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NO. 85511-1

SUPREME COURT OF THE STATE OF WASHINGTON

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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

LINDY DEER,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LAURA GENE MIDDGAUGH

SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUE PRESENTED

Whether the Court of Appeals erred in holding that when a defendant charged with rape of a child -- a strict liability offense -- claims to have been asleep when she had sexual intercourse with the victim, the State has the burden of proving beyond a reasonable doubt that the defendant engaged in a "volitional" act of sexual intercourse because "volition" is an implied element of the crime.

B. STATEMENT OF THE CASE

The State charged the defendant, Lindy Deer (dob 6/7/54), with three counts of rape of a child in the third degree for having sexual intercourse on multiple occasions with 15-year-old R.R. between September 2006 and June 2007. CP 1-7; RP (2/5/09) 2-3; RP (2/11/09-II) 58-59.

R.R. is a relative of a woman for whom Deer worked as an administrative assistant. RP (2/10/09-II) 63-64, 66-67. R.R. moved from his home in another state to Auburn, Washington, to attend a private religious boarding school. RP (2/10/09-II) 4-9. During the summer before school started, R.R. helped Deer with chores at her house. RP (2/10/09-II) 68-69; RP (2/11/09-I) 23. On one of these

occasions, Deer told R.R. that he should have "kissing lessons."
RP (2/11/09-I) 24-25. Deer kissed R.R. on the mouth. She used
her tongue, and told R.R. how to "tease" a partner while kissing.
RP (2/11/09-I) 27-28.

The first time that R.R. and Deer progressed beyond kissing
was in September 2006, shortly after R.R. had started attending the
private school. RP (2/11/09-I) 37. Deer had brought R.R. to her
house to spend the night. R.R. was going to sleep on the couch,
but when he became sexually aroused, he went into Deer's room
and got into bed with her. RP (2/11/09-I) 38-40. Deer had
previously told R.R. that "if it wasn't wrong in the eyes of society,"
that she would have no problem having sex with R.R. RP
(2/11/09-I) 39. After R.R. got into Deer's bed, he pulled his
underwear down and put Deer's hand on his penis. Deer grabbed
R.R.'s penis and pulled him closer to her. Deer inserted R.R.'s
penis into her vagina and started moving up and down and
moaning. Intercourse continued until R.R. ejaculated. RP
(2/11/09-I) 40-42. Afterwards, both Deer and R.R. pretended to be
asleep. RP (2/11/09-I) 43-45. In fact, Deer succeeded in making
R.R. believe that she actually was asleep when they had sex on

several occasions. R.R. referred to these encounters as "sleep sex." RP (2/11/09-I) 92-95; RP (2/11/09-II) 23, 34.

Deer and R.R. had another sexual encounter at Deer's house in November 2006, when Deer was comforting R.R. because his peer-aged girlfriend had broken up with him. RP (2/11/09-I) 46-50, 69. Deer and R.R. were lying on the couch, talking about the breakup and kissing, and then Deer performed fellatio on R.R. This was R.R.'s first experience with oral sex. RP (2/11/09-I) 50-51. That night, R.R. again got into bed with Deer and had vaginal sex with her. RP (2/11/09-I) 51-52.

Another sexual encounter occurred at Deer's house when Deer went into the bathroom to change her clothes. R.R. walked into the bathroom and began kissing and fondling Deer. They both took off their clothes and went into Deer's bedroom. Deer helped R.R. insert his penis into her vagina and they had intercourse until R.R. ejaculated. R.R. was upset after this incident because he was interested in a peer-aged girl at the time. RP (2/11/09-I) 58-60.

Another incident took place at Deer's employer's house in the spring of 2007. R.R. and Deer had vaginal intercourse in the laundry room while Deer was sitting on a stool. RP (2/11/09-I)

61-66. On another occasion when R.R. was at this house, Deer masturbated R.R. until he ejaculated. RP (2/11/09-I) 64-66.

R.R. finally disclosed these incidents to his student adviser at the religious school in the fall of 2007, when R.R. was studying to be baptized. RP (2/10/09-II) 42-43. The student advisor told R.R. to tell the boys' dean. RP (2/11/09-I) 73-76. The dean informed the school principal. RP (2/10/09-II) 62. As a result, a CPS referral was made, and the Auburn Police became involved. RP (2/10/09-I) 26. According to the school's records, Deer had signed forms to take R.R. off campus on at least 10 occasions. RP (2/10/09-II) 45-47, 50-51, 61.

Auburn Police detectives went to Deer's house on November 7, 2007 to arrest her. RP (2/10/09-I) 6-7. After advising Deer of her rights, Detective Weller told Deer that she knew that Deer had a sexual relationship with R.R. Deer responded, "It was on his part." RP (2/10/09-II) 10.

In defense of these charges, Deer claimed that she was asleep during some of the incidents of sexual intercourse with R.R., and she claimed that during the other incidents, R.R. had forced her to have sexual intercourse without her consent. Accordingly, Deer's defense counsel initially proposed inserting the word

"willfully" into the elements of the crime as set forth in the "to convict" instructions. The trial court correctly rejected this proposal because the crime of rape of a child does not require proof of any mental state on the part of the defendant. Instead, the trial court asked defense counsel to draft a separate instruction describing Deer's defense. RP (2/5/09) 29-33.

Defense counsel then proposed an instruction stating that the jury should acquit if they found that the defense had presented evidence sufficient to raise a reasonable doubt as to whether the acts of sexual intercourse were "volitional," and the State agreed to this instruction.¹ RP (2/11/09-II) 76-84. The trial court again rejected Deer's proposed instruction, and instead crafted its own instruction stating that the defendant had the burden of proving by a preponderance of the evidence that the acts of sexual intercourse had occurred without her knowledge or consent. CP 24.

¹ The Court of Appeals' opinion incorrectly states that "Deer and the State proposed a jury instruction that would have required the State to prove beyond a reasonable doubt that she committed a 'volitional' act." State v. Deer, No. 63737-1-I (filed 12/13/10) (hereinafter "Slip Op."), at 4. The error in the court's opinion, and in the Brief of Respondent, is due to the fact that the defendant's proposed instruction was not filed for the record for some reason, and undersigned counsel for the State initially misread the verbatim report of proceedings. Upon closer inspection, however, the transcript is clear that the instruction that Deer proposed and the State agreed to would have required the defense to produce sufficient evidence to raise a reasonable doubt as to whether the acts of sexual intercourse were "volitional." RP (2/11/09-II) 78.

At the conclusion of the trial, the jury convicted Deer of three counts of third-degree child rape as charged. CP 29-31. The trial court imposed 46 months on each count -- the low end of the standard range -- to be served concurrently. CP 42-51.

Deer raised two claims of error on appeal: 1) that the trial court erred in allowing the State to amend the information to correct erroneous charging language after the State had rested its case; and 2) that the trial court erred in instructing the jury that Deer had the burden of showing by a preponderance of the evidence that she lacked knowledge of the acts of sexual intercourse that she claimed had occurred while she was asleep.² The State conceded error as to the first issue, and agreed that the charges must be dismissed without prejudice. Slip Op., at 4-6. As to the second issue, however, it is the State's position that the Court of Appeals erred in holding that the State bears the burden of proving a "volitional" act of sexual intercourse beyond a reasonable doubt as an implied element of child rape just because Deer claimed that she was sleeping when some of the acts in question occurred.

² Deer did not challenge the trial court's ruling that the defense bore the burden of proving Deer's alleged lack of consent by a preponderance of the evidence.

C. ARGUMENT

1. **UNCONSCIOUSNESS OR LACK OF "VOLITION" IS A DEFENSE THAT THE DEFENDANT MUST ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE IN CASES INVOLVING STRICT LIABILITY CRIMES.**

The Court of Appeals held that the trial court erred in instructing the jury that Deer had the burden of proving by a preponderance of the evidence that she engaged in acts of sexual intercourse with R.R. without her knowledge. Slip Op., at 6-10. In so holding, the Court of Appeals concluded that a "volitional" act on the part of the defendant is an implied element of even a strict liability offense like rape of a child. Thus, the court held that the trial court's instruction violated Deer's due process rights by relieving the State of its burden to prove all necessary elements of the crime beyond a reasonable doubt. See Slip Op., at 9-10.

This holding is erroneous because "volition" is not an essential element of this or any other crime. Rather, a *lack* of "volition" is a *defense* to a crime. Moreover, both the burden of production and the burden of persuasion should be allocated to the defendant when the crime charged is a strict liability offense such as child rape. The trial court's instruction was correct, and the Court of Appeals should be reversed.

The correct result in this case necessarily stems from one crucial conceptual distinction. Specifically, the correct analysis of the issue presented here turns on whether *unconsciousness* (or lack of "volition") is a *defense* to a crime, or whether *consciousness* (or "volition") is an *implied element* of every crime, including strict liability offenses. As the author of one authoritative treatise has explained, treating unconsciousness or involuntary conduct as an "excuse defense"³ and allocating at least the burden of production to the defendant makes far more sense for both practical and policy reasons than treating voluntariness or "volition" as a universal implied element of every offense:

Various rationales underlie this allocation of the burdens of proof. Excuses are claims of abnormality and are by their very nature exceptional claims. In contrast, the elements of an offense, of burglary for example, are at issue every time that offense is charged. Excuses raise claims of subjective abnormality and thus are not easily disproved. In contrast, even subjective offense elements present

³ The author includes the "involuntary act defense" under the general category of "excuse defenses," which includes, among others, insanity, intoxication, duress, and mistake. 2 Robinson, Criminal Law Defenses, Chapter 5 (1984). Under Washington law, the defendant bears the burden of proving at least two such "excuse defenses" by a preponderance of the evidence, i.e., insanity and duress, even in cases where the defendant is charged with a crime that includes a mens rea element. See State v. Riker, 123 Wn.2d 351, 366-67, 869 P.2d 43 (1994). Accordingly, the Court of Appeals' conclusion that it violates due process to allocate the burden of proof for the defense of unconsciousness or lack of volition to the defendant by a preponderance of the evidence, particularly when a strict liability crime is charged, is not correct.

more manageable problems of proof. Compare the government's task in proving that the defendant had a particular, defined culpability level (purpose, knowledge, recklessness, or negligence) as to a corresponding objective element of an offense, with its task in disproving that the defendant suffered from a general excuse disability such as insanity and did not know right from wrong. In addition, where the defendant's abnormality is at issue, the facts are peculiarly within the defendant's knowledge. Perhaps most importantly, where the defendant claims an excuse, he admits causing a net harm or evil yet seeks exculpation. In such a case, one's sense of fairness is not as likely to be offended if the defendant is given the burden of demonstrating that it is more likely than not that he should be exculpated.

The rationales supporting allocation of the burdens of production and persuasion for excuses to the defendant seem clearly applicable to the voluntariness issue. Involuntary conduct is a statistical and subjective abnormality; the relevant facts are peculiarly within the knowledge of the accused; and where a harm has been caused by a defendant's act, it seems fair to require him to adduce evidence that the act was involuntary. This analysis suggests that for constitutional purposes involuntariness should be viewed as a general excuse rather than as a universal offense element.

....

In summary, there is no apparent reason, either conceptual or practical, to treat the involuntary act excusing condition differently than any other excusing condition.

2 Robinson, Criminal Law Defenses, § 171(d)(3), p. 266-67 (1984)

(footnotes omitted); see *also* Riker, 123 Wn.2d at 367 ("affirmative

defenses are uniquely within the defendant's knowledge and ability to establish," so it is proper to place the burden on the defendant to prove such defenses by a preponderance of the evidence).

The Model Penal Code "defines an involuntary act as one that is 'not a product of the actor's effort or determination.'"

2 Robinson, *supra*, § 171(e)(1), p. 269 (1984) (citing Model Penal Code § 2.01). "At all events, it is clear that criminal liability requires that the activity in question be voluntary." 1 LaFave, Substantive Criminal Law, § 6.1(c), p. 425 (2d ed. 2003). Accordingly, involuntary conduct, or a lack of "volition," is recognized as a defense in most jurisdictions,⁴ and, as a general rule, "[t]he burden of production . . . is generally on the defendant," and "[t]he burden of persuasion is nearly always on the state, beyond a reasonable doubt."⁵ 2 Robinson, *supra*, § 171(a), p. 259-61.

Allocating the burdens of production and persuasion in this manner makes sense when the crime in question contains a mental

⁴ For a collection of statutes and case law from other jurisdictions regarding involuntary conduct, see Eunice A. Eichelberger, Annotation, *Automatism or Unconsciousness as Defense to Criminal Charge*, 27 A.L.R. 4th 1067 (1984); see also 1 LaFave, *supra*, § 6.1(c). Undersigned counsel for the State has spent many hours reading authorities from other jurisdictions, but has yet to find any directly on point.

⁵ This is consistent with the instruction Deer proposed at trial, which would have required the jury to acquit if Deer had presented evidence sufficient to raise a reasonable doubt that her conduct was "volitional." RP (2/11/09-II) 76-84.

element, because proof of unconsciousness is evidence that negates that the defendant acted with knowledge, and the State obviously retains the burden of proving the mental element beyond a reasonable doubt. In such cases, the defense of unconsciousness would be very similar to the defense of diminished capacity.⁶ But when the crime in question is a strict liability offense, this allocation of burdens is unworkable because there is no knowledge to negate.

It is well-settled under Washington law that rape of a child is a strict liability offense. State v. Chhom, 128 Wn.2d 739, 741-43, 911 P.2d 1014 (1996). As such, the only elements of this crime are 1) sexual intercourse, 2) the perpetrator and victim are not married, 3) the victim's age, and 4) the age difference between the perpetrator and victim. See Chhom, at 743. Accordingly, as the Court of Appeals has previously held, the State is not required to prove the defendant's capacity to know that she was performing the acts constituting the crime of rape of a child:

⁶ See State v. Marchi, 158 Wn. App. 823, 833-34, 243 P.3d 556 (2010) (when a defendant raises the defense of diminished capacity and offers evidence that his or her ability to form the requisite mens rea was impaired, the jury is instructed that such evidence "may be taken into consideration in determining whether the defendant had the capacity to form intent," and the jury is also instructed that the State has the burden of proving the elements of the crime, including the requisite mental state, beyond a reasonable doubt).

Were we to hold that the State must prove that an accused had the mental capacity or ability to know that he was in fact performing the acts specified, we would be converting a defense burden into a prosecutorial burden. In the absence of a statutory mandate to that effect we refuse to find such a transposition of burdens by implication.

State v. Abbott, 45 Wn. App. 330, 333, 726 P.2d 988 (1986), rev. denied, 107 Wn.2d 1027 (1987); see also State v. Swagerty, 60 Wn. App. 830, 832-35, 810 P.2d 1 (1991) (diminished capacity and voluntary intoxication are unavailable as defenses to statutory rape because that crime has no mens rea that the State is required to prove). Accordingly, if the State has no burden to prove the defendant's capacity to know that she was engaging in acts of sexual intercourse, then the State also should have no burden to prove that those acts were "volitional."

In reaching the opposite conclusion, the Court of Appeals endorsed the notion that "volition" is not a function of *mens rea*, but a component of the *actus reas* of a strict liability offense. Slip Op., at 6-8. With all due respect, "volition" is a function of mental awareness and will, not physical movement, and the Court of Appeals' statements to the contrary should be rejected as a basis to create a new element for every criminal offense including strict liability crimes.

As the Court of Appeals correctly noted, Black's Law Dictionary defines "actus reas" as "[t]he wrongful deed that comprises *the physical components of a crime*[" Slip Op., at 6 (quoting BLACK'S LAW DICTIONARY 41 (9th ed. 2009)) (emphasis supplied). The physical component of rape of a child is sexual intercourse. Under the Court of Appeals' analysis, if an act of sexual intercourse is performed by an unconscious person, there is no "act" due to a lack of "volition," despite the fact that an act of sexual intercourse has unquestionably occurred. The court further held that when the defendant claims a lack of "volition," the State assumes the burden of proving "volition" beyond a reasonable doubt as an implied element of the crime. But a defendant whose actions are lacking in "volition" due to insanity, which prevents him from appreciating the nature and quality of his acts, would be required to establish that defense by a preponderance of the evidence; there is no implied element of sanity that the State must prove in order to establish an "act" for purposes of the actus reas. This distinction is as artificial as it is unsound.

The problem with this abstract distinction between actus reas and mens rea with respect to child rape is perhaps best illustrated by an example utilizing a different strict liability offense.

Possession of a controlled substance, like rape of a child, is a strict liability offense, and unwitting possession is an affirmative defense that the defendant must prove by a preponderance of the evidence. State v. Bradshaw, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004). The actus reas of this crime is possession, whether actual or constructive. Id. But "[i]f the defendant affirmatively establishes that 'his "possession" was unwitting, then he had no possession for which the law will convict.'" State v. Staley, 123 Wn.2d 794, 799, 872 P.2d 502 (1994) (quoting State v. Cleppe, 96 Wn.2d 373, 381, 635 P.2d 435 (1981)). As this Court has recognized, the unwitting possession defense "ameliorates the harshness of a strict liability crime," but it does so without improperly shifting the burden of proof to the State with respect to elements that do not exist in the statute. Bradshaw, 152 Wn.2d at 538.

Therefore, a defendant who claims that he put on his roommate's pants without knowing that there was a baggie of cocaine in the pocket has the burden of proving that defense by a preponderance of the evidence. On the other hand, based on the Court of Appeals' reasoning, if the same defendant were to claim that he was sleepwalking when he put on his roommate's pants with the cocaine in the pocket, the State would then bear the

burden of proving beyond a reasonable doubt that the defendant's possession of cocaine was "volitional." This result is absurd.

Unwitting possession provides the closest corollary to the defense proffered in this case, i.e., that the defendant claimed to be sleeping and was therefore unaware that she was having sexual intercourse with a child. As is the case with possession of a controlled substance, the defendant should be allowed to raise the defense that the act of intercourse was unwitting, i.e., performed when she was asleep, unconscious, or otherwise incapable of "volitional" action, but the burden should be on the defendant to establish this defense by a preponderance of the evidence. In so holding, this Court would acknowledge a defense that would serve to ameliorate the harshness of a strict liability offense, but without creating a burden of proof for the State regarding an element of the crime that simply does not exist. Such a holding is entirely consistent with due process, and it constitutes sound policy as well.

Nonetheless, the Court of Appeals reached the opposite conclusion based primarily on two cases that are not on point: State v. Eaton, 168 Wn.2d 476, 229 P.3d 704 (2010), and State v. Utter, 4 Wn. App. 137, 479 P.2d 946 (1971). Both cases are distinguishable.

In Eaton, a 5-justice majority of this Court concluded that in order to prove a sentencing enhancement that the defendant possessed a controlled substance in a "prohibited zone," e.g., in a jail or prison, the State must show "that defendant took a volitional act to place himself in the enhancement zone." Eaton, 168 Wn.2d at 479. In reaching this conclusion, this Court noted language from Utter stating that "a certain minimal mental *element* is required in order to establish the actus reas itself."⁷ Id., at 482 (quoting Utter, 4 Wn. App. at 139) (emphasis supplied). Although on the surface this language appears to support the Court of Appeals' decision in this case, the use of the word "element" in this context plainly does not mean an essential element of the offense that must be included in the charging document and in the "to convict" instruction. Rather, the term "element" as used in Utter and by the various commentators has its ordinary meaning, i.e., "one of a number of distinct or disparate units, parts, traits, or characteristics of which

⁷ The majority also cited a Holmes treatise and a law review article to support the notion that an act is not an "act" unless it is performed voluntarily or as an exercise of choice. Id. at 482 (citing O.W. Holmes, Jr., The Common Law (Mark DeWolfe Howe ed., Harvard Univ. Press 1967) (1981), and A.P. Simester, On the So-Called Requirement for Voluntary Action, 1 Buff. Crim. L. Rev. 403 (1998)). These commentaries are addressed to the simple idea that a person should not be punished for conduct that is completely involuntary. The State certainly agrees with this basic premise; however, the State disagrees with the notion that this premise leads to a conclusion that "volition" is an implied element of every crime it charges, including strict liability offenses like child rape.

something tangible or intangible is composed[.]'" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 734 (1993). This is the critical flaw in the Court of Appeals' analysis, and this Court should correct it.

Furthermore, this Court's holding in Eaton is grounded solely in principles of statutory construction, because the sentencing enhancement statute at issue had not yet been construed. See Eaton, 168 Wn.2d at 480. Accordingly, after performing its statutory analysis, the majority concluded that the legislature did not intend to further punish the defendant with a sentencing enhancement unless he was in the "prohibited zone" voluntarily or as the product of choice. But in this case, this Court has already held that the legislature intended child rape to be a strict liability offense; thus, to create a new element of "volition" would contravene that legislative intent. In sum, Eaton does not apply here.

The Court of Appeals' reliance on Utter is equally unavailing. In Utter, the defendant was charged with murder and convicted of manslaughter. On appeal, he claimed that the trial court erred in refusing his so-called "conditioned response" instruction, which would have allowed the jury to find that his actions were involuntary "as a result of his jungle warfare training in World War II" and the

large amount of whiskey he had consumed. Utter, 4 Wn. App. at 138-39. After a fairly lengthy explication of the notion that the Court of Appeals relied upon -- that an "automatic" or unconscious act "is in reality no act at all" -- the Utter court ultimately concluded that "the evidence presented was insufficient to present the issue of defendant's unconscious or automatic state at the time of the act to the jury." Id., at 140-43. In other words, the Utter court's entire discussion of the defense of involuntariness is *dicta*.

Moreover, Utter does not support the Court of Appeals' conclusions in any event, as the Utter court clearly recognized that unconsciousness or "automatism," if applicable, is a *defense* to a crime; consciousness is not an implied element of the crime. See id., at 141 (comparing automatism to insanity as a defense to a crime). Also, Utter does not address the allocation of the burdens of production and persuasion for such a defense. In sum, the Court of Appeals plainly overstated Utter's significance in reaching its conclusion that "volition" is an implied element of child rape.

Finally, the Court of Appeals' conclusion that "volition" is an implied element of even a strict liability offense gives rise to consequences the court likely did not intend. Specifically, because Washington law requires that all essential elements be charged in

the information and included in the "to convict" instruction,⁸ the Court of Appeals' decision could provide a basis for untold numbers of defendants to challenge their convictions on due process grounds, whether or not those convictions are final on appeal. Such a result would work an injustice on crime victims and the citizens of Washington.

As a final point, it is important to emphasize that the State is not arguing that unconsciousness cannot be a defense to the crime of rape of a child. Rather, the State contends that the burden of proving such a defense should lie with the defendant, who is in the best position to offer evidence in this regard. Stated in the converse, the State should not bear the burden of proving "volition" beyond a reasonable doubt when a defendant charged with rape of a child provides some evidence, no matter how ludicrous, that she was asleep when she had sexual intercourse with an underage boy on multiple occasions.

⁸ See State v. Tandeckj, 153 Wn.2d 842, 846, 109 P.3d 398 (2005) (all essential elements must be alleged in the charging document); State v. Mills, 154 Wn.2d 1, 7, 109 P.3d 415 (2005) (all essential elements must be in the "to convict" instruction); State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000) (these principles apply to both statutory elements and non-statutory elements).

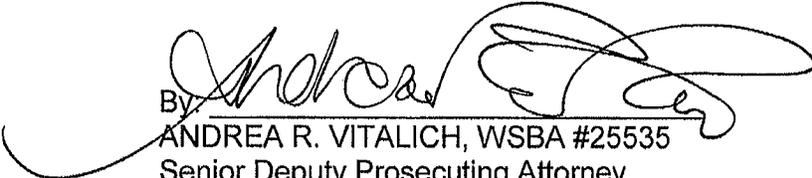
D. CONCLUSION

This Court should hold that the defense of unconsciousness must be proved by the defendant by a preponderance of the evidence when the crime charged is a strict liability offense. Accordingly, the Court of Appeals' holding to the contrary should be reversed.

DATED this 31st day of May, 2011.

Respectfully submitted,

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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 Lila Silverstein, the attorney for the appellant/respondent, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Supplemental Brief, in STATE V. LINDY DEER, Cause No. 85511-1, in the Supreme Court, 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.

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Subject: RE: State v. Deer, No. 85511-1, State's Supplemental Brief

Rec. 5-31-11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Vitalich, Andrea [<mailto:Andrea.Vitalich@kingcounty.gov>]
Sent: Tuesday, May 31, 2011 2:57 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'Lila J. Silverstein'
Subject: State v. Deer, No. 85511-1, State's Supplemental Brief

Dear Sir or Madam,

Please find attached for filing via email the Supplemental Brief of Petitioner (with certificate of service) for State v. Lindy Deer, No. 85511-1.

Thank you,

Andrea R. Vitalich, WSBA #25535
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Appellate Unit
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