

59573-3

59573-3

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NO. 59573-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CYNTHIA CRISAUNDR A BOSS,

Appellant.

FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2007 NOV -8 PM 4:47

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES D. CAYCE

BRIEF OF RESPONDENT

NORM MALENG
King County Prosecuting Attorney
DANIEL T. SATTERBERG
Interim King County Prosecuting Attorney

TERENCE R. CARLSTROM
Deputy Prosecuting Attorney
Attorneys for Respondent

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A. ISSUES PRESENTED

1. First degree custodial interference requires the State to prove that a government agency had a lawful right to physical custody of a child. The State used court orders and testimony to establish that the Department of Social and Health Services had a lawful right to physical custody of Omaria Boss-Pelts. The trial court determined that the validity of the orders was a question of law rather than an element of the offense. Did the trial court err when it omitted the validity of the orders as an element of the crime from the to-convict instruction?

2. First degree custodial interference requires the State to prove that a relative of a child intended to conceal the child from a government agency with a lawful right to physical custody of the child. Court orders granted custody of Omaria Boss-Pelts to the Department of Social and Health Services. The validity of the orders was not an element of the crime. Boss's knowledge of the validity of the orders likewise was not an element of the crime. Did the trial court err in omitting Boss's knowledge of the validity of the orders from the to-convict instruction?

B. STATEMENT OF CASE

PROCEDURAL AND SUBSTANTIVE FACTS

Appellant Cynthia Boss is the mother of Omaria Boss-Pelts, who was born on February 15, 2006. 2/7/07 RP 106-07.¹ On May 11, 2006, Child Protective Services (CPS) obtained an order from King County Superior Court to take Omaria into custody and place her in shelter care. Exhibit 1,² 2/7/07 RP 104-05. CPS obtained the order because, based on Boss's prior history with CPS, social workers believed the child may have been in imminent risk of harm if she remained in the home. 2/7/07 RP 104. Once the order was obtained, social workers and law enforcement officers went to Boss's apartment to try to locate the child. 2/7/07 RP 108. They were unable to do so. 2/7/07 RP 108. Social workers and police officers made several attempts to locate Omaria at Boss's apartment over the course of the next few days, but were unsuccessful each time. 2/7/07 RP 108-10.

¹ All references to verbatim reports of proceedings will be according to date.

² The State has filed a Supplemental Designation directing that Exhibits 1, 3, and 11 be sent to the Court of Appeals. Copies of each order are attached as Appendices A, B, and C, respectively.

On May 18, 2006, CPS obtained a writ of habeas corpus for Omaria. Exhibits 3 and 11, 2/7/07 RP 110-11. After Boss was taken into custody, an emergency hearing was held before the court on May 31. 2/7/07 RP 112. Omaria still had not been located. 2/7/07 RP 112. Boss was served in court with copies of the custody order (Exhibit 1) and writ (Exhibit 11), among other documents. 2/7/07 RP 112. She did not provide any information to CPS that allowed social workers to locate Omaria. 2/7/07 RP 113. On June 1, a second hearing was held. 2/7/07 RP 113. Boss was released, apparently upon her promise to help CPS locate Omaria. 2/7/07 RP 114. Boss came back the next day for another hearing, but had no information to assist in locating Omaria. 2/7/07 RP 114. A subsequent hearing scheduled for June 6 was continued to June 8. 2/7/07 RP 115-16. On June 8, Boss failed to appear. 2/7/07 RP 116.

On August 22, 2006, a social worker with CPS was notified that Omaria had been located in Houston, Texas. 2/7/07 RP 129-30. The social worker flew to Houston where she took custody of Omaria and returned her to Washington. 2/7/07 RP 130. A diaper bag accompanying Omaria contained documents from

New Orleans, Amtrak tickets, and other items with Boss's name on them. 2/7/07 RP 131.

King County Sheriff's Detective Dave Barnard was notified on August 22 that Boss had been arrested in Houston. 2/8/07 RP 17. On August 31 Det. Barnard flew to Houston and returned the next day with Boss in his custody. 2/8/07 RP 16.

Boss was charged by amended information³ with first degree custodial interference committed during a period of time intervening between May 31, 2006, and August 22, 2006. Supp. CP _____. The matter proceeded to a jury trial before the Honorable James Cayce. The jury found Boss guilty of first-degree custodial interference. CP 53. Boss timely appealed. CP 54-61.

C. ARGUMENT

THE TO-CONVICT INSTRUCTION CONTAINED THE ESSENTIAL ELEMENTS OF FIRST DEGREE CUSTODIAL INTERFERENCE.

Boss asserts that the "to-convict" instruction omitted two essential elements of the crime of first degree custodial

³ The Amended Information filed with the trial court was originally captioned with an unrelated cause number. The court clerk returned it to the trial DPA to correct the cause number. The DPA changed the cause number, but mistakenly wrote the number of the co-defendant, Paul Pelts. The Amended Information was thus erroneously filed under Pelts's cause number. The State is filing a Supplemental Designation of Clerk's Papers to have the Amended Information that applies to Boss designated from Pelts's court file. A copy is attached as Appendix D.

interference. Specifically, she complains that "the lawfulness of the custody order was an element of the offense which was required to be included in the 'to-convict' instruction." Brief of Appellant at 1, 4. In addition, she claims that knowledge of the lawfulness of the order was also required in the "to-convict" instruction. Brief of Appellant at 1, 8. She is incorrect on both points. The lawfulness of the custody order was a matter of law properly decided by the trial court rather than by the jury. Moreover, by the plain language of the statute, knowledge of the lawfulness of the custody order is not an essential element. The jury was correctly instructed on the elements of first degree custodial interference, and Boss's conviction should be affirmed.

Because it serves as a "yardstick" by which the jury measures the evidence in determining guilt or innocence, the "to convict" instruction must generally contain all elements of the charged crime. State v. DeRyke, 149 Wn.2d 906, 910, 73 P.3d 1000 (2003); see also State v. Mills, 154 Wn.2d 1, 6, 109 P.3d 415 (2005). The jury is not required to search other instructions for elements necessary for conviction. State v. Oster, 147 Wn.2d 141, 147, 52 P.3d 26 (2002).

"It is proper to first look to the statute to determine the elements of a crime." State v. Miller, 156 Wn.2d 23, 27, 123 P.3d 827 (2005). RCW 9A.40.060 states in relevant part: "(1) A relative of a child under the age of eighteen . . . is guilty of custodial interference in the first degree if, with the intent to deny access to the child . . . by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child . . . from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and: (a) intends to hold the child . . . permanently or for a protracted period."

RCW 9A.40.060(1)(a). Thus, the elements of the crime are: (1) a relative (2) of a child under the age of eighteen (3) with intent to deny access to the child (4) by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of the child (5) takes, entices, retains, detains, or conceals the child from such person and (6) intends to hold the child permanently or for a protracted period.

The statute makes no mention of a "lawful custody order." Rather, the element that must be proved is that the person, agency, or institution from whom the child is taken or concealed had a

"lawful right to physical custody" of the child. Similarly, the statute makes no mention of the charged relative's "knowledge of the lawfulness of the order." The requisite mental state is intent, both "to deny access to the child" as well as to "hold the child . . . permanently or for a protracted period," not knowledge of the lawfulness of an order. Id.

Here, the jury was instructed on the elements of first degree custodial interference as follows:

To convict the defendant of the crime of custodial interference in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That the defendant is a relative of Omaria Boss-Pelts, a child under the age of eighteen;

(2) That on or about the period of time intervening between May 31, 2006 through August 22, 2006, the defendant, with the intent to deny access to Omaria Boss-Pelts by an institution, agency or person having a lawful right to the physical custody of such person, took, enticed, retained, detained, or concealed Omaria Boss-Pelts from an institution, agency or person having a lawful right to the physical custody of such person and intended to hold Omaria Boss-Pelts permanently or for a protracted period; and

(3) That any of the acts occurred in the State of Washington.

CP 45. The elements set forth in the to-convict instruction closely tracked the language of the statute. Accordingly, the jury was properly instructed on the elements of first degree custodial interference.

To prove the "lawful right to physical custody" element here, the State introduced evidence in the form of court orders and testimony as to the meaning of those orders to establish that during the charging period, the Department of Social and Health Services had the right to physical custody of Omaria Boss-Pelts. Exhibits 1, 3, 11; 2/7/07 RP 104-05, 110-11, 118-19; 2/8/07 RP 35-37, 41-42, 51, 72. The validity of those orders was properly determined by the court as a matter of law.

Washington courts have held in similar contexts that issues concerning the validity of prior convictions or court orders are questions of law for the trial court to decide rather than questions of fact for the jury. Thus, in a prosecution for violation of a domestic violence no contact order, the trial court properly determined that the two prior convictions on which the jury relied and which elevated the crime charged to a felony were for violating orders issued pursuant to pertinent statutory authority. State v. Carmen,

118 Wn. App. 655, 77 P.3d 368 (2003).⁴ This court held that "this was properly a question of law for the court" and that it related to the admissibility of the State's proof of the prior convictions rather than to an essential element of the felony crime. Id. at 663. The court went on to explain:

Put another way, RCW 26.50.110(5) raises an evidentiary barrier to the admission of evidence of the two prior convictions in order to prove the felony offense unless the prior convictions qualified as predicate convictions as defined in the statute. The very relevancy of the prior convictions depended upon whether they qualified as predicate convictions under the statute. If they had not so qualified, the jury never should have been permitted to consider them.

Id. at 664. Accordingly, though the existence of two prior convictions was an element of the crime for the jury to decide, the issue of whether the prior convictions proffered by the State were for violating orders issued under particular statutory authority was a question of relevance, and thus of law, for the court to determine.

⁴ The Carmen court took issue only with the timing of the trial court's determination that the prior convictions were for violations of orders issued pursuant to the pertinent statutes. There, the trial court waited until sentencing to make the determination. While the delay did not warrant overturning the conviction, the court noted that the proper procedure would have been for the issue to be decided prior to the State requesting admission of the evidence. Carmen, 118 Wn. App. at 668.

Similarly, the Washington Supreme Court has held that in a prosecution for violation of a domestic violence no contact order, the validity of the no contact order itself is a question of law for the court to decide. State v. Miller, 156 Wn.2d 23. There, the Court stated:

[I]ssues relating to the validity of a court order (such as whether the court granting the order was authorized to do so, whether the order was adequate on its face, and whether the order complied with the underlying statutes) are uniquely within the province of the court. Collectively, we will refer to these issues as applying to the "applicability" of the order to the crime charged. An order is not applicable to the charged crime if it is not issued by a competent court, is not statutorily sufficient, is vague or inadequate on its face, or otherwise will not support a conviction of violating the order. The court, as part of its gate-keeping function, should determine as a threshold matter whether the order alleged to be violated is applicable and will support the crime charged. Orders that are not applicable to the crime should not be admitted. If no order is admissible, the charge should be dismissed.

Id. at 31. As in Carmen, although the existence of the no contact order was an issue of fact for the jury, the issue of whether it was valid, and therefore "applicable" or "relevant" to the crime charged, was one of law to be determined by the court.

In a case decided after Miller, this court returned to the question of whether the court or the jury was responsible for finding that prior convictions for violating no contact orders were convictions pursuant to violations of orders issued under one or more of the pertinent statutes listed in RCW 26.50.110(5). State v. Gray, 134 Wn. App. 547, 138 P.3d 1123 (2006). In Gray, the court was invited to disagree with its reasoning in Carmen and hold instead that the statutory authority for the previously violated no contact orders was an essential element of the crime and therefore a jury question. Id. at 552. The court declined to do so, noting that Miller explicitly approved the reasoning in Carmen that such questions were for the court to decide as part of its gate-keeping function of determining what evidence is relevant, or "applicable," and therefore properly placed before the jury. Id. at 555-56.

Taken together, Carmen, Miller, and Gray stand for the general proposition that where, as here, a court order constitutes part of the State's proof of an essential element of a charged crime, the issue of whether the order is valid, and therefore "applicable" to the charged crime, is a question of law for the court to determine. The Alaska case cited by Boss does not alter this general proposition. There, the Court of Appeals of Alaska considered

whether, in a prosecution for custodial interference,⁵ the trial court properly excluded the testimony of defendant Cornwall's attorney (Grober) that he told Cornwall that in his opinion, the order vesting custody of Cornwall's child in the State was invalid. Cornwall v. State, 915 P.2d 640 (Alaska App. 1995). The appellate court specifically noted that the validity of the order was an issue for the court rather than the jury to decide:

If Grober's testimony had been offered for the purpose of convincing the jury that the superior court's 1993 custody orders had no legal effect on Cornwall (or, more precisely, that there was a substantial possibility that these orders had no legal effect on Cornwall), Grober's testimony would clearly have been inadmissible. The legal effect of the superior court's custody orders was an issue of law to be decided by the trial judge.

Id. at 647. While the court ultimately reversed Cornwall's conviction, it did so because exclusion of the attorney's testimony about what he told Cornwall regarding the validity of the orders was erroneous, in that it would have negated Cornwall's requisite mental state, i.e. she would have believed that she had a legal right to take

⁵ Under AS 11.41.330(a), "A person commits the crime of custodial interference in the second degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that the person has no legal right to do so, the person takes, entices, or keeps that child or incompetent person from a lawful custodian with intent to hold the child or incompetent person for a protracted period."

or keep the child from the lawful custodian.⁶ Id. at 649. Any doubt about whether the court meant what it said about the validity of orders being a question of law for the trial court was cleared up by a subsequent case:

In Cornwall, the question was whether the trial judge should have allowed the defendant to present testimony concerning the defendant's mistaken understanding of certain child custody orders. We explained that this testimony was admissible because it was relevant to the issue of the defendant's state of mind--and because one of the elements of custodial interference is the defendant's state of mind. But we noted that this same testimony would *not* have been admissible if it "had been offered for the purpose of convincing the jury that ... there was a substantial possibility that [the child custody] orders had no legal effect on Cornwall"--because "[t]he legal effect of the superior court's custody orders was an issue of law to be decided by the trial judge."

Busby v. State, 40 P.3d 807, 817 (Alaska App., 2002) (emphasis in original), citing Cornwall, 915 P.2d at 647. Accordingly, the rationale of Carmen, Miller, and Gray applies here, the trial court ruled correctly that the validity of the custody orders was a question of law, and the jury was properly instructed on the elements of first degree custodial interference.

⁶ To the extent that Boss argues RCW 9A.40.060 requires the State to prove that the defendant has knowledge of the lawfulness of the custody order (Brief of Appellant at 7), she clearly confuses the knowledge element of AS 11.40.330 with the intent element of RCW 9A.40.060.

D. **CONCLUSION**

For the reasons set forth above, the State respectfully requests that this Court affirm Boss's conviction.

DATED this 9th day of November, 2007.

Respectfully submitted,
NORM MALENG
King County Prosecuting Attorney
DANIEL T. SATTERBERG
Interim King County Prosecuting Attorney

By: Terence R. Carlstrom
TERENCE R. CARLSTROM, WSBA #32249
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

APPENDIX A

State Exhibit

STATE OF WASHINGTON } ss.
County of King

I, BARBARA MINER, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office, and that the same is a true and correct transcript of said original and of the whole thereof. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office at Seattle this _____ day of FEB 01 2007 20_____

By [Signature]
BARBARA MINER, Superior Court Clerk
Deputy Clerk

06-1-05268-1 KNT
NO _____

STATE OF WASHINGTON
Plaintiff

V S

[Signature]

Defendant

FILED

KING COUNTY, WASHINGTON

FEB 6 2007

SUPERIOR COURT CLERK
BY CAROL K. INCH
DEPUTY

FILED
KING COUNTY WASHINGTON

MAY 11 2006

CLERK
PIZARRO
DEPUTY

**CERTIFIED
COPY**

State Exhibit

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING
JUVENILE COURT

Dependency of:

BOSS- PELTS, Omaria Joyce

D.O.B.: 2/15/2006

NO: 06-7-02508-1 SEA

**ORDER TAKING CHILD INTO CUSTODY
AND PLACEMENT IN SHELTER CARE
(ORTCC)**

I. BASIS

The Court has considered a motion, statement and declaration requesting an order to take the above-named child into custody.

II. FINDINGS

The Court FINDS that:

- 2.1 A petition has been filed with the Court alleging that the child is dependent pursuant to RCW 13.34.030.
- 2.2 It is currently contrary to the welfare of the child to remain in the child's home. The petition and/or supporting declarations and affidavits establish reasonable grounds to believe that the child is dependent and the child's health, safety, and welfare will be seriously endangered if not taken into custody.
- 2.3 The petitioner has demonstrated that there is a risk of imminent harm to the child in the child's home. The assessment of risk by petitioner constitutes reasonable efforts to prevent or eliminate the need for removal of the child from the child's home and:
- due to the risk of imminent harm to the child, there are no reasonably available services that can be provided to the parent(s) to maintain the child in the child's home at this time;
 - services previously offered or provided to the parent(s) have been unable to remedy the unsafe conditions in the home;
 - there is no parent, guardian or legal custodian known to petitioner at this time who is available to take custody of the child; and/or
 - Other _____

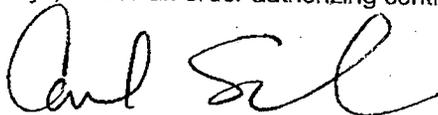
NO: 06-7-02508-1 SEA

III. ORDER

IT IS ORDERED that:

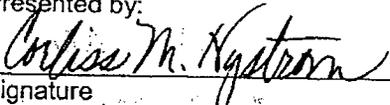
- 3.1 The above-named minor child shall be taken into custody by a law enforcement officer, probation counselor, or child protective services worker, and placed in a facility licensed pursuant to RCW 74.15.030, or in a home not required to be licensed pursuant to that section, under the supervision of [] DSHS or [] _____ (supervising agency).
- 3.2 The supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care.
- 3.3 The child shall remain in shelter care for not more than 72 hours from the time the child is taken into custody, excluding Saturdays, Sundays and holidays, unless an order authorizing continued shelter is entered.

Dated: 5/11/06



JUDGE/COMMISSIONER

Presented by:



Signature
Corliss Nystrom, Court Social Worker III
Type or Print Name/Title

APPENDIX B

06-1-05268-1 KNT

NO
STATE OF WASHINGTON

Plaintiff

Boss VS

Defendent

FILED
KING COUNTY, WASHINGTON
FEB 6 2007

SUPERIOR COURT CLERK
BY CAROL K. INCH
DEPUTY

STATE OF WASHINGTON } ss.
County of King

I, BARBARA MINER, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office at Seattle this _____ day of _____ 20_____

MAY 18 2006

BARBARA MINER, Superior Court Clerk
By _____

[Signature]
Deputy Clerk
RUTH M. PERALTA-CLARK

CERTIFIED
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State Exhibit

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IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THE COUNTY KING

IN RE THE CUSTODY OF:

BOSS-PELTS, Omaria Joyce
DOB: 2/15/06

Minor Child

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, DIVISION OF
CHILDREN AND FAMILY SERVICES,

Petitioner,

BOSS, Cynthia Crisaundra
PELTS, Paul Anthony,

Respondents.

NO. 06-7-02508-1 SEA

ORDER TO ISSUE WRIT OF HABEAS
CORPUS AND WARRANT IN AID OF WRIT

MAY 18 2006
ISSUED
BA

THIS MATTER having come before the Court on the Petitioner's motion for
issuance of Writ of Habeas Corpus, Petitioner appearing by and through counsel of record,
Elizabeth Berris, Assistant Attorney General, the Court having reviewed the records, files,
declarations herein, and having heard argument of counsel, and deeming itself fully advised,
now therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED that a Writ of Habeas Corpus be

ORDER TO ISSUE WRIT OF HABEAS
CORPUS AND WARRANT IN AID OF WRIT

Rev. 03/01 pp

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ATTORNEY GENERAL OF WASHINGTON
900 Fourth Avenue, Suite 2000
Seattle, WA 98164
(206) 464-7744

CERTIFIED
COPY

1 issued directing the Sheriff of King County, or any other peace officer of the State of
2 Washington to locate and take **Omaria Joyce BOSS-PELTS** into immediate custody and
3 to deliver said child as soon as reasonably possible to the Unified Family Court Judge of the
4 King County Superior Court, Regional Justice Center, State of Washington; and it is further:

5 ORDERED, ADJUDGED, AND DECREED that said peace officers may break and
6 enter any residence, building, structure, or vehicle in which they have reason to believe the
7 child(ren) to be located or where information pertaining to the location of the child(ren) may
8 be found; and it is further:

9 ORDERED, ADJUDGED, AND DECREED that said officers may arrest any
10 individual who stands in the way or obstructs their rightful attempts to obtain the immediate
11 custody of **Omaria Joyce BOSS-PELTS** ; and it is further:

12 ORDERED, ADJUDGED, AND DECREED that if the King County Superior Court
13 is not in session at the time said child(ren) is/are placed into custody, said officers shall
14 place the said child(ren), **Omaria Joyce BOSS-PELTS**, into the care and custody of the
15 Department of Social and Health Services, Division of Children and Family Services,
16 Children's Protective Services until the first date court is in session following the date of the
17 recovery of the child(ren); and it is further:

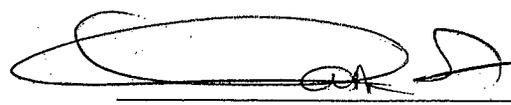
18 ORDERED, ADJUDGED, AND DECREED that Children's Protective Services
19 shall place said child, **Omaria Joyce BOSS-PELTS** , into Protective Custody upon request
20 of the said peace officers until such time as this matter may be heard in the Superior Court
21 of Washington for King County. Further, the child shall not be released to any person other
22 than the King County Police or any other peace officer in the State of Washington acting in
23 accordance with this order; or, upon a Return of Service on this Writ of Habeas Corpus, and
24 a further order issued from the King County Superior Court authorizing the release of said
25 child to a person designated by the Court.

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ORDERED, ADJUDGED, AND DECREED that the clerk's office shall issue the Writ of Habeas Corpus, and the Warrant in Aid of Writ of Habeas Corpus, and 2 certified copies of this order to the Office of the Attorney General at no charge.

DATED this 18 day of May, 2006.

ISSUED



UNIFIED FAMILY COURT JUDGE
CATHERINE SHAFFER

Presented by:

ROB MCKENNA
Attorney General

By



Elizabeth Bennis
Assistant Attorney General #15249
WSBA #32879

APPENDIX C

State Exhibit

06-1-05268-1 KNT
NO _____

STATE OF WASHINGTON
Plaintiff

Boss VS

Defendent

FILED

KING COUNTY, WASHINGTON

FEB 8 2007

SUPERIOR COURT CLERK
BY CAROL K. INCH
DEPUTY

State Exhibit

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IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THE COUNTY KING

IN RE THE CUSTODY OF:

NO. 06-7-02508-1 SEA

WRIT OF HABEAS CORPUS

BOSS-PELTS, Omaria Joyce
DOB: 2/15/06

Minor Child

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, DIVISION OF
CHILDREN AND FAMILY SERVICES,

Petitioner,

BOSS, Cynthia Crisaundra
PELTS, Paul Anthony,

Respondents.

The State of Washington, To:

The Sheriff of King County and each and every other peace officer in the State
of Washington:

You are commanded to secure custody of the body of **Omaria Joyce BOSS-
PELTS**, wherever he/she may be detained and bring him/her before the Unified Family

WRIT OF HABEAS CORPUS

1 Court Judge of the Superior Court of Washington in and for the County of King in
 2 courtroom 4B at the Regional Justice Center in Kent, Washington, to do those things which
 3 shall then and there be considered concerning the said child.

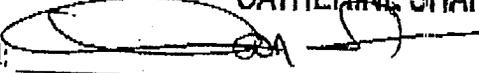
4 You are further ordered to break and enter any outer or inner door or other opening
 5 of any building, vehicle, or other enclosure as necessary to secure the body of said child and
 6 bring him/her before the court.

7 In the event that the King County Superior Court is not in session at the time the
 8 child is placed into law enforcement custody, the King County Police or any other peace
 9 officer in the State of Washington is hereby commanded to place the said child, **Omaria**
 10 **Joyce BOSS-PELTS**, into the care and custody of Children's Protective Services until the
 11 first date court is in session following the date of the recovery of the child.

12 In the name of the State of Washington, pursuant to the above order, Children's
 13 Protective Services is hereby commanded to take custody of said child, **Omaria Joyce**
 14 **BOSS-PELTS**, and place the child into protective custody until such time as this matter
 15 may be heard in the Superior Court of Washington for King County. The child shall not be
 16 released to any person other than the King County Police or any other peace officer in the
 17 State of Washington acting in accordance with this order; or, upon a Return of Service on
 18 this Writ of Habeas Corpus, and further order issued from the King County Superior Court
 19 authorizing the release of said child to a person designated by this court.

CATHERINE SHAFFER

20 Witnessed:


 Judge of Superior Court of the State
 of Washington, in and for the County
 of King this 19th day of May
2006

21 Attest: My hand and seal of said Superior Court
 22 the day and year last written above.

23 WRIT OF HABEAS CORPUS

APPENDIX D

FILED
07 FEB -5 PM 2:49
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

~~FILED
KING COUNTY, WASHINGTON
FEB 7 2007
SUPERIOR COURT CLERK
ANDRE JONES
DEPUTY~~

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
) Plaintiff,)
)
 vs.)
)
 CYNTHIA CRISAUNDR A BOSS, and)
 11 PAUL ANTHONY PELTS)
 and each of them,)
) Defendants.)

06C-05269-9 KWT
No. ~~032207900-0100~~

AMENDED INFORMATION

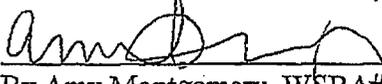
(as to Defendant Boss Only)

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse CYNTHIA CRISAUNDR A BOSS of the crime of **Custodial Interference in the First Degree**, committed as follows:

That the defendant CYNTHIA CRISAUNDR A BOSS in King County, Washington during a period of time intervening between May 31, 2006 through August 22, 2006 did take, retain, detain and conceal children, to-wit: O.J.B-P. (dob 2/15/06) with the intent to deny access to the child from a person having a lawful right to physical custody of such child; to-wit: a representative from DSHS, Children's Protective Services and the State of Washington, and intended to hold the child permanently or for a protracted period;

Contrary to RCW 9A.40.060 (1)(a), and against the peace and dignity of the State of Washington.

NORM MALENG
Prosecuting Attorney

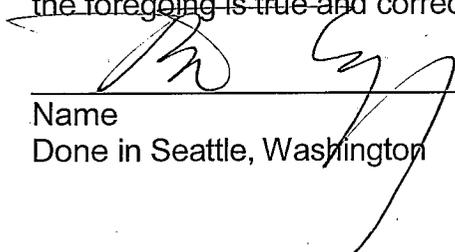

By Amy Montgomery, WSBA# 32068
Deputy Prosecuting Attorney

Norm Maleng,
Prosecuting Attorney
Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas M. Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. CYNTHIA CRISAUNDRA BOSS, Cause No. 59573-3-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

11-08-07

Date

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 NOV -8 PM 4:47