

FILED  
Court of Appeals  
Division III  
State of Washington  
3/20/2018 4:06 PM  
No. 35381-8-III

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

Chelan County Superior Court  
Cause No. 16-1-00224-3

STATE OF WASHINGTON,  
Plaintiff/Respondent,

v.

EDWARD LANE HART,  
Defendant/Appellant.

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BRIEF OF RESPONDENT

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## **A. ASSIGNMENTS OF ERROR**

1. The Court did not err or violate Mr. Hart's Sixth Amendment right by disqualifying Julie Anderson from representation.

2. The State did not commit misconduct in closing arguments because the statements were reasonable inferences based on evidence elicited at trial.

3. The State concedes Scribner's error regarding RCW 9.94A.712 versus RCW 9.94A.507 and the Judgment and Sentence should be remanded for correction.

4. The Court did not error in imposing conditions regarding "community protection zone" because it is a crime-related condition and has a nexus to Mr. Hart's crime.

5. The State concedes error in the community custody condition regarding "sexually explicit materials" and the condition should be stricken from the Judgment and Sentence.

6. The State takes no position on Mr. Hart's position on the assessment of fees.

7. Mr. Hart's Statement of Additional Grounds on Appeal should be summarily denied as the prosecution was not time barred by the statute of limitations.

## **B. STATEMENT OF THE CASE**

The State takes no exception to the recitation of the relationship of the parties as stated in the Appellant's brief pages 2-4. Upon filing of the case, attorney Julie Anderson filed a notice of appearance noting her intent to represent the defendant. CP 85. Prior to the filing of the case, there had been no indication in the police reports that Ms. Anderson was a potential witness in the case and was not an individual law enforcement contacted during their initial investigation. Ms. Anderson filed a motion to dismiss for violation of the statute of limitations. CP 20-25. The State responded and the motion was heard before the Court on June 14, 2016. CP 33-35, RP 3-24. The Court dismissed the motion because the defense failed to acknowledge legislative changes to the statute in 2009 and 2013 that allowed for prosecution up to the victim's twenty-eighth and now thirtieth birthday. RP 17-23. Alleged victim A.C. was twenty-six at the time the State filed charges. CP 34.

As the case continued, Ms. Anderson did not disclose or make aware that she had any relationship to the parties prior to the filing of the charges. Subsequently, the prosecution proceeded forward and pursuant to Ms. Anderson's request, the witnesses

were made available for defense interview. The interviews of the defendant's estranged wife, Cami Stewart, and alleged victim, A.C., took place on July 14, 2016. CP 47. During those interviews, it was revealed that not only was Ms. Anderson well acquainted with both parties during the length of the marriage of Cami Stewart and the defendant, but the victim A.C. had disclosed to Ms. Anderson the abuse she endured at the hands of the defendant when she was sixteen and working as an employee of Ms. Anderson's. CP 47. Ms. Stewart and A.C. indicated that over the course of a 21-year relationship, they saw Ms. Anderson five to fifteen times per week and she was considered "an aunt." CP 50-51. It was also revealed that Ms. Anderson had personal conversations with the victim's mom previously about the veracity of the claims made against Mr. Hart by A.C. years prior to the filing of the charges. CP 47. Ms. Stewart also stated in her declaration to the Court that Ms. Anderson had offered her legal advice in the past. CP 51. During the interview, Ms. Anderson attempted to use her personal knowledge of the parties to discredit the motivations of the victim's mother and credibility of the victim with information from conversations had between them years earlier. CP 47. At this time, it became clear to the State there was a material conflict with

Ms. Anderson representing Mr. Hart in the defense of his case. CP 48. The State immediately moved for the disqualification of Ms. Anderson on July 26, 2016. CP 44. In Ms. Anderson's response, she indicated that she was not a material witness to the case, Ms. Anderson indicated that Mr. Hart's only prejudice was that he would not be able to find "private counsel before the trial date." RP 8. Mr. Hart was not held in-custody at this time. RP 3. The Court granted the State's motion for disqualification of Ms. Anderson finding that the conflict would limit Mr. Hart's defense. CP 10-11. Mr. Hart was appointed public defense counsel on August 15, 2016. CP 16-19. During the course of Mr. Hart's trial, Ms. Anderson was called as a witness for the State and provided crucial information for the prosecution. RP 428-437.

Part of the State's evidence at trial involved the presence of a mole on Mr. Hart's penis. Three witnesses testified to observing the mole. The victim, A.C., testified to the presence, color, placement and shape of the mole. RP 273-275. Cami Stewart testified to the presence, color, placement and shape of the mole. RP 331-332, 341-343. Detective Stephen Evitt also testified that, pursuant to a valid search warrant, he observed the presence,

placement and color of the mole, but that the pictures were not a good description of what he observed. RP 355-359.

On the third day of trial and after the State had rested its case, defense offered new pictures of Mr. Hart's penis taken by defense investigator, Juan Miranda, the morning of the third day of trial. RP 470. The State objected to the new pictures as unfair surprise and was given little to no opportunity to investigate the veracity of the photos. CP 470-476. The State argued outside of the presence of the jury that it was possible that the defendant, over the course of the case, could have had the mole surgically removed prior to the trial and the State would need time to investigate the possibility. RP 477-481. The Court gave the State no meaningful opportunity to investigate and allowed the photos to be presented as evidence to the jury. RP 477-481. Mr. Miranda testified that he did not witness any markings on the defendant's penis. RP 484-485. On cross-examination, the State elicited testimony that the charges against Mr. Hart were thirteen months old, he had not reviewed or obtained Mr. Hart's medical records, and he had not asked whether Mr. Hart had plastic surgery to have the mole removed. RP 485-487.

At the conclusion of trial, the jury rendered a verdict of guilty on the counts submitted for deliberation. CP 194-195. Mr. Hart was subsequently convicted of one count of Rape of a Child in the Second Degree and one count of Child Molestation in the Second Degree. RP 541-545.

### **C. ARGUMENT**

1. Mr. Hart's Sixth Amendment right was not violated because Ms. Anderson had a clear conflict of interest and could not represent Mr. Hart because she was a witness in the case and any further representation would have been materially limited.

Perhaps the foremost duty an attorney owes a client is that of undivided loyalty. Thus, in a criminal case, any potential conflict of interest must be scrutinized. Indeed, a trial court's failure to inquire about a potential conflict of interest automatically requires reversal of a conviction, without a showing of prejudice. *In Re Richardson*, 100 Wn.2d 669, 677, 675 P.2d 209 (1983).

Whenever a potential conflict of interest arises from a defense counsel's action, a prosecutor is under an affirmative duty to disclose the potential conflict to the court. Further, courts have indicated the prosecutor is obliged to request disqualification. In *Mannhalt v. Reed*, 847 F.2d 576 (9th Cir. 1988), a prosecutor was chastised for failing to bring to the court's attention a potential

conflict of interest and for not moving for the disqualification of defense counsel. Similarly, in *United States v. Lorizzo*, 786 F.2d 52 (7th Cir. 1985), a prosecutor who failed to move for the disqualification of the defendant's attorney was chastised even though the prosecutor brought the potential conflict to the court's attention.

A defendant does not have an absolute, Sixth Amendment right to choose any particular advocate. *State v. DeWeese*, 117 Wn.2d 369, 375-76, 816 P.2d 1 (1991) (citing *Wheat v. United States*, 486 U.S. 153, 159 n.3, 108 S. Ct. 1692, 100 L.Ed.2d 140 (1988)). Whether an indigent defendant's dissatisfaction with his court-appointed counsel is meritorious and justifies the appointment of new counsel is a matter within the discretion of the trial court. *DeWeese*, 117 Wn.2d at 376. Factors to be considered in a decision to grant or deny a motion to substitute counsel are (1) the reasons given for the dissatisfaction, (2) the court's own evaluation of counsel, and (3) the effect of any substitution upon the scheduled proceedings. *State v. Stark*, 48 Wn. App. 245, 253, 738 P.2d 684 (1987).

One of the Sixth Amendment's guarantees is the undivided loyalty of a criminal defendant's attorney. See, *Wood v. Georgia*,

450 U.S. 261, 271, 67 L.Ed.2d 220, 101 S. Ct. 1097 (1981). In *Richardson*, the court stated:

. . . It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available, it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interest on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible. Thus, an inquiry into a claim of harmless error here would require, unlike most cases, unguided speculation.

*In re Richardson*, 100 Wn.2d 669 at 676 (citing *Holloway v. Arkansas*, 435 U.S. 475, 490-91, 555 L.Ed.2d 426, 98 S. Ct. 1173 (1978)). Thus, the trial court's failure to investigate a potential conflict of interest, after having been warned of the possibility, was held to constitute a per se deprivation of the defendant's right to effective assistance of counsel. Id.

Reasonably effective assistance of counsel includes "a duty of loyalty, a duty to avoid conflicts of interest." *State v. Robinson*, 79 Wn. App. 386, 394, 902 P.2d 652 (1995) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 80 L.Ed.2d 674, 104 S. Ct. 2052 (1984)). Importantly, where there is a conflict between a client's interests and the attorney's personal interests, prejudice is

presumed. See, *U.S. v. Hoffman*, 733 F.2d 596, 6601-02 (9th Cir. 1988), *cert. denied*, 469 U.S. 1039 (1988). Furthermore, the Rules of Professional Conduct are designed, in part, to prohibit conflicts of interest. See, RPC 1.7, 1.8, and 1.9.

Washington Rules of Professional conduct Rule 1.7 subsection (8) provides:

Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests.

In the instant case, the alleged rape victim in the case has been very closely known to Ms. Anderson since she was five years old. CP 50. Ms. Anderson frequently attending family gatherings to include Thanksgivings and Christmases. CP 50. The alleged victim continued to maintain this close relationship until the investigation of this case began. She came to be considered family to the alleged victim, her mother, and the defendant, Edward Hart. CP 50. During the interview on July 14, 2016, it became clear to the State that Ms. Anderson was very personally involved and a witness in the case and should be disqualified from representation. CP 45. It was revealed during the interview that while the alleged

victim was an employee of Ms. Anderson's law firm eight years prior, the alleged victim disclosed that she had been raped and molested by Mr. Hart. CP 45-50. Additionally, it was later revealed that at the age of sixteen, the victim had written a formal declaration absolving Mr. Hart of the allegations. CP 123. This declaration was written on legal pleadings bearing the name of Ms. Anderson's firm. CP 123. It was subsequently revealed that Ms. Anderson took that disclosure and revealed it to Mr. Hart who had not been previously made aware of such allegations. CP 50. It was also revealed that Ms. Anderson had previously had personal conversations with the victim's mother, Cami Stewart, about the veracity of A.C.'s claims against Mr. Hart as well as her own personal questions of the motivations of the victim's mother based on conversations Ms. Anderson had with her. CP 45-51. The interview was intensely personal and the questioning became increasingly antagonistic. CP 49.

The State did not become aware of the inherent conflict involving Ms. Anderson's representation of Mr. Hart until this victim interview was conducted on July 14, 2016. Ms. Anderson's representation was also materially limited because she was unable to testify as to issues that could materially impact the presentation

of Mr. Hart's case. The Court was clear in addressing the reasons for the disqualification. It stated:

[D]espite sort of the present stated intention we're not going to call you, this could be a real situation of a he said/she said swearing match where credibility is going to be of the utmost importance for the jury to evaluate because this long after the allegations, there's not going to be any other kind of physical evidence. Your declaration indicates you had conversations with Mr. Hart, with Ms. Stewart, the mother, and with the alleged victim back at this time period when this was first brought to light. Further I don't know if—I guess I wouldn't rule out the possibility that the State could end up calling you as a witness, depending on what the nature of the defense is, as a rebuttal witness, but I think that Mr. Hart would be deprived potentially of a witness that might be favorable for him in terms of you and your knowledge of the event back many years ago if you are acting as his attorney in this case.

RP 11.

A key assertion made by Ms. Anderson during the disqualification hearing was that she would not be called as a witness by the State. RP 8. This ultimately proved incorrect. CP 99. Ms. Anderson was called as a witness for the State and was a crucial credibility witness against Mr. Hart. RP 428-438.

For the aforementioned reasons, Ms. Anderson's representation would have materially limited Mr. Hart's defense. Additionally, Ms. Anderson was a State's witness against Mr. Hart.

The disqualification was not improper and was, in fact, necessary.

2. The State did not commit prosecutorial misconduct in closing because the statements were permissible inferences drawn from the testimony elicited at trial.

In analyzing prejudice, we do not look at the comments in isolation, but in the context of the total argument, the issues in the case, the evidence, and the instructions given to the jury. *State v. Warren*, 165 Wn.2d 17, 28, 195 P.3d 940 (2008). Depending on whether the defendant objected to the improper comments, we analyze prejudice in misconduct claims under one of two standards of review. *State v. Emery*, 174 Wn.2d 741, 760, 278 P.3d 653 (2012). If the defendant objected at trial, he need only show that the prosecutor's misconduct resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. *Id.* If, however, the defendant did not object at trial, he is deemed to have waived any error, unless the prosecutor's misconduct was so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice. *Id.* at 760-61. "Under this heightened standard, the defendant must show that (1) 'no curative instruction would have obviated any prejudicial effect on the jury' and (2) the misconduct resulted in prejudice that 'had a substantial likelihood of affecting the jury verdict.'" *Id.* at 761 (quoting *State v. Thorgerson*, 172

Wn.2d 438, 455, 258 P.3d 43 (2011)). In other words, prosecutorial misconduct is flagrant and ill-intentioned only when it crosses the line of denying a defendant a fair trial. Although prosecuting attorneys have wide latitude to argue facts and reasonable inferences from the evidence, *State v. Thorgerson*, 172 Wn.2d 438, 453, 258 P.3d 43 (2011), they are not permitted to make prejudicial statements unsupported by the record. See, *State v. Rose*, 62 Wn.2d 309, 312-13, 382 P.2d 513 (1963) (improper to refer to defendant as “drunken” when every witness testified that he did not appear drunk or intoxicated); *State v. Boehning*, 127 Wn. App. 511, 519-23, 111 P.3d 899 (2005) (cannot infer multiple instances of rape from unpursued rape charges because unpursued charges are not evidence). However, it is not misconduct for a prosecutor to argue the evidence does not support the defense theory; prosecutors are entitled to respond to defense counsel's arguments. *State v. Russell*, 125 Wn.2d 24, 87, 882 P.2d 747 (1994).

In a recent case out of the Washington State Supreme Court, *State v. Phelps*, the court ruled that prosecutors are free to characterize the evidence to tell their story in closing argument. *In re Personal Restraint of Phelps*, No. 94185-8, slip op. at 23 (Wash.

2018). The case involved a rape where the prosecutor in that case thoroughly discussed the date of the rape itself, grooming tactics, and credibility arguments made were centered on the differences between Phelps's and the victim's accounts of what happened between her and the defendant. The prosecutor made many comments about the defendant's grooming tactics although the concept of grooming was not addressed by an expert or witness at trial specifically. The court found that the prosecutor did not argue facts not in evidence, and his comments in closing argument were not central to the verdict reached by the jury. *Id.* at 29. In fact the court found the prosecutor's comments about grooming more akin to permissible inferences drawn from the evidence than arguing facts not in evidence. *Id.* at 25. The court also considered the instructions to jury instructing them that closing arguments are not evidence and they could only considered the testimony and exhibits in reaching a verdict. *Id.* at 28.

Courts have found prosecutorial misconduct to be flagrant and ill-intentioned in a narrow set of cases where we were concerned about the jury drawing improper inferences from the evidence, such as those comments alluding to race or a defendant's membership in a particular group, or where the

prosecutor otherwise comments on the evidence in an inflammatory manner. See, *State v. Monday*, 171 Wn.2d 667, 257 P.3d 551 (2011); *State v. Belgarde*, 110 Wn.2d 504, 508, 755 P.2d 174 (1988) (holding a prosecutor committed flagrant and ill-intentioned misconduct by telling the jury the defendant in a murder trial was “strong” with the American Indian Movement (AIM) and calling AIM a “deadly group of madmen” and “butchers that kill indiscriminately”).

On appeal, Mr. Hart contends three portions of the State’s closing argument as misconduct, all regarding the presence of a mole on Mr. Hart’s penis. The State presented three witnesses who testified to the presence, shape, coloring, and location of a mole on Mr. Hart’s penis. RP 273-275, 331-332, 341-343, 355-359. The defense, on the last day of trial and after the State had closed its case, presented new penis pictures to the jury taken thirteen months after the commencement of the case by a defense investigation. RP 470. Defense also presented a defense investigator, Mr. Miranda, as witness to testify that the mole did not exist after his inspection of Mr. Hart’s penis that day. RP 470. The credibility of the witnesses was a central issue to this case. The presence and subsequent absence of the mole gives rise to the

inference that something could have been done to remove the mole since the first pictures were taken upon Mr. Hart's arrest. On cross examination, Mr. Miranda was questioned about the thoroughness of his investigation to include whether or not he reviewed the medical records of Mr. Hart and whether or not he had questioned Mr. Hart about possible removal of the mole. RP 485-487. It is a reasonable inference from the testimonial evidence in the record that it was possible that the mole could have been removed from the defendant's penis between the time of the investigation and trial. These were arguments and inferences were supported by the record. Mr. Hart cannot show that the statements were ill-intentioned so as to deprive the defendant of a fair trial. There is no substantial likelihood that the statements had a substantial likelihood of affecting the jury's verdict.

Furthermore, jurors are also specifically instructed not to consider closing arguments as evidence, which further helps draw the line between fact and argument. 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 1.02, at 21 (4th ed. 2016). Mr. Hart's jury was so instructed. CP 153.

3. The State concedes Scribner's error regarding RCW 9.94A.712 versus RCW 9.94A.507 and the Judgment and Sentence should be corrected as such.

The appellant is correct in that a sentence imposed under the SRA, "shall be determined in accordance with the law in effect when the current offense was committed." RCW 9.94A.345. The law in effect in 2002 and 2004 would have required the application of RCW 9.94A.712 as RCW 9.94A.507 was not put into effect until 2009. The language of the law did not materially change as to warrant resentencing, but should be considered Scribner's error and remanded to correct the Judgment and Sentence. *State v. Healy*, 157 Wn. App. 502, 516, 237 P.3d 360 (2010).

4. The Court did not error in imposing conditions regarding "community protection zone" because it is a crime-related condition with a nexus to the crime.

Generally, a court may impose crime-related prohibitions and affirmative conditions. RCW 9.94A.505(8). A "crime-related prohibition" is an order prohibiting conduct that directly relates to the circumstances of the crime. RCW 9.94A.030(13). We review whether a community placement decision is crime-related for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). "Crime-related prohibitions" during the period of community custody following release from total confinement further the

"purposes of the Sentencing Reform Act of 1981 . . . [which include] imposition of just punishment, protection of the public, and offering the offender an opportunity for self-improvement." *State v. Letourneau*, 100 Wn. App. 424, 431, 997 P.2d 436 (2000). "'Crime-related prohibition' means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct." RCW 9.94A.030(13). "Although the conduct prohibited during community custody must be directly related to the crime, it need not be causally related to the crime." *Letourneau*, 100 Wn. App. at 432, 997 P.2d 436.

RCW 9.94A.8445 explicitly states:

Community protection zones—Preemption of local regulations—Retrospective application.

- (1) Sections 1 through 3 and 5 of chapter 436, Laws of 2005, supersede and preempt all rules, regulations, codes, statutes, or ordinances of all cities, counties, municipalities, and local agencies regarding the same subject matter. The state preemption created in this section applies to all rules, regulations, codes, statutes, and ordinances pertaining to residency restrictions for persons convicted of

any sex offense at any time. (emphasis added).

Under RCW 9.94A.712(6)(a), the trial court *may* order the defendant to "perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community." Under RCW 9.94A.700(5)(e), the trial court *may* also order the defendant to "comply with any crime-related prohibitions."

In this particular case, Mr. Hart was convicted of a sexual offense against a minor. It is well within the discretion of the court to impose a condition regulating where Mr. Hart is allowed to reside in order to protect the community and minors in designated community protection zone areas. There is a nexus between the crime and the condition imposed and the condition should, therefore, be upheld.

5. The State concedes err in the Court's imposition of the community custody condition regarding "sexually explicit materials" as it has no nexus to Mr. Hart's crime.

Because the community custody condition regarding "sexually explicit materials" does not involve affirmative conduct reasonably related to the circumstances of the offense as required under RCW 9.94A.712 and the condition is not crime-related as

prescribed under RCW 9.94A.700, the condition should be stricken.

*State v. O'Cain*, 144 Wn. App. 775, 184 P.3d 1262 (2008).

6. The State takes no position on Mr. Hart's position on the assessment of fees.
7. Mr. Hart's Statement of Additional Grounds on Appeal should be dismissed as the action was not time barred by the statute of limitations.

Mr. Hart alleges that the statute of limitations under RCW 9A.04.080 at the time the offenses occurred fell under the 1998 version of the statute and the statute was not amended until 2013. This assertion is incorrect. The statute was amended by the legislature and filed in the Office of the Secretary on April 13, 2009, to extend the statute of limitations for cases of Rape of a Child in the First and Second Degree. More specifically, the 2009 amendment extended jurisdiction where the alleged victim was less than fourteen years old at the time of the commission of the offense to be prosecuted up until the victim's 28<sup>th</sup> birthday. The State agrees that the alleged victim is currently 26 years old. The State also agrees that had the 1998 statute not been amended prior to December 31, 2011, ex post facto would apply absent explicit legislative direction for retroactive application. However, because the statute had been amended in 2009 and again in 2013 prior to

the expiration of jurisdiction under the 1998 statute of limitations, the State at the time of filing had jurisdiction for prosecution until the victim's 30<sup>th</sup> birthday.

#### **D. CONCLUSION**

The lower Court did not violation Mr. Hart's Sixth Amendment right to counsel because Ms. Anderson had material conflicts that disqualified her from representing Mr. Hart at trial. The State did not commit misconduct by remarks about evidence brought forth in the defense case in chief. Statements made by the State in closing arguments were proper inferences drawn from the facts elicited at trial by the testimony of both defense and State witnesses. The convictions should be upheld.

The State concedes Scribner's error with regard to correcting the Judgment and Sentence to RCW 9.94A.712 versus RCW 9.94A.507. The Judgement and Sentence should be remanded for correction.

The Court did not commit error when it imposed conditions regarding residing within a "community protection zone" as it is a crime-related prohibition condition of sentence with a nexus to the crime and is specifically prescribed for in the statute.

The State concedes the conditions of community custody should be corrected to strike the condition regarding "sexually explicit materials" as the condition does not have a nexus to the crime in Mr. Hart's case.

The State takes no position regarding the impositions of appeal costs. Mr. Hart's Statement of Additional Grounds for violation of statute of limitations should be summarily dismissed for the same grounds as the lower Court previously dismissed the motion.

DATED this 20th day of March, 2018.

Respectfully submitted,

Douglas J. Shae  
Chelan County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Nicole Hankins", written over a horizontal line.

By: Nicole Hankins WSBA #42895  
Deputy Prosecuting Attorney

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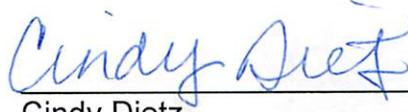
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	No. 35381-8-III
Plaintiff/Respondent,	)	Chelan Co. Superior Court No. 16-1-00224-3
vs.	)	DECLARATION OF SERVICE
EDWARD LANE HART,	)	
Defendant/Appellant.	)	

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 20th day of March, 2018, I caused the original BRIEF OF RESPONDENT to be filed via electronic transmission with the Court of Appeals, Division III, and a true and correct copy of the same to be served on the following in the manner indicated below:

Jill S. Reuter	( )	U.S. Mail
Nichols and Reuter, PLLC	( )	Hand Delivery
P.O. Box 19203	(X)	E-Service Via Appellate
Spokane, WA 99219		Courts' Portal
jill@ewala.com		
Kristina M. Nichols	( )	U.S. Mail
Nichols and Reuter, PLLC	( )	Hand Delivery
P.O. Box 19203	(X)	E-Service Via Appellate
Spokane, WA 99219		Courts' Portal
admin@ewalaw.com		
Edward Lane Hart, DOC #399600	(X)	U.S. Mail
Stafford Creek Corrections Center	( )	Hand Delivery
191 Constantine Way	( )	E-Service Via Appellate
Aberdeen, WA 98520		Courts' Portal

1 Signed at Wenatchee, Washington, this 20th day of March, 2018.

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4 Cindy Dietz  
5 Legal Administrative Supervisor  
6 Chelan County Prosecuting Attorney's Office  
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# CHELAN COUNTY PROSECUTING ATTORNEY

March 20, 2018 - 4:06 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35381-8  
**Appellate Court Case Title:** State of Washington v. Edward Lane Hart  
**Superior Court Case Number:** 16-1-00224-3

### The following documents have been uploaded:

- 353818\_Briefs\_20180320160558D3260172\_6194.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Hart 35381-8 Brief of Respondent.pdf*

### A copy of the uploaded files will be sent to:

- admin@ewalaw.com
- douglas.shae@co.chelan.wa.us
- jill@ewalaw.com

### Comments:

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Sender Name: Cindy Dietz - Email: cindy.dietz@co.chelan.wa.us

**Filing on Behalf of:** Nicole Hankins - Email: nicole.hankins@co.chelan.wa.us (Alternate Email: prosecuting.attorney@co.chelan.wa.us)

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