

**FILED
Court of Appeals
Division III
State of Washington
7/30/2018 10:16 AM**

COA Cause No. 359662

**STATE OF WASHINGTON
COURT OF APPEALS
DIVISION III**

STATE OF WASHINGTON

Appellant,

vs.

**STEVENS COUNTY DISTRICT COURT
JUDGE**

Respondent,

BRIEF OF RESPONDENT

JERRY J. MOBERG, WSBA No. 5282
Attorneys for Respondent
P.O. Box 130
124 3rd Ave S.W.
Ephrata, WA 98823
(509) 754 2356

TABLE OF CONTENTS

A.	IDENTITY OF RESPONDENT AND INTRODUCTION	1
B.	STATEMENT OF THE CASE	1
C.	ARGUMENT	5
D.	CONCLUSION	14

TABLE OF AUTHORITIES

CASES

<i>Cost Mgmt. Servs., Inc. v. City of Lakewood</i> , 178 Wn.2d 635, 310 P.3d 804 (2013).....	5
<i>Matter of 13811 Highway 99, Lynnwood, Washington</i> , 194 Wn.App. 365, 378 P.3d 568 (2016).....	14
<i>River Park Square, LLC v. Miggins</i> , 143 Wash.2d 68, 17 P.3d 1178 (2001).....	4, 5
<i>State ex rel. Carroll v. Junker</i> , 79 Wash.2d 12, 482 P.2d 775 (1971).....	5
<i>State ex rel. Hodde v. Superior Court</i> , 40 Wash.2d 502, 244 P.2d 668 (1952).....	5
<i>State v. Birch</i> , 183 Wash. 670, 49 P.2d 921 (1935).....	9
<i>State v. Chapman</i> , 131 Wash. 581, 230 P. 833 (1924).....	8, 9
<i>State v. Cummings</i> , 87 Wn.2d 612, 555 P.2d 835 (1976).....	10, 11, 12
<i>State v. Dolman</i> , 22 Wn. App. 917, 594 P.2d 450 (1979).....	12
<i>State v. Stock</i> , 44 Wn. App. 467, 722 P.2d 1330 (1986).....	13, 14
<i>State v. Taylor</i> , 101 Wash. 148, 172 P. 217 (1918).....	8, 9

<i>State v. Werner</i> , 129 Wn.2d 485, 918 P.2d 916 (1996).....	7, 10
---	-------

STATUTES

RCW 10.43.010	17, 18
RCW 10.46.090	18
RCW 13.04.021(1).....	9
RCW 2.08.010	8
RCW 3.02	9
RCW 3.02.010	9
RCW 3.02.020	9
RCW 3.30	10
RCW 3.30.080	10
RCW 3.34	10
RCW 3.66.060	10
RCW 7.16.160	4
RCW § 3.66.020	10
RCW § 7.36.040	11
Wa. Const. art. IV, § 1	8
Wa. Const. art. IV, § 6	8, 19, 21
Wa. Const. art. IV, § 12	9

I. IDENTITY OF RESPONDENT AND INTRODUCTION

The Respondent is the duly elected District Court Judge for the District Court of Stevens County Washington, the Honorable Gina Tveit. She is the Respondent in the State's Petition for a Writ of Mandamus that challenges the District Court's right to handle its own cases. The Writ was summarily denied by the Hon. John Strohmaier acting in his capacity as a visiting Superior Court judge for Stevens County.

The issue before this court is straightforward. Can a Superior Court judge enter orders and take other actions in a case that was filed in the District Court if the case is not before the Superior Court in any appellate capacity? The answer to that question seems obvious and Judge Strohmaier ruled that the Superior Court has no authority to enter orders in District Court matters outside of its appellate court jurisdiction. Nevertheless, the Prosecutor of Stevens County seeks review from this Court to pursue his novel theory of jurisdiction that would grant the Superior Court Judge authority to act on any matter filed in District Court. Judge Strohamier's ruling is correct and should be affirmed by this court.

II. STATEMENT OF THE CASE

For several years the District Court has handled all first appearances in criminal matters both for cases filed in the Superior Court

and cases filed in the District Court. For reasons that are unclear, the Stevens County Superior Court Judges decided to change that procedure. They ordered that all first appearances¹ for any Information filed in Superior Court would be handled by the Superior Court. The Respondent has no objection to that procedure. Inexplicably, the Superior Court Judges, without even consulting Judge Tveit, decided that they would also hear all first appearances in criminal cases filed in the District Court. On January 29, 2018, the Superior Court Administrator, Evelyn Bell, announced the change in procedure.

On February 2, 2018, the State attempted to file in District Court an order on first appearance signed by one of the Stevens County Superior Court judges. Judge Tveit concluded that the Superior Court Judge had no lawful authority to enter the order and directed her clerk to not accept the order for filing.

In response to the District Court Judge's ruling refusing to accept an order signed by a Superior Court Judge in a District Court case, the Stevens County Prosecuting Attorney sought and obtained an *ex parte* Writ of Mandamus. (CP 62-63). The District Court Judge answered the Writ setting forth the fact that the Superior Court Judges lacked any

¹ At first appearances the judicial officer would make decisions regarding probable cause, the conditions of release, assignment of counsel and scheduling of subsequent in court hearings.

jurisdiction or other authority to enter orders on first appearance in cases that were filed originally in the District Court. Judge Tveit asserted that the actions of the Superior Court Judges were *ultra vires* to their authority. (CP 135.) On February 28, 2018, the matter was then heard by Hon. John Strohmaier, sitting as a visiting judge in Stevens County. On March 7, 2018, Judge Strohmaier filed a memorandum opinion concluding that the district court was acting within its power to refuse the Superior Court's attempt to hear cases and enter orders in District Court cases unless the Superior Court judicial officer was acting as a District Court Judge *pro tempore*. (CP 178) Judge Strohmaier cogently noted:

There has been no citation of any case law or statute that would appear to grant the superior court judge or court commissioner the authority to conduct hearings in district court and enter orders in district court absent the district court judge's specific authorization to act as an elected judge pro tern or absent court rule. The district court judge is an elected official that presides over criminal misdemeanor/gross misdemeanor charges and may conduct preliminary hearings to determine probable cause on felony complaints (CrRLJ 3.2. 1 (g)). Contrary to the petitioner's affidavit in support of the Writ of Mandamus, the district court is not subject to the direction of the superior court and the respondent cannot be "commanded" by the superior court to change its own docket or the time of its hearings.

The district court sets its own hours, appoints its own judge pro tern, and rules on any issue that may come up during pre-trial, trial, sentencing, or post-conviction matters. Only if the defendant seeks to review the district court's decision will the superior court act in its appellate capacity (RALJ), but such matters will then be heard in the superior court.

Furthermore, if a superior court could sign orders in the district court whenever a district court defendant is in-custody and needs to be brought before the court, it could cause uncertainty, inconsistency, and may cause a conflict if the defendant files an appeal to the superior court.

(CP 177).

Unwilling to accept the well-reasoned ruling of Judge Strohmaier, the Prosecutor sought reconsideration. (CP 179-183). Judge Strohmaier reaffirmed his ruling that the Superior Court “is not authorized” to act in District Court cases without the consent of the District Court Judge. (CP 185). The Prosecutor now seeks review by this Court.

III. ARGUMENT

A. STANDARD OF REVIEW.

Writs of mandamus are subject to two separate standards of review, depending on the question reviewed. First, a writ of mandamus “may be issued by any court ... to compel the performance of an act which the law especially enjoins as a duty....” RCW 7.16.160. Moreover, “[t]he determination of whether a statute specifies a duty that the person must perform is a question of law.” *River Park Square, LLC v. Miggins*, 143 Wash.2d 68, 76, 17 P.3d 1178 (2001). Thus, since we review questions of law de novo, we review de novo the question whether a statute specifies a duty such that mandamus may issue. But “[w]hether there is a plain,

speedy, and adequate remedy in the ordinary course of the law is a question left to the discretion of the court in which the proceeding is instituted.” *Id.* (citing *State ex rel. Hodde v. Superior Court*, 40 Wash.2d 502, 517, 244 P.2d 668 (1952)). We reverse discretionary decisions of the trial court only if “the superior court's discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Id.* (citing *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971)). Therefore, if the question raised is whether a statute prescribes a duty that will support issuance of a writ of mandamus, our review is *de novo*. But if the question raised is whether there existed an adequate remedy at law that precludes issuance of mandamus, we review the trial court's decision for abuse of discretion. *Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wn.2d 635, 648–49, 310 P.3d 804, 812 (2013).²

B. THE TRIAL JUDGE PROPERLY DENIED THE STATE’S REQUEST FOR A WRIT OF MANDAMUS SINCE JUDGE TVEIT’S ACTIONS IN REFUSING TO ACCEPT ORDERS FROM THE SUPERIOR COURT ON CASES FILED IN THE DISTRICT COURT WAS APPROPRIATE AND NOT UNCONSTITUTIONAL.

The State argues that Judge Tveit’s decision refusing to accept orders in District Court that were signed by Superior Court judges was an unconstitutional act. The State misstates and understates the issue as

² In this case Judge Tveit did not raise the “adequate remedy” defense and this matter should be reviewed by this court *de novo*.

“[W]hether a superior court must give way to an inferior court simply because the case was given an inferior file number first.” State’s Brief at 7. This case is not about inferior file numbers. This case squarely addresses whether the Superior Court has any authority to make decisions and enter orders **in cases that were filed in the District Court** when it is not acting in its appellate capacity.³

The State argues that Judge Tveit’s refusal to accept an order signed by the Superior Court in a case filed originally in the District Court is in violation of the Washington State Constitution citing a portion of Article IV, §10. The State is mistaken. Wa. Const. art. IV, §10 provides that “The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.” The Constitutional authority of Superior Courts is set out in the Washington Constitution, in pertinent part, as follows:

The superior court shall have original jurisdiction . . . in all criminal cases amounting to felony, and in all cases of misdemeanor **not otherwise provided for by law**[.]

Wa. Const. art. IV, § 6. (Emphasis added.) See also, RCW 2.08.010 The District Court is a constitutional court created by the legislature. Wa.

³³ The issue is one of jurisdiction. The State’s argument makes no more sense than if it were to argue that this honorable Court would have the authority to enter non-appellate orders and rulings in any Superior Court action. While the number assigned to the case is indicative of the Court in which the matter is pending, the division of jurisdiction between court’s is a matter of great importance.

Const. art. IV, § 12. The District Court is not merely a division of the Superior Court.⁴ District Courts are created by statute. *See generally*, RCW 3.02 et. seq., and RCW Titles 35 and 35A. RCW 3.02.010. The decisions of the District Court are reviewable by the Superior Court. RCW 3.02.020. District Courts are specifically created and authorized by the legislature pursuant to RCW 3.30 et. seq. They are authorized to adopt their own rules in addition to rules prescribed to them by the Supreme Court. RCW 3.30.080. Its judges are specifically authorized in RCW 3.34 et. seq. The court has civil jurisdiction over most cases up to \$100,000. RCW § 3.66.020 More importantly, the legislature has conferred upon District courts broad powers to hear misdemeanors, gross misdemeanors, violations of city ordinances, traffic infractions, and to sit as a committing magistrate and conduct preliminary hearings. RCW 3.66.060.

Understandably, the District Court and the Superior Court have concurrent jurisdiction over misdemeanors and gross misdemeanors. That does not make them a unified court. Each is a separate constitutionally created court with concurrent jurisdiction over misdemeanors depending

⁴ An example of a court that is a division of the Superior Court would be the juvenile court. *State v. Werner*, 129 Wn.2d 485, 492, 918 P.2d 916, 920 (1996)(The juvenile court is only a division of the superior court, not a separate constitutional court. RCW 13.04.021(1).

in which court the Prosecuting Attorney chooses to file the case. The fact that Superior Court has concurrent jurisdiction over misdemeanors gives it no more right to enter orders in District Court cases than it would give the court the right to enter orders in matters originally filed in the Supreme Court where the Superior Court and Supreme Court have concurrent jurisdiction.⁵ If, as the State argues, having concurrent jurisdiction gives the Superior Court the right to enter orders in misdemeanor cases filed in District Court then the District Court would have the same authority to enter orders and make rulings regarding misdemeanors filed in Superior Court. That is not the way the court system was designed.

The question is not whether the Superior Court and District Court have concurrent jurisdiction over a matter. It is instead a matter of where the case was filed.⁶ *State v. Taylor*, 101 Wash. 148, 172 P. 217 (1918) and *State v. Chapman*, 131 Wash. 581, 230 P. 833 (1924) are instructive and were relied upon by the trial court. The trial judge noted that *Taylor* and *Chapman* held that in the absence of a statute giving the Superior Court or the District Court exclusive jurisdiction, the one first assuming jurisdiction

⁵ For example, the Supreme Court, Court of Appeals and superior court have concurrent original jurisdiction of habeas corpus proceedings. RCW § 7.36.040.

⁶ The State makes the disingenuous argument that since the hearings on District Court filed misdemeanors occurred in a Superior Court courtroom the proceedings were in Superior Court. (State Brief at 10) This is akin to the argument that if you are standing in a garage it makes you a car. Understandably the State does not cite any case law for its novel argument.

is entitled to exercise it to the exclusion of the other. (CP 176).

Specifically, *Chapman* held:

The offense with which the relator has been charged is a gross misdemeanor. This court, in *State ex rel. Murphy v. Taylor*, 101 Wash. 156, 172 P. 217, considering the jurisdiction of the superior courts, stated that ‘justices of the peace have concurrent jurisdiction with the superior court of all cases of gross misdemeanor,’ and inferentially adds that, in the absence of a statute giving one or the other courts exclusive jurisdiction, the one first assuming jurisdiction is entitled to exercise it to the exclusion of the other.

The relator having been charged with a gross misdemeanor, and the statute not having given exclusive jurisdiction to either the justice or the superior court of such offense, the general law must apply that they have concurrent jurisdiction, and, **when the complaint was filed in the justice’s court and the defendant arrested, that court acquired jurisdiction of him**, and a subsequent dismissal of that action was a bar to any later prosecution in any court, under the statute which provides that the order dismissing such prosecution ‘shall bar another prosecution of a misdemeanor or gross misdemeanor, where the prosecution dismissed charged the same misdemeanor or gross misdemeanor.’ For that reason the writ should be granted, under the authority of *State ex rel. Murphy v. Taylor*, supra, which held that the Supreme Court has jurisdiction to issue a writ of prohibition to the superior court where it is proceeding in a matter in excess of its jurisdiction. Let the writ issue. (Emphasis added)

State v. Chapman, at 585. This holding has never been contradicted or overruled by any subsequent case. This holding was cited with approval in *State v. Birch*, 183 Wash. 670, 678, 49 P.2d 921, 924 (1935) and more

recently by our Supreme Court in *State v. Cummings*, 87 Wn.2d 612, 614, 555 P.2d 835, 836 (1976).

The State argues that it does not matter where the case was originally filed, the Superior Court has the authority to enter orders in the case citing *State v. Werner*, 129 Wn.2d 485, 487, 918 P.2d 916, 918 (1996). *Werner* provides the State little solace. In *Werner*, the question was whether the Superior Court judge had the power to enter a search warrant in a juvenile court case. Justice Talmadge correctly noted that since the juvenile court was a division of the Superior Court, the Superior Court judge had authority to enter search warrants in the juvenile court case. The clear distinction between *Werner* and the case at bar is that **the District Court is not a division of the Superior Court** but is, instead, a separate court established by the legislature.

The State attempts to avoid the clear holdings of *Taylor* and *Chapman* by arguing that their holdings were superseded by the court rules. This argument completely ignores the case of *State v. Cummings*, 87 Wn.2d 612, 614, 555 P.2d 835, 836 (1976). *Cummings* involved a similar procedural issue as *Chapman*. In *Cummings*, the State filed a District Court action and then subsequently filed Information in Superior Court alleging the same offense. The State then dismissed the prior filed District court action. The defendant moved to dismiss the Superior Court

action arguing that the District Court had first acquired jurisdiction by the filing of the complaint in District Court and the dismissal of the District Court action was a bar to the State to proceed in the later filed Superior court action. The Supreme Court noted that the dismissal of a prosecution instituted first in justice court barred further prosecution of information later filed in Superior court citing the holding in *Chapman. Cummings* at 614. Not only did the Court in *Cummings* reaffirm the holding in *Chapman* but it went on to hold that the current criminal rules in Superior Court and in District Court did not supersede the holding in *Chapman*. The court held that “the rules should be interpreted in light of the common law and decisional law of this state.” *Id.* at 617. More importantly, the *Cummings* court held that the criminal rules did not override the provisions of RCW 10.43.010 (since repealed) that stated in relevant part:

An order dismissing a prosecution , , , shall bar another prosecution of a misdemeanor or gross misdemeanor where the prosecution dismissed charged the same misdemeanor or gross misdemeanor; but in no other case shall such order of dismissal bar another prosecution.

Cummings at 613. The *Cummings* court went on to hold:

We conclude that RCW 10.43.010 and RCW 10.46.090 have been superseded only insofar as court rules conflict with them, and that RCW 10.46.090 continues to govern the authority of the prosecutor to move for dismissal in justice court, subject to the provisions of RCW 10.43.010, making a dismissal of a misdemeanor charge a bar to another prosecution for the same offense, if the latter

prosecution was instituted subsequent to that which was dismissed. RCW 10.43.010 also applies to dismissals in superior court made pursuant to CrR 8.3.

This interpretation is in harmony with JCrR 2.06, which expresses the policy that a misdemeanor should be tried in the court in which the first complaint was filed.

Cummings at 617. The holding in *Cummings* was affirmed in *State v. Dolman*, 22 Wn. App. 917, 921, 594 P.2d 450, 452 (1979) where the Court of Appeals held that the issuance of a citation to the defendant conferred jurisdiction on the San Juan County District Court. In *Dolman* after the citation was issued the deputy prosecutor decided to file the charges in Superior Court. The citation was never filed in District Court. The court still held that jurisdiction was conferred on the District court once the citation was issued and accepted.

The State argues that any ruling that would deprive a superior court of jurisdiction over a criminal matter in favor of an inferior court would violate Art. IV, §6 of the Washington constitution. The argument misses the point. In matters of concurrent jurisdiction, the court rules that confer jurisdiction on the court where in the case is first filed does not deprive the other court of jurisdiction in the constitutional sense. It only

established which court will hear the case. Only one pilot at a time can fly the plane.⁷

The State takes issue with the rule that the court where the case is filed acquires jurisdiction over the case. It cites *State v. Stock*, 44 Wn. App. 467, 475, 722 P.2d 1330, 1335 (1986). *Stock* is of little help. *Stock* was convicted in superior court of first degree theft when former JCrR 2.03(d)(2) provided in part that “[j]urisdiction vests in the superior court at the time the information is filed.” *Id.* at 474–75. Evidence admitted at trial had been obtained through a search warrant issued by the district court after the State filed the information in superior court. *Id.* at 473–74,. On appeal, *Stock* argued that the evidence should have been suppressed because once the State filed the case in superior court, the District Court lost its jurisdiction over the case to issue a warrant. In rejecting that argument, the *Stock* court first noted that superior courts have original jurisdiction over all felony cases under former Const. art. 4, § 6 (amend. 65). The law also provided in part that “[t]he justice court shall have jurisdiction: ... (2) to sit as committing magistrates and conduct preliminary hearings in cases provided by law; (3) concurrent with the

⁷ It is the prosecutor who has the initial choice as to where he or she wants to file misdemeanors. Under the prosecutors theory if he disliked the ruling of the district court judge, he could, without an appeal, seek all further rulings in the case before the Superior Court judge.

superior court of a proceeding to keep the peace in their respective counties.’ ” *Stock*, 44 Wash.App. at 474, 722 P.2d 1330 (quoting former RCW 3.66.060). The court concluded that district courts' concurrent jurisdiction with superior courts **to issue warrants in felony cases** did not trench upon superior courts' exclusive jurisdiction over felony cases. *Id.* The court agreed with the trial court's reasoning that the filing of a felony information in superior court invokes the superior court's jurisdiction over the “matters concerning the trial of the case itself” but does not deprive district courts from their jurisdiction to issue warrants. *Id.* *Stock* reaffirms the concept that the court where the concurrent jurisdiction matter is first filed has jurisdiction to hear the case. It does not prevent the other court from exercising some statutorily approved ancillary action like issuing a search warrant. However, that is not the issue before this court. The question before this court is whether a Superior Court judge can issue orders and make rulings in a District Court case independently of any special ancillary jurisdiction. Clearly it cannot.

Likewise, the State’s reliance on *Matter of 13811 Highway 99, Lynnwood, Washington*, 194 Wn.App. 365, 374, 378 P.3d 568, 573 (2016) is misplaced. In fact, that case acknowledges the “priority of action’ rule stating that the court which first gains jurisdiction of a cause retains the exclusive authority to deal with the action until the controversy is

resolved. The relevant issue in the case was whether a search warrant issued out by an inferior court pursuant to statute would divest the Superior Court of jurisdiction to determine if the seized property should be returned. The search warrant was issued out by the City of Lakewood. The inferior court rules provided that the motion for return of goods seized in a warrant should be filed in the court that issued the warrant. The Superior court rules did not include that restriction. The court determined that the Superior Court had jurisdiction to hear and decide the motion for return of seized items in a case filed in the superior court. The court rejected the City's claim that it had exclusive jurisdiction to hear the matter. Again, that is not the issue before this court. At bar, there is no dispute that the Superior and District court have concurrent jurisdiction. The criminal rules do not provide otherwise. Judge Tveit is not arguing that the district court rules divest the Superior court of jurisdiction. She argues that once a case is filed in Superior Court or District Court that particular court is vested with the power to make all rulings on the case to the exclusion of the other court. This has to be the rule in order to avoid potential irreconcilable conflicts in the administration of the case.

The Superior Court and the District Court both have jurisdiction over misdemeanors. However, both courts cannot hear or administer the same case. The court wherein the case is first filed has the jurisdiction to

hear all matters related to the case. The other court cannot “intervene” and issue out rulings or orders in the case. Judge Strohmaier correctly ruled that Judge Tveit lawfully refused to accept orders filed by the Superior Court judges in cases that were initially filed in District court. The ruling is consistent with the law and practically necessary. If the Superior Court could intervene and issue rulings on District court cases then how could it fairly exercise its appellate court jurisdiction over these same cases? Could a Superior court judge make a ruling in the District court case and then if the matter was appealed to the Superior court reverse his or her ruling? Clearly not.

IV. CONCLUSION

The Court should affirm Judge Strohmaier’s ruling and dismiss the appeal.

RESPECTFULLY SUBMITTED this 28th day of July, 2018.

JERRY MOBERG & ASSOCIATES



JERRY J. MOBERG WSBA No. 5282
Attorney for Respondent

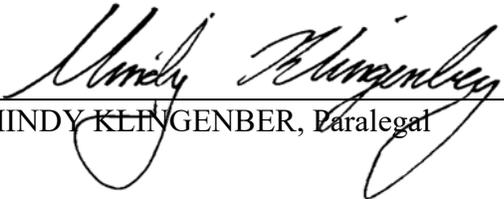
CERTIFICATE OF SERVICE

I certify that on this date I filed this document using the Washington State Appellate Court's Portal which will send notification of the filing to:

Will Ferguson
wferguson@stevenscountywa.gov
Tim Rasmussen
trasmussen@stevenscountywa.gov

DATED this 30th day of June, 2018 at Ephrata, WA.

JERRY MOBERG & ASSOCIATES, P.S.


MINDY KLINGENBER, Paralegal

JERRY MOBERG & ASSOCIATES, P.S.

July 30, 2018 - 10:16 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35966-2
Appellate Court Case Title: State of Washington v. Stevens County District Court Judge
Superior Court Case Number: 18-2-00062-7

The following documents have been uploaded:

- 359662_Briefs_20180730101014D3305851_0943.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Respondent Brief.pdf

A copy of the uploaded files will be sent to:

- trasmussen@stevenscountywa.gov
- wferguson@stevenscountywa.gov
- will.ferguson208@gmail.com

Comments:

Sender Name: Mindy Klingenberg - Email: mklingenberg@jmlawps.com

Filing on Behalf of: Gerald John Moberg - Email: jmoberg@jmlawps.com (Alternate Email:)

Address:
PO Box 130
Ephrata, WA, 98823
Phone: (509) 754-2356

Note: The Filing Id is 20180730101014D3305851