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Court of Appeals  
Division III  
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. ~~331067-7~~ 331067

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MATTHEW DEVORE, Appellant,  
v.  
STATE OF WASHINGTON, Respondent.

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*Appellant's Brief*

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## **I. INTRODUCTION**

The State made a choice to charge Matthew DeVore with Murder in the Second Degree on November 26, 2014. Mr. DeVore made a choice to plead to that charge at his arraignment on December 4, 2014. The trial court made a choice to accept that plea on December 22, 2014. What followed was a series of decisions by the State and trial court that have not changed the fact Mr. DeVore pled guilty and that his plea was accepted.

At his arraignment on December 4, 2014, Mr. DeVore pled guilty as charged to Murder in the Second Degree with the aggravating circumstance of "Impact on Others". After Mr. DeVore entered his plea of guilty, the State attempted to amend the information to charge Murder in the First Degree. Benton County Superior Court Judge Cameron Mitchell continued the case on his own motion to December 9, 2014 to allow counsel to brief the issue of the amended information. Due to the State filing a brief on December 8, 2014, the hearing was moved to December 22, 2014.

At the December 22, 2014 hearing, Judge Mitchell denied the State's request to amend the information, and accepted as knowing, intelligent, voluntary, with a factual basis, Mr. DeVore's December 4, 2014 guilty plea to Murder in the Second Degree with the

aggravating circumstance. Prior to the conclusion of the hearing, the trial court took a recess and there were no further proceedings that day.

Court reconvened on December 29, 2014 at which time Judge Mitchell reversed himself and ruled that the State could amend the information to charge Murder in the First Degree, thereby withdrawing Mr. DeVore's guilty plea to Murder in the Second Degree with the aggravating circumstance.

On January 14, 2014 findings of fact, conclusions of law, and the trial Court's order were entered.

## **II. ASSIGNMENTS OF ERRORS**

ASSIGNMENT OF ERROR 1: The trial court erred by initially barring the State from filing an amended information after the defendant entered a guilty plea as charged at arraignment and then reversing itself and allowing the State to file an amended information after the defendant entered a guilty plea as charged at arraignment.

ASSIGNMENT OF ERROR 2: The trial court erred by accepting Mr. DeVore's guilty plea to the original information as a knowing, intelligent, and voluntary plea with a factual basis and then withdrawing that plea on the State and trial court's motion.

### **III. STATEMENT OF THE CASE**

Matthew DeVore was arrested on Monday, November 24, 2014 on suspicion of homicide. CP 31: 1-2. Mr. DeVore was booked into the Benton County Jail on a 72 hour hold for Murder in the Second Degree. CP 31: 2. Mr. Johnson was assigned the case by the Benton/Franklin Counties' Office of Public Defense on that same day. CP 31: 2. Mr. Johnson made email contact with the Benton County Prosecutor's Office and the Kennewick Police Department concerning the case. CP 31: 2. Mr. Johnson went to the Benton County Jail to meet with Mr. DeVore. CP 31: 2. Mr. Johnson and Mr. DeVore met for over 2 hours. CP 31: 2.

On Tuesday, November 25, 2014, Mr. Johnson requested the assistance of the Benton County Prosecutor and Sheriff's Office to obtain a blood draw from Mr. DeVore. CP 31: 2. Mr. Miller and Undersheriff Hatcher were very helpful in making sure the blood draw took place. CP 31: 2. Mr. DeVore made his initial appearance in Benton County Superior Court on the 72 hour hold for Murder in the Second Degree. CP 31: 2. After the hearing, Mr. Johnson went to the Benton County Jail to meet with Mr. DeVore. CP 31: 2.

Also on Tuesday, November 25, 2014, Mr. Miller emailed Mr.

Johnson about releasing Mr. Christian's body. CP 31: 2. Mr. Miller provided the name and phone number of Dr. Menchel, the forensic pathologist who conducted the autopsy in the case. CP 31: 2. Mr. Johnson called and spoke with Dr. Menchel about the manner and cause of death. CP 31: 2.

On Wednesday, November 26, 2014 Lt. Josh Shelton of the Benton County Sheriff's Office emailed the first set of blood results from Mr. DeVore's blood draw. CP 31: 2. Mr. Johnson again met with Mr. DeVore at the Benton County Jail. CP 31: 2.

On Monday, December 1, 2014 Mr. Johnson met with Mr. DeVore at the Benton County Jail. CP 31: 4.

On Tuesday, December 2, 2014 Lt. Josh Shelton of the Benton County Sheriff's Office emailed the last set of blood results from Mr. DeVore's blood draw. CP 31: 4. Mr. Johnson also met with Mr. DeVore at the Benton County Jail. CP 31: 4.

On Wednesday, December 3, 2014 Mr. Johnson met with Mr. DeVore at the Benton County Jail for several hours. CP 31: 4. Mr. Johnson and Mr. DeVore went over the statement of defendant on plea of guilty. CP 31: 4.

On Thursday, December 4, 2014, Mr. DeVore appeared in Benton County Superior Court for his arraignment on the charge of Murder in the

Second Degree. RP 12/4/14 at 8:8-10; CP 31: 4. At the start of the hearing, the State informed the trial court that the case was on for arraignment. RP 12/4/14 at 8:8-10. CP 31: 4. The State did not propose the filing of any amended information at the beginning of the hearing. RP 12/4/14; CP 31. After the State spoke, on behalf of his client, Mr. Johnson acknowledged receipt of a one count information charging Murder in the Second Degree with an aggravating factor, and stated "At this time we wish to enter a guilty plea." RP 12/4/14 at 8:15-19; CP 31: 5. Mr. Johnson then handed forward the Statement of Defendant on Plea of Guilty signed by Mr. DeVore and Mr. Johnson. CP 31: 5; CP 13. After Mr. DeVore plead guilty and his Statement of Defendant on Plea of Guilty was handed to the trial court, the State announced on the record that "I should have brought this up, Your Honor. I am charging murder in the First Degree." RP 12/4/14 at 9:1-3; CP 31: 5. The State then handed an amended information to the trial court. CP 31: 5; CP 14. Mr. Johnson objected to the amended information as Mr. DeVore had already pled guilty. RP 12/4/14 at 8-9; CP 31: 5. The State disagreed that Mr. DeVore had already pled guilty arguing that the State had not reviewed the factual basis for the plea contained in the Statement of Defendant on Plea of Guilty and that Mr. DeVore himself did not speak. RP 12/4/14 at 10:3-7; CP 31: 5. At that point, the trial court, on the trial court's motion,

continued the case to December 9, 2014 to allow the parties to brief their respective positions on the State amending the information after Mr. DeVore pled guilty. RP 12/4/14 at 10-14; CP 31: 5.

Because of a filing by the State on December 8, 2014, the trial court continued the December 9, 2014 hearing to December 22, 2014. RP 12/10/14 at 6-8; CP 31:6.

At the December 22, 2014 hearing, the trial court ruled that the State could not amend the information to charge Murder in the First Degree. RP 12/22/14 at 11-17; CP 31: 6. The trial court then reviewed Mr. DeVore's constitutional rights with him, questioned him about what he did that made him guilty of Murder in the Second Degree with an aggravating factor, allowed Mr. DeVore's attorney, Mr. Johnson, to supplement the record about Mr. DeVore's factual basis for the plea and understanding of the facts of the case. RP 12/22/14 at 17-29; CP 31: 6-7. At that point in the hearing, the trial court ruled that Mr. DeVore's plea was a knowing, intelligent, and voluntarily plea with an adequate factual basis. RP 12/22/14 at 29:18-21; CP 31: 8. After the trial court had ruled against the State and found that Mr. DeVore's plea to Murder in the Second Degree with an aggravating factor was a knowing, intelligent, and voluntarily plea with an adequate factual basis, the State claimed that the trial court was "treating them worse than any other case I'm familiar with

in the State of Washington" and went on to state that the trial court's ruling was a "...ruling that I probably disagree with as much as any ruling as I have heard in this courtroom." RP 12/22/14 at 26:5-8; 15-17. The State then argued that the trial court had discretion, in the interest of justice, to not accept the plea. RP 12/22/14 at 27:16-19; CP 31: 8. Mr. Johnson made a few comments on that point. RP 12/22/14 at 30:12-25; 31: 1-15; CP 31: 8. The trial court then started to address the State's contention that the plea had to be in the interest of justice when the State interrupted the trial court. RP 12/22/14 at 31:16-25; CP 31: 8. As the trial court was trying to exit the bench, the State told the trial court "I'm a little bit--well, given the rulings today, I guess I'm not surprised that Mr. Johnson has been given the chance to address the trial court, and I'm not..." RP 12/22/14 at 32:1-4; CP 31: 8-9. After the comments by the State, the trial court assured the State they would be allowed to address the trial court. RP 12/22/14 at 32:5-7. Court did not reconvene and the conclusion of the hearing was moved to December 29, 2014. CP 31:9. The only issue left before the trial court was if the plea was in the interest of justice.

On Monday, December 29, 2014, the trial court reversed itself and ruled that the State could amend the information and charge Mr. DeVore with Murder in the First Degree. RP 12/29/14 at 61-67; CP 31:9. The trial court ruled that, despite the fact that Mr. DeVore proffered his guilty

plea as charged at arraignment and despite the fact that the trial court had accepted the plea as a knowing, intelligent, and voluntary, with an adequate factual basis, Mr. DeVore was not prejudiced. RP 12/29/14 at 63:20-25. The trial court rejected the arguments of Mr. DeVore that he would be prejudiced in his that right to remain silent had been taken away, due process was not followed, and that Mr. DeVore had suffered mental anguish as a result of pleading guilty, having that plea accepted, and then having the accepted plea taken from him. RP 12/29/14 at 64: 16-25; 65: 1-13.

On January 14, 2015 Finding of Fact, Conclusions of Law, and the Court's Order were entered by the trial Court. CP 31.

#### **IV. ARGUMENT**

##### ***A. Amendment of Information After Entry of Guilty Plea.***

CrR 4.2(a) establishes the right to plead guilty at arraignment when it states "A defendant may plead not guilty, not guilty by reason of insanity or guilty." Mr. DeVore had a right to plead guilty at arraignment under CrR 4.2 and the case law interpreting that court rule. While there are exceptions to the right to plead guilty at arraignment, none of those exceptions exists in this case. Mr. DeVore was not required to actually

utter his plea in open court. Nor is the prosecution required to approve a plea at arraignment.

Further, once the trial court accepts a plea of guilty as knowingly, intelligently, voluntarily made, with a factual basis, under CrR 4.2(f), there is no legal mechanism for the trial court or State to withdraw the guilty plea on the trial court's or State's motion.

The seminal case on a defendant's right to plead guilty at arraignment is *State v. Martin*, 94 Wn.2d 1, 614 P.2d 164 (1980). In first addressing whether a right to plead guilty in Washington exists, the *Martin* court at 6 stated:

While a defendant does not have a constitutional right to plead guilty, it is well established that the State may confer such a right by statute or by other means. *North Carolina v. Alford*, 400 U.S. 25, 38 n.11, 27 L. Ed. 2d 162, 91 S. Ct. 160 (1970). In this state such a right has been established by Supreme Court rule. *CrR 4.2(a)* provides for the types of pleas which may be accepted at arraignment.

Therefore, a defendant has a right to plead guilty at arraignment.

The next question is can the trial court refuse to accept a guilty plea at arraignment? The *Martin* court at 7 addressed that question:

Although the State appears to argue to the

contrary, we have been informed of no statute or rule of court which grants a trial court authority to decline a plea of guilty made competently, knowingly, voluntarily, unconditionally, unequivocally and on advice of counsel.

Thus, so long as a plea is made competently, knowingly, voluntarily, unconditionally, unequivocally and on advice of counsel, the court must accept the plea.

The *Martin* court then addressed the issue of the prosecutor's involvement in a guilty plea at arraignment. The *Martin* court stated at 7:

Moreover, unlike the law in some states, our rules and statutes nowhere suggest that prosecutorial approval is required before a defendant may plead guilty. Accordingly, we hold that in this state, a criminal defendant has the right to plead guilty unhampered by a prosecuting attorney's opinions or desires.

Given the above holding, the State has no right to approve or disapprove of a defendant's choice to plead guilty at arraignment. In addition, the right of a defendant to plead guilty at arraignment should be "unhampered by a prosecuting attorney's opinions or desires."

The ruling in *Martin* has been clarified in *State v. Ford*, 125 Wash.2d 919, 891 P.2d 712 (1995). In *Ford*, the defendant was charged with three counts of first-degree murder. At arraignment, it appeared that the defendant's attorney had just been appointed and had only spoken to the

defendant for a short period of time. *Id.* at 926-27. The defendant's attorney seemed hesitant and asked to have the arraignment moved down the court calendar a number of times. *Id.* Then, the defendant, through his counsel, proffered a plea of guilty. *Id.* at 921-22. The prosecutor moved for a continuance of the arraignment, stating he possessed potentially exculpatory material which needed to be disclosed to defendant prior to any plea. *Id.* The case was continued one week. During that week, the State claimed it had developed further inculpatory evidence it did not have at the original arraignment, necessitating the amendment. *Id.* at 927-28.

The Supreme Court in *Ford* held that the right to plead guilty did not limit the trial court's independent obligation under Wash. Super. Ct. Crim. R. 4.2(d) to satisfy itself that the plea was factually based and voluntary because the statement on plea of guilty and the voluntariness inquiry pertain to the trial court's acceptance of a guilty plea, not defendant's attempt to enter one. The Court found that the continuance was not a violation of the right to plead guilty because the trial judge had a legitimate concern for whether the proffered guilty plea was knowing, intelligent, and voluntary given the short time between the crime and the plea, as well as concern that defendant had a right to review the exculpatory material. *Id.* at 926. This is a vastly different situation than exists in this case, where the trial court accepted the guilty plea and then

withdrew the guilty plea on the trial court's own motion. RP 12/22/14 at 29:18-21; CP 31: 8. RP 12/29/14 at 61-67; CP 31:9.

Before analyzing the holding in *Ford* as it applies to this case, it is important to distinguish the facts in *Ford* compared to the facts in this case:

1. In *Ford*, the State did not attempt to file an amended information immediately after the defendant pled guilty as charged, as happened in this case. RP 12/4/14 at 9:1-3; CP 31:5.
2. In *Ford*, the State did not even possess the necessary information to file an amended information until a week after the arraignment. In this case, the State possessed the information it needed to charge Murder in the First Degree at arraignment as evidenced by the fact the State had prepared an amended information. RP 12/4/14 at 9:1-3. CP 14.
3. In *Ford*, the State did not declare at the hearing, on the record, after the defendant had pled guilty, that "I should have brought this up your honor. I am charging murder in the first degree," as happened in this case. RP 12/4/14 at 9:1-3.

4. In *Ford*, the State requested that the arraignment be continued so that the State could provide *Brady* material to the defense. In this case, the *trial court* requested that the case be continued for the parties to brief the issue of whether or not the State could amend the information. RP 12/4/14 at 10:8-13. The State made no record of needing to continue the arraignment to provide Brady material to the defense. RP 12/4/14.
5. In *Ford*, the trial court continued the arraignment because the trial court had concerns about whether or not the plea was knowing, intelligent, and voluntary. The trial court was especially concerned given the fact that defense counsel had just met with his client prior to entering the plea, defense counsel asked to move the case down the docket a number of times, and defense counsel appeared to hesitate when entering the plea. In this case, Mr. Johnson had met with his client numerous times for numerous hours prior to the plea, there was no defense request to set the case down or continue arraignment, and far from being hesitant, Mr. Johnson unequivocally entered Mr. DeVore's guilty plea and fully asserted Mr. DeVore's right to plead

guilty under CrR 4.2(a). RP 12/4/14 at 8:15-19. CP 31.

Further, in this case, the trial court expressed no concern about whether the plea was knowing, intelligent, voluntary and if there was a factual basis. RP 12/22/14.

6. In *Ford*, the trial court did not accept the guilty plea. In this case, the trial court did accept the guilty plea after finding it was made knowingly, intelligently, voluntarily, and with a factual basis. RP 12/22/14 at 29:18-21.

In *Ford*, the State argued almost the exact same arguments that the State argued at arraignment in this case: First that Mr. DeVore himself did not speak at the hearing and second that the trial court had not “accepted” the guilty plea.<sup>1</sup> The Ford court rejected all three of those arguments at 922:

As a threshold matter, the State advances two arguments suggesting no plea was entered and that the right to plead guilty established by *Martin* was therefore not triggered. First, the State argues only those guilty pleas are validly entered which are actually uttered by the defendant in open court.... Second, the State contends that entry of the plea was ineffective or incomplete, since (1) no "Statement of Defendant on Plea of Guilty" was submitted, and (2) the court did not conduct the

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<sup>1</sup> In this case the State also argued that the State had not signed the statement of defendant on plea of guilty. RP 12/22/14 at 10:21-23. The holding in *Martin* that the State need not approve a guilty plea at arraignment renders that argument moot.

required voluntariness inquiry. *See CrR 4.2(g); CrR 4.2(d)*. We find no merit in either argument.

The *Ford* Court was careful to point out that at the time the arraignment was continued, neither Mr. Ford, the State, nor the trial court were aware that additional evidence would develop supporting an amended charge. In this case, the State apparently had all the information they needed to file an amendment prior to the arraignment. This is evidenced by the fact they had prepared an amended information and brought it with them to court. RP 12/4/14 at 8:21-23. CP 14. It is further evidenced by the fact that after Mr. DeVore pled guilty, the State said on the record that “I should have brought this up your honor. I am charging murder in the first degree.” RP 12/4/14 at 9:1-3. With this statement, the State appears to acknowledge that they forgot to amend the information prior to the plea and then tried to do it after the plea was made. If what the State said at arraignment is true, that it “should have brought...up” the amended information prior to the plea of guilty, the fact they forgot to amend until after the plea was made should not prejudice Mr. DeVore. RP 12/4/14 at 9:1-3. The State was well aware that Mr. DeVore could plead as charged at arraignment. If the State had probable cause to file the amended information prior to the arraignment, which they apparently thought they did, they should have filed the amended information at the

start of the hearing. Filing the amended information at the start of the hearing, before the plea, would have obviated the need for this entire argument. By playing poker and holding the amendment too long, the State played their hand too late. As American icon Kenny Rogers once sang “You’ve got know when to hold ‘em and know when to fold ‘em.” In this case, the State “held ‘em” too long and according to the cited authorities, they lose the hand.

In *Ford*, the amendment was also allowed because the defendant could not show any prejudice to himself resulting from the continuance, at the time the continuance was granted. In *Ford*, when the continuance was granted, the State did not have evidence of aggravated murder. *Id.* at 928. The State developed that evidence during the continuance. *Id.* In the present case, Mr. DeVore is prejudiced because the State alleges it had information sufficient to file Murder in the First Degree charges at the time of the continuance, it just chose not to do so. RP 12/4/14 at 9:1-3; CP 31: 5; CP 14. By having information sufficient to file Murder in the First Degree charges at the time of Mr. DeVore’s arraignment and then by not attempting to file that amended information until after Mr. DeVore pled guilty, there can be no doubt Mr. DeVore was prejudiced as Mr. DeVore: “showed his hand” in his admission of guilt and willingness to accept responsibility; has no power to plea bargain now; has admitted to the

world he is guilty of murder; and has endured the mental anguish of accepting responsibility, pleading, and then having that plea taken away. Further, due to the procedural problems with the trial court accepting Mr. DeVore's plea and then withdrawing that plea without any legal authority, Mr. DeVore's procedural due process rights have been violated.

**B. Trial Court Withdrawing Plea On Court's Motion**

CrR 4.2(f) sets out the rule on withdrawal of a guilty plea. The rule sets out in relevant part:

The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice.

The vast majority of cases addressing CrR 4.2(f) deal with defendants who wish to withdraw a plea and/or disagreements between defendants and the State as to what was bargained for during plea negotiations. However, those cases are instructive to the facts in the present case.

In *State v. Conwell*, 141 Wn.2d 901, 10 P.3d 1056 (2000) the Supreme Court clarified the duty of the trial court when a *plea agreement* is present. In *Conwell*, the defendant was charged initially with second degree manslaughter in District Court. Negotiations during the following weeks

led to an agreement by which the prosecutor would charge Conwell in Superior Court with a dangerous weapon violation and with second degree reckless endangerment. *Id.* at 904. In return for Conwell's guilty plea to both counts the prosecutor agreed to a recommendation of ninety days with credit for fifteen days served, remainder served in home detention or work release, no additional fine (other than court costs/victim assessment), two years' probation. *Id.* at 904. The State filed an information charging the two gross misdemeanor counts in Superior Court on September 24, 1997. Five days later, Conwell appeared for arraignment and to enter his guilty plea. At the morning hearing, the judge inquired as to Conwell's competence, his understanding of the charges and consequences of a guilty plea, and the voluntariness of his plea. The trial court confirmed Conwell's understanding of the plea agreement and informed Conwell that the trial court was not bound by the terms of that agreement. *Id.* at 904. After reviewing the factual basis for the plea, the trial court expressed reluctance to accept it. The hearing was then adjourned to allow the judge to review additional materials, including the police report, emergency room report and autopsy report. *Id.* at 905. When the hearing reconvened that afternoon, the judge confirmed that the charges had a factual basis. Nevertheless, after hearing argument, the judge rejected both the plea agreement and the proffered plea. *Id.* at 905. The defendant was then

arraigned on the two gross misdemeanor counts charged in the information. The trial court entered a plea of not guilty to both counts, and the defendant did not object. *Id.* at 905. On December 11, 1997 the State moved to amend the information to one count of first degree manslaughter. Conwell opposed the motion and moved to allowed to plead guilty to the charges in the original information. *Id.* at 905. The Supreme Court accepted review on the issue of whether Conwell was deprived of his rule-based right to pled guilty to the original charges. *Id.* at 906.

The *Conwell* court stated that “For purposes of a CrR 4.2 analysis, it is critical to distinguish between a plea agreement and a guilty plea. While the trial court has the discretion to reject a plea agreement it finds inconsistent with the interests of justice, the trial court does not have discretion to reject a valid plea offered notwithstanding that agreement.” *Id.* at 909. In the present case, there was no plea agreement. Mr. DeVore entered a plea of guilty to the charge of Murder in Second Degree with Aggravating Circumstance Impact on Others. The only duty the trial court had was to determine if the plea was made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea and that there was a factual basis for the plea. CrR 4.2(d). Here, the trial court at the hearing on December 22, 2014 found that Mr.

DeVore's plea was knowingly, voluntarily, competently made with an understanding of the nature of the charges and the consequences and that there was a factual basis for the plea. RP 12/10/14 at 29:18-21. CP 31.

In *State v. Tourtellotte*, 88 Wn.2d 579, 564 P.2d 799 (1977), the Supreme Court addressed a situation where the State moved to withdraw an accepted guilty plea and the trial court allowed it. The Court in *Tourtellotte* reversed, stating:

The State urges the applicability of CrR 4.2(f). It does not apply. The rule is clear and unambiguous: "[W]henver it . . . is necessary to correct a manifest injustice", the court "shall allow a defendant to withdraw his plea of guilty". (Italics ours.) At no time during the proceedings did defendant withdraw his plea or evidence any desire to withdraw his plea. The motion to withdraw was made by the State. The defendant was not "allow[ed] . . . to withdraw his plea of guilty"; he had it withdrawn from him after the court had previously fully considered the plea and had accepted it without equivocation or reservation. See generally Fischer, *Beyond Santobello -- Remedies for Reneged Plea Bargains*, 2 San. Fern. V. L. Rev. 121 (1973).

In the current case, it was the trial court that withdrew the accepted guilty plea, not the State. RP 12/29/14 at 2961-67:18-21. However, the analysis remains the same: There is no mechanism for

the trial court nor the State to withdraw an accepted guilty plea.

*State v. Rhode*, 56 Wn.App. 69, 782 P.2d 567 (1989) addressed whether the trial court had erred in revoking its previous acceptance of Ms. Rhode's guilty plea after a plea bargain. The *Rhode* court stated that pleas made voluntarily, competently, and with an understanding of the nature of the charge are to be accepted by the trial court if the agreement is consistent with the interests of justice and prosecuting standards. *Id.* at 73. If not consistent, the authority of the trial court is limited to informing the defendant and prosecutor the trial court is not bound by the agreement. It is up to the defendant to withdraw the plea, not the trial court. *Id.* at 73.

Mr. DeVore pled guilty, the trial court found that plea to be a knowing, intelligent, voluntary plea, with a factual basis. Subsequently, Mr. DeVore did not move or in any way request the trial court withdraw his accepted guilty plea, but that is exactly what the trial court did.

## **V. CONCLUSION**

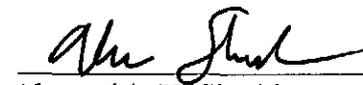
The State charged Mr. DeVore with Murder in the Second Degree with an aggravating factor. Mr. DeVore pled guilty to Murder

in the Second Degree with an Aggravating Circumstance Impact on Others. The trial court accepted the plea to Murder in the Second Degree with an Aggravating Circumstance Impact on Others, as a knowing, intelligent, and voluntary plea, with an adequate factual basis. Mr. DeVore had a substantial right to have the trial court honor his guilty plea once it had accepted the plea. For those reasons, Mr. DeVore requests that this Court remand to Superior Court for entry of the guilty plea and subsequent proceedings consistent with the guilty plea to Murder in the Second Degree with an Aggravating Circumstance Impact on Others.

Respectfully submitted this 20th day of August, 2015.

  
\_\_\_\_\_  
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And

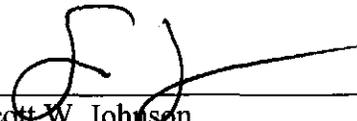
  
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**PROOF OF SERVICE (RAP 18.5(b))**

I, Scott W. Johnson, do hereby certify under penalty of perjury that on August 20, 2015, I caused to be hand delivered to the Benton County Jail or e-mailed by prior agreement, a true and correct copy of the brief of appellant:

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