acquainted with the defendant and had personally witnessed the incident and the statement. *Id.* at 468.

In *Heatley*, a DUI prosecution, a police officer testified that the defendant was "obviously intoxicated" and "could not drive a motor vehicle in a safe manner." *City of Seattle v. Heatley*, 70 Wn. App. 573, 575-77, 854 P.2d 658 (1993). The court held that the officer's testimony

contained no direct opinion on the defendant's guilt and was properly based on the officer's experience, firsthand observation of the defendant's physical appearance, and defendant's performance during the field sobriety tests. *Id.* at 579.

Like the officers in *Wigley* and *Heatley*, Richard was personally acquainted with Defendant and personally experienced his demeanor on the phone. Richard's pretrial conversations with Defendant and Richard's perception of Defendant's "upset" tone of voice on December 5, 2006, were sufficient foundation for Richard to tell the jury what she thought Defendant meant when he asked her why she was "back in town."

It is important to note that this testimony was offered on redirect examination as a direct response to testimony elicited by the defense on cross-examination. The defense took great pains to establish with Richard that she never told the police that Defendant used the exact words, "Don't come to court," during the December 5 phone call. The point the defense attempted to make through this testimony was that Defendant did not attempt to persuade Richard to absent herself from court on December 5, 2006. The State was entitled to respond with evidence that Richard did in fact relate to police that although Defendant did not use the words, "don't come to court," he conveyed exactly that request to Richard.

The jury could independently assess Richard's opinion in light of all of the evidence admitted at trial. The defense had the opportunity to vigorously cross-examine Richard and undermine her testimony, including the testimony at issue. The jurors were instructed that they were the sole judges of the credibility and weight to be accorded to the testimony of each witness, including Richard. CP 54-68 (Jury Instruction No. 1). Defendant's arguments go to the weight of Richard's testimony, not the admissibility of her lay opinion. The trial court properly overruled the objection.

2. Richard's testimony was properly admissible under ER 704 because she did not make a direct comment on Defendant's guilt.

Testimony directly commenting on a defendant's guilt is not proper opinion testimony. *City of Seattle v. Heatley*, 70 Wn. App. 573, 578, 854 P.2d 658 (1993). Such improper opinions usually involve an assertion pertaining directly to the defendant's guilt. *E.g.*, *State v. Carlin*, 40 Wn. App. 698, 700, 700 P.2d 323 (1985) (police officer testified that tracking dog followed defendant's "fresh guilt scent"). However, "testimony in the form of an opinion or inferences otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." ER 704. Opinion testimony should not be excluded on the basis that it encompasses ultimate issues of fact if proper foundation

has been laid, the evidence is helpful to the trier of fact, and the evidence will not confuse, mislead, or result in unfair prejudice. ER 704; *Heatley*, 70 Wn. App. at 579.

Unlike *Carlin*, where an officer testified that a dog followed the defendant's "fresh guilt scent," Richard never uttered the word "guilt" in her testimony. Rather, she simply testified that on December 5, 2006, Defendant made statements to her over the phone. Richard related to the jury her impression of what Defendant was trying to communicate to her through those statements in light of his demeanor and past statements to her. Thereafter, it was for the jury to determine whether Richard's testimony was credible; and whether the totality of the evidence, including Richard's testimony, established all of the elements of witness tampering. Richard's testimony was properly admitted pursuant to ER 704.

C. The State presented sufficient evidence to support a conviction on Count II.

In reviewing a claim of insufficient evidence, the court determines whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of the offense beyond a reasonable doubt. *State v. Powell*, 62 Wn. App. 914, 916, 816 P.2d 86 (1991). The court draws all reasonable inferences in favor of the prosecution and interprets the evidence most strongly against

the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

In the present case, Count II alleged that on December 5, 2006, Defendant committed witness tampering by calling Richard during the Hinshaw trial and attempting to induce her not to show up for court. CP 144-146. Viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of Count II beyond a reasonable doubt.

The State presented testimony from Richard that Defendant called her during the week prior to trial and told her “not to come to court” and that she should “leave town.” RP 187-191. Richard testified that Defendant telephoned her midtrial on December 5, as police were on their way to arrest her, and he was upset that she was “back in town.” RP 194. Richard testified that she understood Defendant to be telling her to continue to avoid court. RP 236. Two prosecutors and a police officer overheard Defendant talk to Richard and warn her about the material witness warrant. RP 271, 367-368, 429. Defendant’s cell phone records confirmed the phone call to Richard, as well as other phone calls to Richard on December 5, 2006. Exhibit 8; RP 439-440. Defendant testified at trial and admitted that he called Richard during trial to warn her that police were on their way to arrest her. RP 521.

Viewing the evidence in light of Defendant's prior request to Richard that she absent herself from court, and drawing all reasonable inferences in favor of the State and against Defendant, the evidence was more than sufficient to support conviction on Count II. The jury's verdict should be affirmed.

Defendant's argument is also essentially moot. Defendant does not challenge the sufficiency of the evidence for Count I. The State concedes that the two counts constitute one ongoing crime under *State v. Hall*, 168 Wn.2d 726, 230 P.3d 1048 (2010). Evidence of Count II would have been admissible to prove Count I even if Count I were tried alone because all of the evidence was proof of an ongoing attempt to induce Richard to absent herself from the trial proceedings. *Hall, supra*. The court should affirm Count I and vacate Count II pursuant to *Hall*.

D. The State concedes that Defendant's two phone calls constituted one count of witness tampering and the case should be remanded for resentencing.

In *State v. Hall*, an opinion published after the trial and sentencing hearing in this case, the Washington Supreme Court held that the unit of prosecution for the crime of witness tampering is "the ongoing attempt to persuade a witness not to testify in a proceeding." *Hall*, 168 Wn.2d at 734. Under the analysis in *Hall*, the State concedes that the two counts of witness tampering constituted one ongoing attempt to persuade Richard

not to testify. Defendant's conviction for one count of witness tampering should be affirmed and the case remanded for resentencing only.

E. The trial court properly exercised its discretion by refusing to re-open evidence after both parties had rested because the defense offered no compelling reason to reopen evidence.

The Sixth Amendment guarantees a criminal defendant the right to confront witnesses against him and the right to call witnesses in his defense. U.S. Const. amend VI; *State v. Parris*, 98 Wn.2d 140, 144, 654 P.2d 77 (1982). However, the Sixth Amendment guarantees only the *opportunity* to cross-examine and call witnesses. *Id.* at 144. A defendant can choose to do neither. *Id.*

The reopening of a case for the taking of further testimony is a matter that rests in the sound discretion of the trial court. *Hansen v. Walker*, 46 Wn.2d 499, 502, 282 P.2d 829 (1955). A trial court's ruling on a request to reopen evidence will not be disturbed absent a showing of abuse of discretion or the exercise of arbitrary and capricious action. *Id.*

Defendant compares the present case to *State v. Brinkley*, but ignores several important differences between the two cases. 66 Wn. App. 844, 837 P.2d 20 (1992). In *Brinkley*, the defendant was convicted of attempted first degree robbery of jewelry, including theft of a Mickey Mouse watch. *Id.* at 845. The victim wore a Mickey Mouse watch during

testimony. *Id.* Immediately after the defense rested, a juror asked the court why the victim was wearing the Mickey Mouse watch in court if the watch had been stolen. *Id.* In fact, the victim had purchased a new Mickey Mouse watch after the robbery. *Id.* at 845-46. The court allowed the State to reopen its case to address the juror's new observation. *Id.* The ruling was affirmed on appeal, in part because WPIC 4.66 allows the court in a criminal case to answer juror questions during witness testimony. *Id.* at 846-847.

Here, Defendant did not move to reopen evidence in response to some unforeseen event like the juror question in *Brinkley*. Rather, defense counsel sought to reopen the case because he wanted another opportunity to cross-examine a witness--a witness whom he had already crossed, declined to call in his case, and objected to being called in rebuttal. Unlike *Brinkley*, there was no compelling reason to reopen evidence.

In *Brinkley*, the court allowed the State to reopen its case in part because the State did not “[engage] in trickery” or “[make] a calculated decision to hold evidence back.” Here, defense counsel did exactly that. As noted by the trial court, defense counsel had ample opportunity to cross-examine and re-cross-examine Lee during the State's case. RP 618-19. Defense counsel admitted that he purposefully chose not to cross-examine Lee on this subject. RP 615. Defense counsel specifically

excused Lee as a witness earlier in the trial. RP 410. Defense counsel could have called Lee during the defense case; and he objected when the State attempted to recall Lee as a rebuttal witness. RP 527. Defense counsel knew that Lee, like Chow, would easily explain why he did not notice or speak to Richard during the times they were in a district courtroom together. It was only after defense counsel's eleventh-hour motions to dismiss were denied that defense counsel had a newfound desire to further impeach Lee.

Finally, defense counsel's stated purpose for recalling Lee was for the sole purpose of impeaching him. RP 617-19. Calling a witness for the sole purpose of impeaching him is improper. *State v. Howard*, 127 Wn. App. 862, 869-870, 113 P.3d 511 (2005) ("calling a defense witness for the sole purpose of impeachment is a pointless exercise").

At the time Defendant asked for permission to reopen the case, Lee had been excused as a witness, both parties had rested, jury instructions were complete, and the parties had appeared for closing arguments. The jury had already been told that there would be no further evidence and all that remained were jury instructions and closing arguments. RP 574. Defendant provided no compelling reason to reopen evidence. The court was well within its discretion to deny the untimely motion.

F. The trial court properly denied the motion to dismiss on due process grounds because there was no record that the State knowingly presented false testimony.

Knowing usage of false testimony to obtain a criminal conviction, or the failure to correct false evidence, violates a defendant's due process rights. *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173 (1959). However, reversal is warranted only where the record establishes that (1) the State presented false testimony; (2) the State knew or should have known that such testimony was false; and (3) the false testimony was material. *Jackson v. Brown*, 513 F.3d 1057, 1071-72 (9th Cir. 2008). The record in this case does not establish any of these criteria

1. The State did not present false testimony.

Defendant slanders Mr. Chow, Mr. Lee, and state's counsel by claiming "perjury" without any factual basis to do so. Defendant's argument is essentially, "I assert that the testimony of Chow and Lee was perjured, therefore it is proven that they committed perjury." If this tactic were sufficient to establish perjury in a criminal case, every case would be reversed. Defendant's argument is nothing more than baseless slander.

Defendant claims that Lee testified falsely that "he had limited contact with Richard between December 2006 and January 2008." Defendant bases this claim on "multiple discovery documents," such as court documents signed by Lee pertaining to cases in which Richard was

the defendant. Defendant's argument is specious and ignores the trial record.

Witness Teddy Chow explained life in the district court division of the Grant County Prosecutor's Office. Chow testified that a typical Grant County District Court docket consisted of 150-250 criminal cases per day. RP 257. Prosecutors interact with defense lawyers, not the defendants. RP 257. Chow testified that he did not pay attention to defendants in the courtroom during long docket days. RP 257-58.

Similarly, Lee testified that during a hectic district court docket, the prosecutor is not able to take note of each of the 150 defendants present for court. RP 348. Lengthy district court dockets began at 8:30 a.m. and could continue to 6:00 p.m. without a lunch break. RP 349. If a criminal defendant were represented by a lawyer, the prosecutor did not talk to the defendant. RP 349. Lee testified that he "had interaction with [Richard's] attorneys regarding her cases, but not her" personally. RP 408.

Lee's signature on documents related to Lona Richard's criminal cases did not prove that Lee had conversations with Richard, or that he even saw her during the one-year time period in question. For example, Defendant references the criminal complaint for Richard's bail jumping charge, which was signed by Lee. The court can take judicial notice that

criminal complaints/informations are signed and filed by the prosecutor without any interaction between the prosecutor and the defendant.

Defendant's arguments are further contradicted by the record. Richard's testimony corroborated Lee's testimony that she did not see or talk to him during the year between the Hinshaw trial in 2006, and her disclosure to Lee in 2007. RP 207. Even though defense counsel continued to press Richard about her contacts with Lee, Richard had no recollection of contact with Lee during the one year time period. RP 207. Richard testified that Mr. Lee did not recognize *her* on December 6, 2007; rather, he "recognized [her] name" (RP 204), thereby corroborating Lee's testimony that he never met Richard in person and would not recognize her by appearance alone.

If Lee and Richard were listed on electronic docket entries as having been present in a courtroom at the same time, Defendant could have questioned Lee as to those occurrences just as he did with Chow. Defense counsel interviewed Lee at length prior to trial and was acutely aware that Lee would easily explain docket entries showing that Lee and Richard may have been in a courtroom at the same time during the year in question. Exhibit 24; RP 389. Lee admitted to defense counsel prior to trial that it was entirely possible that he was in court with Richard following the Hinshaw trial, or signed court documents related to Richard,

but he had “no idea.” Exhibit 24 (pp. 32-33, 41). Lee further explained to defense counsel prior to trial:

It is always possible that she had a case in District Court and was being—going through the process while I was handling the docket, and a probation review or something along those lines that attorneys handle. We have got this probation review and we read the probation report and say, “Okay, fine,” and move on, but I don’t recall anything, and certainly nothing to do with Mr. Stansfield.

Exhibit 24 (p. 41).

Defense counsel knew that Lee would emphatically deny having any conversation with Richard during December 2006-2007; and that he would easily explain district court docket entries from that same time period. Defense counsel purposefully decided against confronting Lee with the docket entries. RP 615. Defense counsel’s tactical decision to limit cross-examination of Lee is not a basis for a conclusion that the State presented “false testimony.”

2. The State had no reason to believe that Lee’s testimony was false.

Even if the court took the leap of faith requested by Defendant and concluded that the elected prosecutor of Grant County perjured himself, there is no record in this case to support the conclusion that the State had any reason to believe that Lee’s testimony was false. State’s counsel personally asked all prosecutors involved with Richard’s cases if there

were any “deals” related to defendant Stansfield. CP (Appendix A). All prosecutors flatly denied that there was. CP (Appendix A). The record in this case is clear that the State combed through the court files and prosecutor’s files well in advance of trial and was acutely aware of them during Lee’s testimony. CP (Appendix A). The State was present at defense counsel’s pretrial interview of Lee and heard his explanations there. Exhibit 24. Lee and Richard both testified that they had no personal interaction with each other and did not discuss the defendant during the one-year time period in question. The docket entries, in conjunction with the explanations of Chow and Lee as to why they did not note Richard’s presence in court, did not contradict the testimony of Chow, Lee, or Richard. The State had no reason (and still has no reason) to believe that Chow or Lee presented false testimony. Defendant’s argument to the contrary fails.

G. The trial court properly denied the motion to dismiss because there was no record supporting the defense claim that the State mismanaged the case by knowingly presenting false testimony from Teddy Chow and Angus Lee.

Dismissal is an extraordinary remedy to which the court should resort only in truly egregious cases of mismanagement or misconduct. *State v. Wilson*, 149 Wn.2d 1, 9, 65 P.3d 657 (2003). CrR 8.3(b) provides a procedural basis for the court to dismiss a case in the furtherance of

justice where there is governmental misconduct that prejudiced the accused.

CrR 8.3(b) first requires a defendant to show “arbitrary action or governmental misconduct,” which may consist of mismanagement of the State’s case. *State v. Michielli*, 132 Wn.2d 229, 239, 937 P.2d 587 (1997). “Mismanagement” refers to truly egregious cases of mismanagement or misconduct by the prosecutor, including unfair gamesmanship or intentional acts that prevent the court from administering justice. *State v. Koerber*, 85 Wn. App. 1, 3-5, 931 P.2d 904 (1996).

CrR 8.3(b) next requires proof that mismanagement actually caused identifiable prejudice. *Michielli*, 132 Wn.2d at 229. Prejudice will not be presumed and must be specifically proven by the defendant. *State v. Head*, 136 Wn.2d 619, 625, 964 P.2d 1187 (1998). Denial of a motion to dismiss pursuant to CrR 8.3(b) is reviewed for an abuse of discretion. *Id.*

Here, Defendant argues that the State mismanaged the case and “perpetuated fraud” by permitting Lee and Chow to give false testimony. As set forth above, Defendant and his counsel, both below and on appeal, cross the line between legal advocacy and slander. There is simply no record in this case that Chow and Lee testified falsely. Both swore to tell the truth and explained their actions when asked. Both stated that there

was never any “deal” with Lona Richard; and both testified that they had no conversation with Richard until Lee talked to her on December 6, 2007. Richard corroborated their testimony. When confronted with electronic docket court entries showing that Chow may have been in court during a day when Richard was on the docket, Chow explained how and why he might not note Richard’s presence or interact with her. Lee would have done the same if confronted, but defense counsel chose not to question him about it, knowing full well the answers he would receive. Defendant offers nothing more than defamatory speculation that Chow and Lee lied under oath.

Defendant did not present testimony from any witness who contradicted the testimony of Chow or Lee as it referenced their interactions with Richard. In fact, the only witness the defense presented who had any knowledge of the interactions between Grant County and Lona Richard was Richard’s criminal defense attorney, Brett Hill. Hill testified that Richard never received any “deal” related to defendant Stansfield nor received any preferential treatment. RP 567-68.

Defendant received a fair trial and was found guilty. There was no misconduct and the trial court properly denied the motion.

H. The trial court properly refused to strike Juror Eight because she was able to serve as a fair and impartial juror.

The trial court properly declined to strike Juror No. 8 at the close of evidence because (1) the defense had no right to exercise a peremptory challenge of Juror No. 8 after accepting a panel that included Juror No. 8, and (2) there was no cause established sufficient to disqualify Juror No. 8.

1. The trial court properly denied Defendant's attempt to exercise a peremptory challenge against Juror No. 8 at the close of trial because Defendant had already accepted Juror No. 8.

There are no constitutional guarantees to peremptory challenges. *State v. Thomas*, 16 Wn. App. 1, 13, 553 P.2d 1357 (1976). The number and manner of exercise of peremptory challenges rests exclusively with the legislature and the courts, subject only to the requirement of a fair and impartial jury. *State v. Persinger*, 62 Wn.2d 362, 365, 382 P.2d 497 (1963).

In Washington, the manner in which peremptory challenges are exercised is governed by both statute and court rule. RCW 4.44.210; CrR 6.4(e)(2). The statute provides:

The jurors having been examined as to their qualifications, first by the plaintiff and then by the defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to wit:

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory

challenges shall be exhausted. *During this alternating process, if one of the parties declines to exercise a peremptory challenge, then that party may no longer peremptorily challenge any of the jurors in the group for which challenges are then being considered and may only peremptorily challenge any jurors later added to that group.* A refusal to challenge by either party in the said order of alternation shall not prevent the adverse party from using the full number of challenges.

RCW 4.44.120 (2003) (emphasis added). In other words, once a party “accepts the panel,” that party may not exercise a peremptory challenge against any of the 12 jurors in that panel. CrR 6.4 goes on to provide that a party who has accepted a panel may thereafter exercise peremptory challenges only against jurors “subsequently called.” CrR 6.4(e)(2).

The plain language of RCW 4.44.210 controls the outcome of the issue raised by Defendant. The record is undisputed that Defendant “accepted” Juror No. 8 (Juror No. 27 during jury selection) when his counsel announced to the court, “Your Honor, we accept the jury.” RP 152. Thereafter, Defendant could only exercise peremptory challenges against jurors “subsequently called.” CrR 6.4(e)(2); RCW 4.44.210. Defense counsel acknowledged his understanding of this rule at trial. RP 50-51.⁷

⁷ **Prosecutor:** ... [L]et’s say there’s 12, I pass, he strikes number ten, and so number 13 comes in the box, I could strike number 13, but I’ve accepted the other 11?

Defense Counsel: That’s my understanding.

There is no ambiguity in the plain language of RCW 4.44.210. Even if there were, court rules are interpreted to give effect to the intent of the Supreme Court and to avoid absurd results. *State v. Ettenhoffer*, 119 Wn. App. 300, 304, 79 P.3d 478 (2003). Defendant asks the court to adopt a system of jury selection where the parties may reserve one or more peremptory challenges, wait until the close of evidence, and then exercise a peremptory challenge against any juror or jurors. Defendant's interpretation of RCW 4.44.210 would lead to absurd results.

For example, in a superior court trial each party is entitled to 6 peremptory challenges and additional peremptory challenges for each alternate juror. CrR 6.4(e)(1); CrR 6.5. Hypothetically, both parties could accept a jury panel without exercising any peremptory challenges. Under Defendant's interpretation of the law, one party or both parties could exercise all 6 of its peremptory challenges at the close of evidence, or even during deliberations. Such a system would force the court to either (a) impanel up to 12 alternates at the start of trial depending on how many peremptories were exercised during jury selection (thereby giving each party 18 peremptory challenges including alternates), or (b) declare a mistrial due to a lack of the 12 jurors required by CrR 6.1(b). Defendant's proposed standard would create an absurd criminal jury system, one that would require budget-strapped counties to summon twice as many jurors

for trials, and reconstruction of courtrooms to allow for jury boxes that seats 12 jurors and 12 or more alternates.

The court should reject an interpretation of statute and court rule that leads to the absurd results offered by Defendant. The law is clear that once a party accepts a jury panel, that party may thereafter exercise peremptory challenges only against jurors “subsequently called.” RCW 4.44.210; CrR 6.4(e)(2).

Defendant’s reliance on *State v. Bird* and *State v. Williamson* is misplaced. In *Bird*, defense counsel accepted the panel without exercising his last peremptory challenges. *State v. Bird*, 136 Wn. App. 127, 130, 148 P.3d 1058 (2006). The prosecutor then exercised a peremptory challenge, thus adding a new juror to the 12-juror panel. *Id.* The defense attempted to exercise its remaining peremptory challenge against the new juror, but the trial court erroneously refused to allow it on grounds that defense counsel’s prior acceptance of an earlier jury panel was itself an exercise of a peremptory challenge. *Id.* at 131. The new juror was sworn as a juror, deliberated, and returned a verdict of guilty. *Id.* at 132. The State conceded error on appeal. *Id.*

Here, unlike what happened in *Bird*, the defense attorney attempted to exercise a peremptory challenge after accepting a panel that included the juror he later tried to strike. Defendant was prohibited by

plain statutory language of RCW 4.44.210 from exercising a peremptory challenge because he had already accepted Juror No. 8.

Williamson is also inapposite. In *Williamson*, the defendant was accused of attempting to murder his ex-wife. *State v. Williamson*, 100 Wn. App. 248, 252, 996 P.2d 1097 (2000). The State called the victim of the crime as its first witness and she recanted the accusations against her ex-husband. *Id.* at 252. Upon seeing the victim appear in court, one of the jurors advised the court that she knew the victim. *Id.* The State challenged the juror for cause but the challenge was denied. *Id.* The State then moved to exercise a remaining peremptory challenge. *Id.* The defense objected, but the court overruled the objection and allowed the peremptory challenge. *Id.* On appeal, the court held that “[n]either the court rule nor the statute prohibits a peremptory challenge to an impaneled and sworn juror based on unforeseen circumstances.” *Id.* at 254. The court held that the trial court did not abuse its discretion in allowing the State to exercise a peremptory challenge given that the trial court “substantially complied with both the statute and the rule.” *Id.* at 254-55.

The State first submits that *Williamson*, a Division Three case, was wrongly decided. At the time *Williamson* was decided, RCW 4.44.210 provided that once the plaintiff (the State) accepted a panel of jurors, the plaintiff could not thereafter exercise a peremptory challenge to those

jurors. RCW 4.44.210 (1869). The trial court in *Williamson* had no authority under the plain language of the statute to allow exercise of a peremptory challenge after the plaintiff accepted the jury panel. RCW 4.44.210 (1869). Division Three ignored the plain language of the statute and held that the trial court “substantially complied” with the rules even though the trial court did not comply with the rule at all.

Williamson was also decided prior to 2003 amendments to RCW 4.44.210. The 2003 amendments specifically set forth that any party⁸ who accepts a panel of jurors may not thereafter exercise a peremptory challenge to the jurors previously accepted. RCW 4.44.210. *Williamson* was not decided under the current statute and is therefore inapposite.

Finally, *Williamson* involved a unique set of circumstances not present in the case at bar. In *Williamson*, a juror advised the court that she

⁸ RCW 4.44.210 was amended in 2003. For the 134 years prior to 2003, the RCW and its predecessor provided that only the *plaintiff* was restricted from exercising peremptory challenges once the jury panel was accepted:

The plaintiff may challenge one, and the defendant may challenge one, and so alternately until the peremptory challenges shall be exhausted. The panel being filled and passed for cause, after said challenge shall have been made by either party, a refusal to challenge by either party in the said order of alternation, shall not defeat the adverse party of his full number of challenges, but such refusal on the part of the *plaintiff* to exercise his challenge in proper turn, shall conclude him as to the jurors once accepted by him, and if his right be not exhausted, his further challenges shall be confined, in his proper turn, to talesmen only.

Former RCW 4.44.210 (1869). The 2003 amendments apply the restriction to both parties.

knew the most crucial witness in the case. *Williamson* essentially involves a set of facts where a challenge for cause was appropriate but the trial court curiously granted a peremptory challenge rather than a challenge for cause. Such circumstances do not exist in the present case; unlike *Williamson*, Juror No. 8 did not know any of the witnesses.

Here, Defendant accepted a jury panel that included Juror No. 8. Thereafter, Defendant could not exercise a peremptory challenge against Juror No. 8. RCW 4.44.210; CrR 6.4(e)(2). Defendant's only means for disqualifying Juror No. 8 was a challenge for cause.

2. The trial court properly refused to strike Juror No. 8 for cause because Juror No. 8 had no relation to any party or witness in the case and was able to try the case fairly and impartially.

A criminal defendant has the right to a fair trial by a panel of impartial, indifferent jurors. *State v. Latham*, 100 Wn.2d 59, 62-63, 667 P.2d 56 (1983). However, a criminal defendant is entitled to a fair trial, not a perfect one, for there are no perfect trials. *Brown v. United States*, 411 U.S. 223, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973); *State v. Rose*, 17 Wn. App. 308, 563 P.2d 1266 (1977).

During voir dire of a juror, the trial court is best able to observe the juror's demeanor and, in light of the observation, interpret and evaluate the juror's answers to determine whether the juror will be fair and

impartial. *State v. Rupe*, 108 Wn.2d 734, 749, 743 P.2d 210 (1987). A trial court's ruling on a motion to excuse a juror for cause is reviewed for manifest abuse of discretion. *State v. Noltie*, 116 Wn.2d 831, 838, 809 P.2d 190 (1991).

A party challenging a juror on the ground of actual bias has the burden of proving by a preponderance of the evidence that the prospective juror cannot try the case fairly and impartially. *Ottis v. Stevenson-Carson School Dist. No. 303*, 61 Wn. App. 747, 812 P.2d 133 (1991). In applying this standard, the appellate court reviews the evidence in the light most favorable to the prevailing party below, accepts the trial court's decisions regarding credibility, and accepts the trial court's decision to choose between reasonable but competing inferences. *Id.*

A juror's unintentional failure to disclose information not directly connected with the case does not necessarily show prejudice sufficient to disqualify the juror. *State v. Rempel*, 53 Wn. App. 799, 802-803, 707 P.2d 1058 (1989), *reversed on other grounds*, 114 Wn.2d 77 (1990).⁹ "To invalidate the result of a . . . trial because of a juror's mistaken, though honest, response to a question, is to insist on something closer to perfection than our judicial system can be expected to give." *Rempel, supra* (quoting *McDonough Power Equip. Inc., v. Greenwood*, 464 U.S.

⁹ *Rempel* was later reversed by the Supreme Court for insufficient evidence in an opinion that did not address the juror issue.

548, 555, 104 S.Ct. 845, 849, 78 L.Ed.2d 663 (1984)). Only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial. *Id.*

In *Rempel*, the names of the potential witnesses were read to the venire and Juror No. 7 indicated she did not know any of the witnesses. *Id.* at 803. When the victim walked into court to testify for the State, Juror No. 7 realized that she knew the victim and she so advised the court. *Id.* The trial court questioned Juror No. 7 outside the presence of the jury. *Id.* Juror No. 7 responded that while she previously worked with the victim, she had no opinion about the victim's credibility and she could still be fair and impartial. *Id.* at 801. The trial court was satisfied that Juror No. 7 could continue and denied the defendant's motion for a mistrial, a ruling upheld on appeal. *Id.*

Here, Defendant argues that "Juror Eight failed to disclose material information which would have been the basis for a challenge for cause." Defendant's argument has no basis in the record. Juror No. 8 was never asked during voir dire if she knew anybody in the Grant County Prosecutor's Office. Rather, Juror No. 8 was asked by the court, "Are any of you acquainted with the assistant attorney general . . ." RP 70. Juror No. 8 answered truthfully (by not answering) that she did not know the assistant attorney general. RP 70. The court asked if any jurors knew

“Grant County . . . deputy prosecuting attorney Teddy Chow (RP 72) or “Grant County Prosecutor Angus Lee” (RP 73). Juror No. 8 truthfully answered that she did not know either. RP 72-73. Juror No. 8 was *never* asked if she knew anyone who worked for the Grant County Prosecutor’s Office. Juror No. 8 gave truthful answers throughout the voir dire and Defendant cannot cite to any instance where she did not.

Even if Juror No. 8 had been asked whether she knew anyone who worked for the Grant County Prosecutor’s Office, she would have answered “no” because Juror No. 8 had no idea that a former acquaintance, Thonney, worked for the local county prosecutor’s office:

The Court: I just have a question about whether you are acquainted with any of the prosecuting attorneys who work in this county.

Juror No. 8: I know a kid named Brad Thonney. I didn’t know that he worked here.

The Court: Okay. So when did you learn that he worked here?

Juror No. 8: Well, I didn’t. I’m just assuming that’s who you’re talking about, because I saw him on the way out the other day. . . . And he was like, hey, don’t talk to me. And I’m like, what did I do? And he said, you can’t talk to me. And I’m like, okay. Well I’ll see you in a few days then or something. And I left. . . . So I did not know that he worked for this –

The Court: *And you still don’t know that, do you?*

Juror No. 8: *No, not really. I don't know who he works for.*

RP at 313-14 (emphasis added). Juror No. 8 was aware that the court had some sort of concern that she knew Thonney, but she was completely unaware that Thonney was employed by the county prosecutor's office. Defendant's claim that the court would have struck Juror No. 8 for cause during general voir dire is untenable because Juror No. 8 did not know she knew someone who worked for the prosecutor's office. Accordingly, Juror No. 8 did not "[fail] to disclose material information which would have been the basis for a challenge for cause."

Defendant nevertheless argues that because Juror No. 8 knew¹⁰ Mr. Thonney, she was necessarily biased in favor of the State. Defendant's leap of logic does not follow because the record below is that Juror No. 8 did not even know that Thonney worked with Chow and Lee. The most that can be said of the record is that Juror No. 8 was acquainted with someone who, unbeknownst to Juror No. 8, was a co-worker of two witnesses. Defendant failed to prove by a preponderance of the evidence that Juror No. 8 could not try the case fairly and impartially. The trial

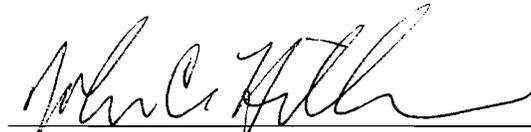
¹⁰ Defendant asserts in his brief that Thonney was a "close friend" of Juror No. 8; that Juror No. 8 "conceded . . . she gave him a warm embrace"; and that an "intimate relationship" existed between the two. Brief of Appellant at pp 13-14, 47. Juror No. 8 said none of these things and none of those assertions are supported by the trial record. RP 313-14.

court was well within its discretion to deny the motion to strike Juror No. 8 for cause.

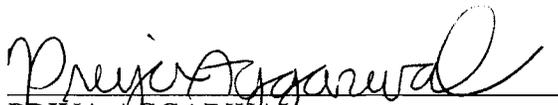
IV. CONCLUSION

Defendant received a fair trial. Defendant's conviction for one count of witness tampering should be affirmed. The State concedes that pursuant to *State v. Hall*, the court must vacate one count and remand for resentencing.

RESPECTFULLY SUBMITTED this 14TH day of October, 2010.



JOHN HILLMAN, WSBA #25071
Assistant Attorney General



PRIYA AGGARWAL
Rule 9 Law Clerk
WSBA ID # 9117607

Appendix A

1 County Prosecutor's Office made a "deal" with Lona Richard. Mr. Browne
2 theorized that the "deal" was for Ms. Richard to accuse Mr. Stansfield of
3 wrongdoing in exchange for favorable treatment in her Grant County district court
4 cases.

- 5 3. Sometime prior to October 16, 2008, I asked the three prosecutors who
6 primarily handled Richards' district court cases whether the Grant County
7 Prosecutor's Office ever gave Richard any consideration in exchange for
8 information implicating Mark Stansfield in a crime. These three prosecutors were
9 Angus Lee, Teddy Chow, and Jessica Cafferty. All three flatly denied that such
10 had ever occurred, and Mr. Lee and Mr. Chow testified to the same at trial.

11 I also asked Richards' criminal defense attorney, Brett Hill, whether he had
12 ever negotiated with the prosecutor for a benefit for Ms. Richard in exchange for
13 anything related to Mark Stansfield. Mr. Hill also said "no." Mr. Hill was called
14 as a witness at trial and, to my recollection, testified to the same. Finally, I asked
15 Lona Richard if she had ever received such a benefit. She also said "no" and
16 testified to the same.

- 17 4. On October 16, 2008 (seven months prior to the trial in this case) I sent Mr.
18 Browne the letter attached as **Appendix A** to this declaration. I told Mr. Browne
19 that I had inquired of the Grant County Prosecutors Office if there ever existed a
20 "deal" with Lona Richard that was related to Mark Stansfield. The answer was
21 "no."

- 22 5. Well in advance of trial, I personally reviewed the Grant County Prosecutor's
23 Office's district court files related to Richard. I copied any pages that I thought
24 might possibly have some sort of impeachment value for the defense in this case.
25 In addition to reviewing the prosecutor's office's files, I printed out the entirety of
26 the district court docket entries for Richards' Grant County District Court cases

1 and provided those to defense counsel, even though defense counsel said he had
2 already reviewed them. Some of the notes from the prosecutor's files and the
3 DISCIS docket entries are included as Appendices A-F to the defendant's
4 "Addendum to Motion for New Trial." I do not believe I was required to copy and
5 send the docket entries, but I did so nonetheless in the event defense counsel might
6 find some minimal impeachment value in them as they showed that Lona Richard
7 had court hearings where Mr. Lee and Mr. Chow were listed as having been
8 present during the relevant December 2006-December 2007 time period. I sent
9 this batch of discovery to Mr. Browne on February 2, 2009, 5+ months prior to
10 trial, accompanied by a letter (**Appendix B**) pointing out the parts of this discovery
11 that I thought he might find interesting, something I do not believe I was required
12 to do.

13 6. The original discovery in this case (police reports, interviews, phone records)
14 was relatively small (approximately 100 pages). I sent Mr. Browne approximately
15 330 pages of additional discovery that consisted of discovery/pleadings from the
16 district court *Hinshaw* case, notes from the prosecutors' files for Richard's cases,
17 district court pleadings from Richard's district court cases, and district court
18 docket entries from Richard's district court cases. Most of this discovery had, in
19 my opinion, little to no relevance to the present case, but knowing Mr. Browne's
20 theory of the case, I gathered this information and sent it to him in the event he
21 thought he could use it to impeach my witnesses. In my 14 years of prosecuting
22 cases for the State, I do not ever recall collecting so much discovery of such
23 minimal value solely to provide it to the defense in case they thought it meant
24 something.

25 7. On May 4, 2009, Mr. Browne filed a motion to compel the State to disclose
26 any discovery related to "deals" that the Grant County Prosecutor's Office made

1 with Lona Richard with respect to Mark Stansfield. I had already advised
2 Mr. Browne back in October 2008 that there were no deals. On May 5, 2009, I
3 advised Mr. Browne by letter (**Appendix C**) that the answer was still “no” and
4 such discovery did not exist.

5 8. Mr. Lee and Mr. Chow both testified at trial and were cross-examined by
6 Mr. Browne. Had they been asked on cross-examination, each would have
7 testified that he did not recall seeing Ms. Richard during the one-year period in
8 question (December '06-December '07) and that he did not have any conversation
9 with her. Both would (and in some respects did) testify that (a) they generally do
10 not talk to represented defendants at district court hearings, (b) the daily district
11 court dockets are horrendous, sometimes in excess of 150 cases, and they do not
12 even see many of the defendants who are there, (c) they generally deal only with
13 defense counsel, (d) the district court docket entries are not always accurate with
14 respect to the prosecutor who is listed as being present for a particular hearing, and
15 (e) district court cases are often and routinely charged months after the alleged
16 crime was committed. Both would have (and may have) testified that they never
17 talked to Lona Richard during the time period in question even though they may
18 have been in a courtroom at the same time she was. I elicited some of this
19 information from Mr. Lee and Mr. Chow on direct examination in anticipation of
20 Mr. Browne attempting to impeach them with docket entries showing that each had
21 been in court with Lona Richard during the one-year time period in question.

22 9. When Mr. Browne cross-examined Mr. Lee and Mr. Chow at trial, he declined
23 to ask them these questions or attempt to impeach them with the documents that I
24 had provided through discovery. Instead, after both the State and the defense had
25 rested and the taking of evidence was concluded, Mr. Browne marked these
26 documents as exhibits for a motion to dismiss. Mr. Browne brought his motion to

1 dismiss unexpectedly when the parties appeared for closing arguments on the
2 morning of May 29, 2009. During this motion, Mr. Browne admitted to the court
3 that his decision not to use the aforementioned discovery to impeach Mr. Lee and
4 Mr. Chow was a tactical/strategic decision on his part. Mr. Browne told the court,
5 in his own words, that he took this course of action because he wanted Mr. Lee and
6 Mr. Chow to "hang themselves" (whatever that means) so he could then bring a
7 motion to dismiss for prosecutorial misconduct after both parties had rested. Only
8 Mr. Browne knows why he chose to employ this tactic. Mr. Browne proceeded to
9 accuse Mr. Lee and Mr. Chow of perjury, and myself of suborning perjury, a claim
10 he re-raises in the present motion.

11 Mr. Browne further made a still-nonsensical argument that the State breached
12 its discovery obligations by failing to provide him with the documents Mr. Browne
13 submitted to the court--documents that Mr. Browne admitted were provided to him
14 by the State months in advance of trial. Finally, Mr. Browne alleged that the State
15 failed to investigate whether Grant County made a "deal" with Lona Richard,
16 despite the several letters that are attached to this declaration which advised
17 Mr. Browne months prior to trial that no such "deal" existed.

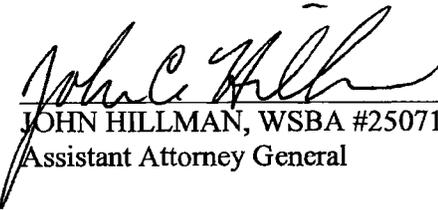
18 10. The court denied the motion to dismiss. Mr. Browne then moved the court to
19 "reopen" the trial even though both parties had rested, all witnesses had been
20 released, the State declined to call rebuttal witnesses, jury instructions were
21 already argued, and the parties were in court that morning to deliver closing
22 arguments.

23 11. I have no knowledge or reason to believe that any witness "perjured" himself
24 or herself during the trial. I am shocked that Mr. Browne would make such
25 allegations against three prosecutors (myself included) who are public servants and
26 officers of the court.

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12. I have not been provided with and have not reviewed any of the trial transcript of this case, which the defense cites throughout its "Addendum to Motion for New Trial." Recitation of the trial testimony herein is from my memory.

DATED this 26th day of August, 2009 in Seattle, Washington.



JOHN HILLMAN, WSBA #25071
Assistant Attorney General

APPENDIX A

LETTER OF OCTOBER 16, 2008



OMG 10/16/08 VR

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

800 Fifth Avenue #2000 • Seattle WA 98104-3188

October 16, 2008

John Henry Browne
821 Second Ave., Suite 2100
Seattle, WA 98104

Re: *State v. Mark Stansfield*
Grant Co. Superior Court #08-1-00484-1

Dear Mr. Browne:

You indicated in our last telephone conversation that you have already interviewed the primary witness in this case, Lona Richard. You related that you hoped to interview the two deputy prosecuting attorneys who are witnesses in this case (Angus Lee and Teddy Chow) when we travel to Ephrata on October 28th for the omnibus hearing. Mr. Chow is available. Mr. Lee, however, is scheduled to be in court for the entirety of the day. They apparently alternate coverage of the district court docket and Mr. Lee is scheduled to cover the docket on the 28th. He is unavailable that date. If you have an alternative date you'd like to suggest, or other witness you desire assistance in contacting, please let me know and I'll be happy to assist as best I can.

During the very brief conversation we had at the arraignment you indicated that Mr. Stansfield wanted a trial and was not interested in a plea. I will extend him a plea offer nonetheless. The State's plea offer is to amend the information to one count of Tampering With a Witness in exchange for Mr. Stansfield's plea of guilty to same. Defendant's standard sentencing range would be 1-3 months jail. The State would agree to the following sentencing recommendation:

- First-Time Offender Waiver
- 0 jail
- 12 months community custody
 - no violations of the criminal laws
 - report as directed by CCO
- standard costs
 - \$500 crime victim penalty assessment
 - \$200 criminal filing fee
 - \$100 biological sample fee



ATTORNEY GENERAL OF WASHINGTON

October 16, 2008

Page 2

You also indicated that you had obtained Lona Richard's criminal history and reviewed the docket entries for various Grant County District Court cases where Ms. Richard is the defendant. You inquired as to whether Ms. Richard received any benefit from the Grant County Prosecuting Attorney's Office in exchange for the statements she has provided to law enforcement concerning Mr. Stansfield. I have been advised by Grant County that she has not.

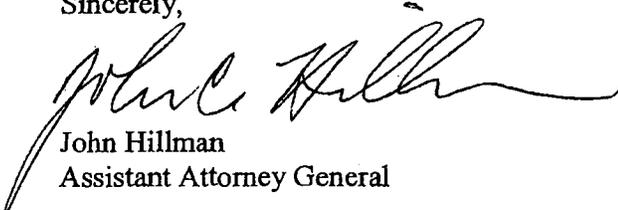
Ms. Richard was granted a deferred prosecution on a DUI in September 2007. The Grant County Prosecutor's Office agreed to recommend the deferred prosecution pursuant to standard practice in their district court. Deputy Prosecutor Lee was present for that hearing, at which Ms. Richard was represented by counsel.

Ms. Richard was charged in Grant County District Court with Bail Jumping in September 2007. In January 2008, the defendant and the State entered into an agreement to continue the case for one year and then dismiss the case if defendant has law-abiding behavior. Ms. Richard was represented by counsel. Deputy Prosecuting Attorney Jessica Caffery was the prosecutor who is listed as having been present when this agreement was entered.

In February 2008, Ms. Richard was charged in Grant County District Court with Unlawful Furnishing of Liquor to a Minor/Attempted Assault 4/Resisting Arrest. That case was charged by DPA Jessica Caffery. The case is still pending trial in Grant County District Court. Ms. Richard is represented by counsel.

If you have any other questions or wish to discuss the case, please feel free to contact me at (206) 389-2026 or johnh5@atg.wa.gov.

Sincerely,



John Hillman
Assistant Attorney General

JCH:vlr

APPENDIX B

LETTER OF FEBRUARY 2, 2009

CMS 2/2/09 VR



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue #2000 • Seattle WA 98104-3188

February 2, 2009

John Henry Browne
821 2nd Ave., Suite 2100
Seattle, WA 98104

Re: State v. Mark Stansfield
Grant County Superior Court #0-8-1-00484-1

Dear Mr. Browne:

Please find enclosed discovery bates stamped 000381-000430. Most of these materials are JIS printouts of the DISCIS criminal history for Lona Richard; as well as docket entries for Ms. Richards' Grant County District Court matters. I believe you have access to and have reviewed most of these materials.

The docket entries included are for the following district court criminal cases where Ms. Richard was named as the defendant:

G080177CC		<u>Charges</u>
Date of Offense:	02/16/07	Criminal Attempt (attempted assault)
Date charged:	02/15/08	Supply Liquor to a Minor
(Criminal Complaint filed by prosecutor)		Resisting Arrest

Disposition: None
Current status: Bench warrant for FTA issued 11/19/08

C00018873		<u>Charges</u>
Date of Offense:	04/03/07	DUI
Date charged:	04/03/07	DWLS 3
(charged by police officer filing citation)		

Disposition: Deferred Prosecution 08/30/2007
Current status: Deferred Prosecution until 2012

ATTORNEY GENERAL OF WASHINGTON

February 2, 2009

Page 2

G070242CC

Charge

Date of Offense: 05/25/07

Bail Jumping (gross misd.)

Date Charged: 09/04/07

Disposition: Continue for one year w/out finding on conditions of probation
01/14/08

Status: DISMISSED 1/15/09 following completion of one year probation

Also included are some documents from the prosecuting attorney's files in these cases. Page 000422 is a copy of the criminal citation filed for the DUI case that resulted in a deferred prosecution. The docket entries show that DPA Angus Lee signed the petition for deferred prosecution that was granted by the court on August 30, 2007.

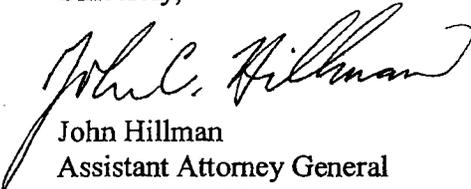
Page 000423 is the criminal complaint for the Bail Jumping case, which was signed by DPA Lee on August 30, 2007, and filed with the court on September 4, 2007.

Page 000425 is a sheet in the prosecutor's file with a post-it note reading, "Spoke w/ Angus—set this out for a while." That is DPA Jessica Cafferty's writing. DPA Cafferty later agreed to the continuance without finding disposition for the bail jumping case.

Page 000428 is another sheet from the prosecutor's file. Apparently, defense attorneys write notes in the prosecutors file in Grant County district court practice. The entry labeled "83" was written by Lona Richard's attorney requesting that the Bail Jumping be dismissed because the defense attorney believed that the FTA had been satisfactorily explained and Mr. Lee had agreed not to charge bail jumping. There is a note to the side from DPA Cafferty indicating, "Angus said he wouldn't do this."

Lastly, I wanted to let you know that I met with Lona Richard on January 21, 2009, to serve her with a subpoena and arrange for her testimony for the then-upcoming January 26th trial date. I have since learned that there is and was an outstanding bench warrant for Ms. Richard due to a failure to appear on her Criminal Attempt district court case back in November 2008. Ms. Richard has been in district court on her other cases since that time and I don't know why her bench warrant wasn't resolved then. In any event, I did not know when I met with her that there was a warrant out. Don't think that has any relevance to the case, but just letting you know.

Sincerely,


John Hillman
Assistant Attorney General
(206) 389-2026

APPENDIX C

LETTER OF MAY 5, 2009



CMS 5/5/09 VR

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

800 Fifth Avenue #2000 • Seattle WA 98104-3188

May 5, 2009

John Henry Browne
2100 Exchange Building
821 Second Avenue
Seattle, WA 98104

Re: *State v. Mark Edward Stansfield*
Grant County Superior Court No. 08-1-00484-1

RESPONSE TO DISCOVERY REQUEST

Dear Mr. Browne:

Please accept this as the State's discovery response to your "Motion to Compel Discovery" dated May 4, 2009.

In your request, you ask the State to produce the following:

- a. All evidence "material to guilt or punishment."
- b. All evidence relevant to the impeachment of potential State witnesses, including any information or documents that may reveal possible biases, prejudices, or ulterior motives of a witness or evidence that tests the witness's perception or memory; and
- c. All evidence and a full and complete statement of any and all promises, inducements, threats, considerations or rewards made by the State to any witness the State intends to call at trial, particularly Lona Richard, to gain his or her cooperation or to induce or encourage his or her cooperation and any deals or arrangements between the State and any witness regarding possible sentencing consequences or dismissal of any pending charges.

In essence, you request the State to disclose to you what is required by the Constitution and CrR 4.7. The State is aware of its discovery obligations, and these materials have already been provided to you.

As has been stated to you before, both by me and the witnesses themselves during your interviews, the Grant County Prosecutor's Office denies that any "deals" were made with



ATTORNEY GENERAL OF WASHINGTON

May 5, 2009

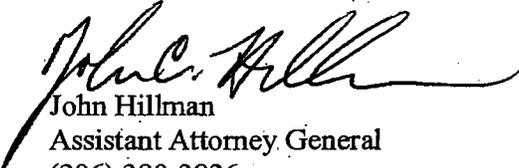
Page 2

Lona Richard in exchange for her cooperation in the present case. Angus Lee, Teddy Chow, and Jennifer Cafferty, the three DPA's who were involved in Ms. Richard's cases, have all denied to me that they ever gave Ms. Richard any consideration in exchange for her cooperation in the present prosecution (or the investigation thereof).

A month or so ago I telephoned attorney Brett Hill following receipt of an e-mail from you that Hill would be a defense witness who would testify that the State did give Ms. Richard a "deal" on her district court case(s) in exchange for cooperation against Mr. Stansfield. Contrary to what you had suggested, Hill told me that he never negotiated anything for Ms. Richard that involved the Stansfield investigation or prosecution. You apparently know something that I do not. In any event, I have no information or documents not already disclosed to you that bear on this issue.

Finally, Ms. Richard herself has denied ever receiving any benefit for making a statement implicating Stansfield or cooperating with the State in its prosecution of Mr. Stansfield.

If you have any questions or concerns or wish to discuss the case further, please don't hesitate to call.



John Hillman
Assistant Attorney General
(206) 389-2026

JCH:vlr

FILED
COURT OF APPEALS
DIVISION II

FILED
2010 OCT 14 PM 2:48

10 OCT 15 PM 12:52

NO. 39825-7

STATE OF WASHINGTON

BY _____ **COURT OF APPEALS, DIVISION II**
DEPUTY **OF THE STATE OF WASHINGTON**

THE STATE OF WASHINGTON,

Respondent,

v.

MARK EDWARD STANSFIELD,

Petitioner.

DECLARATION OF
SERVICE

VICTORIA L. ROBBEN declares as follows:

On Thursday, October 14, 2010, I deposited into the United States

Mail, first-class postage prepaid and addressed as follows:

BRIAN CHASE
209 S. CENTRAL AVENUE
QUINCY, WA 98848

Copies of the following documents:

- 1) BRIEF OF RESPONDENT
- 2) DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 14th day of October, 2010.

Victoria L. Robben
VICTORIA L. ROBBEN