NO. 59995-0

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

2007 MAY -4 PM 4:20
COURT OF APPEALS
STATE OF WASHINGTON

In re the Matter of Application for Relief
from Personal Restraint of:

ROLAND SPEIGHT,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SAN JUAN COUNTY

The Honorable Alan R. Hancock, Judge

# PETITIONER'S SUPPLEMENTAL BRIEF

DANA M. LIND
Attorney for Petitioner

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

Today I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to attorneys of record of ~~respondent/appellant/plaintiff~~ containing a copy of the document to which this declaration is attached.
San Juan County Prosecutor
I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Patrick Mayovsky — 5-4-2007
Name — Done in Seattle, WA — Date

## TABLE OF CONTENTS

Page

A. ASSIGNMENT OF ERROR . . . . . 1

Issue Pertaining to Assignment of Error . . . . . 1

B. STATEMENT OF THE CASE . . . . . 1

1. Procedural Facts . . . . . 1

2. Facts Relating to Speight's Claim . . . . . 2

C. ARGUMENT . . . . . 4

PETITIONER'S CONSTITUTIONAL PUBLIC TRIAL RIGHT WAS VIOLATED. . . . . 4

D. CONCLUSION . . . . . 12

## TABLE OF AUTHORITIES

Page

WASHINGTON CASES

Allied Daily Newspapers of Wash. v. Eikenberry,
121 Wn.2d 205, 848 P.2d 1258 (1993) . . . . . 6

In re Haverty,
101 Wn.2d 498, 681 P.2d 835 (1984) . . . . . 4

In re Personal Restraint of Cook,
114 Wn.2d 802, 792 P.2d 506 (1990) . . . . . 4

In re Personal Restraint Petition of St. Pierre,
118 Wn.2d 321, 823 P.2d 492 (1992) . . . . . 4

In the Matter of the Personal Restraint of Orange,
152 Wn.2d 795, 100 P.3d 291 (2004) . . . . . 4-11

State v. Bone-Club,
128 Wn.2d 254, 906 P.2d 629 (1984) . . . . . 1, 5, 6, 8-11

State v. Brightman,
155 Wn.2d 506, 122 P.3d 150 (2005) . . . . . 6-11

FEDERAL CASES

In re Oliver,
333 U.S. 257, 68 S. Ct. 499,
92 L. Ed. 682 (1948) . . . . . 11

Waller v. Georgia,
467 U.S. 39, 104 S. Ct. 2210,
81 L. Ed. 2d 31 (1984) . . . . . 5

## TABLE OF AUTHORITIES (CONT'D)

Page

RULES, STATUTES AND OTHERS

Const. art. 1, § 22 . . . . . 5

RAP 16.4(c)(2) . . . . . 11

Thomas M. Cooley,
Constitutional Limitations (8th ed. 1927) . . . . . 11

U.S. Const. amend. I . . . . . 5

U.S. Const. amend. VI . . . . . 5

## A. ASSIGNMENT OF ERROR

Petitioner's constitutional public trial rights were violated.

Issue Pertaining to Assignment of Error

The trial court ruled on the parties' motions in limine in chambers in the presence of only the judge, counsel, petitioner, court clerk, court reporter, and a sheriff's deputy. Likewise, the court conducted individual voir dire in chambers in the presence of only the same individuals. Where the trial court did not analyze the Bone-Club[1] factors before conducting private rulings and private jury voir dire, did the trial court's exclusion of the public therefrom violate petitioner's constitutional public trial right?

## B. STATEMENT OF THE CASE

### 1. Procedural Facts

On February 7, 2005, the San Jan County Prosecutor charged petitioner Roland Speight with two counts of second degree rape. See Information & Amended Information, attached as Appendix A. Following a jury trial in May 2005, Speight was convicted as charged. See Verdict Forms, attached as Appendix B.

On August 1, 2005, Speight was sentenced to a maximum term of life and a minimum term of 102 months in prison. See Judgment and

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[1] State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 629 (1984).

Sentence and Department of Corrections letter, attached as Appendix C. Speight timely appealed. See Notice of Appeal attached as Appendix D.

Speight was represented by undersigned counsel, who did not raise the issue raised herein. On November 27, 2006, this Court affirmed Speight's convictions. See Unpublished Opinion, attached as Appendix E. A mandate terminating review was entered on December 29, 2006. See Appendix F.

2. Facts Relating to Speight's Claim

On May 24, 2005, jury voir dire was conducted. While the jury was filling out the initial juror questionnaires, the judge, the parties, Speight, court clerk, court reporter and a sheriff's deputy went privately into chambers:

> THE COURT: Good morning, ladies and gentlemen. I think we're ready to go on the record here and do so in the case of State v. Roland Speight. For the record, the jury is in the courtroom outside of our presence here filling out the juror questionnaire. We're gathered here in chambers, myself, the judge, Mr. Silverman [the prosecutor], Ms. Kenimond [defense counsel] and Mr. Speight, together with the clerk of the Court and court reporter and sheriff's deputy, and we're now conducting some proceedings on some of the matters we discussed informally this morning in chambers with counsel and Mr. Speight.

See Verbatim Report of Proceedings from May 24, 2005, attached as appendix G,[2] at p.3. During this in-chambers conference, the court proceeded to rule on the parties' numerous motions in limine. Appendix G, 4-28.

Based on the juror questionnaires, the court subsequently conducted individual voir dire of several prospective jurors in chambers in the presence of only the judge and other individuals previously mentioned.

> THE COURT: Back on the record in the case of State v. Speight with all the parties present, attorneys and Mr. Speight. I'd like to begin the process of questioning individual jurors. That's the persons who requested to be questioned outside the presence of other jurors. The first one would be number 3. Are counsel ready?
>
> . . .
>
> THE COURT: Let's have number 3, Madam Clerk. That will be Elizabeth Barats.
>
> Good morning, Ms. Barats.
>
> THE COURT: We're gathered here in chambers, as you know, because you had requested to be questioned outside the presence of the other jurors, and we'll certainly honor that request. I want you to know we're going to keep

---

[2] In his direct appeal, Speight did not initially order voir dire. Accordingly, the parties' motions in limine and other matters entertained in chambers on 5/24/05 - although done intermittently on breaks from voir dire (also conducted on 5/24/05) - were transcribed in a volume separate from voir dire referred to as "2ARP" on direct appeal (COA No. 56760-8-I). This portion of the proceedings is attached as Appendix G. Pursuant to a supplemental statement of arrangements, however, voir dire was subsequently transcribed and bound in its own volume referred to as "2RP" on direct appeal. Appendix H, infra, represents that portion of voir dire included within 2RP that was done in chambers. For clarity, Speight is filing a motion to transfer the record on appeal to the current case.

> these as private as possible. It is required that the attorneys and the defendant be present for this process. So we're doing the best we can, ma'am.

See Verbatim Report of Proceedings from May 24, 2005, attached as Appendix H. The court, the prosecutor and defense counsel subsequently inquired individually of juror 3, as well jurors 5, 7, 8, 10, 22, 15, 21, 24, 28, 55, 23, 13 and 38. A number of these jurors were excused based on this individual questioning. Appendix H, at p.10-72.

C. ARGUMENT

PETITIONER'S CONSTITUTIONAL PUBLIC TRIAL RIGHT WAS VIOLATED.

Generally, when a petitioner claims a constitutional violation he needs to show he was prejudiced. In re Personal Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990); In re Haverty, 101 Wn.2d 498, 504, 681 P.2d 835 (1984). The burden of showing prejudice, however, is waived where the error gives rise to a presumption of prejudice. In the Matter of the Personal Restraint of Orange, 152 Wn.2d 795, 804, 100 P.3d 291 (2004) (citing In re Personal Restraint Petition of St. Pierre, 118 Wn.2d 321, 328, 823 P.2d 492 (1992)). Prejudice is presumed where there is violation of a petitioner's public trial right. Orange, 152 Wn.2d at 814. Because Speight was denied his constitutional public trial right during

pretrial in limine rulings and the jury selection process, his convictions should be reversed and the case remanded for a new trial. Id.

Under both the Washington and United States Constitutions, a defendant has a constitutional right to a speedy and public trial. Const. art. 1, § 22; U.S. Const. amend. VI. Additionally, the public and press have an implicit First Amendment right to a public trial. U.S. Const. amend. I; Waller v. Georgia, 467 U.S. 39, 46, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984).

The temporary full closure of pre-trial proceedings can violate a defendant's constitutional right to a public trial. See State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995) (temporary full closure of suppression hearing during officer's testimony required new trial). Improper closure of even a portion of jury voir dire can likewise violate a defendant's constitutional public trial right. Orange, 152 Wn.2d at 812.

In Bone-Club, the Court held that before a trial judge can close a pre-trial hearing to the public, he or she is required to analyze the following five factors:

> 1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a 'serious and imminent threat' to that right. 2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.

> 3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests. 4. The court must weigh the competing interests of the proponent of closure and the public. 5. The order must be no broader in its application or duration than necessary to serve its purpose.

Bone-Club, 128 Wn.2d at 258-59 (quoting Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 210-11, 848 P.2d 1258 (1993)).

Similarly, in Orange, the Court held that before a trial judge can close any part of jury voir dire from the public, it is required to analyze the five factors identified in Bone-Club. Orange, 152 Wn.2d at 806-07, 809; see also State v. Brightman, 155 Wn.2d 506, 515-516, 122 P.3d 150 (2005) (a trial court violates a defendant's right to a public trial if the trial court orders the courtroom closed during jury selection but fails to engage in the Bone-Club analysis).

In Brightman, the trial court sua sponte told counsel that for reasons of security "we can't have any observers while we are selecting the jury." Brightman, 155 Wn.2d at 511. The court, however, failed to analyze the five Bone-Club factors. The Brightman Court held because the record lacked "any hint that the trial court considered Brightman's public trial right as required by Bone-Club, we cannot determine whether the closure was warranted." Id. at 518. The Court remanded for a new trial. Id.

Interestingly, the Brightman Court rejected the State's arguments that: (a) Brightman failed to prove the trial court in fact closed the courtroom during jury selection; or (b) any such closure was de minimis. Brightman, 155 Wn.2d at 515-17. It ruled, "once the plain language of the trial court's ruling imposes a closure, the burden is on the State to overcome the strong presumption that the courtroom was closed." Id. at 516. It also ruled that where jury selection or a part of the jury selection is closed, the closure is not de minimis or trivial. Id. at 517.

The closed jury voir dire issue in Brightman was decided on direct appeal. In Orange, the same issue was raised in a personal restraint petition. In 1995, Orange was tried for murder, attempted murder and assault. Orange, 152 Wn.2d at 799. During part of the jury selection process the trial court closed the courtroom. Orange was convicted and appealed. Appellate counsel did not raise the closed jury selection issue. Id. at 814. Orange's convictions were affirmed. Id. at 803.

Orange filed a personal restraint petition in 2001, six years after his trial. Id. at 803. The court of appeals denied the petition but the Supreme Court granted discretionary review and ordered a reference hearing. Id. Findings from the reference hearing showed due to limited courtroom space and security reasons the trial court closed the courtroom during more than

half of the time spent on jury voir dire. Id. at 808-10. The Orange Court held the trial court's failure to analyze the five Bone-Club factors before ordering the courtroom closed violated Orange's right to a public trial. Id. at 812.

The Orange Court also held the constitutional violation was presumptively prejudicial and would have resulted in a new trial had the issue been raised in Orange's direct appeal. Id. at 814 (citing Bone-Club, 128 Wn.2d at 261-262). It reasoned that because there was no legitimate tactical or strategic reason for appellate counsel's failure to raise the issue, Orange was denied his right to effective assistance of counsel on appeal and was entitled to a new trial, the same remedy he would have received had counsel raised the issue on appeal. Id.

Here, not only was a significant portion of jury voir dire conducted in private chambers, but the court made numerous discretionary rulings in private as well. As in Bone-Club and Brightman, the record here lacks "any hint" the court considered, much less analyzed, the Bone-Club factors. Even if the prospective jurors were interviewed independently to minimize the risk of embarrassment or jury pollution, it does not explain why the public was excluded and not just the other prospective jurors. There is no conceivable explanation as to why the court would exclude the public from

its pre-trial rulings. Speight's right to a public trial was violated because the trial court failed to analyze the Bone-Club factors before it ordered the private hearing and private jury voir dire. Orange, 152 Wn.2d at 812.

Even if it were proper for this Court to independently analyze the Bone-Club factors, the analysis shows the pre-trial hearing and jury voir dire closures were illegal. The record shows that neither the court nor the State identified a compelling interest the closed hearing and/or jury voir dire was ordered to protect. There is nothing in the record to show anyone present was given the opportunity to object when the decisions to conduct in chambers in limine motions and jury voir dire were made. There is nothing in the record to show that conducting private proceedings was the least restrictive means available for protecting any perceived threatened interests or was no broader in its application or duration than necessary to serve its purpose -- whatever the undisclosed purpose.

Because the trial court failed to analyze the Bone-Club factors before excluding the public from a significant portion of the pre-trial proceedings and jury voir dire, under the rule in Bone-Club, Orange and Brightman, Speight's constitutional right to a public trial was violated. Moreover, on this record an analysis of the Bone-Club factors also leads to the same conclusion.

The State may try to argue that because there is no showing Speight's counsel objected to the closed proceedings, the issue is waived. That argument fails. Defense counsel in Bone-Club, Orange and Brightman also failed to object to the closed proceedings. Bone-Club, 128 Wn.2d at 261; Orange, 152 Wn.2d at 801-02; Brightman, 155 Wn.2d at 517. And in Brightman, the Court held, "the defendant's failure to lodge a contemporaneous objection at trial did not effect a waiver of the public right to trial." 155 Wn.2d at 517 (citing Bone-Club, 128 Wn.2d at 257).

The State may try to argue this case is somehow distinguishable from Brightman and Orange because only a portion of the pre-trial proceedings and jury voir dire was closed to the public. That argument fails as well. In Orange, the courtroom was only closed a portion of the jury selection process. 152 Wn.2d at 808. In Brightman, the Court ruled where jury selection or a part of the jury selection is closed, the closure is not de minimis or trivial. 155 Wn.2d at 517. Similarly, in Bone-Club, the suppression hearing was closed for only the testimony of one officer. Bone-Club, 128 Wn.2d at 256-57.

The State may also try to argue that this case is distinguishable from Bone-Club, Brightman and Orange because in those cases the court closed the courtroom, but here the court conducted the pre-trial hearing and jury

voir dire in chambers, outside the courtroom. Such an argument would specious. The constitutional public trial right is the right to have a trial open to the public. Orange, 152 Wn.2d at 804-05. "The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions. . . ." Bone-Club, 128 Wn.2d at 259 (citing In re Oliver, 333 U.S. 257, 270 n. 25, 68 S. Ct. 499, 506 n. 25, 92 L. Ed. 682 (1948) (quoting Thomas M. Cooley, Constitutional Limitations 647 (8th ed. 1927)). Whether a pretrial hearing or jury voir dire is conducted in a courtroom closed to the public or in judges' chambers closed to the public is a distinction without a difference. The public was not present to see if Speight was fairly dealt with.

The relevant facts in this case do not distinguish this case from Bone-Club, Brightman or Orange. Speight's constitutional right to a public trial was violated. He is therefore unlawfully restrained under RAP 16.4(c)(2).

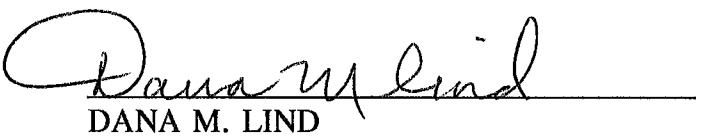
D. CONCLUSION

For the above reasons and the reasons set forth in the personal restraint petition, this Court should remand the case for a new trial.

DATED this 4th day of May, 2007.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



DANA M. LIND
WSBA No. 28239

Attorneys for Petitioner

# APPENDIX A

COUNTY CLERKS OFFICE
FILED

FEB 07 2005

MARY JEAN CAHAIL
SAN JUAN COUNTY, WASHINGTON

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

**IN AND FOR THE COUNTY OF SAN JUAN**

05 1 05003 6

| | | |
|---|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>v.<br>ROLAND ARTHUR SPEIGHT,<br>Defendant. | ) | CASE NO.<br>**INFORMATION** |

I, Randall K. Gaylord, Prosecuting Attorney for San Juan County, in the name and by the authority of the State of Washington, do accuse the above-named defendant of the following crimes:

**COUNT I: RAPE IN THE SECOND DEGREE**, committed as follows:

That the defendant, on or about the 3rd day of February, 2005, in San Juan County, State of Washington, did engage in sexual intercourse by forcible compulsion with K.N., to-wit: forced her to have oral intercourse, contrary to RCW 9A.44.050(1)(a) and against the peace and dignity of the State of Washington.

**THIS IS A CLASS A FELONY** punishable by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of $50,000 dollars, or by both such confinement and fine.

///

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SAN JUAN COUNTY
PROSECUTING ATTORNEY
350 COURT STREET • P.O. BOX 760
FRIDAY HARBOR, WA 98250
TEL (360) 378-4101 • FAX (360) 378-3180

**COUNT II: RAPE IN THE SECOND DEGREE**, committed as follows:

That the defendant, on or about the 3rd day of February, 2005, in San Juan County, State of Washington, did engage in sexual intercourse by forcible compulsion with K.N., to-wit: forced her to have vaginal intercourse, contrary to RCW 9A.44.050(1)(a) and against the peace and dignity of the State of Washington.

**THIS IS A CLASS A FELONY** punishable by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of $50,000 dollars, or by both such confinement and fine.

RANDALL K. GAYLORD
PROSECUTING ATTORNEY

DATED: 2/3/05

By: _____
Charles Z. Silverman, WSBA # 8654
Attorney for Plaintiff

| DEFENDANT INFORMATION | | |
|---|---|---|
| **ADDRESS:** 105 Alder Street Eastsound, WA 98245 | | |
| **SEX:** Male | **RACE:** White | **DOB:** 04.20.1960 |
| **HEIGHT:** 5'10" | **WEIGHT:** 185 | **HAIR:** Blonde |
| **EYES:** Green | **SID:** | **FBI:** |
| **SSN:** 541.88.6977 | **DOL:** 18242400<br>**STATE:** TX | **DOC:** |

**EXPECTED NUMBER OF TRIAL DAYS:** 3



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COUNTY CLERKS OFFICE
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MAY 24 2005

MARY JEAN CAHAIL
SAN JUAN COUNTY, WASHINGTON

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

**IN AND FOR THE COUNTY OF SAN JUAN**

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>v.<br>ROLAND ARTHUR SPEIGHT,<br>Defendant. | CASE NO.<br>**FIRST AMENDED INFORMATION** |

I, Randall K. Gaylord, Prosecuting Attorney for San Juan County, in the name and by the authority of the State of Washington, do accuse the above-named defendant of the following crimes:

**COUNT I: RAPE IN THE SECOND DEGREE**, committed as follows:

That the defendant, on or about the 3rd day of February, 2005, in San Juan County, State of Washington, did engage in sexual intercourse by forcible compulsion with Kelly Nixon, to-wit: forced her to have oral intercourse, contrary to RCW 9A.44.050(1)(a) and against the peace and dignity of the State of Washington.

**THIS IS A CLASS A FELONY** punishable by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of $50,000 dollars, or by both such confinement and fine.

///



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TEL (360) 378-4101 • FAX (360) 378-3180

**COUNT II: RAPE IN THE SECOND DEGREE**, committed as follows:

That the defendant, on or about the 3rd day of February, 2005, in San Juan County, State of Washington, did engage in sexual intercourse by forcible compulsion with Kelly Nixon, to-wit: forced her to have vaginal intercourse, contrary to RCW 9A.44.050(1)(a) and against the peace and dignity of the State of Washington.

**THIS IS A CLASS A FELONY** punishable by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of $50,000 dollars, or by both such confinement and fine.

RANDALL K. GAYLORD
PROSECUTING ATTORNEY

DATED: 5/24/06

By: _____
Charles Z. Silverman, WSBA # 8654
Attorney for Plaintiff

| DEFENDANT INFORMATION | | |
|---|---|---|
| **ADDRESS:** 105 Alder Street Eastsound, WA 98245 | | |
| **SEX:** Male | **RACE:** White | **DOB:** 04.20.1960 |
| **HEIGHT:** 5'10" | **WEIGHT:** 185 | **HAIR:** Blonde |
| **EYES:** Green | **SID:** | **FBI:** |
| **SSN:** 541.88.6977 | **DOL:** 18242400<br>**STATE:** TX | **DOC:** |

**EXPECTED NUMBER OF TRIAL DAYS:**



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# APPENDIX B

COUNTY CLERKS OFFICE
FILED
MAY 27 2005
MARY JEAN CAHAIL
SAN JUAN COUNTY, WASHINGTON

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
**IN AND FOR THE COUNTY OF SAN JUAN**

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>v.<br>ROLAND ARTHUR SPEIGHT,<br>Defendant. | CASE NO. 05-1-05003-6<br>VERDICT FORM A<br>COUNT II |

We, the jury, find the defendant, ROLAND ARTHUR SPEIGHT,

Guilty, of the crime of
(write in "not guilty" or "guilty")

COUNT II: RAPE IN THE SECOND DEGREE, as charged.

Presiding Juror

SAN JUAN COUNTY
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37

COUNTY CLERKS OFFICE
FILED
MAY 27 2005
MARY JEAN CAHAIL
SAN JUAN COUNTY, WASHINGTON

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
**IN AND FOR THE COUNTY OF SAN JUAN**

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>v.<br>ROLAND ARTHUR SPEIGHT,<br>Defendant: | CASE NO. 05-1-05003-6<br>VERDICT FORM A<br>COUNT I |

We, the jury, find the defendant, ROLAND ARTHUR SPEIGHT,

guilty, of the crime of
(write in "not guilty" or "guilty")

COUNT I: RAPE IN THE SECOND DEGREE, as charged.

Roger Be
Presiding Juror

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PROSECUTING ATTORNEY
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8'gw

# APPENDIX C

COUNTY CLERKS OFFICE
FILED
AUG - 1 2005
MARY JEAN CAHAIL
SAN JUAN COUNTY, WASHINGTON

863245
8-02-05

SUPERIOR COURT OF WASHINGTON
COUNTY OF SAN JUAN

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>v.<br><br>ROLAND ARTHUR SPEIGHT,<br>Defendant.<br>DOB: 04/20/60<br>SID: WA21477594<br>FBI: 494217PB0 | No. 05 1 05003 6<br><br>**JUDGMENT AND SENTENCE** (JS)<br>[X]Prison [X] RCW 9.94A.712 Prison Confinement<br>[ ] Jail One Year or Less<br>[ ] First Time Offender<br>[ ] Special Sexual Offender Sentencing Alternative<br>[ ] Special Drug Offender Sentencing Alternative<br>**[ ] Clerk's Action Required, para 4.5 (SDOSA), 4.15.2, 5.3, 5.6 and 5.8** |

## I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

## II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on May 27, 2005 by [ ] plea [x] jury verdict [ ] bench trial of:



05 9 05114 7

8 02 05 San Juan mailing certifieds

| COUNT | CRIME | RCW | DATE OF CRIME |
|---|---|---|---|
| I | Rape in the Second Degree | 9A.44.050(1)(a) | February 3, 2005 |
| II | Rape in the Second Degree | 9A.44.050(1)(a) | February 3, 2005 |
| | | | |
| | | | |
| | | | |
| | | | |

as charged in the First Amended Information

[x] The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

[x] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): Counts I and II

[x] **Mental health or chemical dependency treatment notification requirements: (a) Notice to department of corrections:** If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify the department of corrections, and the defendant's treatment information must be shared with the department of corrections for the duration of the defendant's incarceration and supervision. RCW 9.94A.562. **(b) Sharing and use of information:** Where the court has ordered the defendant to obtain a substance abuse, mental health, domestic violence evaluation and/or treatment, all evaluations and progress reports shall be made available by the evaluator and the treatment provider to the Department of Corrections, the Prosecuting Attorney, and this court. Such documents may be used in any future hearings relating to this cause of action. **(c) Notice to treatment provider:** If the defendant receives court or department ordered mental health or chemical dependency treatment, the defendant must disclose to the treatment provider that (s)he is subject to supervision by the department of corrections. RCW 9.94A.722. **(d) Use of test results:** Where the court has ordered the defendant to submit to testing of his or her breath, blood, or urine, the results of such tests shall be made available by the treatment provider, the person or entity that obtained the samples, and by the testing facility, to the Department of Corrections, the Prosecuting Attorney, and this court. Such documents and test results may be used in any future hearings relating to this cause of action.

2.2 **CRIMINAL HISTORY:** (RCW 9.94A.525): No prior felonies

2.3 SENTENCING DATA:

| COUNT NO. | OFFENDER SCORE | SERIOUS-NESS LEVEL | STANDARD RANGE (not including enhancements) | Plus enhancement for Firearm (F), other deadly weapon finding (D), or VUCSA (V) in a protected zone, or Veh. Hom (VH), or Juvenile Present (JP) | Total STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|---|---|---|---|---|---|---|
| I | 0 | XI | 78 - 102 | | 78 - 102 | life and $50,000 |
| II | 0 | XI | 78 - 102 | | 78 - 102 | life and $50,000 |
| | | | | | | |

2.4 [ ] **EXCEPTIONAL SENTENCE:** Substantial and compelling reasons exist which justify an exceptional sentence

[ ] within [ ] below the standard range for Count(s)_____

[ ] above the standard range for Count(s) _____.

[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. [ ] Jury's special interrogatory is attached. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows:_____

## III. JUDGMENT

3.1 The defendant is **GUILTY** of the Counts and Charges listed in paragraph 2.1 and Appendix 2.1

3.2 [ ] The Court **DISMISSES** Counts _____ [ ] The defendant is found **NOT GUILTY** of Counts _____

## IV. SENTENCE AND ORDER

**IT IS ORDERED:**

4.1 Defendant shall pay to the Clerk of this Court:

| JASS CODE | | |
|---|---|---|
| | $TBS | Restitution to: Kelly Nixon or Her Surrogate |
| | $_____ | Restitution to: _____ |
| RTN/RJN | $_____ | Restitution to: _____ (Name and Address-address may be withheld and provided confidentially to Clerk's Office) |
| PCV | $ 500 | Victim Assessment [$500/$250] RCW 7.68.035 |
| PDV | $_____ | Domestic Violence assessment RCW 10.99.080 [$100] |
| CRC | $ 210 | Court costs, including: RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190 |
| | + witness costs To be set | Criminal Filing fee $ [110] FRC [$200 after 07/23/05] |
| | | Witness costs $ TBSet WFR |
| | | Sheriff service fees $_____ SFR/SFS/SFW/WRF |
| | | Jury demand fee $ [100] JFR [$ 100] RCW 36.18.016(3); 10.46.190 [$250 after 07/23/05] |
| | | Extradition Costs: $_____ EXT |
| | | Other $_____ |
| PUB | $ 1,500 | Fees for court appointed attorney RCW 9.94A.760 |
| WFR | $_____ | Court appointed defense expert and other defense costs RCW 9.94A.760 |
| FCM/MTH | $_____ | Fine RCW 9A.20.021 [ ] VUCSA chapter 69.50 RCW [fines under RCW 69.50.401; certain methamphetamine, ephedrine and pseudoephedrine crimes require mandatory minimum $3,000 fine, RCW 69.50.401(2)(b), RCW 69.50.440; Mandatory $1,000 fine for most felony drug offenses ($2,000 subsequent conviction), in addition to fines under RCW 69.50.401; 69.50.430; [ ] VUCSA additional fine deferred due to indigency. RCW 69.50.430 |
| CDF/LDI/ FCD/NTF/SAD/SDI | $_____ | Drug enforcement fund of San Juan County Sheriff's Office RCW 9.94A.760 |
| CLF | $_____ | Crime lab fee $ 100 per offense [ ]suspended due to indigency RCW 43.43.690 |
| DNA | $ 100 | Felony DNA collection fee of $100 [ ] not imposed due to hardship RCW 43.43.7541 |

| | | | |
|---|---|---|---|
| BKF | $ 50 | Jail booking fees. | |
| RTN/RJN | $ | Emergency response costs (Vehicular Assault, Vehicular Homicide only, $1,000 maximum) | RCW 38.52.430 |
| TPS | $ | [$ 50] Traffic Assessment, RCW 46.64.055 | |
| | $ | Other costs for: | |
| | $ 2,860 | TOTAL | RCW 9.94A.760 |

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:
[ ] shall be set by the prosecutor
[X] is scheduled for 10:30AM on 9-6-05

[ ] RESTITUTION. Schedule attached.

[ ] Restitution ordered above shall be paid jointly and severally with:

| NAME of other defendant | CAUSE NUMBER | (Victim Name) | (Amount-$) |
|---|---|---|---|
| | | | |

RJN

[ ] The Department of Corrections or the clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(3), (8).

[x] The clerk of the court or DOC may issue a notice of payroll deduction or other income-withholding action without further notice to the defendant if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed. RCW 9.94A.760(3)

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than $ 100 per month commencing 60 days after release from confinement. RCW 9.94A.760

**NOTE: DEFENDANT MUST IMMEDIATELY NOTIFY THE CLERK OF THE SAN JUAN COUNTY SUPERIOR COURT OF ANY CHANGE OF ADDRESS OR TELEPHONE NUMBER UNTIL ALL LEGAL FINANCIAL OBLIGATIONS ARE PAID IN FULL. The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).**

[ ] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. (JLR) RCW 9.94A.760

RCC **The defendant shall pay the costs of services to collect unpaid legal financial obligations. The Superior Court Clerk is hereby authorized to assess the defendant $100 for each year the defendant owes legal financial obligations. RCW 36.18.190 and SJC Resolution 126-1999.**

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

4.2 [x] **DNA TESTING.** The defendant shall have biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. [This applies to convictions for any felony offense or for stalking, harassment, and communication with a minor for immoral purposes] RCW 43.43.754

[x] **HIV TESTING.** The defendant having been convicted of a sexual offense under chapter 9A.44 RCW, of prostitution or offenses relating to prostitution under chapter 9A.88 RCW, or of a drug offense under chapter 69.50 RCW which is associated with the use of hypodermic needles, the Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754. If the conviction is for a sexual offense under chapter 9A.44 RCW, the victim or victims Kelly Nixon, upon request, shall be provided with the test results.

4.3 The Defendant shall not have contact with Kelly Nixon 01/28/63 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence.)

[ ] Domestic Violence Protection Order or Anti-Harassment Order is filed with this Judgment and Sentence.

4.4 **OTHER:**

**NOTE: ANY EVALUATIONS REQUIRED BY THIS JUDGMENT AND SENTENCE AS A CONDITION OF COMMUNITY CUSTODY, COMMUNITY PLACEMENT OR COMMUNITY SUPERVISION, INCLUDING ANY EVALUATIONS RECOMMENDED OR REQUIRED BY THE DEPT. OF CORRECTIONS OR RECOMMENDED OR REQUIRED BY ANOTHER TREATMENT AGENCY, COUNSELOR OR THERAPIST, SHALL BE PERFORMED IN ACCORDANCE WITH THE SAN JUAN COUNTY DISTRICT COURT STANDARDS IN ADDITION TO OTHER STATE AND PROFESSIONAL STANDARDS.**

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

| | |
|---|---|
| Life months on Count I | months on Count |
| Life months on Count II | months on Count |
| months on Count | months on Count |

Actual number of months of total confinement ordered is: life (Add mandatory firearm or deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s)_____ contain(s) a mandatory minimum term of _____.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively with the sentence in cause number(s) 03 1 05015 3 Misd. but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

**WARNING: FAILURE TO REPORT AS REQUIRED IN THIS ORDER SHALL CONSTITUTE THE CRIME OF ESCAPE.**

(b) CONFINEMENT. RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count I minimum term 102 months; maximum term life
Count II minimum term 102 months; maximum term life

175 days JT
29 days G

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: since February 4, 2005

4.6 [ ] COMMUNITY PLACEMENT is ordered as follows:
Count ____ for _____ months
Count ____ for _____ months
Count ____ for _____ months

[x] COMMUNITY CUSTODY for count(s) I and II, sentenced under RCW 9.94A.712 is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

[ ] COMMUNITY CUSTODY is ordered as follows:
Count ____ for a range from _____ to _____ months
Count ____ for a range from _____ to _____ months
Count ____ for a range from _____ to _____ months
or for the period of earned early release awarded pursuant to RCW 9.94A.728(1)and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a. the defendant committed a current or prior: i) sex offense, ii) violent offense, iii) crime against a person (RCW 9.94A.411), iv) Domestic violence offense (RCW 10.99.020), v) Residential burglary offense, vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers, vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)
b. the conditions of community placement or community custody include chemical dependency treatment.
c. the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by the Department of Corrections; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while on community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[x] The defendant shall not consume any alcohol.
[x] Defendant shall have no contact with: Kellly Nixon
[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit:_____
[ ] Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). RCW 9.94A.030(8).
[x] The defendant shall participate in the following crime-related treatment or counseling services: see below
[x] The defendant shall undergo an evaluation for treatment for [ ] domestic violence [x] substance abuse [x] mental health [ ] anger management and fully comply with all recommended treatment
[ ] The defendant shall comply with the following crime-related prohibitions:_____
[x] Other conditions:

Be under the supervision of the department of corrections and follow explicitly the instructions and conditions of the department; Report to and be available for contact with the assigned community corrections officer as directed;

Live at a residence and under living conditions subject to prior approval of the department;
Notify the CCO of any change in address or employment;
Participate in rehabilitative programs or perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of re-offending, or the safety of the community, to include, but not limited to: successfully participate in and complete sexual deviancy treatment with a state-certified therapist; comply with all rules and conditions set by the therapist; not change therapist without consent of the CCO; ensure that quarterly reports are provided to the CCO, the prosecutor and the court; successfully participate in and complete counseling recommended by the sexual deviancy therapist or the CCO;
Submit to accepted methods of monitoring and evaluating progress in sexual deviancy treatment, to include, but not limited to polygraph and plathysmograph at request of CCO or counselor;
Successfully participate in and complete substance abuse treatment by a state-certified agency;
Not possess or consume alcohol, controlled substances, or drug paraphernalia, except pursuant to lawfully issued prescriptions;
Perform affirmative acts deemed appropriate by the department of corrections or his counselors to monitor compliance with the conditions of the sentence, to include, but not limited to submission to testing of breath, blood, or urine at the request of a CCO or counselor, or at the request of a law enforcement officer who has reasonable grounds to believe the offender has possessed or used alcohol or drugs;
Not go into any liquor store or any bar, tavern or lounge;
Work at department-approved education, employment, or community service, or any combination thereof;
Pay supervision fees as determined by the department;
Remain within, or outside of, a specified geographical boundaries prescribed by the Dept. of Corrections;
Not have direct or indirect contact with Kelly Nixon and not go within 500 feet of her and her residence;
Not own, use, possess, or have access to any firearms, parts of firearms, or ammunition
Obey all laws as required by the department;
~~Comply with conditions in Appendix F~~

[x] For sentences imposed under RCW 9.94A.712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than 7 working days.

4.7 [ ] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:_____

## V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations, unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

( ) Defendant waives any right to be present at any restitution hearing (sign initials): RB

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

5.7 **MENTAL HEALTH AND CHEMICAL DEPENDENCY TREATMENT:**

**EVALUATION STANDARDS:**

**A defendant who is required by the court to obtain an evaluation of any kind, must ensure that the evaluator complies with the minimum requirements set forth below. The defendant must also sign a waiver of confidentiality so that the court, probation officer and prosecutor may provide the evaluator with pertinent information, and the evaluator can provide evaluations and progress reports to the court, probation officer and prosecutor.**

**THE EVALUATOR must meet all certification and registration requirements of the state in**

which (s)he practices. As part of the evaluation process, the evaluator must comply with all procedures required by the State of Washington and, in addition, MUST ALSO OBTAIN AND CONSIDER THE FOLLOWING:

1. The arrest and criminal history of the defendant;
2. The driving record of the defendant;
3. The police reports relating to the incident underlying the charges;
4. Any prior relevant evaluations;
5. Information from at least one collateral contact who has significant knowledge of the defendant;
6. Any additional information provided by the probation officer.

NOTIFICATION:
IF YOU ARE OR BECOME SUBJECT TO COURT-ORDERED MENTAL HEALTH OR CHEMICAL DEPENDENCY TREATMENT, YOU MUST NOTIFY THE DEPARTMENT OF CORRECTIONS, AND INFORMATION RELATING TO YOUR TREATMENT MUST BE SHARED WITH THE DEPARTMENT OF CORRECTIONS FOR THE DURATION OF ANY INCARCERATION AND SUPERVISION.

IF YOU RECEIVE COURT-ORDERED MENTAL HEALTH OR CHEMICAL DEPENDENCY TREATMENT OR TREATMENT ORDERED BY THE DEPARTMENT OF CORRECTIONS, YOU MUST DISCLOSE TO THE MENTAL HEALTH OR CHEMICAL DEPENDENCY TREATMENT PROVIDER THAT YOU ARE SUBJECT TO SUPERVISION BY THE DEPARTMENT OF CORRECTIONS

RESULTS OF SUBSTANCE-ABUSE TESTING:
THE RESULTS OF ANY TESTS OF BREATH, BLOOD, OR URINE AUTHORIZED OR REQUIRED UNDER THIS JUDGMENT AND SENTENCE SHALL BE RELEASED AND PROVIDED TO THE DEPARTMENT OF CORRECTIONS, THE PROSECUTOR, AND TO THIS COURT, AND MAY BE USED BY THE DOC, PROSECUTOR, DEFENDANT, AND THIS COURT IN ANY FUTURE PROCEEDINGS RELATING TO THIS CAUSE OF ACTION.

ADDITIONAL EVALUATIONS:
IF THE DEFENDANT HAS BEEN ORDERED TO OBTAIN A MENTAL HEALTH, DOMESTIC VIOLENCE PERPETRATOR, OR SUBSTANCE ABUSE TREATMENT

EVALUATION AND TO FOLLOW ALL RECOMMENDED TREATMENT, ANY OTHER RECOMMENDED EVALUATIONS SHALL ALSO BE DONE IN ACCORDANCE WITH THE STANDARDS OF THE SAN JUAN COUNTY DISTRICT COURT.

**Cross off if not applicable:**

**Cross off if not applicable:**

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

If you change your residence within a county; you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence within five days of the entry of the order. RCW 9A.44.130(7).

5.8 [ ] The court finds that Count ____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 **OTHER:**_____

Done in Open Court in the presence of the defendant this date: August 1, 2005

JUDGE Print name: Alan R. Hancock

Deputy Prosecuting Attorney
WSBA# 8009
Print name:

Attorney for Defendant
WSBA# 24562
Print name: Colleen Kennedy

Defendant

Defendant's physical address: _____ Defendant's mailing address: _____

Defendant's telephone numbers: _____(home) _____(work)

Defendant's e-mail address: _____

**VOTING RIGHTS STATEMENT:** RCW 10.64.____ . I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: (a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; (b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; (c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or (d) A certificate or restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 9.92.660.

Defendant's signature: _____. 2005 Wash. Laws 246 sect.1

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the_____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

I,_____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date:_____.

Clerk of said County and State, by:_____, Deputy Clerk

**IDENTIFICATION OF DEFENDANT**

SID No. WA21477594 (If no SID take fingerprint card for State Patrol) Date of Birth 04/20/60

FBI No. 494217PB0 Local ID No.

PCN No. Other

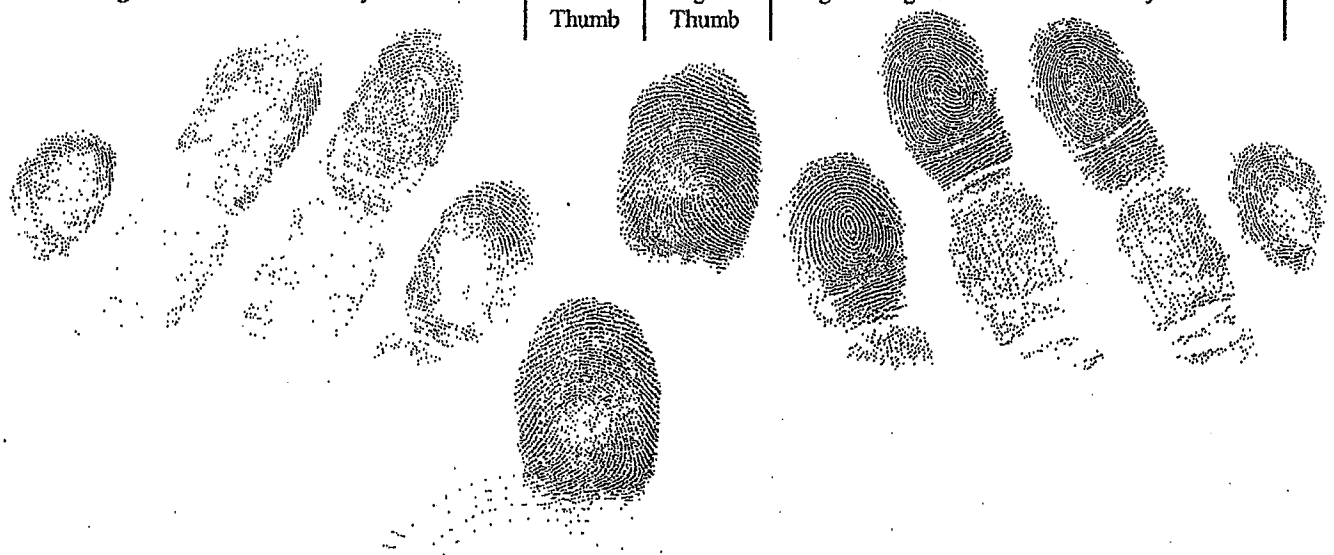
Alias name, SSN, DOB:

| Race: | | | Ethnicity: | Sex: |
|---|---|---|---|---|
| [ ] Asian/Pacific Islander | [ ] Black/ African-American | [ x] Caucasian | [ ] Hispanic | [x ] Male |
| [ ] Native American | [ ]Other:_____ | | [x ] Non-Hispanic | [ ] Female |

**FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.
Clerk of the Court: _____ 107, Deputy Clerk. Dated: 8/01/05

**DEFENDANT'S SIGNATURE:** (X)

| Left 4 fingers taken simultaneously | Left Thumb | Right Thumb | Right 4 fingers taken simultaneously |
|---|---|---|---|



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FELONY JUDGMENT AND SENTENCE (FJS)
(RCW 9.94A.500, .505) (WPF CR 84.0400 (06/02)
N:\Criminal\Cases\Adult\Speight.Roland\Rape\J&S.wpd



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STATE OF WASHINGTON
**DEPARTMENT OF CORRECTIONS**
**WASHINGTON CORRECTIONS CENTER**
P.O. Box 900 • Shelton, Washington 98584

August 31, 2005

Honorable Alan R. Hancock
San Juan County Superior Court
P.O. Box 5000
Coupeville, Washington 98250-7901

Colleen S. Kenimond
Attorney for Defendant
417 W Gates Street, Suite 3
Mount Vernon, Washington 98273-5925

Deputy Prosecuting Attorney
San Juan County Prosecuting Attorney's Office
P.O. Box 760
Friday Harbor, Washington 98250

RE: SPEIGHT, Ronald Arthur
DOC#863245
CSE#05-1-05003-6

SEP 0 6 2005

Dear Judge Hancock, Dep. Pros. Atty. and Ms. Kenimond:

Mr. Speight was received at the Washington Corrections Center on August 2, 2005. He was convicted of two counts of Rape 2nd with an offense date of February 3, 2005. After reviewing the Judgment and Sentence, it appears there may be an error in sentencing.

Mr. Speight was sentenced pursuant to RCW 9.94A.712 guidelines to 102 months minimum term of confinement and a maximum term of life. Per RCW 9.94A.712(5) community custody has been ordered from time of release from total confinement until expiration of the maximum term (life).

We respectfully request the court amend Section 4.5(a) of the Judgment and Sentence to remove the additional confinement ordered on these convictions.

Thank you for your attention in this matter.

Sincerely,

Wendy Stigall
Correctional Records Manager
(360) 427-4628
wsstigall@doc1.wa.gov

cc: Central File
ISRB

*"Working Together for SAFE Communities"*

Attachments

recycled paper

# APPENDIX D

COUNTY CLERKS OFFICE
FILED
AUG 12 2005
MARY JEAN CAHAIL
SAN JUAN COUNTY, WASHINGTON

IN THE SUPERIOR COURT STATE OF WASHINGTON, COUNTY OF SAN JUAN

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| STATE OF WASHINGTON<br>Plaintiff,<br>vs.<br>ROLAND SPEIGHT,<br>Defendant. | NO. 05-1-05003-6<br>NOTICE OF APPEAL TO THE COURT OF APPEALS DIVISION ONE |

COMES NOW the Defendant above named, ROLAND SPEIGHT, and seeks review by the designated appellate court of entry of Judgment and Sentence entered by the Honorable Alan R. Hancock, San Juan County Superior Court Judge, in the above-entitled cause of action on August 1, 2005, finding the Defendant guilty of two counts of rape in the second degree, after a jury verdict rendered on May 27, 2005.

Dated this 11 day of August, 2005.

Colleen Kenimond, WSBA #24562
Attorney for Defendant

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Defendant:
ROLAND SPEIGHT



ORIGINAL

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360-336-661

# APPENDIX E

# IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
## DIVISION ONE

| | | |
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| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>ROLAND ARTHUR SPEIGHT,<br><br>Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 56760-8-I<br><br><br><br>UNPUBLISHED OPINION<br><br>FILED: November 27, 2006 |

PER CURIAM. A jury convicted Roland Speight of two counts of raping Kelly Nixon. Speight challenges the conviction on grounds of instructional error, improper admission of prejudicial evidence, and improper comment on credibility. We reject his arguments and affirm.

## BACKGROUND

On the night of December 3, 2004, Kelly Nixon telephoned the San Juan County domestic violence hotline and reported that she had just been raped by Roland Speight. Speight was arrested and tried for two counts of second degree rape.

Nixon and Speight met through a mutual acquaintance, Grover Telleson, who rented a basement apartment on the property where Nixon lived. Telleson worked with Speight as a caretaker at the nearby North Beach Inn. At trial, both Nixon and Speight testified that Speight visited Telleson's apartment on the afternoon of December 3, 2004. While there, Speight offered to drive Nixon to a grocery store, after which Speight

asked Nixon to go with him to the North Beach Inn where he had been asked to perform some maintenance. Nixon, who did not have a job at the time, testified she acquiesced because she was interested in applying for a housekeeping job there and wanted to see the facility.

Speight drove Nixon to one of the guest cabins at the North Beach Inn. They entered the cabin, and Nixon used the bathroom while Speight investigated electrical problems. From this point, their accounts of the incident diverge widely. Nixon described a violent attack culminating in forcible oral and vaginal intercourse. Speight testified that Nixon initiated a consensual encounter, and that nothing happened that would have resulted in the injuries to Nixon's face, leg, and clothing.

After the encounter, Speight drove Nixon home. She called the domestic violence hotline soon thereafter and made a report to police that evening.

Nixon's injuries and torn clothing were consistent with her version of the encounter. By coincidence, Nixon had a routine gynecological exam on the morning of December 3. The physician's assistant who examined Nixon that morning testified that the injuries documented by police had not been present during her examination that morning.

The jury convicted Speight of two counts (one count each for oral and vaginal intercourse) of rape by forcible compulsion. On appeal, Speight contends that (1) instructional error misinformed the jury of the burden of proof on consent; (2) the court improperly admitted an irrelevant and prejudicial statement made by Speight during a voluntary interview with police; (3) the arresting officer gave improper opinion testimony; and (4) cumulative errors deprived him of a fair trial.

## DISCUSSION

Jury Instruction. We review alleged errors in jury instructions de novo. State v. Porter, 150 Wn.2d 732, 735, 82 P.3d 234 (2004). "Jury instructions are proper when they permit the parties to argue their theories of the case, do not mislead the jury, and properly inform the jury of the applicable law." State v. Willis, 153 Wn.2d 366, 370, 103 P.3d 1213 (2005).

Speight's sole defense was consent. The jury was instructed that Speight bore the burden of proving by a preponderance of the evidence that the intercourse was consensual.

Due process requires the prosecution prove every element of a crime beyond a reasonable doubt. State v. Camara, 113 Wn.2d 631, 638, 781 P.2d 483 (1989). Normally, the burden of proving a defense lies with the defendant, but where a "defense negates an element of the crime, . . . the State's burden includes proving the absence of that defense." State v. Dana, 84 Wn. App. 166, 176, 926 P.2d 344 (1996); State v. Riker, 123 Wn.2d 351, 366, 869 P.2d 43 (1994).

Speight contends that the defense of consent negates the required element of forcible compulsion, and the jury should thus have been instructed that the State bore the burden to prove the absence of consent.

Our Supreme Court rejected this argument in State v. Camara, holding that although consent remains a defense to a charge of rape by forcible compulsion, nonconsent is no longer an element of the crime, and the burden of proof on consent rests with the defendant. 113 Wn.2d at 640. We are obliged to follow Supreme Court precedent, and objections to the rationale of Camara must be brought before that Court.

State v. Wallin, 125 Wn. App. 648, 664, 105 P.3d 1037, review denied, 155 Wn.2d 1012 (2005). The jury was properly instructed as to burdens of proof.

Speight's Statement to Police. Speight next contends that the admission of a statement Speight made to police was irrelevant, and that its prejudicial effect outweighed its probative value.[1]

Deputy Raymond Clever testified to a statement Speight gave in a voluntary interview after his arrest, which Clever recorded in his written report. When asked whether he intended to have sex with Nixon when he brought her to the cabin, Speight responded: "I was hoping. It's been over two years since I had sex with a woman. You know, I can't get laid around here because everyone thinks I'm a crazy killer and on drugs because of all my other trouble." Report of Proceedings (RP) (May 26, 2005) at 317 (emphasis added).

Before trial, Speight sought to exclude the statement on grounds of relevance, prejudice, and reference to prior convictions. The court admitted the statement, finding it relevant "to show the defendant's intent and state of mind at the time of the events." RP (May 25, 2005) at 47. The court noted that Speight's explanation of why he had not had sex for two years

> shows a strong desire to have sex with the alleged victim. It indicates a reason why he would want to do that, and it shows how the events in question that gave rise to these charges did not happen in an isolated way, but there was some motivation or reason why these events occurred.

Id. at 47–48.

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[1] Speight also contends the evidence violated ER 404(b) restrictions on evidence of prior convictions, but we do not reach that issue because he provided no argument to support it, either in this court or in the trial court. RAP 10.3(a)(5); State v. Farmer, 116 Wn.2d 414, 433, 805 P.2d 200, 812 P.2d 858 (1991).

We review a ruling on admissibility of evidence for abuse of discretion. State v. Demery, 144 Wn.2d 753, 758, 30 P.3d 1278 (2001). Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. ER 403.

Speight's motive is clearly relevant. The highlighted sentences demonstrate Speight's belief that he was not sought out as a sexual partner because of public perception that he had an unstable or dangerous character. From this evidence a jury could infer not only that Speight would be "hopeful" to have sex, but that there was reason for him to think force would be necessary, or that his threats would prove particularly persuasive.

Speight correctly points out that the court misstated the law in declaring that "the case law indicates that where the balance is essentially even that the evidence should be admitted." RP (May 25, 2005) at 48. However, the ruling clearly shows that the court did not regard this as an even balance and that "[t]he probative value does outweigh any danger of unfair prejudice." Id. The court misstated the law, but did not misapply it.

Admission of Speight's statement to Clever was not an abuse of discretion.

Deputy Clever's Testimony. A witness may not give an opinion "regarding the guilt or veracity of the defendant." Demery, 144 Wn.2d at 759. Such testimony invades the fact-finding province of the jury and thus violates a defendant's right to a jury trial. State v. Thach, 126 Wn. App. 297, 312, 106 P.3d 782 (2005). Furthermore, "a police officer's testimony may particularly affect a jury because of its special aura of reliability." State v. Kirkman, 126 Wn. App. 97, 105, 107 P.3d 133, review granted, 155 Wn.2d

1014 (2005) (internal quotation omitted). Manifest constitutional error may be raised for the first time on appeal. Thach, 126 Wn. App. at 312. Where the other evidence of guilt is overwhelming, the error is harmless, and will not merit reversal. Thach, 126 Wn. App. at 313.

Over Speight's objection, the State introduced a statement made by Speight during a voluntary post-arrest interview with Deputy Raymond Clever. His testimony included the following exchange:

> Q: What was the next thing that happened, sir?
>
> A: At that point I advised [Speight] that based on the information presented to me at this point that I believed he had committed the —
>
> [Defense]: Objection, Your Honor.
>
> Court: Sustained.

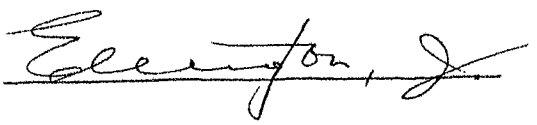
RP (May 26, 2005) at 319. Speight neither moved to strike the statement nor requested a limiting instruction. The trial court committed no error.

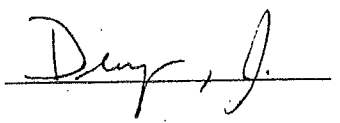
Without deciding whether an incomplete statement interrupted by a sustained objection, constitutes manifest trial error, we conclude that any error caused by Clever's testimony was harmless. See State v. Aguilar (In re Aguilar), 77 Wn. App. 596, 602, 892 P.2d 1091 (1995) (act of sustaining an objection may itself be sufficient to dispel prejudicial impact of a prosecutor's statement without a curative instruction). The evidence against Speight was overwhelming. Intercourse was undisputed. The physical evidence of Nixon's injuries and torn clothing was consistent with Nixon's testimony, while Speight's testimony did not account for either. Nor did Speight offer any explanation as to why Nixon would concoct a rape accusation against him. Even if

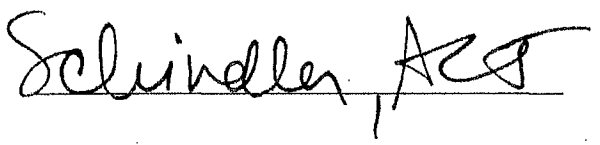
the jury inferred that Clever believed Speight was guilty, the same inference follows from the fact that Clever booked Speight at the conclusion of the interview. Speight has not demonstrated that the statement likely affected the outcome here.

Affirmed.

FOR THE COURT:







# APPENDIX F

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
## DIVISION I

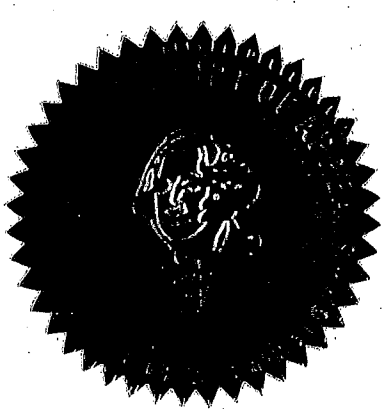
| | | |
|---|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>ROLAND ARTHUR SPEIGHT,<br><br>Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 56760-8-I<br><br>MANDATE<br><br>San Juan County<br><br>Superior Court No. 05-1-05003-6 |

RECEIVED
DEC 29 2006
Nielsen, Broman & Koch, P.L.L.C.

**THE STATE OF WASHINGTON TO:** The Superior Court of the State of Washington in and for San Juan County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on November 27, 2006, became the decision terminating review of this court in the above entitled case on December 29, 2006. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

c: Dana M. Lind
Philip James Buri
Randall Keenan Gaylord
Hon. Alan Hancock
Indeterminate Sentencing Review Board



**IN TESTIMONY WHEREOF,** I have hereunto set my hand and affixed the seal of said Court at Seattle, this 29th day of December, 2006.

**RICHARD D. JOHNSON**
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.