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NO. 93119-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

DENNIS ARMSTRONG,

Petitioner.

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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**ORIGINAL**

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A. ISSUES PRESENTED.

1. Whether Armstrong's conviction should be affirmed where the jury unanimously found that he was guilty of the single offense charged, and sufficient evidence supports both alternative means of committing the offense presented to the jury.

2. Whether Armstrong should be allowed to raise a due process claim for the first time on appeal where it is not a manifest error affecting a constitutional right because the trial record is insufficient to determine the merits of the claim.

3. Whether the record that exists is insufficient to establish that the State acted in bad faith in failing to preserve potentially useful evidence, where there are no facts from which to draw an inference that the video was ever in the possession of the police, or that the video was potentially useful, or that the officers acted in bad faith.

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B. STATEMENT OF THE CASE.

1. PROCEDURAL FACTS:

Dennis Armstrong was charged with the crime of domestic violence felony violation of a court order. CP 1. A jury found him

guilty as charged. CP 9. He received a sentence of 60 months incarceration. CP 38.

## 2. FACTS OF THE CRIME.

On April 20, 2014, the defendant, Dennis Armstrong, was prohibited from contacting his former girlfriend, Nadia Karavan. RP 7/29/14 33-35; RP 7/30/14 93-98. Yet, on that date he appeared at the homeless shelter where Karavan had been staying for several days. RP 7/29/14 35-38. As Karavan was sitting in the kitchen, a woman advised her that her "boyfriend came by." RP 7/29/14 38. Karavan admitted that she had been talking to Armstrong by phone and told him that she had some of his belongings that she wanted to return to him. RP 7/29/14 36-37.

Karavan exited the shelter to speak to Armstrong and found him sitting at a nearby bus stop. RP 7/29/14 39. They began talking, but Armstrong became angry and violent. RP 7/29/14 39-41. He was also intoxicated. RP 7/29/14 40, 71. Armstrong began yelling, striking the sides of the bus stop and then struck Karavan twice in the face. RP 7/29/14 40-43. Karavan was scared because Armstrong was threatening her, and had threatened her before. RP 7/29/14 43-44.

Armstrong tried to take Karavan's wallet, which was in the pocket of her jacket. RP 7/29/14 45. Frightened, Karavan dropped her jacket and started to run. RP 7/29/14 45. However, when she saw Armstrong throw her jacket to the ground, she quickly retrieved it and her wallet and ran into the AM/PM convenience store located behind the bus stop. RP 7/29/14 45-47.

Armstrong followed Karavan into the convenience store. RP 7/29/14 46. Karavan was trying her best to escape him and asked the store clerk to call the police. RP 7/29/14 36. The clerk watched as the two angrily argued, with Armstrong following Karavan around the store for seven to ten minutes before the clerk decided to call the police as Karavan requested. RP 7/30/14 36-38. He did not hear the entire argument, but he heard Armstrong saying "please talk to me," and Karavan saying "leave me alone." RP 7/30/14 37-38. On the 911 call, Karavan tells the dispatcher that Armstrong was drunk, and that he hit her and threatened her, saying "I'm going to get you and I'm going to get your kids." Ex. 1. While the clerk and Karavan waited for the police to arrive, the clerk noted that Karavan's face was red and she was crying. RP 7/30/14 42. The clerk did not see anything that happened before Karavan entered the store. RP 7/30/14 38.

Seattle police officers responded to the call, and found Karavan waiting outside the convenience store. RP 7/30/14 60. Karavan was cooperative and had a red mark on the side of her face. RP 7/30/14 62-63. Armstrong was located by officers a few blocks from the store, and was identified by Karavan as the person who had assaulted and threatened her. RP 7/29/14 69, 83; RP 7/30/14 65, 68. He admitted to being in the store after being told by Officers Elliott and Rodrigue that "the whole incident" was "on video," and that they were going to get the video. Ex. 3.

Armstrong had two prior convictions for violating orders prohibiting from contacting another person. RP 7/30/14 88-90.

C. ARGUMENT.

1. ARMSTRONG'S RIGHT TO JURY UNANIMITY WAS NOT VIOLATED.

~~Armstrong contends that his conviction violated his state~~  
constitutional right to a unanimous jury verdict because the jury was instructed that it need not be unanimous as to the two alternative means of committing the crime charged. This Court has repeatedly held for more than 40 years that the right to jury unanimity includes unanimity that a single offense was committed, but does not include

unanimity as to the means of commission. Armstrong's conviction is constitutionally valid under well-settled Washington law.

Armstrong was charged with one crime, domestic violence felony violation of a court order, pursuant to RCW 26.50.110. CP 1-2. The State alleged that the crime was committed in two alternative ways: violating the order while also assaulting the victim, and violating the order while having two prior convictions for violating a court order, pursuant to RCW 26.50.110(4) and (5). CP 1-2.

The jury was instructed pursuant to WPIC 36.51.02 as to the elements of the crime:

To convict the defendant of the crime of violation of a court order, each of the following five elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about April 20, 2014, there existed a no-contact order applicable to the defendant;

(2) That the defendant knew of the existence of this order;

(3) That on or about said date, the defendant knowingly violated a provision of this order;

(4) That

(a) the defendant's conduct was an assault or

(b) the defendant has twice been previously convicted for violating the provisions of a court order; and

(5) That the defendant's act occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3) and (5), and any of the alternative elements (4)(a), or (4)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. *To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (4)(a), or (4)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.*

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of the five elements, then it will be your duty to return a verdict of not guilty.

CP 28<sup>1</sup> (emphasis added). The jury unanimously found him guilty of the crime. Armstrong has never claimed that there was not sufficient evidence of both of the alternative means presented at trial.

Other pattern instructions for crimes that contain alternative means follow this same formulation, allowing the jury to convict without unanimity as to the alternative means. See, e.g., WPIC 4.23 (elements of the crime-alternative elements); 35.08 (assault in

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<sup>1</sup> Defense counsel did not object to instruction 11, and indeed adopted the State's proposed instructions, stating "I would like to adopt what the State has proposed." RP 7/30/14 104-05.

the first degree); 35.12 (assault in the second degree); 35.35.01 (assault of a child in the first degree); 35.37 (assault of a child in the second degree); 37.02 (robbery in the first degree); 40.02 (rape in the first degree); 41.02 (rape in the second degree); 42.02 (rape in the third degree); 80.02 (arson in the first degree). Armstrong mistakenly argues that these pattern instructions are incorrect statements of the law because the right to a unanimous jury includes the right to unanimity as to the means of commission. This has never been the law in Washington, and Armstrong cannot show that the well-settled rule that the jury need not be unanimous as to alternative means is incorrect and harmful.

The Washington constitution requires that a jury unanimously find the defendant guilty of the charged crime.<sup>2</sup> WASH. CONST. art. I, § 21. Forty years ago, in State v. Arndt, 87 Wn.2d 374, 376, 553 P.2d 1328 (1976), this Court held that when a single crime is charged through alternative means, unanimity as to the means of commission is not required, so long as there is sufficient evidence of each of the means charged. This holding has been repeatedly approved and applied by this Court. State v. Peterson,

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<sup>2</sup> The Sixth Amendment does not require jury unanimity in state court criminal trials. Apodaca v. Oregon, 406 U.S. 404, 92 S. Ct. 1628, 32 L. Ed. 2d 184 (1972).

168 Wn.2d 763, 769, 230 P.3d 588 (2010); State v. Ramos, 163 Wn.2d 654, 660, 184 P.3d 1256 (2008); State v. Fortune, 128 Wn.2d 464, 467-68, 909 P.2d 930 (1996); State v. Lee, 128 Wn.2d 151, 157, 904 P.2d 1143 (1995); State v. Noltie, 116 Wn.2d 831, 842, 809 P.2d 190 (1991); State v. Crane, 116 Wn.2d 315, 325-26, 804 P.2d 10 (1991); State v. Kitchen, 110 Wn.2d 403, 401-11, 756 P.2d 105 (1988); State v. Whitney, 108 Wn.2d 506, 511, 739 P.2d 1150 (1987); State v. Petrich, 101 Wn.2d 566, 569-70, 683 P.2d 173 (1984); State v. Franco, 96 Wn.2d 816, 823, 639 P.2d 1320 (1982).<sup>3</sup>

The rule is most aptly illustrated, and explained, in State v. Ramos, *supra*. In Ramos, the issue was whether the defendant could be retried for manslaughter after his conviction for second degree murder was vacated. 163 Wn.2d at 657. The jury had been instructed on second degree murder by the alternative means of an intentional killing and a killing in the course of felony. *Id.* at

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<sup>3</sup> This holding also predates Arndt and can be traced back to State v. Talbott, 199 Wash. 431, 437-38, 91 P.2d 1020 (1939). In that case, the defendant was charged with murder and admitted that he struck the victim in the head, albeit harder than he intended, and then decided to "finish him off" by shooting him in each temple. On appeal, Talbott argued that jury's verdict failed to specify whether they found him guilty of premeditated murder in the first degree or felony murder in the first degree, and was "void for uncertainty." *Id.* This Court held that because these were not separate offenses but the same offense charged in different ways "the evidence in the case was amply sufficient to convict on either or both theories." *Id.*

658. The jury was instructed that they need not be unanimous, but was given a special interrogatory asking whether they unanimously agreed as to each alternative means. Id.<sup>4</sup> The jury answered "no" as to intentional killing and "yes" as to killing in the course of a felony. Id. Ramos claimed that he was impliedly acquitted of second degree intentional murder, and could not be retried for a lesser included offense. Id. at 659. This Court disagreed and explained:

The well-settled alternative means analysis that applies in this case dictates that where a single offense may be committed in more than one way, there must be jury unanimity as to *guilt* for the single crime charged. Unanimity is not required, however, as to the *means* by which the crime was committed so long as substantial evidence supports each alternative means [submitted to the jury]. "In reviewing an alternative means case, the court must determine whether a rational trier of fact could have found each means of committing the crime proved beyond a reasonable doubt." If the alternatives submitted to the jury truly describe alternative means of committing a single crime, rather than separate crimes, jury unanimity as to each alternative mean is not required under either the state or federal constitution.

The alternative means principle dictates that when a jury renders a guilty verdict as to a single crime, but one of the alternative means for committing that crime is later held to be invalid on appeal and the record does not establish that the jury was unanimous

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<sup>4</sup> Such a special verdict is based on WPIC 190.09, which simply asks the jury whether it found each alternative means by answering "yes," "no," or "not unanimous." WPIC 190.09 does not require unanimity. If the jury answers "not unanimous" as to the only alternative means that is supported by sufficient evidence, the conviction must still be reversed. Thus, this special verdict form may or may not be helpful on appeal.

as to the valid alternative in rendering its verdict, double jeopardy does not bar retrial on the remaining, valid alternative mean. This is the case even when one alternative mean has been reversed on appeal due to a finding of insufficient evidence, a finding that has the same double jeopardy implications as an outright acquittal in other circumstances.

Id. at 660-61 (citations omitted) (emphasis in original). In other words, there is no right to unanimity as to alternative means of committing a single offense.<sup>6</sup> As such, the jury is instructed that they need not be unanimous, and no expression of unanimity is required. However, if one of the means is later invalidated on appeal, due to a finding of insufficient evidence, reversal of the entire conviction would be required when there is a possibility that some of the jurors based their verdict on the unsupported means.<sup>6</sup> But, as long as there is sufficient evidence to support each alternative means presented to the jury, the conviction will be affirmed.

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In State v. Ortega-Martinez, 124 Wn.2d 702, 706-08, 881 P.2d 231 (1994), this Court followed the rule set forth in Arndt and affirmed the conviction for second degree rape, finding that there

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<sup>6</sup> Armstrong has never presented an argument that there is more than one statutory offense at issue here. See Franco, supra, 96 Wn.2d at 821. If there is, Armstrong could be convicted of two crimes under these facts instead of one. Id.

<sup>6</sup> Likewise, a conviction would need to be reversed if one of the alternative means was deemed legally invalid, for example, as unconstitutionally vague.

was sufficient evidence as to both alternative means presented to the jury: that the defendant used forcible compulsion and that the victim was incapable of consent due to mental incapacitation. However, this Court misstated the well-settled analysis supporting the result in a way that has caused some confusion since. This Court stated, "In certain situations, the right to a unanimous jury trial also includes the right to express jury unanimity on the *means* by which the defendant is found to have committed the crime." Id. at 707 (emphasis in original). The Court went on to state, "If the evidence is *sufficient* to support each of the alternative means submitted to the jury, a particularized expression of unanimity as to the means by which the defendant committed the crime is unnecessary to affirm a conviction because we infer that the jury rested its decision on a unanimous finding as to the means." Id. at 707-08 (emphasis in original). This is not correct, and is frankly, illogical. Unanimity is not constitutionally required. As long as each means is valid, there is no error. As previously explained in State v. Whitney, supra, 108 Wn.2d at 511, "because constitutionally sufficient evidence supports both charged alternatives, the lack of jury unanimity does not entail the danger present in Green II<sup>7</sup> that

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<sup>7</sup> State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980).

any of the jury members may have based their finding of guilt on an invalid ground." Conversely, if one of the means is not valid, then reversal will be required if it is possible that the jury's verdict was based on the invalid means. But in that case, the error that demands reversal is lack of unanimity as to the only valid means presented to the jury, not lack of unanimity between multiple valid means. To the extent that Ortega-Martinez states that there is *sometimes* a constitutional right to jury unanimity as to valid alternative means, and that unanimity is inferred from sufficient evidence, it should be disavowed.<sup>8</sup>

However, the ultimate holding of Ortega-Martinez is correct. This Court properly affirmed the second degree rape conviction because there was sufficient evidence of both alternative means. Likewise, in the present case, because sufficient evidence indisputably supports both alternative means of committing the crime that were submitted to the jury, Armstrong's conviction should be affirmed.

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<sup>8</sup> This language about inferring unanimity from sufficient evidence was repeated in State v. Randhawa, 133 Wn.2d 67, 73-74, 941 P.2d 661 (1997). However, in this Court's other subsequent cases, the rule has been correctly formulated. Most recently, in State v. Sandholm, 184 Wn.2d 726, 732, 364 P.3d 87 (2015), this Court stated: "In alternative means cases, where the criminal offense can be committed in more than one way, we have announced a rule that an expression of jury unanimity is not required provided each alternative means presented to the jury is supported by sufficient evidence."

Not only is the rule stated in Arndt well-settled in Washington, it is consistent with what other jurisdictions have concluded. See Schad v. Arizona, 501 U.S. 624, 111 S. Ct. 2491, 115 L. Ed. 2d 555 (1991) (holding that the jury need not be unanimous as to whether defendant committed first degree murder with premeditation or while committing a felony); State v. James, 698 P.2d 1161 (Alaska 1985); State v. West, 238 Ariz. 482, 488, 362 P.3d 1049 (2015); People v. Sutherland, 17 Cal.App.4<sup>th</sup> 602, 618, 21 Cal.Rptr.2d. 752 (1993); Hargrove v. U.S., 55 A.3d 852, 857 (D.C. App. 2012); State v. Shinyama, 101 Hawai'i 389, 69 P.3d 517, 527 (2003); People v. Rand, 291 Ill.App.3d 431, 440, 683 N.E.2d 1243 (1997); State v. Bolze-Sann, 302 Kan. 198, 208, 352 P.3d 511 (2015); Malone v. Commonwealth, 364 S.W.3d 121, 130-31 (Ken. 2012); State v. Erskine, 889 A.2d 312, 318 (Maine 2006); Rice v. State, 311 Md. 116, 532 A.2d 1357, 1361 (1987); State v. Merrick, 257 S.W.3d 676, 683 (Mo. App. 2008); Tabish v. State, 119 Nev. 293, 313, 72 P.3d 584 (2003); State v. Goddard, 871 P.2d 540, 546 (Utah 1994); Holland v. State, 91 Wis.2d 134, 143, 280 N.W.2d 288 (1979).

This Court will not reject its prior holdings unless there is a clear showing that an established rule is incorrect and harmful.

State v. Otton, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016). A party asking this court to reject a prior decision must show that the decision is "so problematic that it *must* be rejected." Id. Armstrong cannot show that 40 years of precedent holding that there is no right to jury unanimity as to alternative means is incorrect and harmful.

2. ARMSTRONG'S ATTEMPT TO ASSERT A DUE PROCESS ERROR IN REGARD TO PRESERVATION OF THE CONVENIENCE STORE VIDEO FOR THE FIRST TIME ON APPEAL SHOULD BE REJECTED.

For the first time on appeal, Armstrong claims that his right to due process was violated when the police failed to obtain the video surveillance from the convenience store. This Court should hold that Armstrong has failed to present a manifest constitutional error that may be raised for the first time on appeal pursuant to RAP 2.5(a)(3). Not all asserted constitutional errors may be raised for the first time on appeal. The error claimed here is not a manifest constitutional error because the record is insufficient to establish the merits of the claim. There is no evidence that the video was ever obtained, was potentially useful or that the police acted in bad faith.

a. The Due Process Framework.

In a criminal case, the prosecution has a duty to disclose to the defense any evidence that is favorable to the accused and material to guilt or punishment, and a related duty to preserve such evidence for use by the defense. See Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). If the State fails to preserve "material exculpatory evidence" the charges must be dismissed. State v. Wittenbarger, 124 Wn.2d 467, 475, 880 P.2d 517 (1994) (citing California v. Trombetta, 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984) and Arizona v. Youngblood, 488 U.S. 51, 58, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988)). In order to be considered material exculpatory evidence, the evidence must possess an exculpatory value that was apparent before it was destroyed. Trombetta, 467 U.S. at 489.

There is, however, no duty to retain and preserve all material that might be of conceivable evidentiary significance. Youngblood, 488 U.S. at 58. Thus, the failure to preserve evidence that is only "potentially useful" is not a due process violation unless the defendant can show bad faith on the part of the State. Id.; Wittenbarger, 124 Wn.2d at 477. The presence or absence of bad faith turns on "the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed." State v. Groth, 163 Wn. App. 548, 558, 261 P.3d 183 (2011) (quoting Youngblood, 488 U.S. at 56 n \*).

Moreover, when the evidence was never in the government's possession in the first place, there is no duty at all. "The police are required only to preserve that which comes into their possession either as a tangible object or a sense impression, if it is reasonably apparent the object or sense impression potentially constitute material evidence." State v. Judge, 100 Wn.2d 706, 717, 675 P.2d 219 (1984) (quoting State v. Hall, 22 Wn. App. 862, 866-67, 593 P.2d 554 (1979)) (no due process violation in failing to measure

skid marks). "The police could not preserve evidence which was never obtained." State v. Wasson, 54 Wn. App. 156, 161, 772 P.2d 1039 (1989).

b. Armstrong's Due Process Claim May Not Be Raised For The First Time On Appeal.

The evidence at trial showed that the convenience store had a surveillance system, with the cameras covering the cash registers, the corners of the store, the entrance to the store, and the gas pumps. RP 7/30/14 47. The cameras did not capture the street or the bus stop, except for perhaps a "small piece of the sidewalk." RP 7/30/14 47. The store clerk, Todd Hawkins, viewed the video of the incident and confirmed that it showed "exactly what I described." RP 7/30/14 45. The police never obtained the video.

The general rule is that appellate courts will not consider ~~issues that are raised for the first time on appeal.~~ State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007); RAP 2.5(a)(3). The rule reflects a policy of encouraging the efficient use of judicial resources. State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988). Only a manifest error affecting a constitutional right may be raised for the first time on appeal. Kirkman, 159 Wn.2d at 926.

The exceptions contained in RAP 2.5(a) are to be construed narrowly. Id. at 934. It is insufficient for an appellant to merely assert a constitutional claim. Id. Not all errors that implicate a constitutional right are reviewable. Id. If the trial record is insufficient to determine the merits of the constitutional claim, the error is not manifest and review should not be allowed. Id.

This case provides an excellent example of why only manifest constitutional errors may be raised for the first time on appeal. The record in this case is insufficient to establish that Armstrong's claim is a manifest constitutional error. There was no showing that the police ever had possession of the video. The trial court was never called upon to determine whether the video was potentially useful or whether the police acted in bad faith. Key facts relevant to these determinations were never developed below. This Court should decline to review Armstrong's claim because he has failed to make a threshold showing of a manifest constitutional error.

First, there is no evidence that the police ever had possession of a video. Pursuant to Judge, the police had no duty to preserve something that was never in their possession. 106 Wn.2d at 717.

Second, there is no evidence that the surveillance video was potentially useful to the defense. There is no reason to believe the store surveillance video showed anything other than what Karavan and Hawkins' testimony established: that Armstrong followed Karavan into the store and followed her around trying to talk to her. Indeed, Hawkins testified that he watched the video and it "showed exactly what I described." RP 7/30/14 45. There was no evidence that the video would have shown what happened at the bus stop. Hawkins testified that the camera angle did not encompass the bus stop. RP 7/30/14 47. He explained that the exterior cameras, "basically cover just the gas pumps. You may see a slight view, low view shot, of maybe the bus stop, a small piece of the sidewalk. But that's it." RP 7/30/14 47. There is simply no evidence that the video would have recorded the altercation at the bus stop.

Finally, the defense presented no evidence of bad faith. Defense counsel never claimed that Armstrong's due process rights were violated and never attempted to establish bad faith. However,

he did try to use the absence of the video to convince the jury they should have a reasonable doubt about what happened. RP 7/31/14 33-34. Thus, there was some testimony about the video. Officer Martin, who was being field trained by Officer Elliott and was designated the primary officer, testified that she did not investigate whether the store had a video. RP 7/30/14 72. She testified that "she assumed it was the responsibility of someone else that was at the scene." RP 7/30/14 72. Officer Rodrigue was a back-up officer that participated in the arrest and testified that he was not sure the store had surveillance video, but that he was just following Officer Elliott's lead in referring to a video in questioning Armstrong. RP 7/28/14 24-25; RP 7/29/14 69, 80. He did not know whether Officer Elliott had actually viewed a video or not. RP 7/29/14 80. Officer Elliott, who initially referred to the video in questioning Armstrong, was not called as a witness at trial. RP 7/28/14 39; RP 7/30/14 31, 82. Det. Christiansen, who was assigned the case for follow up, testified that he did not know the store had a video. RP 7/30/14 86.

The holding urged by Armstrong would have far-reaching implications. In this day and age, many businesses and residences have private surveillance systems, which may or may not be known to the police officers investigating a particular crime. There should

be no due process obligation for the police to investigate and obtain footage from any and all private surveillance systems that exist near the scene of a crime.

Armstrong argues that it was unfair for the officers to lead Armstrong to believe there was a video, and then not obtain it. However, this Court has repeatedly held that police are allowed to use some deception, including ruses, for the purposes of investigating criminal activity. State v. Athan, 160 Wn.2d 354, 377-78, 158 P.3d 354 (2007); State v. Hastings, 119 Wn.2d 229, 234-35, 830 P.2d 658 (1992). Armstrong has never contended that the ruse used here—the implication that the police would obtain the video—was conduct so outrageous as to violate due process. See State v. Lively, 130 Wn.2d 1, 19, 921 P.2d 1035 (1996) (holding that for police deception to violate due process the conduct “must shock the universal sense of fairness”). For all the reasons above, Armstrong’s due process claim fails.

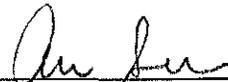
D. CONCLUSION.

Armstrong's conviction should be affirmed.

DATED this 5th day of October, 2016.

Respectfully submitted,

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King County Prosecuting Attorney

By:   
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Oliver Davis, the attorney for the appellant, at Oliver@washapp.org, containing a copy of the Supplemental Brief of Respondent, in State v. Dennis Earl Armstrong, Cause No. 93119-4, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 5 day of October, 2016.

  
Name:  
Done in Seattle, Washington

**KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT**

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