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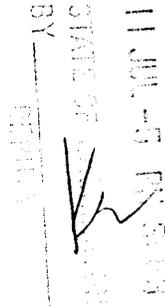
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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JAY KASBAUM, APPELLANT

11 JUL -5 PM 2011  
STATE OF WASHINGTON  
BY 

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Appeal from the Superior Court of Pierce County  
The Honorable Bryan E. Chushcoff

No. 09-1-01572-6

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**CROSS APPEAL AND BRIEF OF RESPONDENT**

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

1. Did the trial court abuse its discretion in refusing to admit irrelevant and inadmissible evidence?

2. Was defendant denied the right to a fair trial where the State did not commit prosecutorial misconduct and defendant cannot show prejudice from any prosecutorial error?

B. ASSIGNMENTS OF ERROR ON CROSS APPEAL.

1. The trial court erred in imposing a DOSA without making a finding on the record that defendant had a chemical dependency that contributed to his offense.

2. The trial court erred in imposing a DOSA when the record at trial and sentencing does not support a finding that defendant had a chemical dependency that contributed to his offense.

C. ISSUES PERTAINING TO ASSIGNMENT OF ERROR ON CROSS-APPEAL:

1. Did the trial court error in granting defendant a DOSA sentence where there was insufficient evidence that defendant had a chemical dependency and no evidence that such dependency contributed to his offenses of bail jumping?

D. STATEMENT OF THE CASE.

1. Procedure

On March 23, 2009, the State charged defendant, Jay Kasbaum, with one count of unlawful possession of a controlled substance with intent to deliver, two counts of unlawful possession of a controlled substance and one count of unlawful possession of a controlled substance-forty grams or less of marihuana. CP 1-2. On December 2, 2009, the State filed an amended information dismissing the four original charges and adding two counts of bail jumping. CP 31-32, 1RP 4-5. One of the bail jumping counts had an offense date of June 24, 2009, and the other had an offense date of September 21, 2009. CP 31-32. The State dismissed the four drug charges pursuant to the decision in *State v. Gant*, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009). 1RP 4-5.

On December 2, 2009, jury trial commenced before The Honorable Frank Cuthbertson. 2RP 4. On the morning of the second day of trial, the State brought to the attention of the court that defense counsel had provided him with discovery the day before. 2RP 47. Defense counsel had provided three documents from the Franciscan Health System that the State argued were not business records, not able to be authenticated, not certified copies, did not deal with a medical condition and did not relate to a specific time of day. 2RP 248-49. The State objected to the documents, especially since defendant had not filed a witness list so there was no one

contemplated to authenticate the documents. 2RP 47-48. Defense counsel argued that his client could lay the foundation for the documents as business records. 2RP 50. The court ruled that the documents did not have a sufficient indicia of reliability and did not concern any medical diagnosis or treatment and so were not admissible. 2RP 51. The court did allow defendant to testify that he had gone to the hospital and he could also testify about any treatment or diagnosis he received. 2RP 51.

The jury found defendant guilty of both counts. 2RP 142-43, CP 51-52.

Sentencing was held on January 14, 2010. 3RP 2. Defendant was determined to have an offender score of 10. 3RP 3, CP 66-79. The State recommended a sentence of 60 months and objected to defendant's request for a DOSA sentence. 3RP 7-9. The trial court granted defendant's request for a DOSA sentence finding that the underlying dismissed offenses were drug charges. 3RP 21-22.

Defendant filed a timely notice of appeal. CP 80. The State filed a timely notice of cross-appeal. CP 81-82.

## 2. Facts

Defendant, Jay Kasbaum, had been ordered by the court to appear for an omnibus hearing on June 24, 2009. 2RP 21. Defendant had been given a copy of the scheduling order as well as a copy of the conditions of release. 2RP 17-18, 19-21. The scheduling order was issued on March 23, 2009. RP 29, Exhibit 3. The conditions of release contained a

language that indicated that failure to appear would result in the issuance of a bench warrant and that it was an independent crime punishable by five years imprisonment or \$10,000 or both. 2RP 21, Exhibit 2. The deputy prosecuting attorney assigned to the courtroom on June 24, 2009 called roll four times. 2RP 10, 24, Exhibit 4. Defendant was not present and a bench warrant issued. 2RP 26, Exhibits 5 & 6. Defendant set up a warrant quash, and the warrant was quashed on July 7, 2009. 2RP 29-30, Exhibits 16 & 7. New conditions of release and a new scheduling order were completed at that time. 2RP 28, Exhibits 8 & 9. The court noted on defendant's conditions of release that if he failed to appear again, bail would increase to \$20,000. 2RP 76, Exhibit 8.

Defendant was ordered by the court to appear for trial on September 21, 2009. 2RP 64-65. Three separate scheduling orders had been issued in defendant's case informing him of that date. 2RP 64-65, 66, 68, 70, Exhibits 9, 10, 11. Anytime a scheduling order is issued, defendant is given a copy. 2RP 63-64. The deputy prosecuting attorney assigned to the courtroom on September 21, 2009, called role twice: at 9:45 and at 10:50. 2RP 60, 72, Exhibit 12. Defendant was not present and a bench warrant issued. 2RP 74, Exhibits 13 & 14. Defendant quashed his warrant on September 29, 2009, and the court increased defendant's bail amount to \$20,000. 2RP 75, 77, Exhibit 15.

Defendant testified that he did not appear for court on June 24, 2009, because a circuit breaker popped and his alarm clock didn't go off.

2RP 97. Defendant could not get to court that day and signed a scheduling order for a warrant quash on June 26. 2RP 99, 101. Defendant testified that he did not appear for court on September 21, because he broke his knuckle and went to a hospital in Lakewood for treatment. 2RP 102-03. Defendant said he got to the hospital at 8am and that he did not get any treatment for his hand because he left. 2RP 104, 112. Defendant signed a scheduling order for a warrant quash on the same day he missed court. 2RP 105, Exhibit 17.

E. ARGUMENT.

1. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO ADMIT IRRELEVANT AND INADMISSIBLE EVIDENCE.

The admission or exclusion of relevant evidence is within the discretion of the trial court. *State v. Swan*, 114 Wn.2d 613, 658, 790 P.2d 610 (1990); *State v. Rehak*, 67 Wn. App. 157, 162, 834 P.2d 651, review denied, 120 Wn.2d 1022 (1992). The trial court's decision will not be reversed on appeal absent an abuse of discretion, which exists only when no reasonable person would have taken the position adopted by the trial court. *Rehak*, 67 Wn. App. at 162.

Under ER 401, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the

action more probable or less probable than it would be without the evidence.” ER 401. Such evidence is admissible unless, under ER 403, the evidence is prejudicial so as to substantially outweigh its probative value, confuse the issues, mislead the jury, or cause any undue delay, waste of time, or needless presentation of cumulative evidence.

A defendant has a constitutional right to present a defense consisting of relevant evidence that is not otherwise inadmissible. *Rehak*, 67 Wn. App. at 162; *In re Twining*, 77 Wn. App. 882, 893, 894 P.2d 1331, *review denied*, 127 Wn.2d 1018 (1995). The right to present evidence is not absolute, however, and must yield to a state’s legitimate interest in excluding inherently unreliable testimony. *Chambers v. Mississippi*, 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973); *State v. Baird*, 83 Wn. App. 477, 482, 922 P.2d 157 (1996), *review denied*, 131 Wn.2d 1012 (1997).

Limitations on the right to introduce evidence are not unconstitutional unless they affect fundamental principles of justice. *Montana v. Engelhoff*, 518 U.S. 37, 116 S. Ct. 2013, 2017, 135 L. Ed. 2d 361 (1996) (stating that the “accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence” (quoting *Taylor v. Illinois*, 484 U.S. 400, 410, 108 S. Ct. 646, 653, 98 L. Ed. 2d 798 (1988))).

In the instant case, defendant sought to admit three documents that he claimed were evidence of medical treatment on the date of the second count of bail jumping. 2RP 47-51, Exhibits 19, 20, 21. The three documents were not disclosed to defense counsel and the prosecutor until the first day of trial. 2RP 47, 52. The three documents are all boilerplate forms. Exhibits 19, 20, 21. The documents were not certified and contained no information at all about any medical condition. They have no personal information about defendant. 2RP 48, 49. Exhibits 19, 20, 21. The documents also have nothing showing a time of day that defendant was supposedly at the hospital. 2RP48, Exhibits 19, 20, 21. None of the documents indicate any thing about treatment. 2RP 49, 51, Exhibits 19, 20, 21. None of the documents have the patient information section filled in. 2RP 51, Exhibits 19, 20, 21. Two of the documents merely list all of the hospitals in the Franciscan Health System, while one document only lists St. Claire's Hospital in Lakewood. Exhibits 19, 20, 21.

The trial court did not abuse its discretion in denying the admission of the documents. Under ER 803(a)(4), medical records must be reasonably pertinent to diagnosis or treatment. The trial court found that the documents did not say anything about diagnosis or treatment. 2RP 51. Further, ER 803(a)(6), (7) and RCW 5.45.020 concern the business records exception. RCW 5.45.020 provides:

A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its

preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.”

The business records exception does not allow all records in but specifically concerns records that are relevant. The records that defendant sought to admit could not be shown to be created in the regular course of business, could not be shown to contain a diagnosis, and could not be shown to be relevant or connected to any specific time on the date of count II. As the trial court noted, the documents did not have a sufficient indicia of reliability. 2RP 51. The trial court ruled that the documents were not admissible. Defendant is not entitled to the benefit of incompetent evidence. Because the court considered the law and arguments and made a reasonable ruling, the court cannot be said to have abused its discretion. Further, since defendant was still able to testify about his condition, defendant cannot show he was denied the right to present his defense.

While defense counsel requested time to authenticate the documents, it's unlikely he would have been able to find anyone to authenticate them and even if he had, the contents of the documents still would not change. The documents themselves still did not have any information that was pertinent to the trial and the defense on count II. The documents were silent on diagnosis or treatment, on the time of day defendant was supposedly at the hospital, and even as to any personal

information about defendant. There is nothing in the documents that supported defendant's claims that he sought treatment. There is nothing in the documents that supports defendant's unforeseen circumstance defense. Further, as the evidence at trial showed, defendant did not actually receive any treatment for his supposedly broken knuckle. The trial court did not err in excluding the unreliable and irrelevant documents.

Despite the fact that the court ruled the documents inadmissible, the trial court did not limit defendant's defense. The trial court ruled that the defendant could still testify about his trip to the hospital and what diagnosis or treatment he received. 2RP 51. During trial, defendant testified that he did not receive any treatment, and in fact has never received treatment for his supposedly broken hand. 2RP 104, 112. Despite this, the court still allowed, over the State's objection, the jury instruction about a medical defense. 2RP 124-125. Further, this evidence only applied to count II, so even if this court found that defendant was limited in his defense; it would only be applicable to the second count and would not have affected the jury's verdict on count I. Defendant was still able to argue his theory of the case, and even have the jury instructed on the unforeseen circumstances defense. The court did not deny defendant from presenting his defense.

2. DEFENDANT WAS NOT DENIED THE RIGHT TO A FAIR TRIAL AS THE STATEMENTS MADE BY THE PROSECUTOR DID NOT CONSTITUTE PROSECUTORIAL MISCONDUCT.

“Trial court rulings based on allegations of prosecutorial misconduct are reviewed under an abuse of discretion standard.” *State v. Stenson*, 132 Wn.2d 668, 718, 940 P.2d 1239 (1997). To prove that a prosecutor’s actions constitute misconduct, the defendant must show that the prosecutor did not act in good faith and the prosecutor’s actions were improper. *State v. Manthie*, 39 Wn. App. 815, 820, 696 P.2d 33 (1985) (citing *State v. Weekly*, 41 Wn.2d 727, 252 P.2d 246 (1952)). The defendant has the burden of establishing that the alleged misconduct is both improper and prejudicial. *Stenson*, 132 Wn.2d at 718. Even if the defendant proves that the conduct of the prosecutor was improper, the misconduct does not constitute prejudice unless the appellate court determines there is a substantial likelihood the misconduct affected the jury’s verdict. *Id.* at 718-19.

If a curative instruction could have cured the error and the defense failed to request one, then reversal is not required. *State v. Binkin*, 79 Wn. App. 284, 293-294, 902 P.2d 673 (1995), *overruled on other grounds by*, *State v. Kilgore*, 147 Wn.2d 288, 53 P.3d 974 (2002). Failure by the defendant to object to an improper remark constitutes a waiver of that

error unless the remark is deemed so “flagrant and ill-intentioned that it evinces an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury.” *Stenson*, 132 Wn.2d at 719, citing *State v. Gentry*, 125 Wn.2d 570, 593-594, 888 P.2d 1105 (1995).

When reviewing an argument that has been challenged as improper, the court should review the context of the whole argument, the issues in the case, the evidence addressed in the argument and the instructions given to the jury. *State v. Russell*, 125 Wn.2d 24, 85-6, 882 P.2d 747 (1994) citing *State v. Graham*, 59 Wn. App. 418, 428, 798 P.2d 314 (1990), *State v. Green*, 46 Wn. App. 92, 96, 730 P.2d 1350 (1986). “Remarks of the prosecutor, even if they are improper, are not grounds for reversal if they were invited or provoked by defense counsel and are in reply to his or her acts and statements, unless the remarks are not a pertinent reply or are so prejudicial that a curative instruction would be ineffective.” *Russell*, 125 Wn.2d at 86, citing *State v. Dennison*, 72 Wn.2d 842, 849, 435 P.2d 526 (1967).

Defendant claims the prosecutor committed misconduct by faulting defendant for failing to present evidence that the State itself successfully excluded. Defendant cites to an instance during cross-examination, an instance during the State’s initial closing and an instance during the State’s rebuttal. However, neither the questions asked by the State nor the remarks in closing referred to the excluded documents. Further, since none of the questions or statements that defendant takes issue with were

objected to in the trial court, defendant must show that they were flagrant and ill-intentioned. Defendant cannot meet this burden.

First, defendant claims the prosecutor questioned defendant about the excluded evidence during cross-examination. A prosecutor's allegedly improper questioning is reviewed in "the context of the total argument, the issues in the case, the evidence addressed in the argument, and the instructions given to the jury." *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997). A prosecutor enjoys reasonable latitude in arguing inferences from the evidence, including inferences as to witness credibility. *State v. Gregory*, 158 Wn.2d 759, 810, 147 P.3d 1201 (2006). An error only arises if the prosecutor clearly expresses a personal opinion as to the credibility of a witness instead of arguing an inference from the evidence. *State v. Warren*, 165 Wn.2d 17, 30, 195 P.3d 940 (2008) *cert. denied*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 2007, 173 L. Ed. 2d 1102 (2009).

The exchange that defendant claims was misconduct is set out below:

State: And you also indicated that you went to seek medical treatment on that day, correct?

Defendant: Correct.

State: Okay. Did you see a nurse or a doctor?

Defendant: I walked in and --

State: A nurse or a doctor.

Defendant: It was -- I believe it was a nurse at the front desk.

State: All right. Is that person here today?

Defendant: No, because you objected it.

State: Is that person, yes or no, here today?

Defendant: No.

2RP 111. The State did not ask any questions about the excluded documents. There had been no motion to exclude any doctor or nurse from testifying. In fact, defense counsel had never sought to have a doctor or nurse testify. In addition, as defendant had testified that he never received treatment for his hand, no doctor or nurse would be able to testify that they treated defendant. The State's questions in cross-examination were in no way related to the excluded documents. Further, the questions were exploring areas that defendant had testified to during direct. Defendant had already testified that he had not received adequate medical treatment for his hand. 2RP 102. Defendant then testified that he sought treatment at a hospital in Lakewood. 2RP 103. Defendant then testified that he ended up having to leave the hospital. 2RP 106. Whether or not defendant had actually seen a doctor on September 21, 2009, or received treatment was not clear from defendant's testimony on direct. The State was entitled to explore defendant's story and ask questions about his testimony on direct. Asking if he had actually seen a doctor or nurse was necessary. As defendant did put on a defense, the State is also allowed to point out the holes in defendant's story. The fact that defendant claims he had seen a nurse but did not produce her for court is relevant to the credibility of defendant's story. The State did not express any personal opinions; asked questions related to defendant's direct; and did not ask any questions about the excluded documents. The State's questions were

not improper, were not flagrant and ill-intentioned and did not constitute misconduct.

Defendant also takes issue with the State's remarks in initial closing. The State quotes jury instruction #10 which states in pertinent part that an uncontrollable circumstance is "A medical condition that requires hospitalization or treatment." CP 35-50, Instruction #10, 2RP 131. The instruction also tells the jury that defendant has to prove the defense by a preponderance of the evidence. CP 35-50, Instruction #10. The State argued this by saying, "So he has to prove, the defense does, they have to give you evidence that shows the defendant needed to be hospitalized or he needed to receive treatment. Where's the evidence?" 2RP 131-32. There is nothing wrong with this argument. The State quotes the jury instruction and points out that defendant had failed to meet his burden. There is no error.

Further, the State went on to argue that defendant did not present any evidence of a medical condition to the court on the day of his warrant quash and he did not present any evidence of a medical condition during the trial. As defendant raised this as a defense, the State is entitled to point out the holes in defendant's theory.

He says that he was seen by a nurse. Okay. Where's that person? Not here. He says that he broke his hand. All right. Didn't hear anything qualifying him as a medical expert that allows him to make that diagnosis. We saw no x-rays. We saw no medical records.

2RP 132-33. The excluded documents were not medical records, contained no diagnosis, contained no evidence of x-rays and contained no names of any nurses. The State was not referring to the excluded documents by pointing out the complete lack of evidence of any medical condition for which defendant needed treatment. The State goes on to explain:

The defendant then tells you that even though he went to a hospital, he left immediately, but apparently still couldn't get here on time, and because he left immediately, he received no treatment. Very clearly, in order to be eligible for this defense, you have to be hospitalized or you have to receive treatment. By his own admissions when he took the stand, he told you that neither one of them were true, that he didn't receive any treatment, and that he wasn't hospitalized. So this defense on its face is not valid. Defense has no proof showing that he needed treatment, that he received treatment, that he was hospitalized.

2RP 133. The State's argument is a correct recitation of the testimony in this case as well as the requirements of the defense that defendant had raised. In rebuttal closing, the State again points out the lack of evidence of any medical condition, and points out that defendant was even using his supposedly broken hand while on the stand. 2RP 139. The documents that defendant sought to introduce were not medical records and provided no record of any treatment or diagnosis. The State's argument was not improper and was not related to the excluded documents. The State's

argument is not improper, not flagrant and ill-intentioned and not misconduct. Defendant cannot meet his burden of showing prosecutorial misconduct.

3. THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING A DOSA SENTENCE WHERE THERE WAS INSUFFICIENT EVIDENCE THAT DEFENDANT HAD A CHEMICAL DEPENDENCY AND NO EVIDENCE THAT A DEPENDENCY CONTRIBUTED TO THE BAIL JUMPING OFFENSES BEFORE THE COURT.

The State is able to appeal a trial court's determination of a defendant's eligibility for a drug offender sentencing alternative or DOSA. *State v. Williams*, 149 Wn.2d 143, 144, 65 P.3d 1214 (2003). "It is well established that appellate review is still available for the correction of legal errors or abuses of discretion in the determination of what sentence applies." *Id.* at 147, *see also State v. Gronnert*, 122 Wn. App. 214, 93 P.3d 200 (2004).

RCW 9.94A.607, entitled Chemical Dependency states:

- 1) Where the court finds that the offender has a chemical dependency that has **contributed to his or her offense**, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, including suspended sentences.

(emphasis added). The Drug Offender Sentencing Alternative (DOSA) is a type of sentence contemplated by section 2 of RCW 9.94A.607. A DOSA sentence includes treatment, and a portion of the sentence is served on community custody instead of in total confinement. RCW 9.94A.660, RCW 9.94A.662.

In the instant case, defendant was convicted of two counts of bail jumping. While defendant was initially arraigned on one count of unlawful possession with intent to deliver and three counts of unlawful possession of a controlled substance, those charges were dismissed prior to trial. CP 31-32, 1RP 4-5. At trial, the only evidence adduced related to the two bail jumping charges. There was no evidence at trial about drugs of any kind and no evidence was adduced that defendant used drugs or that they in anyway contributed to the crime. Defendant's defense for the first count of bail jumping was that he overslept because there was a power surge that knocked out his alarm clock. 2RP 97. Defendant's defense for the second count of bail jump was that he had broken his hand and had to go to the hospital. 2RP 102-04. There was absolutely no evidence that drug use or a chemical dependency played in any part in the crimes of bail jumping.

Despite this lack of evidence, the trial court sentenced defendant to a DOSA sentence over the State's objection. 3RP 21-22. The State pointed out that there was no evidence that a chemical dependency contributed to the crimes before the court. 3RP 8. The State also pointed out that a previous evaluation was inconclusive on whether or not defendant had a chemical dependency problem. 3RP 9. In addition, the representative from DOC indicated that the two page form that was provided to the court is just answers provided by the defendant and that there is nothing from a chemical dependency provider. 3RP 12. She herself believed defendant had a chemical depending history because defendant had self-admitted issues in the past but there was no evaluation from any treatment provider submitted to the court. 3RP 12. The trial court does not ever make a finding on the record that the defendant had a chemical dependency problem or that it contributed to the crimes. The trial court states:

I think that there is — in this case, the underlying offenses are all four drug offenses, and while bail jumping isn't a drug offense, the underlying offenses that bring us here today involve substance abuse issues, and I don't know why you didn't choose to avail yourself or take advantage of treatment options that you may have had earlier, but my understanding from Ms. Saxon is back in September '08, you did get one evaluation, which was inconclusive about whether treatment was recommended or not and whether you were chemically dependent or not. The more recent evaluation done on January 7th of this year indicates that

there is some chemical dependency. So I believe that based on the purposes of the Sentencing Reform Act and that what is appropriate in this case for the Court to impose is what's called a DOSA sentence, and I'm going to impose a DOSA sentence in this case and give you an opportunity to deal with this drug issue, because with your offender score, I think you now understand that if you do anything, including obviously being late to court, you're looking at five years in prison.

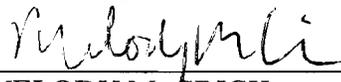
3RP 21-22. The only place any finding appears that defendant has a chemical dependency problem is on page 1 of the Judgment and Sentence, and this finding is not supported by any evidence in the record. CP 66-79. The trial court abused its discretion in ordering a sentencing alternative where there was no evidence in the record before the court that defendant had a chemical dependency problem and absolutely no evidence that any such problem contributed to his offense. Further, the supposed evaluation that showed that defendant was chemically dependant consisted of answers defendant himself gave to a DOC representative. There was no evidence admitted from any treatment provider who conducted an evaluation. The trial court did not have the proper evidence to make a finding that a chemical dependency contributed to the crimes before the court and abused its discretion in ordering a DOSA sentence. This Court should remand for resentencing.

F. CONCLUSION.

The State respectfully requests this Court affirm defendant's convictions. The State also requests that this Court remand the case for resentencing as the DOSA sentence in this case was not supported by the record.

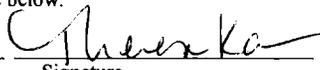
DATED: July 5, 2011.

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney

  
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MELODY M. CRICK  
Deputy Prosecuting Attorney  
WSB # 35453

Certificate of Service:

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

7-5-11   
Date Signature

