

8/230-6

COURT OF APPEALS
DIVISION ONE

DEC 18 2006

NO. 24820-8-III

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

In re the Detention of

BRYAN DUNCAN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S BRIEF

ROB MCKENNA
Attorney General

JOSHUA L. CHOATE
Assistant Attorney General
WSBA #30867
Criminal Justice Division
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 389-3075

FILED
COURT OF APPEALS DIV. III
STATE OF WASHINGTON
2006 DEC 18 PM 3:20

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I. ISSUES PRESENTED FOR REVIEW

- A. Whether admission of testimony regarding Duncan's refusal to participate mental health re-evaluation by the State's expert was unfairly prejudicial.
- B. Whether admission of testimony regarding the criminal history of Duncan's proposed roommate if released was unfairly prejudicial.
- C. Whether Duncan's right to due process was violated by the trial court's alleged failure to allow Duncan the opportunity for meaningful cross-examination of the State's expert witness.
- D. Whether Duncan's right to due process was violated by the trial court's exclusion of opinion testimony from the defense expert regarding the sex offender treatment program at the Special Commitment Center.
- E. Whether the above circumstances amount to cumulative error requiring reversal of the jury's verdict in this case.

II. STATEMENT OF THE CASE

This sexually violent predator (hereafter "SVP") action was filed against the Appellant, Bryan Duncan, on March 22, 1996. CP 1870-1871. A supplemental certification for determination of probable cause was filed with the trial court in August 1996. CP 1817-1837. This supplemental certification indicated that the Petitioner had been evaluated by the State's expert, Dr. Leslie Rawlings, a licensed psychologist and certified sex offender treatment provider, in March 1996. CP 1817. Dr. Rawlings' written report reflecting his opinions and conclusions, as well as his curriculum vitae, was appended into the supplemental certification.

Dr. Rawlings' report indicates that he conducted a clinical interview with, and psychological testing of, Mr. Duncan in March, 1996. CP 1818.

Four years after the case was filed, and despite numerous trial settings, the matter had still not proceeded to trial. Consequently, on May 3, 2000, the State filed a CR 35 motion to have Mr. Duncan submit to a mental examination by the State's expert, Dr. Leslie Rawlings. CP 1753-1761. It does not appear from the record that Mr. Duncan filed any formal objection, and on May 9, 2000, the trial court granted the State's motion. CP 1748-1750. In its order, the trial court indicated that failure to comply with the order could result in the imposition of the sanctions outlined in CR 37. CP 1750.

On August 25, 2000, the State filed a motion for CR 37 sanctions based upon Mr. Duncan's refusal to meet with Dr. Rawlings. CP 1721-1729. After considering the State's motion and Mr. Duncan's response, the trial court granted the State's motion, and ordered that Mr. Duncan be prevented from presenting any expert testimony on the issue of whether he suffers from a mental abnormality or personality disorder which makes him likely to engage in predatory acts of sexual violence if he is not confined to a secure facility, one of the central issues at Mr. Duncan's trial. CP 1694. Despite the 2000 order granting the evaluation and the subsequent order granting CR 37 sanctions,

Mr. Duncan never participated in a clinical interview by Dr. Rawlings after March, 1996. RP 1328 (11/3/05).

Trial began in October, 2005. CP 1213. At trial, Dr. Rawlings testified that he diagnosed Mr. Duncan with pedophilia and schizophrenia, and that pedophilia was a "mental abnormality" for purposes of the SVP determination. RP 1060-75 (11/2/05). Dr. Rawlings also concluded that Mr. Duncan was likely to reoffend if not confined, and described the several actuarial instruments he employed to reach that conclusion. RP 1101-1116 (11/2/05).

The State also presented the testimony of Dr. Paul Spizman. Dr. Spizman is a psychologist who works at the Special Commitment Center on McNeil Island (hereafter "SCC"), a state-run treatment facility for SVPs. RP 1402-3 (11/4/05). Dr. Spizman testified regarding Mr. Duncan's living arrangements at the SCC, and the various infractions Mr. Duncan committed while there. RP 1408-13 (11/4/05). He also testified that he would be concerned if Mr. Duncan were released because Mr. Duncan had not learned to engage in healthy relationships. RP 1413 (11/4/05).

Despite the trial court's order sanctioning him, Mr. Duncan presented the testimony of two experts at trial, Dr. Richard Wollert and Dr. Robert Halon. *See generally* RP 1153 (11/7/05) through

RP 1906 (11/9/05); RP 1929 (11/9/05) through RP 2039 (11/10/05). Dr. Wollert largely limited his testimony to discussions relating to the general validity of the actuarial instruments used by Dr. Rawlings, the validity of those instruments when applied to juvenile offenders, and the impact of brain development on the test results. Dr. Halon, on the other hand, was permitted to testify regarding whether Mr. Duncan suffered from a mental abnormality that makes him likely to engage in predatory acts of sexual violence if he is not confined. Cf. 1768-72 (11/8/05); RP 2029-30 (11/10/05). Specifically, Dr. Halon opined that Mr. Duncan did not suffer from pedophilia. Rather, Dr. Halon testified that Mr. Duncan's deviant behavior was driven by a need to "experiment," and there was no evidence that Mr. Duncan has a preference for children. RP 1972-78 (11/9/05).¹

At the conclusion of the trial Mr. Duncan was found by the jury to be a sexually violent predator. CP 31. This appeal followed.

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¹ It is not clear from the record why the Order Granting Petitioner's Motion for Sanctions was not enforced at trial. However, *In re Detention of Williams*, 147 Wn.2d 476, 55 P.3d 597 (2002), holding that the State cannot compel a CR 35 psychological evaluation in the context of SVP proceedings, issued after entry of that Order and before the commencement of the trial. The State assumes that trial counsel intentionally chose, in light of *Williams*, to forgo any attempt to enforce sanctions.

III. ARGUMENT

A. Mr. Duncan Was Not Unfairly Prejudiced by Testimony Regarding Dr. Rawlings' Inability to Conduct a Supplemental Interview.

Appellant argues that the trial court erred in allowing the State to elicit testimony by Dr. Rawlings that he would like to have interviewed Mr. Duncan a second time, but that he was not able to do so. Br. of Appellant at 14. Citing ER 403, *In re Detention of Williams*, 147 Wn.2d 76, 55 P.3d 597 (2002), and *In re Detention of Marshall*, 156 Wn.2d 150, 125 P.3d 111 (2005), he argues that the State had no right to any additional personal interview and as such, any testimony regarding Mr. Duncan's failure to participate in a subsequent interview was more prejudicial than probative.

Mr. Duncan's claim fails for several reasons. First, his objection based on ER 403 is untimely. Second, there is nothing in the language of *Williams* or *Marshall* that precluded the State from eliciting testimony from Dr. Rawlings to the effect that he would like to have been able to update his 1996 interview but was not able to do so. Third, the trial court correctly determined that, where the defense had attacked Dr. Rawlings' credibility on the basis of the lack of a post-1996 interview, the State was entitled to clarify why no interview had occurred. Finally, when considered in the context of this case, it cannot be said that there was any

realistic possibility of prejudice. Mr. Duncan's arguments are without merit and should be rejected.

1. Appellant's ER 403 argument is untimely.

Mr. Duncan cites ER 403 in support of his argument that he was unfairly prejudiced by the admission of testimony regarding his refusal to be clinically interviewed by the State's expert. Br. of Appellant at 10-11. ER 403 provides in pertinent part as follows: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...." Error due to violation of ER 403 is not of constitutional magnitude, and cannot be raised for the first time on appeal. *State v. Jackson*, 102 Wn.2d 689, 695, 689 P.2d 76 (1984); *State v. Smith*, 106 Wn.2d 772, 780, 725 P.2d 951 (1986); RAP 2.5(a). Although defense counsel claimed that the evidence "cast a pall" over Mr. Duncan, he never raised ER 403, nor did he ask the court to balance the probative value of the evidence against its prejudicial effect. RP 1328-1331 (11/2/05). As such, he has waived this argument. *See King County v. Washington State Boundary Review Bd.*, 122 Wn.2d 648, 660, 860 P.2d 1024 (1993); 11/4/05 RP 1338-9.

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2. **The testimony elicited by the State was in direct response to Appellant's attack on Dr. Rawlings, and as such its probative value far outweighed any potential for prejudice.**

Even if this Court agrees to consider Mr. Duncan's argument, it is without merit. At trial, Mr. Duncan's cross examination of Dr. Rawlings effectively invited the State to explain why Dr. Rawlings had not interviewed Mr. Duncan since 1996. Having attempted to impeach the State's expert with his failure to conduct such an interview, he cannot now claim that the State's response to that attack was prejudicial to him. Moreover, Mr. Duncan's attempt to use *Williams* and *Marshall* in support of this argument fails. The question of the State's "right" to a CR 35 evaluation is not at issue in this case.² Rather, the question is, where Mr. Duncan intentionally attacked the State's expert's credibility based on that expert's failure to conduct a supplemental interview, did the trial court abuse its discretion by allowing the State to respond to those attacks and explain, in an exceedingly restrained way, that failure? The trial court's ruling was clearly correct, and Mr. Duncan's argument fails.

² The State does not dispute that, pursuant to *Williams*, a CR 35 evaluation would not, at the time of trial, have been available to the State. The State did not, however, ever obtain a CR 35 evaluation of Mr. Duncan and, as explained above, never sought to enforce its CR 37 Order for sanctions. In this case, as in *Marshall*, no CR 35 evaluation was conducted prior to trial. Rather, for the purpose of updating his original 1996 evaluation of Mr. Duncan, Dr. Rawlings conducted a record review of "over 5,000 pages" of documents relating to Mr. Duncan's criminal history and incarceration, treatment history, and past psychological evaluations. *Compare Marshall* at 160, 125 P.3d 111, 116; RP 1052-3 (11/2/05).

Admission or exclusion of relevant evidence is within the sound discretion of the trial court, which has broad discretion to balance the probative value of evidence with its potentially prejudicial impact. *State v. Stenson*, 132 Wn.2d 668, 701-02, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008, 118 S. Ct. 1193, 140 L.Ed.2d 323 (1998). A trial court's ruling under ER 403 is subject to review only for abuse of discretion. *State v. Benn*, 120 Wn.2d 631, 654, 845 P.2d 289, *cert. denied*, 510 U.S. 944, 114 S. Ct. 382, 126 L.Ed.2d 331 (1993).

The State elicited the disputed testimony of Dr. Rawlings regarding his "inability" to interview Mr. Duncan in direct response to Mr. Duncan's attempts to attack Dr. Rawlings' analysis and his report. During its direct examination of Dr. Rawlings, the State carefully limited its questioning regarding the logistics of Dr. Rawlings' interview of Mr. Duncan:

Q: Did you meet with Mr. Duncan?

A: I did. I met with Mr. Duncan in March of 1996 for about six and a half hours of direct interview, and then there was an additional time span with psychological testing.

Q: And where was he at that time?

A: Well, at that time Mr. Duncan was at Maple Lane School, which is a juvenile rehabilitation institution for adolescents and young adults.

RP 1053-4 (11/2/05). Although the content of the 1996 interview was later discussed during Dr. Rawlings' testimony on direct, the State

refrained from asking him to clarify or explain why he had not interviewed Mr. Duncan in the nine years since. *See* RP 1062-3 (11/2/05).

During cross-examination, however, defense counsel overtly highlighted this fact during the following exchange:

Dr. Rawlings: . . . Now the other side of this is, though, that [Mr. Duncan] has continued to experience fantasies and continues to masturbate to thoughts about sex with kids, and that's something there has not been a change in.

Mr. Thompson: **Now that, of course, is based on what others have written about Bryan?**

A: Well, it's what he's told other people. It's what he said with his own mouth.

Q: **Well, again you weren't there, were you?**

A: No, no, I wasn't there, but I might point out that Bryan's own expert a Dr. Halon evaluated Bryan Duncan in 2001, and he told Dr. Halon that he continued to have fantasies about having sex with kids, with boys, and that he felt that he wasn't able to control himself at times. So that's what he's told not just the people at the Special Commitment Center but of [sic] also individuals outside of the Special Commitment center, at least one individual.

Q: **That's what has been written about him? Is that correct?**

A: Yes.

RP 1256-7 (11/3/05) (emphasis added).

Only after this attempt to undermine Dr. Rawlings' credibility did the State attempt, on redirect, to mitigate its impact. At that point, the State posed three pertinent, constrained questions: First, Dr. Rawlings was asked if he would "have liked [an] opportunity to update your evaluation of him by meeting with him?" RP 1328 (11/3/05). The

single-word response to this question was “yes.” *Id.* The next day, after argument on the subject by counsel, Dr. Rawlings was asked whether he requested another interview of Mr. Duncan, to which he responded that he had. He was then asked whether, following that request, whether he “was able” to interview Mr. Duncan. RP 1341 (11/4/05). To the final question, Dr. Rawlings replied, “no.” *Id.* No further testimony on the subject was elicited by the State or received by the jury. Nor did the State attempt to elicit any evidence to the effect that Mr. Duncan refused or avoided a subsequent interview. Moreover, in response to a juror’s question as to why the second interview had not occurred, the trial court advised the jury that Mr. Duncan had no obligation to participate. RP 1921 (11/9/05).

Mr. Duncan’s argument that the evidence of Dr. Rawlings’ inability to conduct a post-1996 interview unfairly gave the jury the impression that he had something to hide fails to recognize that this evidence was relevant on several grounds. Clearly, any actions taken, or not taken, by Dr. Rawlings when conducting his assessment of Mr. Duncan are relevant to the credibility of the result. Given the nine-year passage of time between Dr. Rawlings’ initial interview of Mr. Duncan and the trial, and the inference raised by defense counsel during cross-examination, the State had an interest in explaining why follow-up contact with Mr. Duncan had not occurred. These two

purposes are proper. Consequently, the trial court's decision to admit evidence implying a refusal to participate was not error. RP 1340 (11/4/05); *See, e.g., State v. Chase*, 59 Wn. App. 501, 507-8, 799 P.2d 272, 275-6 (Div. 2, 1990).

3. Even if the trial court erred in permitting the State's questions, there was no realistic possibility that that error materially affected the outcome of the trial.

Even if this Court accepts Appellant's invitation to strain to find prejudicial impact in testimony that Dr. Rawlings was "unable" to interview Mr. Duncan after 1996, any such prejudice is so slight that ER 403 considerations are not implicated. "An evidentiary error which is not of constitutional magnitude requires reversal only if the error, within reasonable probability, materially affected the outcome of the trial." *State v. Halstien*, 122 Wn.2d 109, 127, 857 P.2d 270 (1993) (internal citations omitted). In this case, the jury heard testimony that Mr. Duncan was a schizophrenic child molester who suffers from pedophilia. RP 1074-5 (11/2/05). He claims to have molested between twenty and forty children, and has an IQ that ranges between 72 and 88. RP 1067, 1085 (11/2/05). Reports of Mr. Duncan's past crimes were corroborated by the testimony of some of his victims. The jury also heard Dr. Rawlings opine that Mr. Duncan is likely to continue to commit acts of predatory sexual violence if released. RP 1126 (11/2/05).

Mr. Duncan's claim that evidence that Dr. Rawlings was unable to interview him after 1996 cast him "in a negative light" is absurd given the overwhelming evidence admitted at trial regarding both Mr. Duncan's sexual deviance and his dangerousness. Questions pertinent to his claim would never have been asked but for defense counsel's decision to attack Dr. Rawlings' credibility by noting the absence of a post-1996 interview. For these reasons, Mr. Duncan's claim should be rejected by this Court.

B. Duncan Was Not Unfairly Prejudiced by Trial Testimony Concerning the Criminal History of Duncan's Proposed Roommate.

Mr. Duncan argues that he was unfairly prejudiced by the admission of evidence concerning the criminal history of Dion Walls, the man he proposed as his roommate in the event of his release. Specifically, Mr. Duncan alleges that the fact that his proposed roommate had previously been convicted of "sexual offenses against children" was improperly dragged into evidence merely for its prejudicial effect, in violation of ER 403. RP 1815 (11/9/05); Br. of Appellant at 16-17. This argument is without merit when viewed in the context one of the central issues at trial; that is, whether Mr. Duncan was likely to offend if released.

Mr. Duncan did not object to testimony regarding the criminal history of his proposed roommate at trial.³ Nor did Mr. Duncan raise ER 403 or allege undue prejudice when the State sought to introduce this evidence. As noted above, error due to violation of ER 403 is not of constitutional magnitude, and cannot be raised for the first time on appeal. *Jackson*, 102 Wn.2d at 695, RAP 2.5(a). As such, he has waived this argument.

Moreover, any possibility of prejudice is more than outweighed by its probative value. Introduction of evidence related to Mr. Walls' criminal background had several relevant purposes. Mr. Walls had struck up a relationship with Mr. Duncan while both men were confined at the SCC. RP 1507 (11/7/05). He had subsequently been released into the community and, as of the date of Mr. Duncan's trial, was not known to have committed any new offenses. RP 1812-13 (11/9/06). Evidence relating to his history of sex offenses against children tended to prove Mr. Duncan's likelihood of re-offense by showing that, if released, Mr. Duncan planned to associate closely with an individual who had

³ In response to the proposed introduction of Mr. Walls' criminal background, defense counsel argued that introduction of such evidence opened the door to introduction of other evidence concerning the "success in the community" enjoyed by Mr. Walls since his release. RP 1812-14 (11/9/06). At the end of the colloquy, the trial court concluded, without responsive comment by defense counsel, that counsel was "trying to raise a flag," but was not objecting to the proffered testimony. RP 1815 (11/9/05).

committed like offenses. It also tended to corroborate Dr. Rawlings' diagnosis of Mr. Duncan as a pedophile. These two purposes are proper, and directly relevant to central trial issues. The evidence was introduced through a defense expert, Dr. Wollert, who was called to testify regarding the issue of likelihood of reoffense. In addition, Mr. Duncan himself had already testified that Mr. Walls was "his boyfriend," and that Mr. Walls "might have mentioned [his sex offending history] in passing." RP 1508 (11/7/05).

In light of these circumstances, the probative value of Mr. Walls' criminal history was not substantially outweighed by the danger of unfair prejudice. Admission of evidence of Mr. Walls' background did not constitute an abuse of discretion, and Mr. Duncan's claim of error should be denied.

C. Duncan's Right To Due Process Was Not Violated by Limiting the Scope of His Cross-Examination of Dr. Spizman.

Mr. Duncan argues that his cross-examination of Dr. Paul Spizman was improperly limited by the trial court, and that that limitation violated his right to due process. Br. of Appellant at 18. Specifically, Mr. Duncan alleges that the trial court erroneously precluded cross-examination of Dr. Spizman on the issue of his opinion regarding the effectiveness of the special needs sex offender treatment program at the SCC. However, this

argument is without merit because Appellant's trial theory—that is, that the SCC treatment program is flawed—was effectively presented at trial without this additional testimony.

Pursuant to ER 611 (b), “[c]ross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.” “It is a basic and essential rule that ‘[t]he extent of the cross-examination of a witness upon collateral matters which tend to affect the weight to be given the witness’ testimony rests within the sound discretion of the trial court.” *State v. Temple*, 5 Wn. App. 1, 4, 485 P.2d 93 (1971) (citing *State v. Goddard*, 56 Wn.2d 33, 37, 351 P.2d 159 (1960)). In determining what procedures due process requires, the court will balance three factors: (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the value of additional procedural safeguards, and (3) the governmental interest, including costs and administrative burdens of additional procedures. *In re Detention of Brock*, 126 Wn. App. 957, 964, 110 P.3d 791, 794 (Div. 1, 2005).

Here, the risk of erroneous deprivation of Mr. Duncan's liberty interest due to the limitation on cross-examination of Dr. Spizman was

negligible. The witness was a staff member at the SCC called to recount the infractions Mr. Duncan had committed during his time there. In declining Mr. Duncan's request to cross-examine Dr. Spizman regarding the "effectiveness" of the SCC treatment program, the trial court correctly noted that this case was about Mr. Duncan, not "the system," and that Mr. Duncan was free to criticize the SCC treatment options through his own testimony. RP 1420-24 (11/4/05). The court permitted defense counsel to question Dr. Spizman about how success in treatment was measured, and to elicit testimony that Mr. Duncan was currently in the first of seven phases of treatment. RP 1424-26 (11/4/05).

Mr. Duncan argues that excluding the cross-examination prevented him from advancing his defense that "he discontinued treatment because it was not meaningful." Br. of Appellant at 20. However, that defense was advanced on several occasions throughout the trial. For example, one of Mr. Duncan's expert witnesses, Dr. Halon, testified regarding developmental disability and that condition's potential to interfere with treatment participation. RP 2002-3 (11/10/05). In addition, Mr. Duncan also told the jury through his own testimony that he did not think the available treatment at the SCC was meaningful. RP 1927 (11/9/05).

Regardless of whether Dr. Spizman would have agreed that the SCC's special needs treatment program would not have been

“meaningful” for Mr. Duncan, that defense was made available through testimony of other witnesses throughout the trial. As a result, Mr. Duncan’s liberty interest remained intact, and his argument is without merit.

D. Duncan’s Right to Due Process Was Not Violated By Exclusion of Dr. Halon’s Opinion Regarding the Effectiveness of the SCC’s Treatment Program.

Appellant argues that his right to due process was violated when the trial court excluded opinion testimony by defense expert Dr. Halon regarding the effectiveness of the special needs sex offender treatment program at the SCC. “The admissibility of expert testimony is governed by ER 702 and requires a case-by-case inquiry.” *State v. Willis*, 151 Wn.2d 255, 262, 87 P.3d 1164, 1167 (2004). A trial court’s decision to exclude expert testimony is reviewed for abuse of discretion. *Id.*, citing *State v. Swan*, 114 Wn.2d 613 at 655, 790 P.2d 610; *State v. Mak*, 105 Wn.2d 692, 715, 718 P.2d 407 (1986). Admissibility depends on whether “(1) the witness qualifies as an expert, (2) the opinion is based upon an explanatory theory generally accepted in the scientific community, and (3) the expert testimony would be helpful to the trier of fact.” *Id.* (internal citations omitted):

The [expert’s] opinion must be founded on facts in evidence, whether disputed or undisputed, and all material facts necessary to the formulation of a sound opinion must

be considered. If the expert's opinion assumes the existence of conditions or circumstances not of record, its validity dissolves and the answer must be stricken. So long as the answer is fairly based on material facts, supported by substantial evidence under the examiner's theory of the case, however, the opinion testimony is proper. The trial court has wide discretion to determine whether expert testimony falls within the above rules.

Tokarz v. Ford Motor Co., 8 Wn. App. 645, 653, 508 P.2d 1370, 1375 (Wn. App. 1973) (internal citations omitted).

In this case, there was little, if any, evidence presented that suggests that Dr. Halon was qualified to opine as to whether the special needs treatment program at the SCC was likely to be "successful." Dr. Halon is a forensic psychologist who is licensed in California, and does not practice in Washington. RP 1929 (11/9/05). The primary purposes of Dr. Halon's testimony were to offer a diagnosis of Mr. Duncan and to render an opinion regarding the reliability of the actuarial instruments used by Dr. Rawlings. RP 1972-78 (11/9/05); RP 1996-2002 (11/10/05). He testified that he had been to the SCC "probably six" times. RP 2002 (11/10/05). Dr. Halon's sole experience with the special needs treatment program at the SCC comes through his review of the "protocol or something." RP 2004 (11/10/05). Nor did Dr. Halon indicate, when describing his areas of expertise, that he had experience assessing the quality of treatment facilities or programs.

Accordingly, any opinion Dr. Halon might have offered regarding the treatment program at the SCC would not have been founded upon any facts of record. Exclusion of such opinion testimony was not an abuse of discretion, and Mr. Duncan's claim of error should be denied.

E. The Circumstances Discussed Above do not Amount to Cumulative Error Requiring Reversal.

Mr. Duncan contends that the cumulative error doctrine mandates reversal in this case. Under this doctrine, a defendant may be entitled to a new trial when errors cumulatively produced a fundamentally unfair trial. *In re Pers. Restraint of Lord*, 123 Wn.2d 296, 332, 868 P.2d 835, *clarified*, 123 Wn.2d 737, 870 P.2d 964, *cert. denied*, 513 U.S. 849 (1994). The cumulative error doctrine only applies when there are numerous prejudicial and egregious errors during trial. *See State v. Coe*, 101 Wn.2d 772, 789, 684 P.2d 668 (1984); *State v. Stevens*, 58 Wn. App. 478, 498, 794 P.2d 38 (1990). Where the claims of error are "largely meritless," reversal is not warranted. *State v. Korum*, 157 Wn.2d 614, 141 P.3d 13, 33 (Wash. 2006). Given these standards, and the above discussion of Mr. Duncan's claimed errors, the cumulative error doctrine does not apply to this case. Therefore, reversal is not required.

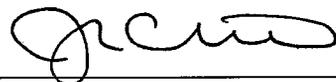
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IV. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court affirm the decision of the trial court committing Appellant as a Sexually Violent Predator.

RESPECTFULLY SUBMITTED this 18th day of December, 2006.

ROB MCKENNA
Attorney General



JOSHUA L. CHOATE
Assistant Attorney General
WSBA #30867
Criminal Justice Division
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 389-3075