

FILED

NOV 27 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COA NO. 31422-7-III consol. with 314235-III, 31424-3-III, 31424-1-III

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON

Respondent

v.

B.D.L., a Juvenile

Petitioner/Appellant

BRIEF OF RESPONDENT

Mr. Tim Rasmussen, # 32105
Prosecuting Attorney
Stevens County

Lech Radzimski, # 39437
Deputy Prosecuting Attorney
Attorneys for Respondent

Stevens County Prosecutors Office
215 S. Oak Street
Colville, WA
(509) 684-7500

TABLE OF CONTENTS

I. APPELLANT’S ASSIGNMENTS OF ERROR.....1

II. ISSUES PRESENTED REGRADING ASSIGNMENTS OF ERROR.....1

 A. DID THE COURT ERR BY RULING THAT BDL DID NOT HAVE STANDING TO CHALLENGE THE CONVERSATION WHICH WAS RECORDED?.....1

 B. IS THE REQUESTED DISMISSAL OF THE CHARGES THE APPROPRIATE REMEDY?.....1

III. STATEMENT OF THE CASE.....1

IV. ARGUMENT.....1

 A. THE COURT DID ERR WHEN IT FOUND THAT BDL LACKED STANDING TO CHALLENGE THE RECORDING.1

 B. DISMISSAL OF THE CHARGES IS NOT THE APPROPRIATE REMEDY.....2

V. CONCLUSION.....4

TABLE OF AUTHORITIES

WASHINGTON STATE CASES

State v. Clark Wash. 129 Wash.2d 211, 916 P.2d 384 (1996).....3

State v. Williams, 94 Wash. 2d 531, 617 P.2d 1012 (1980)2

WASHINGTON STATE STATUTES

RCW 9.43.0501, 2

I. APPELLANT'S ASSIGNMENTS OF ERROR

- A. THE COURT ERRED BY DENYING BDL'S MOTION TO SUPPRESS THE RECORDED PRIVATE CONVERSATION BETWEEN A VICTIM'S DAUGHTER AND HER FRIEND AND A SUSPECT, DC, IMPLICATING BDL IN THE CRIMES.

II. ISSUES PRESENTED

- A. DID THE COURT ERR BY RULING THAT BDL DID NOT HAVE STANDING TO CHALLENGE THE CONVERSATION WHICH WAS RECORDED?
- B. IS THE DISMISSAL OF THE CHARGES THE APPROPRIATE REMEDY?

III. STATEMENT OF THE CASE

The State accepts the Appellant's Statement of the Case.

IV. ARGUMENT

- A. THE COURT DID ERR WHEN IT FOUND THAT BDL LACKED STANDING TO CHALLENGE THE RECORDING.

The State concedes that the court erred when it found that BDL lacked standing to challenge the recording which occurred between co-defendant DC, the daughter of one of the victims, and a friend of the daughter. Given the broad interpretation of RCW 9.43.050 made by the court in *State v. Williams* the trial court should have found that BDL had

standing to challenge the recording. *See State v. Williams*, 94 Wash. 2d 531, 545 – 546, 617 P.2d 1012, 1020 – 1021 (1980).

B. DISMISSAL OF THE CHARGES IS NOT THE APPROPRIATE REMEDY.

Despite the fact that the trial court erred when it found that BDL lacked standing to make a challenge the appropriate remedy is not dismissal of the charges.

The appropriate remedy for this court is to remand the case for further proceedings. The appellant is correct in stating that the State did concede that, "...if the court finds that the conversation which occurred was 'private' in nature and therefore a violation of RCW 9.73.030 the proper remedy would be suppression of all evidence obtained in the conversation and any derivative information obtained." (CP 64). However, the State did not concede that the conversation was private in nature. The State urged the court to find that the conversation was not private in nature and therefore not a violation of RCW 9.73.030. (CP 56 – 66).

The fact that the conversation occurred and was recorded without consent does not automatically make the recording inadmissible. Had the trial court found that BDL had standing to challenge the recording the

court would then need to determine if the conversation was in fact private based upon the factors stated in *State v. Clark* Wash. 129 Wash.2d 211, 225 – 227, 916 P.2d 384, 392 (1996).

The state also urged the court find that law enforcement's actions would have been justified under the independent source doctrine. (CP 56 – 66). Based upon the investigation which had been conducted law enforcement still had sufficient cause to contact BDL in reference to this investigation.

Reversal of the convictions and dismissal of the charges is not appropriate. Standing was merely a threshold issue for the trial court to address. Additional inquiry by the trial court needs to occur. The appropriate remedy is for this court to remand these offenses back to the trial court to determine if the conversation was in fact private in nature and if there were other reasons for law enforcement to have investigated BDL.

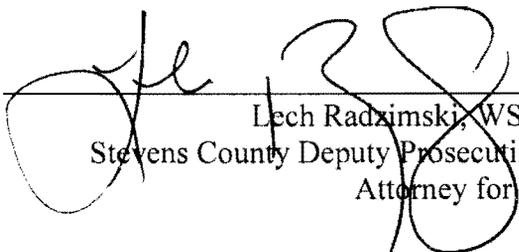
V. CONCLUSION

Based upon the forgoing facts and authorities, the Respondent, State of Washington respectfully requests that this court find that the trial court erred in finding that BDL lacked standing to challenge the admissibility of the recorded conversation pursuant to RCW 9.73.030. The State further requests that this court remand this case to the trial court

for further proceedings and deny the Appellant's motion to dismiss the charges.

Respectfully submitted this 26th day of November, 2013

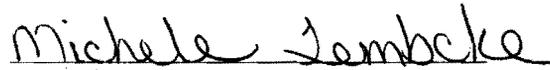
Tim Rasmussen, WSBA # 32105
Stevens County Prosecutor



Lech Radzinski, WSBA# 39437
Stevens County Deputy Prosecuting Attorney
Attorney for Respondent

Affidavit of Certification

I certify under penalty of perjury under the laws of the State of Washington, that I mailed a true and correct copy of the foregoing Brief of Respondent to the Court of Appeals, Division III, 500 N. Cedar Street, Spokane, WA 99201, and to Kenneth H. Kato, Attorney at Law, 1020 N. Washington St., Spokane WA 99201-2237 on November 26, 2013.



Michele Lembcke, Legal Assistant
for Lech Radzinski