

NO. 48827-2-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JESSE L. WILKINS,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court denied the defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, when it allowed an expert witness who performed a forensic examination on the complaining witness to repeat the allegations of abuse the complaining witness made to her.

2. This court should not impose appellate costs on appeal.

Issues Pertaining to Assignment of Error

1. Does a trial court deny a defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, if it allows an expert witness who performed a forensic examination on the complaining witness to repeat the allegations of abuse the complaining witness made to her?

2. Should an appellate court impose costs on appeal if an indigent client has no present or future ability to pay those costs?

STATEMENT OF THE CASE

Factual History

On July 1, 2014, Charity Matthews was living at the Peppertree Motel off Exit 81 in Lewis County with her 12-year-old daughter CW, her 5-year-old daughter AW, her son MW, and her 16-year-old son Jesse Wilkins, the defendant in this case. RP 10-11, 32. Just before noon on that day Ms Matthews left to go to a class at the local community college. RP 33. At the time MW was at a friend's house and the defendant was also gone. RP 13-15, 25-26. A little over two hours later Ms Matthews' daughter CW called and asked that Ms Matthews return home immediately. RP 33. In fact, she was on the way and arrived at their motel room in a few minutes. *Id.*

When Ms Matthews returned and entered the room she saw the defendant sitting playing video games. RP 33-34. As she walked in CW ran out to her crying and claimed that the defendant had "raped" her. *Id.* The defendant immediately responded by saying "I swear I didn't do that. RP 35-36. At this point Ms Matthews took CW into the bathroom to speak with her. RP 35-36. Once in the bathroom, CW said that sometime after Ms Matthews left the defendant returned home and began playing video games. RP 15-16. CW then went into bathroom to wash dishes in the bathtub as they did not have a kitchen and the bathroom sink was not big enough. *Id.*

CW went on with her story to her mother claiming that while she

knelt in front of the tub the defendant entered the bathroom, pulled down her pants and underwear, pushed her on her stomach onto the floor and tried to anally rape her. RP 15-18. When she resisted the defendant wrapped his arms around her neck and strangled her. *Id.* The defendant then flipped her over, pinned her on her back, and tried to vaginally rape her, all the time with CW yelling at him to stop. *Id.* According to CW the defendant then stopped and went back into the main room to resume his video games. *Id.*

Once Ms Matthews heard this story she took CW and her younger sister to a local hospital so CW could be examined. RP 36-37. During that examination hospital personal called the police, who came and interviewed Ms Matthews and her daughter. *Id.* They then took Ms Matthews and CW to the police station so CW could give a video-taped statement. *Id.* At that point they took Ms Matthews and CW to a hospital in Olympia to have a “rape kit” done. *Id.* Finally, the police took them to “Children’s Place” where a sexual assault examination nurse by the name of Lisa Curt examined CW for the purpose of preserving evidence. *Id.* As Ms Curt later explained, she did not perform a “medical” examination of CW. RP 45. Rather, as she put it, “we are separate from the medical part of things. *Id.* During that examination Ms Curt found some redness to the defendant’s vagina and labia and well as small area of pinpoint petechia on CW’s throat that “could be” consistent with a claim of strangulation and attempted intercourse. RP 45-47.

Procedural History

By information originally filed July 3, 2014, and then amended a week later, the Lewis County Prosecutor charged the defendant Jesse L. Wilkins in Lewis County Juvenile Court with one count of attempted second degree rape. CP 1-2, 3-4. This case later came on for a bench trial on October 8, 2014, with the state calling CW, Charity Matthews and Nurse Lisa Curt as its sole witnesses. RP 9, 32, 42. They testified to the facts contained in the preceding factual history. *See Factual History, supra*. In addition, during Lisa Curt's testimony, the state asked her to repeat what CW told her the defendant had done. RP 47. The defense objected. *Id.* This exchange went as follows:

Q. And when you were doing an exam based upon a sexual assault, why were you looking at her neck?

A. Because she made claims that –

MR. BLAIR: I'm going to object to that.

THE COURT: Well, I'll allow it for the purpose which is intended which is why she was looking there.

MR. NELSON: Thank you, Your Honor.

THE COURT: Go ahead.

A. She had made claims that the person that assaulted her had wrapped his arms around her neck, trying to choke her.

RP 47.

Following these three witnesses the state rested its case. RP 50. The defense then rested without calling any witnesses. *Id.* After argument by counsel, the court found the defendant guilty of attempted second degree rape. RP 50-58, 58-60.

The court later imposed a manifest injustice sentence upon the defendant of 52 weeks in custody upon the following three findings: (1) abuse of position of trust, (2) lack of acceptance of responsibility, and (3) protection of the community. CP 19. On September 9, 2014, the defendant filed timely notice of appeal. CP 34-35.¹ The court thereafter entered an Order of Indigency finding him indigent and unable to pay the costs on appeal. CP 34-35.

¹Because of an apparent error in the Lewis County Prosecutor's office, the notice of appeal in this case was not transmitted to this court until March 16, 2016, well after the defendant finished his sentence. *See* Appellate Clerk's Notice of Reception of Case. As a result, Appellant accepts that the issues upon the manifest injustice sentence are moot. As a result, Appellant will not make any arguments concerning that sentence, although he believes the court erred when it imposed a sentence in excess of the standard range.

ARGUMENT

THE TRIAL COURT DENIED THE DEFENDANT A FAIR TRIAL WHEN IT ADMITTED SUBSTANTIVE HEARSAY UNDER THE PHYSICIAN-PATIENT EXCEPTION BECAUSE THE TESTIFYING NURSE OBTAINED THAT HEARSAY DURING A FORENSIC EXAMINATION, NOT A MEDICAL EXAMINATION.

While due process under Washington Constitution, Article I, § 3, and United States Constitution, Fourteenth Amendment, does not guarantee every person a perfect trial, *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968), both our state and federal constitutions do guarantee all defendants a fair trial untainted from inadmissible, prejudicial evidence. *State v. Swenson*, 62 Wn.2d 259, 382 P.2d 614 (1963). It also guarantees a fair trial untainted by unreliable, prejudicial evidence. *State v. Ford*, 137 Wn.2d 472, 973 P.2d 472 (1999). As the following explains, one type of unreliable evidence inadmissible at trial is “hearsay” under ER 801 for which no exception allows its admission. *State v. Dahl*, 139 Wn.2d 678, 990 P.2d 396 (1999).

Under ER 801(c) hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Under ER 802 hearsay is “not admissible except as provided by these rules, by other court rules, or by statute.” One of these exceptions is found in ER 803(a)(4), which allows the admission over a hearsay exception of a “Statement for Purposes of Medical

Diagnosis or Treatment.” The following examines this hearsay exception.

Under ER 803(a)(4) statements made for the purpose of medical diagnosis or treatment are considered an exception to the hearsay rule. This rule states:

(a) Specific Exceptions. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

. . .

(4) Statement for Purposes of Medical Diagnosis. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

ER 803(a)(4).

Traditionally, this exception “applies only to statements ‘reasonably pertinent to diagnosis or treatment.’ Thus, statements as to causation (“I was hit by a car”) would normally be allowed under this exception, while statements as to fault (“. . . which ran a red light”) would not. 5A K. Tegland, *Washington Practice* § 367 at 224 (2d ed. 1982).

However, over the last few decades, the courts of this state have carved out an exception which allows a health care provider, under appropriate circumstances, to testify to a child’s identification of the perpetrator of a crime against the child and a child’s description of the alleged abuse. In a 1993 case, Division I of the Court of Appeals described this

exception as follows:

ER 803(a)(4) allows the admittance of hearsay testimony if the statement was made for the purpose of a medical diagnosis or treatment. Normally, such testimony is not admissible if it identifies the perpetrator of a crime, but an exception has arisen to this rule when the victim is a child. *State v. Butler*, 53 Wn.App. 214, 766 P.2d 505, *review denied*, 112 Wn.2d 1014 (1989).

In *Butler*, this court examined at length the purposes of ER 803(a)(4) and the times when hearsay evidence concerning the identity of the perpetrator of a crime can be admitted when the victim is a child. This court ruled that such statements could be admitted as part of the doctor's testimony regarding medical treatment if the information was necessary for diagnosis and treatment. In ruling that the incriminating identification was necessary for diagnosis and treatment in that case, we reasoned that, in abuse cases, it is important for the child to identify the abuser in seeking treatment because the child may have possible psychological injuries and also may be in further danger, due to the continued presence of the abuser in the child's home. *Butler*, 53 Wn.App. at 222-23, 766 P.2d 505; *see also In re Dependency of S.S.*, 61 Wn.App. 488, 503, 814 P.2d 204, *review denied*, 117 Wn.2d 1011, 816 P.2d 1224 (1991).

State v. Ashcraft, 71 Wn.App. 444, 456, 859 P.2d 60 (1993).

As is apparent from the court's comments in *State v. Butler*, 53 Wn.App. 214, 766 P.2d 505 (1989), and *Ashcraft*, the justification for allowing a treatment provider to testify to the child's identification of the alleged perpetrator of abuse lies within the court's belief that part of the treatment provider's duty and function is to identify the abuser, thereby allowing the treatment provider to gauge what type of psychological damage occurred, what type of treatment is necessary, and what steps will be necessary to prevent future abuse. As such, the courts have held that these

statements, in the context of child abuse cases, fall generally within the category of those made “for the purpose of diagnosis or treatment.”

For example, in *State v. Butler, supra*, the babysitter of a 2½-year-old child took the infant to the hospital after noting several bruises about the child’s face. During the examination the child told the attending physician that his “daddy” (meaning his mother’s boyfriend) had thrown him off the bunk bed. When questioned about this, the defendant stated that the child, whom he had been watching, fell off the bed. At trial the court allowed the physician to testify to the child’s statement of who caused her injuries. Following conviction the defendant appealed, arguing that the trial court erred when it allowed the physician to testify as to what the child said.

On appeal the court of appeals first reviewed the similar fact patterns in *State v. Bouchard*, 31 Wn.App. 381, 639 P.2d 761 (1982), and *State v. Robinson*, 44 Wn.App. 611, 722 P.2d 1379 (1986). The *Butler* court stated the following concerning these cases:

In *State v. Bouchard*, 31 Wn.App. 381, 382, 639 P.2d 761, review denied, 97 Wn.2d 1021 (1982), Bouchard was convicted of indecent liberties with his 3-year-old granddaughter. The child suffered a perforated hymen. The incident occurred when the child was visiting her grandparents. *Bouchard*, at 382, 639 P.2d 761. When the child returned home, her mother noticed blood on her daughter’s body. Her mother testified that when she questioned her daughter, she told her mother that “grandpa did it.” The attending physicians also testified that the child made similar statements to them. *Bouchard*, at 383, 639 P.2d 761.

Bouchard argued on appeal that the child's statements to the physicians were inadmissible hearsay. *Bouchard*, at 383, 639 P.2d 761. Without analysis, the court held that "[t]he statements to the attending doctors are clearly admissible under ER 803(a)(4) as statements 'of the cause or external source' of the injury and as necessary to proper treatment." *Bouchard*, at 384, 639 P.2d 761.

In *State v. Robinson*, 44 Wn.App. 611, 722 P.2d 1379, review denied, 107 Wn.2d 1009 (1986), the facts were very similar. Robinson was found guilty of indecent liberties with a 3-year-old girl. *Robinson*, at 615, 722 P.2d 1379. Robinson argued on appeal that admission of the child's statements made to the nurse and doctor at the hospital where she was treated were inadmissible hearsay. *Robinson*, at 615, 722 P.2d 1379. The statements to the nurse and doctor identified Robinson as the abuser. The court disposed of Robinson's argument in a footnote by holding that "[t]he statements to Nurse Billings and Dr. Kania are also admissible as statements made for purposes of diagnosis and treatment. ER 803(a)(4)." *Robinson*, at 616 n. 1, 722 P.2d 1379.

State v. Butler, 53 Wn.App. 219-220 (footnotes omitted).

In *Butler* the court went on to examine the application of the rule under analogous federal cases. The court noted:

This approach to child hearsay in the context of ER 803(a)(4) was further refined in *United States v. Renville*, 779 F.2d 430 (8th Cir.1985). Renville was convicted by a jury of two counts of sexual abuse of his 11-year-old stepdaughter. *Renville*, at 431. Renville argued on appeal that the trial court erred by permitting a physician to testify to statements by the victim during his examination identifying Renville as her abuser. *Renville*, at 435. Specifically, Renville argued that the hearsay exception found in Fed.R.Evid. 803(4) did not encompass statements of fault or identity made to medical personnel. *Renville*, at 435-36.

The *Renville* court pointed out that the crucial question under the rule was whether the out-of-court statement of the declarant was "reasonably pertinent" to diagnosis or treatment. *Renville*, at 436. The court began its analysis by stating the two-part test for the

admissibility of hearsay statements under Fed.R.Evid. 803(4) that the court set forth in *United States v. Iron Shell*, 633 F.2d 77 (8th Cir.1980), *cert. denied*, 450 U.S. 1001, 101 S.Ct. 1709, 68 L.Ed.2d 203 (1981).

“[F]irst, the declarant’s motive in making the statement must be consistent with the purposes of promoting treatment; and second, the content of the statement must be such as is reasonably relied on by a physician in treatment or diagnosis.” *Renville*, at 436.

The test reflects the twin policy justifications advanced to support the rule. First, it is assumed that a patient has a strong motive to speak truthfully and accurately because the treatment or diagnosis will depend in part upon the information conveyed. The declarant’s motive thus provides a sufficient guarantee of trustworthiness to permit an exception to the hearsay rule. *Iron Shell*, 633 F.2d at 84. Second, we have recognized that “a fact reliable enough to serve as the basis for a diagnosis is also reliable enough to escape hearsay proscription.

State v. Butler, 53 Wn.App. at 219-220.

After reviewing these cases, the court in *Butler* went on to affirm, noting that, as in *Bouchard* and *Robinson*, the child’s statements to the treatment provider were necessary to determine the source of the injuries, and thereby determine what treatment to provide and what steps to take to protect the child from further injury.

Similarly, in *State v. Ashcraft*, *supra*, the babysitter of a 3-year-old child called the police after she discovered a number of bruises on the infant. After the initial investigation, CPS took custody of the child and had her examined by a physician. During this examination, the physician found numerous injuries and bruises of a type commonly associated with physical

abuse. The state then charged the mother with numerous counts of assault after the child told the physician that her mother had hurt her. Following conviction, the mother appealed, assigning error to the court's admission of the physician's testimony that the child told him that "My mama did it."

After reviewing the history behind ER 803(a)(4), and the recent expansion of it for child abuse cases, the court held as follows:

Similarly, in the present case, the victim lived in the accused's home. The child had been determined to be the victim of probable abuse, raising questions of possible psychological injuries, as well as questions with respect to her safety. Therefore, as in *Butler*, [the child's] identification was necessary to allow for her proper diagnosis and treatment.

State v. Ashcraft, 71 Wn.App. at 456-67.

In each of these cases just cited, *Butler*, *Robinson*, *Bouchard*, *Renville*, and *Ashcraft*, the common thread that runs throughout is the immediate need to determine the source of the injuries in order to determine what treatment is appropriate, and what steps are necessary to shield the child from further abuse. As the court notes in both *Butler* and *Renville*, "first, the declarant's motive in making the statement must be consistent with the purposes of promoting treatment; and second, the content of the statement must be consistent with the purposes of promoting treatment or diagnosis." *Butler*, 53 Wn.App. at 220.

In each of these cases these two criteria were met in that the

suspicious injuries had just been discovered and the placement of the child back into the home of the alleged perpetrator was an imminent possibility. By contrast, in the case at bar, unlike any of the cited cases, there was no question as to the identity of the alleged perpetrator. Neither was there a need to protect CW from the alleged perpetrator because CW's mother was present, aware and taking steps to protect her. In addition, CW had repeatedly identified the defendant to the police.

Finally, unlike the cited cases in which the children were taken to a physician for treatment, in this case the police specifically took CW to Lisa Curt for the sole purpose of gaining her opinion as an expert witness for the prosecution. In other words, Lisa Curt was performing a forensic examination, not an examination for the purpose of treating the person examined. Thus, neither of the criteria required under *Butler* and *Renville* or any of the other cases cited was present in the cause currently before this court.

In fact, in this case Ms Curt admitted on cross-examination that her examination was not in any way medical or for the purposes of diagnosis or treatment. She specifically testified that "We are separate from the medical part of things." RP 45-46. As this testimony clarifies, CW did not go to Lisa Curt to get a diagnosis or to get treatment. Rather, she went to her because the police told her to in order to aid their preparation for the state's case

against the defendant. Under these circumstances CW's statements to Lisa Curt were not "consistent with the purposes of promoting treatment" as is required under *Butler* and *Renville*. Neither were her statements "consistent with the purposes of promoting treatment or diagnosis" since the young woman was not going to Ms Curt for diagnosis or treatment.

Far from a medical examination intended to promote the health and well being of the young woman, the examination in this case was solely a forensic exercise in the pursuit of evidence to use against the defendant contrived by the state to circumvent the hearsay rule. To sanction the use of such evidence invites the state to preface every claim of sexual abuse with a trip to the state's special consulting medical expert during which the child will be asked to repeat his or her prior claims of abuse to the expert, and thereby overcome the fundamental principles of the hearsay rule under the magic wand of ER 803(a)(4).

Under the facts of this case, CW's statements to Lisa Curt as to who the abuser was and what he did do not meet the requirements of the ER 803(a)(4) exception to the hearsay prohibition. Thus, they were not admissible to prove the identity of the perpetrator and the facts of the alleged molestations. Allowing Ms Curt to repeat what CW told her had the effect of bolstering CW's credibility thereby damaging the defendant's case.

Under the doctrine of harmless error, a trial court's error of a non-

constitutional magnitude such as occurred in this case warrants reversal if the defendant can show a reasonable probability that but for the error, the trier of fact would have returned a verdict of acquittal. *State v. Hamlet*, 133 Wn.2d 314, 327, 944 P.2d 1026 (1997). As the following explains, in the case at bar the defendant can meet this burden.

In this case, CW testified to a single instance of sexual abuse that she claimed happened over a few minutes with her younger sister in the next room. The defendant adamantly denied to his mother that this abuse occurred. In addition, Ms Curt's expert testimony was far from conclusive in supporting CW's claims. Rather, she testified that her examination only revealed evidence that "could" be consistent with CW's claims. Ms Curt also testified that in spite of CW's claims of strangulation by having the defendant's arms wrapped across her neck, she found no type of linear mark or abrasion across CW's neck. Thus, in this case, the improper admission substantive hearsay via Ms Curt's testimony was sufficient to create a reasonable probability that the error affected the verdict. As a result, this court should reverse the defendant's conviction and remand for a new trial.

II. THIS COURT SHOULD NOT IMPOSE APPELLATE COSTS ON APPEAL.

The appellate courts of this state have discretion to refrain from awarding appellate costs even if the State substantially prevails on appeal. RCW 10.73.160(1); *State v. Nolan*, 141 Wn.2d 620, 626, 8 P.3d 300 (2000); *State v. Sinclair*, 192 Wn. App. 380, 382, 367 P.3d 612, 613 (2016). A defendant's inability to pay appellate costs is an important consideration to take into account when deciding whether or not to impose costs on appeal. *State v. Sinclair, supra*. In the case at bar the trial court found Jesse Wilkins indigent and entitled to the appointment of counsel at both the trial and appellate level. CP 3, 165-166. In the same matter this Court should exercise its discretion and disallow trial and appellate costs should the State substantially prevail.

Under RAP 14.2 the State may request that the court order the defendant to pay appellate costs if the state substantially prevails. This rule states that a "commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review." RAP 14.2. In *State v. Nolan, supra*, the Washington Supreme Court held that while this rule does not grant court clerks or commissioners the discretion to decline the imposition of appellate costs, it does grant this discretion to the appellate

court itself. The Supreme Court noted:

Once it is determined the State is the substantially prevailing party, RAP 14.2 affords the appellate court latitude in determining if costs should be allowed; use of the word “will” in the first sentence appears to remove any discretion from the operation of RAP 14.2 with respect to the commissioner or clerk, but that rule allows for the appellate court to direct otherwise in its decision.

State v. Nolan, 141 Wn. 2d at 626.

Likewise, in RCW 10.73.160 the Washington Legislature has also granted the appellate courts discretion to refrain from granting an award of appellate costs. Subsection one of this statute states: “[t]he court of appeals, supreme court, and superior courts *may* require an adult offender convicted of an offense to pay appellate costs.” (emphasis added). In *State v. Sinclair*, *supra*, this Court recently affirmed that the statute provides the appellate court the authority to deny appellate costs in appropriate cases. *State v. Sinclair*, 192 Wn. App. at 388. A defendant should not be forced to seek a remission hearing in the trial court, as the availability of such a hearing “cannot displace the court’s obligation to exercise discretion when properly requested to do so.” *Supra*.

Moreover, the issue of costs should be decided at the appellate court level rather than remanding to the trial court to make an individualized finding regarding the defendant’s ability to pay, as remand to the trial court not only “delegate[s] the issue of appellate costs away from the court that is

assigned to exercise discretion, it would also potentially be expensive and time-consuming for courts and parties.” *State v. Sinclair*, 192 Wn. App. at 388. Thus, “it is appropriate for [an appellate court] to consider the issue of appellate costs in a criminal case during the course of appellate review when the issue is raised in an appellate brief.” *State v. Sinclair*, 192 Wn. App. at 390. In addition, under RAP 14.2, the Court may exercise its discretion in a decision terminating review. *Id.*

An appellate court should deny an award of costs to the state in a criminal case if the defendant is indigent and lacks the ability to pay. *Sinclair, supra*. The imposition of costs against indigent defendants raises problems that are well documented, such as increased difficulty in reentering society, the doubtful recoument of money by the government, and inequities in administration. *State v. Sinclair*, 192 Wn.App. at 391 (citing *State v. Blazina, supra*). As the court notes in *Sinclair*, “[i]t is entirely appropriate for an appellate court to be mindful of these concerns.” *State v. Sinclair*, 192 Wn.App. at 391.

In *Sinclair*, the trial court entered an order authorizing the defendant to appeal *in forma pauperis*, to have appointment of counsel, and to have the preparation of the necessary record, all at State expense upon its findings that the defendant was “unable by reason of poverty to pay for any of the expenses of appellate review” and that the defendant “cannot contribute anything

toward the costs of appellate review.” *State v. Sinclair*, 192 Wn. App. at 392. Given the defendant’s indigency, combined with his advanced age and lengthy prison sentence, there was no realistic possibility he would be able to pay appellate costs. Accordingly, the Court ordered that appellate costs not be awarded.

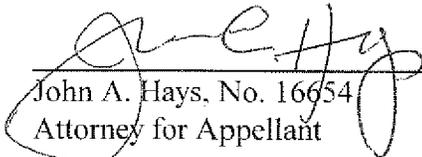
Similarly in the case at bar, the defendant is indigent and lacks an ability to pay. First, the trial court found the defendant indigent and unable to pay the costs of either the trial or the appeal. Second, the defendant’s age and status as a sex offender indicates that he has no resources with which to support himself, nor will he. Given these factors, it is unrealistic to think that the defendant will be able to pay appellate costs. Thus, this court should exercise its discretion and order no costs on appeal should the state substantially prevail.

CONCLUSION

The trial court's admission of inadmissible, prejudicial evidence denied the defendant a fair trial as did the trial court's comments on the credibility of the complaining witness. As a result, the defendant is entitled to a new trial. In the alternative this court should refrain from imposing appellate costs.

DATED this 22nd day of July, 2016.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

ER 801

The following definitions apply under this article:

(a) Statement. A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A 'declarant' is a person who makes a statement.

(c) Hearsay. 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements Which Are Not Hearsay. A statement is not hearsay if--

(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement, and the statement is (i) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (ii) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (iii) one of identification of a person made after perceiving the person; or

(2) Admission by Party-Opponent. The statement is offered against a party and is (i) the party's own statement, in either an individual or a representative capacity or (ii) a statement of which the party has manifested an adoption or belief in its truth, or (iii) a statement by a person authorized by the party to make a statement concerning the subject, or (iv) a statement by the party's agent or servant acting within the scope of the authority to make the statement for the party, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

ER 802

Hearsay is not admissible except as provided by these rules, by other court rules, or by statute.

ER 803(a)(4)

(a) *Specific Exceptions.* The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

. . . .

(4) *Statements for Purposes of Medical Diagnosis or Treatment.* Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

NO. 48827-2-II

vs.

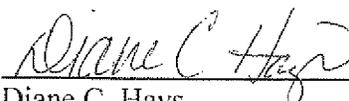
**AFFIRMATION
OF SERVICE**

JESSE L. WILKINS,
Appellant.

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Jonathan Meyer
Lewis County Prosecuting Attorney
345 West Main Street
Chehalis, WA 98532
appeals@lewiscountywa.gov
2. Mr. Jesse L. Wilkins
P.O. Box 630
Montesano, WA 98563

Dated this 22nd day of July, 2016, at Longview, WA.



Diane C. Hays

HAYS LAW OFFICE

July 22, 2016 - 4:31 PM

Transmittal Letter

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Case Name: State v. Jesse L. Wilkins

Court of Appeals Case Number: 48827-2

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

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Statement of Arrangements

Motion: _____

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Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

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No Comments were entered.

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