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STATE OF WASHINGTON

SUPREME COURT NO. 81449-0

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BY RONALD R. CARPENTER

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

STATE OF WASHINGTON,

Respondent,

v.

NEIL GRENNING,

Appellant.

FILED
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STATE OF WASHINGTON
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable James Orlando, Judge

SUPPLEMENTAL BRIEF OF ~~RESPONDENT~~

Petitioner

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A. STATEMENT OF ISSUES

1. Where the defense was unable to find an expert to examine the mirror-image hard drives at a police facility, as required by the court's protective order, does the holding of this Court in State v. Boyd, 160 Wn.2d 424, 158 P.3d 54 (2007), that a defendant does not have "to establish that effective representation merits a copy of the very evidence supporting the crime charged," require reversal on appeal without the defendant having to establish that he was prejudiced by his attorney's inability to investigate the evidence against him?

2. Must a defendant who is denied a copy of the mirror-image hard drive for investigation outside a police facility file an interlocutory appeal in order to obtain the copy without a showing of prejudice?

3. Is the denial of a copy of the "very evidence supporting the crime charged" structural error?

4. Is the traditional Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), analysis for ineffective assistance of counsel inapplicable to instances where the defendant is denied the effective assistance of counsel because discovery of the "very evidence supporting the crime charged" was denied to him and he does not allege that his attorney failed to request the discovery?

5. Did Mr. Grenning do everything necessary to preserve for appeal the issue of his right to a copy of the mirror-image hard drives of his computer by: (a) moving for a copy of the drives; (b) moving to reconsider the restrictive protective order limiting access to the drives to a police facility; (c) signing a written order prepared and presented by the prosecutor memorializing the denial of the motion to reconsider; and (d) raising the issue again with the trial judge who refused to revisit the issue?

B. STATEMENT OF THE CASE

1. The decision of the Court of Appeals

The Court of Appeals reversed Mr. Grenning's twenty convictions for possessing depictions of minors because the trial court's order requiring

his attorney or expert to examine the mirror-image hard drives of his computer at a police facility was "unduly restrictive." Slip op. at 13-14.

2. The trial evidence

The police seized Mr. Grenning's computer as a result of a complaint from the mother of R.W., a child identified as the victim in charges affirmed on appeal. RP 298-312, 322-331, 404, 506-511.

During the hundreds and hundreds of hours of searching all of the information on the three hard drives of the computer, Detective Richard Voce of the Tacoma Police Department located numerous pictures of commercial child pornography. RP 515-517, 645-646, 649-658. The images of commercial pornography were recovered from the "unallocated space" of two of the hard drives. RP 640, 644. Voce was unable to determine whether the images were in the unallocated space because they had been deleted from the computer or because of something done to the computer's operating system to place them there. RP 642. Thus, the evidence against Mr. Grenning on the depiction counts was the images taken from the computer. RP 528-611, 649-658, 677-683.

3. Defense efforts to obtain the hard drives

Well before trial, on July 25, 2003, defense counsel moved, pursuant to CrR 4.7(a)(5), to compel the discovery of the mirror-image

hard drive of the computer seized by the police from Mr. Grenning.¹ CP 101-113, 463-464; RP(7/25/03) 4-6. The request was made after consulting with defense experts Marcus and Ramona Lawson. RP(7/25/03) 5.

Defense counsel stated:

We have an obligation to look at the material that's been seized by the state to determine, number one, not only to look at the exhibits that they are referencing here, but to search that material and determine whether or not there's exculpatory material.

Again, this process has been on-going by the state for months, and they still aren't done. And we're going to have to undertake the same type of search. So our position is we cannot do that unless we have the requested material.

RP(7/25/03) 9-10. Counsel reiterated that "it's our position that we're going to look at everything that was done on that computer. It's not as simple as just looking at these pictures." RP(7/25/03) 19.

The court, the Honorable Lisa Worswick, ruled that the defense experts had to come to a secure facility in Tacoma to view the hard drives and photographs. RP(7/25/03) 24.

¹ CrR 4.7(a)(5) provides that it is the prosecutor's obligation to provide "Any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonging to the defendant."

On September 2, 2003, defense counsel indicated that the Lawsons were not willing to work on the case, given the protective order, and so the computer discovery had not been reviewed. RP(9/2/03) 4.

On December 15, 2003, defense counsel further informed the court, now the Honorable Vicki Hogan, of his need to have a computer expert to assist in preparing the case and of his efforts to find such an expert.² RP(12/15/03) 13-14. On March 26, 2004, defense counsel asked Judge Hogan to reconsider Judge Worswick's order denying the defense mirror-image copies of the hard drives. RP(3/26/04) 47-48. Defense counsel noted that retained experts, the Lawson Company of Spokane, had declined to work on the case given the restrictions of the discovery order. RP(3/26/04) 48. Counsel outlined the considerable time he had spent attempting to contact and retain another expert; eventually he was referred to Robert Apgood. RP(3/26/04) 49. Counsel made extensive argument that CrR 4.7 was mandatory and cited authority supporting the right to discovery of the drives and of the impossibility of working within the protective order. RP(3/26/04) 58-63. Counsel emphasized his need for

² One of the difficulties in this case was the number of judges making pretrial rulings in this case: Judge Worswick, Judge Hogan, Judge Fleming, and Judge Orlando.

professional expertise in examining virtually the sole evidence at trial. RP(3/26/04) 52-53.

Expert Robert Apgood explained in his declaration filed with the court that he had specialized equipment in his laboratory in Seattle which he would need to use and that the searches of the hard drives were time-consuming and could take place when he was engaged in other work. CP 601-609. If the work took place in the secure facility he would not be able to engage in other work and would have to transport his equipment to the secure facility. CP 601-609. He attested that if forced to work with state equipment he would have to divulge defense strategy. CP 601-609.

The court denied the motion to reconsider, ruling that the defense had made no effort to comply with the order. RP(3/26/04) 84-85. The court indicated it did not think that the order was unworkable but needed to know if it was. RP(3/26/04) at 85.

On May 7, 2004, the prosecutor provided an order signed by Judge Hogan earlier in the day "which denied the defendant's request for reconsideration on pretrial ruling regarding the discovery of the images that were the basis of these counts. This matter was originally heard by Judge Worswick, she entered the order. Cause was then reassigned to Judge Hogan. Defense sought to revise that order and Judge Hogan denied that,

I believe, back in late March. I drafted the order and had her -- Mr. Kawamura signed it and I had her sign it today." RP 1.

On May 26, 2004, defense counsel indicated that the only potential witness for the defense would be Robert Apgood. RP 20. Counsel made it clear, however, that he might be required to call Mr. Apgood only on matters pertaining to statements provided by Detective Voce. RP 21-22.

On June 8, 2004, defense counsel summarized for the trial court, the Honorable James Orlando:

We have been before the court twice before for discovery issues and the court's made rulings. It doesn't change our position.

We, from the outset of when I was appointed in this case, had made specific requests for copies of the hard drives and there has been repeated attempts by the State to define our discovery request as simply looking at images. That's not accurate. There's basically a couple hundred photographs here that the State's going to introduce; there has been testimony from the detective that there's 8700 pages worth of material on those hard drives. Those were the materials that we have been requesting. So our position hasn't changed.

RP 267-268. In response, Judge Orlando stated, "Well, I am not going to revisit any of the other motions." RP 268.

The state acknowledged that the defense had not had access to the hard drives by successfully obtaining a motion in limine precluding the defense from commenting in voir dire or opening statement about not

having had such access. RP 268. Neither Mr. Apgood nor any other expert testified at trial for the defense.

C. ARGUMENT

1. A DEFENDANT SHOULD NOT HAVE TO FILE AN INTERLOCUTORY APPEAL IN ORDER TO OBTAIN THE DISCOVERY TO WHICH HE IS ENTITLED.

The state concedes that Mr. Grenning was entitled to his own copy of the mirror-image hard drives at the time he requested them before trial; and that if he were on interlocutory appeal he, like the defendants in State v. Boyd, 16 Wn.2d 424, 158 P.3d 54 (207), would have been entitled to a copy without a showing of prejudice or a showing that he was unable to adequately examine the hard drives in a police facility. Amended Answer to Petition for Review (and cross-petition), 3-4.

The state concedes that Mr. Grenning was entitled to a copy of the hard drives pretrial because the clear holding of Boyd is that the prosecutor must provide a defendant in discovery with an actual copy of the hard drive to "protect the defendant's interests in getting meaningful access to evidence supporting the criminal charges in order to effectively prepare for trial and provide adequate representation." Boyd, 160 Wn.2d at 432-433. For that reason, a defendant is entitled to the copy of the mirror-image hard drive under CrR 4.7(a) and does "*not have to establish*

that effective representation merits a copy of the very evidence supporting the crime charged." Boyd, at 433. (emphasis added)

Thus, what the state is urging this Court to hold is that a defendant must file an interlocutory appeal when denied the discovery which Boyd clearly holds he was entitled to or he will be in the untenable position on direct appeal of having to demonstrate the prejudice of not having the very information that he has never been provided. Boyd, at 432-433. Such a holding is contrary to the plain terms of RAP 2.3(c) that "the denial of discretionary review of a superior court decision does not affect the right of a party to obtain later review of the trial court decision or the issues pertaining to that decision."

Further, the rule requiring the filing of an interlocutory appeal would not promote judicial economy and would place this Court in the position of having to oversee the pre-trial discovery process. Such routine oversight is unnecessary and unprecedented. Boyd sets out a bright-line rule requiring the state to provide a copy of the mirror-image hard drive in a child pornography case where the evidence on the hard drive represents the significant evidence to be admitted at trial. If the state refuses to comply with this clear holding of Boyd, and the trial court errs in refusing to enforce it, then the state should be held to deny discovery at its own

peril. Any other result places the defendant in the untenable position of having to choose between a speedy trial, delayed while seeking interlocutory review, and going to trial with adequate, prepared counsel. This is contrary to the decision in State v. Michielli, 132 Wn.2d 229, 937 P.2d 587 (1997).

Arguably, a showing of prejudice could be appropriate if the issue on appeal or on collateral review was whether trial counsel was ineffective for failing to make a timely request for a mirror-image copy of the hard drive. Mr. Grenning, however, is not claiming his counsel was ineffective for failing to seek a copy of the hard drive; counsel did repeatedly seek this discovery. His claim is that counsel was rendered ineffective because of the state's refusal to provide discovery. Moreover, a prosecutor's discovery obligations under CrR4.7 do not require a specific demand for a copy of the hard drive. Under Boyd, such a copy is discoverable under CrR 4.7(1(5)).

The prosecutor was, under Boyd and CrR 4.7, obligated to provide copies of the mirror-image hard drives. The prosecutor refused to provide them. As a result, defense counsel had no adequate means of investigating or countering the state's evidence. Mr. Grenning has still never received the copies of the hard drives and should not have to establish prejudice of

not having the information to which he was entitled. In fact, in the absence of information about what a defense expert might have discovered in examining the mirror-image hard drives, there is no way for this Court to determine the prejudice of the failure to provide the hard drives.

Mr. Grenning was entitled to copies of the mirror-image hard drives prior to trial "in order to effectively prepare for trial and provide adequate representation." Boyd, 160 Wn.2d at 432-433. This Court should not hold that he had to file an interlocutory appeal in order to obtain the primary evidence to be used against him at trial. This Court should not hold that Mr. Grenning had to establish that he was prejudiced by the denial of evidence he never had the opportunity to discover.

II. THE ERROR IN DENYING ESSENTIAL DISCOVERY IS STRUCTURAL CONSTITUTIONAL ERROR.

What is at stake when the defendant is denied meaningful access to the evidence against him and the assistance of counsel in examining this evidence is denial of the constitutional rights to the effective assistance of counsel, to appear and defend at trial, to confrontation of witnesses and virtually all of the guaranteed trial rights. This is the type of error that is not only constitutional error, but pervades the entire trial process and should never be deemed harmless.

In Washington v. Texas, 388 U.S. 14, 18 L. Ed. 2d 119, 87 S. Ct. 1920 (1967), the Court held that the right to present a defense is a fundamental component of due process of law.

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so that it may decide where the truth lies . . . This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. at 19; see also United States v. Nixon, 418 U.S. 683, 709, 41 L. Ed. 2d 1039, 94 S. Ct. 3090 (1974).

"Whether rooted directly in the Due Process Clause of the Fourteen Amendment, or in Compulsory Process of Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Crane v. Kentucky, 476 U.S. 683, 690, 90 L. Ed. 2d 636, 106 S. Ct. 2142 (1986)(citations omitted) (quoting California v. Trometta, 467 U.S. 479, 485, 81 L. Ed. 2d 413, 104 S. Ct. 2528 (1984). . . . "[W]here constitutional rights directly affecting the ascertainment of guilt are implicated, [evidentiary rules] may not be applied mechanistically to defeat the ends of justice." Chambers, 410 U.S. [284,] 302 [1973]).

Greene v. Lambert, 288 F.3d 1081, 1090-1091 (9th Cir. 2002).

For these reasons, the Supreme Court has consistently held in a number of contexts that state procedural and evidentiary rules must give way to a criminal defendant's rights under the Fifth, Sixth and Fourteenth Amendments to appear, testify and defend at trial, and to present witnesses

in his or her own behalf. See, e.g., Washington v. Texas, *supra* (a statute preventing defendants from testifying if tried jointly with others unconstitutionally denied those defendants their right to testify at trial); Chambers v. Mississippi, 410 U.S. 284, 35 L. Ed. 2d 297, 93 S. Ct. 1038 (1973) (a state hearsay rule prohibiting a party from impeaching his or her own witness precluded the defendant from examining a witness who had confessed to the crime and unconstitutionally denied the defendant his right to present witnesses and evidence negating the elements of the charged crime); Rock v. Arkansas, 483 U.S. 44, 97 L. Ed. 2d 37, 27 S. Ct. 2704 (1987) (an Arkansas evidentiary rule excluding all post-hypnosis testimony unconstitutionally burdened the defendant's right to testify at trial); Holmes v. South Carolina, 547 U.S. 319, 164 L. Ed. 2d 503, 126 S. Ct. 1727 (2006) (the state's rule excluding evidence of third-party guilt if the prosecution's case was strong violated a defendant's constitutional rights to present a complete defense grounded in the due process, confrontation, and compulsory process clauses). Even when evidence is not otherwise admissible, a defendant has a due process right to rebut arguments presented by the state. Simmons v. South Carolina, 512 U.S. 154, 164-165, 129 L. Ed. 2d 133, 124 S. Ct. 487 (1994); Skipper v. South Carolina, 476 U.S. 1, 6 L. Ed. 2d 211, 106 S. Ct. 1669 (1986).

Here, because Mr. Grenning was denied the right to test and contest the evidence against him, he was denied his fundamental rights to due process, confrontation and compulsory process. The error was not just the violation of CrR 4.7, but constitutional error. The state experts spent hundreds of hours examining the hard drives, and Mr. Grenning was denied the opportunity to confront that evidence or present independent evidence about the hard drives. The error was constitutional and not the type of error that can be harmless.

Not all constitutional errors require reversal; some may be harmless in their effect on the trial. Sullivan v. Louisiana, 58 U.S. 275, 278-279, 124 L. Ed. 2d 182, 113 S. Ct. 2078 (1993). Some constitutional errors, however, are considered "structural error" and always invalidate a conviction. Sullivan, 508 U.S. at 278-279. Structural errors include a deficient reasonable doubt instruction, the denial of the right to counsel, a biased trial judge, and violation of the right to self-representation. Sullivan, at 278-279, McKaskle v. Wiggins, 465 U.S. 168, 79 L. Ed. 2d 122, 14 S. Ct. 944 (1984), Gideon v. Wainwright, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792 (1963), Tumey v. Ohio, 273 U.S. 51, 71 L. Ed. 749, 47 S. Ct. 437 (1927). Other examples include racial discrimination in the selection of a grand jury (Vasquez v. Hillery, 475 U.S. 254, 88 L.

Ed. 2d 598, 16 S. Ct. 617 (1986)), the erroneous excusal of a juror who could fairly deliberate in a capital case for his views on the death penalty (Gray v. Mississippi, 481 U.S. 648, 95 L. Ed. 2d 622, 17 S. Ct. 2045 (1987)), invidious discrimination in exercising peremptory challenges (Batson v. Kentucky, 476 U.S. 79, 90 L. Ed. 2d 69, 16 S. Ct. 1712 (1986)), and denial of a public trial (Waller v. Georgia, 467 U.S. 39, 81 L. Ed. 2d 31, 104 S. Ct. 2210 (1988)). In State v. Jackman, 125 Wn. App. 552, 561, 778 P.2d 179 (1989), the court held that instructing the jury that an element of the crime had been established cannot be harmless error.

These errors are not subject to harmless error analysis because they constitute "a defect affecting the framework in which the trial proceeds." Arizona v. Fulminante, 499 U.S. 279, 310, 113 L. Ed. 2d 32, 111 S. Ct. 1246 (1991). Structural error is the type of defect that "infects the entire trial process." Brecht v. Abrahamson, 507 U.S. 619, 630, 123 L. Ed. 2d 353, 113 S. Ct. 1710 (1993). As this Court noted in State v. Vreen, 143 Wn.2d 923, 930, 26 P.3d 236 (2001), trial error is error which can be assessed in the context of the trial, whereas structural errors are not amenable to such a harmless error analysis:

"A classical trial error is one which occurred during the presentation of the case to the jury and which may

therefore be quantitatively assessed in the context of the other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt." Fulminante, 499 U.S. at 37-38. Structural errors are "defects in the constitution of the trial mechanism, which defy analysis by 'harmless error' standards. Id. at 309.

For these reasons, this Court held in Vreen that the erroneous denial of a peremptory challenge is not amenable to harmless error analysis; the defendant could not prove bias or hostility and the state could not prove the absence of bias, and it would be difficult to establish the degree of harm or the effect on the outcome of the denial of the peremptory challenge. Vreen, at 93-931 (citing United States v. Annigoni, 96 F.3d 1132, 1144-1155 (9th Cir. 1996)).

Structural errors are not subject to harmless error analysis because they are fundamental and pervasive; they take away from the defendant a basic trial protection guaranteed by the constitution. It is not that the denial of such basic trial protections such as a public trial or a legally-correct reasonable doubt conviction always results in a conviction where there would not have one otherwise; it is that it is impossible to determine what the result would have been absent the constitutional violation. Denial of access to what was essentially all of the state's evidence on the reversed counts denied Mr. Grenning the opportunity to defend and to be effectively represented at trial. And because he still has not had an opportunity to

examine and test the evidence, it is impossible to determine the impact of the denial or what the result would have been absent the denial. The state spent hundreds and hundreds of hours examining Mr. Grenning's hard drives, and he had no opportunity to contest the state's case based on that examination. To hold that this is something less than structural error is to determine that he did not have a right to test the state's evidence and present the jury with his version of the facts. This would conflict with fundamental principles of due process. The denial of the mirror-image hard drives, when they constitute the state's case at trial, is structural error.

III. MR. GRENNING IS NOT RAISING HIS CLAIM IN THE CONTEXT OF AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM; HE WAS DENIED EFFECTIVE COUNSEL BECAUSE OF THE DENIAL OF DISCOVERY.

Mr. Grenning does not argue that his attorney was ineffective for failing to seek copies of the mirror-image hard drives. His argument is that the state's refusal to provide discovery denied him effective counsel. His claim is analogous to the claims in Gideon and Michielli, and as in those cases, he need not demonstrate prejudice.

In Strickland v. Washington, 466 U.S. 668, 687 (1984), the United States Supreme Court held that, to sustain a claim of ineffective assistance of counsel, the defendant must "show that counsel's performance was

deficient . . . [and] that the deficient performance prejudiced the defense. Strickland, 466 U.S. at 687.

Here counsel sought a copy of the mirror-image hard drive and an expert to review it. This was not a deficient performance, it was consistent with the mandate of Strickland that counsel have a duty in every case to make a reasonable investigation.

[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffective case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

Strickland, at 690-691; Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 2535, 156 L. Ed. 2d 471 (2002).

An attorney cannot make a reasonable strategic choice without an adequate investigation. Foster v. Lockhart, 9 F.3d 722, 726 (8th Cir. 1993) (holding that defense counsel's decision not to pursue an impotency defense in a rape case was unreasonable because the attorney's only investigation was a cursory phone conversation with one urologist) Sanders v. Ratelle, 21 F.3d 1446, 1456-1457 (9th Cir. 1994) (counsel was ineffective for failing to investigate another suspect's purported confession). It turns the logic of these cases on its head to hold that a defense counsel who is

prevented by the state from conducting the type of investigation that he must conduct under the Sixth Amendment is deficient under Strickland and that prejudice must be shown to establish harm from the state's error. Mr. Grenning is not claiming that his trial counsel was ineffective; he is claiming that the state's refusal to provide discovery denied him his right to effective counsel.

IV. THE DISCOVERY ISSUE WAS PRESERVED.

Judge Worswick entered the protective order requiring the hard drives to be examined at a police facility. The defense experts, the Lawson Company, were unwilling or unable to work under the protective order. RP(9/2/03) 4. After the Lawsons declined to continue working on the case, defense counsel spent a great deal of time and effort trying to find an expert who would work within the strictures of the protective order. RP(3/26/04) 46, 49. This led counsel to Robert Apgood. RP(3/26/04) 49. Mr. Apgood, however, filed a declaration in support of the defense motion for reconsideration before Judge Hogan setting forth why the protective order was unworkable: he had specialized equipment in his laboratory in Seattle; it would be burdensome to transport his special equipment to Tacoma; if he used the state's equipment, he would be forced to reveal defense theory or strategy; and he would not be able to perform any other work while

searches were going on unattended. CP 601-609. The clear implication of his affidavit was that he would not be willing to undertake the intensive examination of the hard drives, which had taken the police months to conduct, at the police facility in Tacoma.

Judge Hogan denied reconsideration of the protective order; and, at the request of the prosecutor, signed a written order memorializing that denial. RP(3/26/04) 83-85; RP 1. The trial judge, Judge Orlando, expressly denied reconsideration of the order as well. RP 267-268.

Thus, defense counsel filed a written motion to compel discovery which was subject to a final written protective order. Counsel moved to reconsider this order in front of a new judge who temporarily was in charge of the case. That judge denied reconsideration and ultimately signed a written order denying reconsideration. Counsel broached the issue with the trial court and the court unambiguously ruled that it would not revisit the issue. There was nothing further counsel could have done to preserve the error.

If Mr. Apgood's affidavit left any doubt about his willingness to work at the police facility, defense counsel's report on the record to the trial judge that the defense position was unchanged since its motion to compel and motion to reconsider establishes that Mr. Apgood was not

willing to conduct his expert investigation there. In fact, both the prosecutor and the trial judge were well aware of the fact that Mr. Apgood did not undertake the investigation defense counsel sought; defense counsel indicated at the start of trial to Judge Orlando that the defense request for discovery of the hard drives was on-going and that it had not changed its position on the issue.

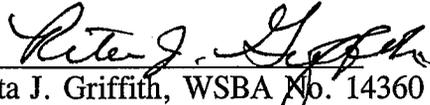
Defense counsel did not have to demonstrate that the protective order was unduly burdensome to preserve objection to it. No authority supports this requirement, and requiring such a demonstration was impossible where the defense was unable to find any expert to try working within the confines of the order. Counsel clearly alerted a number of judges, including the trial judge, of the need to have copies of the hard drives so that they could be investigated. This preserved the error.

D. CONCLUSION

Appellant respectfully submits that the decision of the Court of Appeals reversing his convictions should be affirmed.

DATED this 21st day of November 2008.

Respectfully submitted,


Rita J. Griffith, WSBA No. 14360
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on the 21st day of November, 2008, I caused a true and correct copy of Petition for Review to be served on the following via prepaid first class mail:

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