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NO. 62742-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

GLEND A WILLIAMS,
Respondent,

v.

SEATTLE PUBLIC SCHOOLS,
Appellant.

RESPONDENT'S BRIEF

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I. INTRODUCTION

Glenda Williams was an excellent administrator, successful by all accounts until Seattle Public Schools issued its “remedy” for her complaint of admitted sexual harassment. Her career as an administrator has been destroyed.

The District’s appeal of this matter is long on procedure and short on the facts. Almost nowhere in the argument does the District challenge the propriety of the jury’s finding that Williams suffered unlawful retaliation for her sexual harassment complaint. The District does not challenge that when she opposed the retaliation, to the point she sued over it, she suffered still more retaliation.

After a trial spanning 8 trial days over two weeks, the sole errors claimed by the District are the refusal of one jury instruction, two evidentiary rulings and denial of a motion for partial directed verdict which, even if granted, could not possibly have changed the outcome.

The District’s appeal is a last gasp effort to avoid responsibility for its poor treatment of an innocent victim of harassment. The court should reject the appeal and affirm the judgment in favor of Williams.

II. STATEMENT OF FACTS

- A. Glenda Williams is a 52 year old African American female with an excellent work history

Glenda Williams is a 52 year old African-American female who developed a successful career in administration at the secondary education level. 8/26 RP 26, 30-35, 37. She had completed her Masters of Education in 1999 and obtained her administrative credentials by 2000. 8/26 RP 30-35, Ex. 32. By 2002 she was employed by Seattle Public Schools (“the District”) as an Assistant Principal at Ballard High School. 8/26 RP 37. Williams was one of a four member administrative team headed by Principal Method Odoemene. Ballard High School’s administrative team was exceptional in the district for its diversity, 75% African American. 8/26 RP 37.

Williams received only positive performance feedback. 8/27 RP 40; Ex. 41.

- B. Method Odoemene sexually harassed Williams and she was transferred.

In late 2002 and 2003, Odoemene made persistent, romantic, unwelcome overtures toward Williams. 8/26 RP 56-57. He first began expressing personal feelings and comments, then told her he was in love with her and wanted to divorce his wife. He invited her to travel to Canada – for lunch – and to Hawaii. 8/26 RP 56. In August 2003,

Williams complained to Wilkins, who was Odoemene's direct supervisor. 8/26 RP 58. When Wilkins asked Odoemene about the allegation, his responses caused her to conclude the allegations in Williams' complaint were true. CP 1194-5 (p. 9-10). Wilkins first counseled Odoemene and 10 days later issued a formal reprimand to Odoemene on August 27, 2003. CP 1194-5 (p. 10-11). (The fact of that reprimand was not shared with Williams until years later, in the discovery phase of this lawsuit). 9/4 RP 72.

Even after Wilkins had counseled Odoemene, he called Williams at her home. 8/26 RP 60-61. Williams now told Wilkins she could no longer work with Odoemene. 8/26 RP 61. Wilkins arranged to transfer Williams to another high school, Rainier Beach High School. 8/26 RP 61. She was switched with another assistant principal such that Williams was now assigned to Rainier Beach High School. Wilkins Depo 17-19. The transfer took place only one week before the start of the 2003-2004 academic year. CP 1153-4 (pp. 13-14).

Williams was met with hostility from the students and community, including fliers, a petition and the child of the outgoing administrator directly questioning Williams about the switch. 8/26 RP 66-71. Students from the Associated Student Body called a meeting with Williams to

question her about the reason for her transfer to their school. 8/26 RP 71-72.

Rainier Beach principal Donna Marshall questioned the last-minute switch of administrators, but Wilkins refused to tell her the reason. CP 1160 (p. 41). Wilkins also told Williams she need not disclose the reason for the transfer; that Wilkins would “take care of it.” 8/26 RP 66. Wilkins had only one reason for withholding that information from Marshall. She wanted to protect principal Odoemene from having another principal, his peer, know of that “disciplinary” matter. CP 1196 (p. 19-20).

Marshall introduced herself to Williams over the phone by telling Williams that she intended to fight the transfer. 8/26 RP 62-63. When Williams brought to Marshall’s attention the difficulties she was having with student and community opposition, Marshall did nothing about it. 8/26 RP 69-70. Marshall stated that she was not going to train her “replacement,” apparently alluding to her belief that Williams might be there to assume Marshall’s principal position. 8/26 RP 74. At one point, Marshall told Williams that if they met outside of work, Marshall “had nothing to say” to Williams. 8/26 RP 78. Lacking the true facts underlying the transfer, Marshall believed Williams had been assigned at Rainier Beach as a district “spy.” CP 1165 (pp. 58-60). Marshall stated this belief in Williams’ presence. CP 1164-5 (pp. 57-60). She also told

Williams that they could work together, but if they encountered each other outside of work, Marshall had nothing to say to Williams. 8/26 RP 78.

Had Marshall known of the actual reason for Williams' transfer, she would have approached Williams differently and would have had a better opportunity to team with her. CP 1162 (pp. 46-47).

- C. After facing hostility at her new assignment, Williams was sent home for 11 weeks during which the press published stories about the sexual harassment she suffered.

Williams sought help from Wilkins for the problems she was experiencing at Rainier Beach. 8/26 RP 73. She also retained an attorney who wrote a letter to the district detailing the background of the sexual harassment at Ballard and expressing concerns about the Rainier Beach situation as well as the impact on Williams' career progress. 8/26 RP 75-76; Ex. 58.

Concluding that the Rainier Beach assignment was not working, Wilkins removed her and placed her on paid administrative leave, where she remained for 11 weeks. CP 1197-8 (pp. 24-26).

During that leave, Seattle media outlets learned of Williams' sexual harassment complaint, despite her desire to keep the matter out of the public eye. More than one article was published detailing her sexual harassment complaint. 8/26 RP 107-108. Many persons in the District were aware of the coverage. CP 1201 (pp. 39-40). Friends and

colleagues called Williams indicating they had read the stories. 8/26 RP 108. Following the publicity, in December 2003, Odoemene was removed from his position at Ballard High School. 9/4 RP 46. Still having no assignment, Williams asked to be returned to Ballard, where, despite the negative press coverage, she had been “known” outside of the perception of Glenda Williams which had arisen from the media coverage. Wilkins refused. 9/4 RP 44-47.

D. Williams was transferred again, where she faced even more hostility and differential treatment.

In December, only weeks after the media barrage, the District finally assigned Williams an assistant principal at Ingraham High School. 8/26 RP 108-109. From the beginning, one long-time Ingraham employee observed that something was “amiss” in the way Williams was treated. CP 1188 (p. 74). Wes Felty was the Ingraham employee responsible for making telephone and computer connections when an office was moved or a new employee commenced work. CP 1187 (pp 72-73). He saw that vacant offices were available in Ingraham’s administrative wing, where the principal and assistant principals worked. CP 1181 (pp. 43-44). Nevertheless, Ingraham administrators assigned Williams to occupy a ticket booth as an office, located in the Student Activity Center. The ticket booth had never before been occupied by an

assistant principal. It had a “roll –up” window where tickets might be sold for events. Adjacent were a ping-pong table and vending machines. 8/26 RP 110-115.

Williams had numerous logistic difficulties working from the ticket booth. She lacked the immediate access to current student schedules available in the administrative wing. 8/26 RP 114-115. Student access to Williams’ office was hindered by the activity center remained locked much of the time. 8/26 RP 116-117. She was entirely disconnected from the rest of the administrative team. 9/4 RP 35-37.

Approximately 3 months later, Williams was finally moved to the administrative wing. 8/26 RP 179. Williams was assigned to move into Assistant Principal David Hookfin’s office as he relocated to another office. 8/26 RP 121. During this move, the phone in her old office were disconnected for several days, but her new office was not yet furnished. Williams operated in her old office by using her personal cell phone to make all work-related calls. 8/26 RP 121-123.

Hookfin was the administrator responsible for office assignments at Ingraham. 9/8 RP 62. During his relocation from his old office, Hookfin took the unusual step of removing all furniture. Those pieces that could not be used by Hookfin in his new office, he attempted to give away

rather than leave for Williams' use. CP 1182 (pp. 47-48). Consequently her new office was not usable.

Hookfin's unusual behavior was observed by Felty, who now asked Hookfin why the furniture for Williams' office was being given away. Hookfin responded with what Felty called an "harangue," saying they were going to "give her everything she deserved." CP 1182 (pp. 48-49).

Williams questioned Principal Martin Floe about confusion over her new office, at which time he sent her home from the building. Floe told Williams that because Ingraham was her third building in one school year, she needed to work harder (alluding, she surmised, to her well-publicized transfers from Ballard and Rainier Beach). 8/26 RP 124-125.

E. Williams filed a Notice of Tort Claim and suffered further retaliation.

Williams sought help from the school district's central office personnel. wrote a letter to Steve Wilson, Chief Academic Officer. Ex. 60. . He made no response to her concerns about the larger issues. 9/4 RP 49.

On May 24, 2004, Williams submitted a formal Notice of Tort Claim to the District, specifically outlining her concerns about retaliation – including the events at her current Ingraham assignment. 8/26 RP 136;

8/27 RP 27-29. Williams received no response or follow up regarding even the current issues in the letter. 8/27 RP 27-29.

The District moved Williams again. This time, it assigned her to Roosevelt High School as Assistant Principal. 8/27 RP 30. Before she arrived, at least one Roosevelt employee was told of Williams' reputation as someone with "an axe to grind." 8/27 RP 22-23. That employee was John Ragan, a 9 year Security Officer at Roosevelt (following a 21 year career as a police officer). 8/27 RP 5. After working with Williams, Ragan found that description to be unfounded. On the contrary, he found her professional, helpful and having good rapport with students and staff. 8.27 RP22-23.

Williams was greeted on her first day at Roosevelt by a security guard named Rose Bumgarner. Bumgarner told Williams that she had heard the events at Ballard and referred to Williams' "sexual relationship" with Odoemene. When Williams denied that any such relationship had occurred, Bumgarner expressed her disbelief. 8/27 RP 34-36.

Williams took solace in the fact she enjoyed a respectful supervisory relation with interim principal Chuck Chinn. Williams knew Chinn from her own days in high school, so it appeared he was less inclined to believe that Williams had an "axe to grind." 8/27 RP 34. He

evaluated her performance for two academic years, using the highest possible marks. 8/27 RP 37-38; Ex. 42.

When Chinn stepped down in October 2006, n brought in Dick Campbell as an interim principal, part way through the 2006-2007 academic year. 8/27 RP 54. Campbell was aware of Rose Bumgarner's tendency toward flamboyant story-telling and that she might embellish. 9/3 RP 157. Nevertheless Campbell immediately passed along to Williams, without explanation, that Bumgarner refused to work with her. 8/27 RP 56-58. Williams had no knowledge of any incident which might have precipitated the animosity. 8/27 RP 58.

In December 2006, Williams sought a meeting with then-High School Director Louis Martinez, seeking assistance with her concerns about Campell. Their meeting took place in January, during which Martinez asked how many schools she had been in, told her she had to "get over" the sexual harassment complaint. They discussed follow-up but Martinez left the District abruptly. 9/3 RP 62, 63-64.

F. Williams filed a lawsuit and was demoted, allegedly based on a situation as to which the Appellant omits many facts.

In order to preserve her rights and toll the statute of limitations, Williams filed this lawsuit in October 2006. 8/26 RP 52-54. She served papers on the District in early January 2007. CP 1-10. Within a matter of

weeks, Principal Campbell accused Williams of lying on her time sheets. He demanded proof that she was at work on the date of a work-related injury for which she was on L&I benefits. As an administrator, such mistrust was unprecedented. 8/27 RP 60-61.

In March 2007, Williams wrote to the new Director of High Schools, Carla Santorno, describing the issues at Roosevelt and mentioning the characterizations she had suffered as a “troublemaker” ever since her sexual harassment complaint and the resultant transfers. Ex. 58. She received no response to these particular concerns. 9/4 RP 50.

In early May 2007, the District demoted Williams from assistant principal to teacher. Ex. 68. This demotion followed an investigation at Roosevelt of a student altercation in which a gun was seen. The District claimed that Williams exercised unprofessional judgment (Ex. 68), but the sequence of events – largely omitted from the Appellant’s brief -- suggest a different motivation for the demotion.

The chronology of events started on April 30, 2007, when a fight broke out in the school courtyard. 8/27 RP 8, Ex. 100. Williams responded to the report, among others. 8/27 RP 62.

The following morning, May 1, Campbell met with the administrative team about the report of a gun seen during the fight. 8/27 RP 63. Campbell issued instructions including that the administrators and

security personnel work as a team. 8/27 RP 70-71. Security Specialist John Ragan was assigned to lead the investigation by talking with student witnesses, with Williams' involvement, among others. 8/27 RP 8.

Later on May 1, assistant principal Elizabeth Guillory called a second meeting and announced that student Shaunte Miller had seen a gun. 8/27 RP 72-73. Shaunte was on Williams' roster, meaning she was among the students assigned to Williams. Campbell directed Williams to speak with Shaunte, and she did so. 8/27 RP 73-74.

Shaunte was adamant she had seen no gun, but upon questioning she reported to Williams that she was aware that another student, Samantha McLin was saying she had been offered \$50 by Guillory and Bumgarner for information about the gun. 8/27 RP 74-755, 77-78; 9/3 RP 88-89. During Williams' discussion with Shaunte, Campbell stuck his head into Williams' office and asked if Shaunte had any information about the gun. Williams truthfully answered "no."¹ 8/27 RP 90-91. She did not mention the bribe allegation to Campbell, reasoning that finding the rumored gun was a far higher priority than addressing such allegations against Bumgarner and Guillory. 9/3 RP 88-89.

Williams' now contacted Guillory, asking which student had reported that Shaunte had seen a gun, thinking that information might shed

¹ Security Officer Ragan, who headed the investigation, concurred with Williams' conclusion about Shaunte, that she had no useful first-hand information. 8/27 RP 10-11.

more light on the conflicting stories. Guillory responded that she would rather not disclose such information to Williams. 9/8 RP 97-98.

Williams did not understand Guillory's response to a fellow administrator, when they were supposed to work together to insure that all students were safe. 9/3 RP 92.

Williams informed Shaunte's mother that the interview which had taken place. 8/27 RP 78-79. She then turned her attention to following up with Samantha McLin. Samantha was also on Williams' roster, so Williams now called her mother to inform her of the investigation, seek permission to interview Samantha and to inform Mrs. McLin that Samantha had apparently been heard to say she was offered money by Guillory and Bumgarner to provide information about the rumored gun. 8/27 RP 80-81, 84-85; 9/3 RP 88-89. (Williams considered first asking Samantha about the incident, but theirs was a strained relationship, arising from Williams' presiding over two of Samantha's truancy hearings. 9/4 RP 43-44).

What Williams didn't know when she called Venus McLin was that Samantha had requested a change in administrators at least a few days earlier. 8/27 RP 81-82. Campbell had not told Williams, despite an established practice of including the existing administrator when handling any request for a change. Had Williams known that she was no longer

Samantha's administrator, she would not have called Venus McLin. 8//27 RP 81-84.

Lacking that critical knowledge, Williams telephoned McLin and explained about the incident, the report that Samantha had been heard talking about a gun and about being offered money to disclose the identity of the student with the gun. McLin initially responded by asking why Williams was calling, given the change in administrator. Williams expressed her surprise. 8/27 RP 85. McLin nevertheless asked Williams a number of questions about Samantha's greets and attendance. 8/27 RP 87. Mrs. McLin also asked about the fight and why her daughter was being questioned. 8/27 RP 89. Finally, McLin asked Williams to bring Samantha into the office so that her mother could talk to her on the phone. Williams attempted to do so, but Samantha refused to cooperate. 8/27 RP 90.

The next day was a professional development day in which Williams had an organizer role. Campbell and Guillory were present, but neither one informed her of that day's progress of the "gun" investigation. 8/27 RP 95-97.

The foregoing were all of the facts Williams knew about the fight and investigation. On the morning of May 3, less than 48 hours later, , the District placed Williams on administrative leave, ordered her to stay away

from campus and have no contact with any district employees. 8/27 RP 98-99; Ex. 29. One of the reasons for the administrative leave, it read, was “to ensure a fair and expeditious investigation” of the matter. Ex. 29.

Knowing nothing about what she had supposedly done to warrant an investigation or an administrative leave, Williams asked Brockman. He said he could not tell her and directed her to Human Resources. 8/27 RP 100.

The Human Resources contact told her nothing, directing her to the Director, Laurie Taylor. 8/27 RP 100.

Williams call Laurie Taylor repeatedly and never received a return call. 8/27 RP 100.

On May 11, 2007, the District sent a letter to Williams demoting her from her job as assistant principal to a non-supervisory classified position as a teacher, outside of administration entirely. Ex. 68. Williams still had no idea what had caused these events. Whatever “fair and expeditious investigation” the District had done had included not a single question for Williams. 8/27 RP 103-104.

- G. What Williams didn't know was that the District had reached its demotion decision based solely on Venus McLin complaint about the phone call, bolstered only by daughter Samantha – who wasn't on the call.

Behind the scenes and unknown to Williams, Campbell and Guillory met with Venus McLin on the morning of May 2. McLin recounted a very different report of the Williams-McLin phone conversation. McLin's version had Williams describing Roosevelt administrators as attacking and being vindictive toward African American students. In McLin's version, Williams "played the race card." McLin described Williams as having accused other administrators of offering to bribe students for information. McLin asked Campbell to take disciplinary action against Williams. 9/3 RP 150-151.

Campbell sought written statements from each of his administrators regarding the situation with Shaunte and Samantha – except from Williams. 9/3 RP 178.

When asked how he confirmed the truth of McLin's version of the call with Williams, Campbell sought confirmation from Samantha, even though in Campbell's prior dealings with Samantha, he didn't give her statements much credibility. 9/3 RP 150, 190. He also testified he had concerns about the possibility that Venus McLin's statement to him was not accurate. 9/3 RP 182-183.

Nevertheless, Campbell turned his own account of the mother-daughter statements, as well as the other administrators' statements over to Phil Brockman, the District's new Director of High Schools. 9/3 RP 177-179. The demotion letter followed 8 days later, signed by Brockman. Ex.68. The District presented no evidence regarding Brockman's conclusions or reasoning.

Approximately 27 days after the demotion, the District told Williams of McLin's accusations against her. 9/3 RP 103-104.

Williams sought reconsideration of the decision. She presented substantial information supporting her version of the McLin phone call, the long history of retaliation, the fact that she was widely seen as a "troublemaker" for having complained about harassment. She pointed out the unusual "investigation" by the principal in which neither he or Phil Brockman had ever asked Williams even to comment on McLin's report. 8/27 RP 109-110. The District refused to change its decision to demote. Only one day after she submitted her evidence to the School Board, it issued its refusal. 9/3 RP 106.

H. Throughout the life of the lawsuit, the District kept demoting Williams

Williams now awaited a teacher assignment, as the demotion letter said would occur. 8/27 RP 110; Ex. 68. She submitted a copy of her

teaching to the district when asked, and obtained a written acknowledgement of its receipt. 8/27 RP 110-113; Ex. 31. She received one teaching assignment: a part-day at Franklin High School. 8/27 RP 113-115. She was then told to report to the Nathan Hale High School library, to see if she could “help out.” She reported daily to the library work room, with no specific duties. 8/27 RP 116-117 . After Nathan Hale, Williams simply remained at home with no duties. In January 2008, she was again demoted, this time to paraprofessional – akin to a teacher’s aide. Her pay was now cut to approximately \$24,000/year, reduced from her administrative salary of more than \$96,000.00 annually. 8/27 RP 120-121.

Even as paraprofessional, the District still gave Williams no assignment. 8.27 RP127-128. By the start of the trial in late August 2008, Williams had reason to believe she was no longer a paraprofessional. She had no idea of her employment status or whether she would continue to be paid. 8/27 RP 132.

August 25, 2008 her trial commenced and the jury rendered its verdict in her favor on September 11, 2008. The trial court entered judgment on that verdict. CP 1132-1134.

III. STATEMENT OF ISSUES

A. Was the Proposed Instruction unnecessary given that the underlying statute was admitted as evidence and the District did argue its theory?

B. Was the Proposed instruction misleading?

C. Did the proposed instruction misstate the law?

D. Was the Felty testimony about Hookfin's state of mind relevant?

E. Was the offered Guillory testimony cumulative when the statement already came in through Campbell – and McLin herself?

F. Did the mishandling of Williams' transfers demonstrate retaliatory motivation, when viewed in the light most favorable to Williams?

G. Did the District's refusal to curtail hostile and unequal treatment of Williams demonstrate retaliatory motivation?

H. Did the District's demotion of Williams, premised upon conclusions never investigated, demonstrate retaliatory motivation?

IV. ARGUMENT

A. The refusal of proposed instruction 13 was not error

The District devotes a lengthy portion of its argument to a superintendent's right to demote, legislative intentions, and an ostensible

“pledge.” The District gives short shrift to its Assignment of Error and what is required legally to demonstrate error in the refusal of a proposed instruction. Application of the legal tests governing the jury instructions will be addressed here, but the salient points are that the instruction misstated the law, was misleading, that refusal to give it caused no prejudice whatsoever.

1. Williams Broke No “Pledge”

The District moved *in limine* for an order “barring plaintiff from arguing that she was not afforded “due process” in connection with her transfer to a subordinate position on May 11, 2007.” CP 548. Williams did not object. CP 619. There was no order entered on the District’s motion *in limine*. Williams nevertheless argued precisely as she said she would – not about due process, but about retaliatory motivation.

The District’s argument about a broken pledge contains a glaring omission when it quotes Williams’ lawyer and describes the “pledge.” In identifying the supposed “pledge,” the District omits the second half of Williams’ sentence – the parenthetical where Williams clarifies and preserves exactly the argument she made. The District included only the portion of the sentence referencing due process. The actual sentence from Williams’ response to the motion *in limine* made clear that Williams intended to argue the transfer was a retaliatory action:

Plaintiff does not argue nor intend to argue that she was denied due process in her transfer to a subordinate position (although she does intend to argue the transfer was a retaliatory action).

CP 619. Plaintiff argued precisely what she said she would. The District cannot honestly claim to have been misled.

Finally, the District's presumption at BA 22 that trial court recalled counsel's "pledge" when it refused the proposed instruction is absurd, particularly in the absence of any argument at the time jury instructions were settled to remind the court of the "pledge."

2. Proposed Instruction 13 Fails to Meet the Legal Standard for Jury Instructions.

The required three elements for any jury instruction are (1) the instruction must permit each party to argue her theory of the case; (2) the instruction cannot be misleading and (3) read as a whole with other instructions, it must properly inform the trier of fact of applicable law. *Bell v. State*, 147 Wn.2d 166, 52 P.3d 503 (2002).

The District turns the standard for jury instructions on its head. The District argues that if proposed instruction 13 accurately stated the law in a fashion that was not misleading, refusal to give the instruction was reversible error. Opening Brief at 20, 21 (hereinafter denominated as "BA."). That is not the law. All three elements of the standard must be met for any instruction given, but failure to give such an instruction will

not be reversible error if the party is not prevented from arguing his theory of the case. *Joyce v. Department of Corrections*, 155 Wn.2d 306, 119 P.3d 825 (2005). The District not only could, it did argue its theory of the case. No reversible error occurred.

The District's Proposed Instruction 13 fails on all of the three elements. Had the court given it, it would have been error.

- a. The proposed instruction was not necessary for the District to argue its theory – and it did argue it.

The District had every opportunity to argue its theory because the text of the statute was in evidence. Proposed instruction 13 was intended by the District to be a distilled version RCW 28A.405.230. A copy of that statute, in full was admitted in evidence. Ex. 69. The District was free to discuss the significance of the piece of evidence. The District cannot plausibly claim that denial of proposed instruction 13 prevented it from making this argument. On this basis alone, the Court should affirm.

The argument the District advanced in support of proposed instruction 13 demonstrates that the instruction was not necessary for it to make its argument. According to the arguments on instructions, the theory sought to be advanced was that the District had the authority to make the demotion:

MR. HARRIS: [O]ur theory of the case is that the District can take actions like this. . . . Even if it's believed that Ms. Williams misbehaved or engaged in unprofessional conduct is erroneous, it can still take actions against an at-will employee, including demotion, so long as it's not based on an improper reason such as retaliation or discrimination. That's my theory of the case, and I think that –
THE COURT: But again, it's not what your instruction says, and at this point I'm just not going to recraft any more instructions, I'm sorry.

RP 9/9 p. 76-77.

b. The District argued its theory

The District argued in closing that it was entitled to demote Williams and followed its procedure in doing so.

The truth is Ms. Williams is going to say she said that Mrs. McLin had some ulterior motive or pretext because the District wanted to get rid of her, that they didn't even get her side of the story. And counsel talked about due process. Well, the fact of the matter is it's not required that a superintendent do an investigation before transferring somebody to a non supervisory position. What is required this person has a right to appeal that decision to the school board. The letter came on May 11, 2007, saying, "Ms. Williams, do not come here to the building. Do not talk to anyone else, because this investigation involving a gun is still going on."

* * *

Ms. Williams, the fact of the matter is on June 7, 2007, she was afforded a meeting with Mr. Campbell and a meeting with Phil Brockman. Ms. Williams and an associate in Ms. Huffington's office showed up at that meeting. They had their day in front of the school board. The entire school board had a closed session downtown where Ms. Huffington and Ms. Williams were there. Mr. Campbell was there. Mrs. McLin repeated what she said before the school board. Mrs. McLin repeated what she said to Phil

Brockman just like you heard. Ms. Williams was afforded her day, and the school board didn't see -- didn't deem it necessary or appropriate to overturn the superintendent's decision. She has had every opportunity to present her case.

RP 9/9 pp. 173-174.

In fact, the District concedes it made the argument before the jury, but contends that it could have made a more “compelling” argument with the proposed instruction. BA 28. The District cites no authority for the proposition that a party is entitled to instructions that permit the most “compelling” argument.

- c. The District waived any argument about a broken “pledge.”

The District waived any argument on appeal relating to the closing argument of Williams, having not objected during or after the closing. RAP 2.5(a); *Marsushita Elec. Corp. v. Salopek* 57 Wn.App. 242, 245, 787 P.2d 963 (1990). The District’s claim of error for the court’s refusal of proposed instruction 13 turns on Williams’ argument to the jury, purported to have violated a “pledge” not to claim violation of due process. The District made no objection during the closing argument, and made no request following the argument for any relief. The District sought no limiting instruction even though many had been given during the trial. The District failed to renew its request for proposed instruction 13. The

District failed to preserve the argument, instead waiting and gambling on the jury verdict..

d. Proposed Instruction 13 misstated the law.

The District's proposed instruction cited RCW 28A.405.230 as its basis, but it turned the statutory language on its head, omitting the second half of one sentence and the first half of another, changing the meaning of the law. It describes inaccurately the procedure after an administrator requests reconsideration of the superintendent's decision to demote. The result is that the board, rather than the administrator would have the right to argue for reconsideration.

Compare the pertinent portion of the statute with the pertinent portion of the proposed instruction. The statute says the administrator shall have the right to request reconsideration:

Such board, upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall notify the administrator in writing of the date, time and place of the meeting at least three days prior thereto. At such meeting the administrator shall be given the opportunity to refute any facts upon which the determination was based and to make any argument in support of his or her request for reconsideration. The administrator and the board may invite their respective legal counsel to be present and to participate at the meeting.

RCW 28A.405.230 (emphasis supplied).

By contrast, the pertinent portion of the proposed instruction gives the board the right to request reconsideration:

Such board, upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall be given the opportunity to refute any facts upon which the determination was based and to make any argument in support of his or her request for reconsideration.

CP 607.

The proposed instruction altered the meaning of the statute, misstating the law. Had the trial court given an instruction misstating the law, it would commit reversible error. *Thola v. Henschell*, 140 Wn.App 70, 84, 164 P.3d 524 (2007). This too is sufficient to reject the first Assignment of Error and to affirm.

e. Proposed Instruction 13 is misleading.

The proposed instruction omits the “purpose” paragraph of the statute on which it was expressly based. That purpose paragraph makes clear that RCW 28A.405.230 is not intended to protect an administrator’s constitutional rights:

This section provides the exclusive means for transferring an administrator to a subordinate certificated position at the expiration of the term of his or her employment contract.

RCW 28A.405.230.

The misleading nature of proposed instruction 13 is a third basis to reject the First Assignment of Error and to affirm.

3. Williams' Argument was Evidence of Retaliatory Intent, not Violation of Due Process

Williams never argued she had been denied due process, as the quote from her closing argument makes obvious. Nor did she argue that the district failed to satisfy legislatively proscribed procedures (RCW 28A.405.230) following its decision to demote (“transfer”) Williams. Williams’ argument was simple: With the way the District obtained the information on which it supposedly based its decision to transfer Williams; the one-sided nature of the fact-gathering; the decision to exclude Williams entirely from the process; that process, the district could not have intended to ascertain the correct facts. The process by which the Roosevelt staff gathered “evidence” against Williams was so far removed from any notion of fairness, so contrary to any search for the truth, as to evidence mal-intent; in this case, retaliatory intent. Only by taking Williams’ argument out of context can the District contend Williams’ argument implicated due process, or even that the provisions of RCW 28A.405.230 had been violated. Williams never denied she was afforded the opportunity to present her side of the story after the demotion decision

had been made. That opportunity to be heard was what the statute provided and governed.

The District's argument that a single phrase constituted a due process argument² fails even to pass a basic test of logic. At BA 23, The District observed that Williams' summation included a reference to "a part of our whole culture and system." The District follows with the fact that due process is a part of our whole culture and system. From this, the District draws the conclusion that the summation necessarily referred to due process. Of course, many principles other than due process are "part of our whole culture and system." The District's argument is a fallacy of composition.

Query whether, had the verdict been different, Williams could have appealed on due process grounds based solely on the referenced language in her closing argument? The answer is "no." Williams' argument would fail utterly to preserve a due process argument on appeal. Arguments complaining of "inadequate notice" preceding an administrative adjudication do not preserve due process claims, without an explicit mention of the constitutional grounds. *Subia v. Commissioner of*

² (Ironically, the only time "due process" was mentioned before the jury was by The District. The District, in closing, argued "And counsel talked about due process." RP 9/9 p. 173. Until that moment, notions of due process were not in front of the jury.

Social Security, 264 F.3d 899 (9th Cir. 2001). By that standard, Williams made no due process argument.

4. The District suggests this Court consider jury motivation, which it cannot do.

The District asks the Court to consider a juror question as evidence the jury wanted to know about issues relating to the proposed instruction. BA 23, 25. The jury's motivation or reasoning inheres in the verdict and cannot be presumed, explored or inferred. *State v. Linton*, 156 Wn.2d 777, 788, 132 P.3d 127 (2006). This argument is meritless.

5. The District Fails to Show any Abuse of Discretion in the Trial Court's Discussion of the Proposed Instruction.

Even if the District's argument of abuse of discretion had been asserted properly, it fails. In a footnote at BA 25, without citation to any authority, the District asserts that the trial court abused its discretion in its discussion of the proposed instruction, the timing of settling instructions and its ruling. An assertion appearing only in a footnote without reasoned argument does not warrant consideration. *Westmark Dev. v. City of Burien*, 140 Wn. App. 540, 556, 166 P.3d 813 (2007). This abuse of discretion argument was not denominated as one of the issues pertaining to the First Assignments of Error.

The District's assertion is that the trial court "denigrated" the proposed instruction in her ruling refusing it. No authority is cited for the

proposition that “denigrating” a proposed instruction constitutes an abuse of discretion.

The District’s second assertion is that the court “waited” until just before the instruction to the jury before refusing the instruction and announcing it was too late to submit another. First, the District misdescribes the timing of the court’s refusal of the instruction. The instructions were settled at the usual time, before the parties’ summations. 9/9 RP 49-77. The District cites no court rule or other authority governing the timing of arguing and ruling on instructions. Finally, abuse of discretion is meaningful in regard to the proposed instruction only in that it would have been an abuse of the court’s discretion to give a misleading instruction which misstated the law and was unnecessary to permit argument of a theory of the case.

6. It is false that reversal is required because of an inability to determine what part of a verdict resulted from a failure to instruct

The District incorrectly suggests that where a reviewing court cannot determine which part of a verdict was influenced by a failure to give any instruction. BA 29. For this proposition the District relies on *Thola v. Henschell*, 140 Wn.App.70, 164 P.3d 524 (2007). The District mixes two different holdings of *Thola* to support this incorrect proposition of law. Specifically, Division Two of this Court found the trial court

should have instructed the jury that it could not consider the same facts for a common law claim as it did for a claim of violation of Uniform Trade Secrets Act, because a portion of the common law claim was preempted. Separate and apart, the court found that because the general verdict form did not segregate the damages from the two claims, the reviewing court could not determine which damages flowed from the preempted claim. For that reason, the court reversed the entire damage award and ordered a new trial. *Thola* does not stand for the proposition claimed by the District. Indeed, if *Thola* had held as the District suggested, this Court should not follow it.

Virtually any of the foregoing sections provides this Court a basis to reject the District's First Assignment of Error and affirm. Williams requests that the Court do so.

B. The Felty Testimony of Hookfin's statement was proper under ER 803(a)(3), and was Relevant.

The District did not want the jury to hear that Hookfin told Felty they were going to give Williams "all she deserved." The District's arguments about the Felty testimony are hard to understand. The District does not dispute that the statement of David Hookfin to Felty evidenced Hookfin's state of mind, including his motive. It cannot be disputed that statements of the declarant's then-existing state of mind are exceptions to

the rule prohibiting admission of hearsay. ER 803(a)(3). The District's arguments range from imputation of actions to issues of speaking agent and back again, but the true issue is the relevance of Hookfin's state of mind.

1. The Standard of Review is Abuse of Discretion

The District argues valiantly for a different standard of review on this issue. The District maintains that the trial court misapplied ER 803(a)(3) because Hookfin's state of mind was ultimately irrelevant. Thereby the District injects a relevance component into ER 803(a)(3). Framing the issue in that way, the District attempts to use a *de novo* standard of review (for the question of whether the court misapplied the law) rather than an abuse of discretion standard (for questions of relevance). The District cannot meld ER 402 to ER 803 and conceive a new standard of appellate review.

Because the issue is relevance, the standard of review is abuse of discretion and the District does not even contend the admission of the Felty testimony was an abuse of discretion.

2. Hookfin's state of mind was relevant under the District's own test of relevance.

The District frames the issue itself when it argues "Hookfin was neither a party to the lawsuit nor someone with authority to make

decisions on behalf of the District about the terms of Williams' employment." BA 33. According to that standard, Hookfin's statement to Felty was admissible.

a. Hookfin Had Authority

Hookfin had authority over issues of facilities at Ingraham High School, including location and furnishing of offices. 9/8 RP 62. The only evidence in the record regarding the person authorized to make office-related decisions at Ingraham High School was that Assistant Principal David Hookfin had been assigned that responsibility. Had there been evidence to the contrary, the District would have cited the record on that subject.

b. Office Issues were Terms of Employment

The challenges and obstacles of Williams' office situations at Ingraham affected "terms of employment" in retaliation cases, according to recent United States Supreme Court case law. Terms of employment are inextricably related to adverse employment actions. In discrimination cases (such as race or gender discrimination), plaintiffs were required to prove they had been treated differently in "terms of employment" or had suffered "adverse employment actions." Until *Santa Fe Railway v. White*, 548 U.S. 53, 126 S.Ct 2405 (2006) was decided, those same standards for terms of employment and adverse employment actions were utilized in the

case law for proving retaliation cases. In *White*, the United States Supreme Court held that adverse employment actions in retaliation cases are defined according to a different standard than in discrimination cases. In retaliation cases, an adverse employment action was defined as any action which might tend to dissuade a reasonable person from complaining about discrimination or harassment or supporting such a claim. *White*, 548 U.S. at 68. Any reasonable employee would find objectionable the office circumstances to which Williams was subjected.

3. Hookfin's statement demonstrates mal-intent toward Williams, which a jury could easily conclude was retaliatory motive.

Hookfin's statement about giving Williams what she "deserved" gave rise to an inference that Hookfin harbored mal-intent toward Williams. State of mind and motivation for actions are a necessary element in retaliation cases under RCW 49.60.210. *Estevez v. Faculty Club*, 129 Wn. App. 774, 797, 120 P.3d 579 (2005).

As the trial court noted, Hookfin's state of mind is also relevant to refute the District's argument that Williams' office situation and other problems at Ingraham were purely of her own making; that no one at Ingraham interfered with her ability to do her job. RP 8/28, p.43.

Because the Hookfin-to-Felty statement was relevant and an exception to the hearsay rule, this Court should reject the Second Assignment of Error and affirm.

C. The Court Properly Excluded Guillory's Testimony of McLin's Statement as Cumulative and the Court should affirm for this and many other reasons

The District sought to introduce Elizabeth Guillory's testimony about what Venus McLin said that Williams said to her. RP 9/8 99-101. The court sustained Williams' objections that the evidence was hearsay, irrelevant and cumulative. RP 9/8 100-101. That ruling was proper.

1. The District Made No Offer of Proof

The District made no offer of proof as to the specifics of what Guillory would say. By failing to make such an offer of proof, the District failed to preserve the issue for appeal. ER 103(a)(2); *Kysar v. Lambert*, 76 Wn. App. 470, 490-91, 887 P.2d 431, *review denied*, 126 Wn.2d 1019 (1995). On this basis, the Court may affirm as to the Third Assignment of Error.

2. The excluded evidence was cumulative

The District acknowledged that the jury had already heard the evidence sought to be admitted through Guillory. 9/8 RP 102. Indeed, declarant Venus McLin had already testified to what she said to Guillory (and Campbell). 9/8 RP 136-141. Campbell had also testified to what

McLin said. 9/3 RP 146-150, 180. The District cannot claim that the court abused its discretion in denying admission of the same statement for the third time through yet another witness.

There is no abuse of discretion in refusing cumulative evidence. *Sutton v. Shufelberger*, 31 Wn. App. 579; 596, 643 P.2d 920 (1982). This is the second basis on which the Court may affirm.

3. The evidence was irrelevant

On the issue of relevance, the District argues on appeal that what Guillory was told (and by extension, what she repeated) was relevant because it played a “key role” in district’s decision to demote Williams (Opening Brief at 38). The District makes no cite to the record, because there was no evidence in the record showing the identity of the decision-maker on the demotion, what was considered in the demotion decision, or what factual conclusions were reached pertinent to that decision. Without such evidence in the record, the District cannot claim that what Guillory knew (or what she told her higher-ups) had any role, let alone a key role. The fact that she heard the statements of McLin is irrelevant.

4. Even if there had been an error, it was harmless

If there was any error, it was harmless. There was no dispute about whether McLin said what she claims to have said. McLin testified that she told Campbell and Guillory about certain statements Williams

allegedly made to her during a telephone call on May 1, 2007. Campbell confirmed that McLin had told him (and Guillory) of those statements in a meeting on May 2. While Williams refuted McLin's version of their telephone call, she never disagreed that McLin delivered her own version of the call to Campbell and Guillory. Williams' argument to the jury took no issue with the fact that McLin had made the statement. Williams only questioned whether the statement McLin delivered was true. As such, there was no need to admit further evidence through Guillory proving that McLin told Campbell and Guillory her version of the Williams telephone call. Any error by the court in refusing Guillory's testimony was harmless to the District.

D. The Court Properly Denied the Motion for Partial Directed Verdict.

1. The District's Motion Fails to Meet the Standard for Directed Verdicts

The standard applicable to motions for directed verdict requires a finding of no legally sufficient evidence:

If, during a trial by jury, a party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party with respect to that issue, the court may grant a motion for judgment as a matter of law against the party on any claim, counterclaim, cross claim, or third party claim that cannot under the controlling law be maintained without a favorable finding on that issue. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment. A

motion for judgment as a matter of law which is not granted is not a waiver of trial by jury even though all parties to the action have moved for judgment as a matter of law.

CR 50(a)(1).

While case law permits the use of a motion for directed verdict to remove a particular defense or a claim, it has not been used as the District did, to remove particular factual bases from the jury's consideration of a claim; a claim which will still remain following the granting of the motion. In the only case cited by the District, *Amsbury v. Cowles Publishing Co.*, 76 Wn.2d 733, 458 P.2d 882 (1969), the court affirmed denial of the motion for partial directed verdict, but noted that such a motion was a proper way to remove the affirmative defense of privilege in a libel case.

The District sought not to remove a claim – but to remove jury consideration of particular pieces of evidence when considering a claim. *Amsbury* provides no authority for the use of CR 50(a)(1) in that fashion.

2. Even if a motion for direct verdict on particular facts was permitted, the District's motion was based upon an incorrect legal standard and was properly denied by the trial court

The legal standard on which the motion for directed verdict was based had been rejected in 2006 by the U.S. Supreme Court in *Santa Fe Railway v. White*, 548 U.S. 53, 126 S.Ct 2405 (2006). The District's

written motion stated two legal bases for its request. First, the District maintained that a transfer from one position to a position equivalent in pay and duties could not, as a matter of law, be an adverse employment action. Second, the District claimed that the Ingraham events were workplace conflicts which could not, as a matter of law, constitute an adverse employment action. CP 950-953. The District is wrong on both the law and the facts³.

Regarding the two transfers, the District relied upon a narrow definition of “adverse employment actions” as a change in employment conditions such as those involving work load or pay. CP 951. The narrow standard more typically used in discrimination cases had been abandoned by the Court in *White*, as regards retaliation cases. For retaliation cases, the Court defined “adverse employment actions” as those that would be “materially adverse” to a reasonable employee; specifically actions that might dissuade a reasonable worker from making or supporting a charge of discrimination. *White*, 548 U.S. at 68. When the District argued that a lateral transfer with equivalent duties and pay could not, as a matter of law, be an “adverse employment action,” it ignored the standard

³ The District refers to its brief on the Motion for Partial Directed Verdict. BA 45. To the extent its brief includes any arguments not stated in the Opening Brief, this Court should ignore those arguments. Incorporation by reference effectively violates the page limitations on appellate briefing.

announced in *White*, or misapplied it. The trial court correctly rejected the District's argument and denied the Motion for Partial Directed Verdict.

3. The two transfers could not be carved out of Williams' claims by a directed verdict, because sufficient evidence was presented that were adverse employment actions and the decision maker was motivated by retaliation.
 - a. Wilkins mishandled the Rainier beach in a material way which was entirely for the benefit of the harasser

Wilkins failed to inform the Rainier Beach principal of the important reason for the last-minute switch of administrators. That failure led to suspicions of Williams. Had the principal known that the transfer was intended to remedy sexual harassment, she would have worked differently with Williams. Taken in the light most favorable to Williams, Principal Marshall's suspicions led to the admitted failure of the Rainier Beach assignment.

- b. The botched Rainier Beach transfer was an "adverse employment action"

A transfer to a new school with substantial opposition by community and students and mistrust by the principal, followed by a quick assignment to administrative leave was an action which might dissuade a reasonable worker from making or supporting a charge of discrimination. Under *White*, that is an adverse employment action.

- c. Wilkins' mishandling of the Rainier Beach transfer for the specific reason of protecting the harasser's reputation among his peers evidence a retaliatory intent toward Williams.

Wilkins' motivation was to protect the harasser with disregard for the victim's interests. No question exists that the sole reason for the transfer was to respond to Williams' sexual harassment complaint, although Williams has never argued that fact alone as a basis for retaliation. The mishandling was unquestionably intended to protect the harasser. That admitted intent also gives rise to the inference that Wilkins' choice to transfer Williams, rather than to remove or transfer Odoemene, was to protect his reputation at Williams' expense. Taken in that light, the choices Wilkins' made, in disregard for Williams, were motivated by retaliation.

The Court should note that the District's claim of the trial court's conclusion is not supported by the record. SPA states that the trial court "expressly acknowledged that Williams' evidence fell short of providing a plausible basis for the jury to find Wilkins' decision to transfer her to Rainier Beach was motivated by retaliatory animus" (Opening Brief at 44). The District makes no citation to the record for that assertion. Presumably it does not appear in the record.

- d. Wilkins' choice to transfer Williams to yet another high school rather than back to Ballard was retaliation for her complaint of sexual harassment

Odoemene was removed from Ballard following widespread media coverage of the harassment complaint and the botched Rainier Beach transfer. It occurred while Williams was on administrative leave and the District was ostensibly trying to find her an assignment. Williams asked to be returned to Ballard where she believed she would be received well and have the opportunity to succeed. Wilkins refused that transfer and instead assigned Williams to Ingraham.

- e. In the context of the transfers and the media attention, the transfer to Ingraham instead of Ballard was an adverse employment action.

Two transfers and a long administrative leave in one academic year would be disruptive to any administrator's ability to succeed, with the predictable "learning curve" at each new assignment. The two transfers and long leave would also cause any observer to infer that Williams, the person being transferred, was a problem employee, leading to a diminished professional reputation. The fact that more than one District administrator used the transfers as evidence that Williams was to blame for work place problems, proves this inference.

The transfers and administrative leave, all coming within a three month period were actions which might dissuade a reasonable worker

from making or supporting a charge of discrimination. Under *White*, the decision to transfer Williams to Ingraham rather than Ballard was an adverse employment action.

- f. Wilkins was motivated in significant part by retaliatory animus when she refused a return to Ballard and instead transferred Williams to Ingraham.

The combination of Wilkins' stated desire to protect Odoemene's reputation and the implausible reason she gave for refusing to return Williams to Ballard gives rise to the inference of retaliatory motivation.

Her stated reason for the refusal about Ballard was implausible. Wilkins admitted a mid-year placement was difficult to find. CP 1197 (p.25).. Once Odoemene was removed from Ballard, the return of Williams would have been ideal. Williams asked Wilkins to transfer her back to Ballard and Wilkins refused. 9/4 RP 44-47. The stated reason for Wilkins' refusal was that she was not going to move any more people. 9/4 RP 46-47. Presumably, Wilkins meant that she would not move anyone else; that she would not transfer another Ballard administrator to make room for Williams. She would not disrupt another administrative team to assist Williams. This presupposes that Williams could not be assigned as an extra administrator at Ballard. But that is exactly the nature of the

assignment to Ingraham only days later. 9/4 RP 47. She was a third assistant principal where they had only had two.

Budget issues were not the reason for the choice of Ingraham versus Ballard. Wilkins arranged for an accounting adjustment to make sure that Ingraham's budget was not negatively impacted by the addition of another administrator. She acknowledges that such an accounting adjustment had been equally possible with any other school. CP 1202 (p. 42).

The implausibility of Wilkins' stated reason implies retaliatory intent, when combined with Wilkins' desire to protect Odoemene's reputation, first and foremost. If Williams was returned to Ballard immediately after Odoemene's removal, the inference would be unavoidable that Odoemene's removal from Ballard was a response to Williams' sexual harassment complaint. Taken in the light most favorable to Williams, Wilkins was again protecting the harasser while disregarding the interests of the victim – who had complained.

The trial court properly concluded that a directed verdict on the issue of the Ingraham claim was improper.

4. The events the District characterizes as “petty workplace complaints” were not contended to be retaliation in and of themselves; the retaliation was the District’s failure to respond to Williams’ concerns about them.

Williams wrote letters of complaint to the District in which she specifically identified numerous events as mistreatment, stated that she was concerned they were motivated by employees’ animosity toward her for her sexual harassment, and requested that the District intervene. She wrote a letter to Steve Wilson, Chief Academic Officer. Ex. 60. He made no response to her concerns about the larger issues. 9/4 RP 49.

She caused her lawyer to submit a detailed letter (as a Notice of Tort Claim) including the hostile environment at Ingraham. 8/26 RP 136; 8/27 RP 27-29. She received no response. 8/27 RP 27-29.

The District presented no evidence that it investigated Williams’ requests for help or assertions of retaliation. Additionally, the evidence in the record suggests it did not. Although Martin Floe’s conduct was central to her letter to Wilson (Ex. 60) Floe denied ever knowing of Williams’ complaint about him. He was never questioned by the District about any issues with Williams. 9/8 RP 73 -74.

The District’s failure to speak with Floe about the behavior of which Williams complained ensured that the behavior would continue. The District offered no evidence regarding the reason for its inaction.

Viewing this evidence in a light most favorable to Williams, a retaliatory motivation toward Williams on the part of the District was demonstrated, with regard to the Ingraham events.

A directed verdict regarding the hostile work environment at Ingraham was improper and the trial court properly denied the District's motion.

Finally, the District incorporates by reference the arguments it made in its Motion for Partial Directed Verdict. BA 45. This incorporation by reference is improper because it has the effect of extending the District's brief beyond the page limit set forth in the appellate rules.

E. Williams is entitled to attorneys' fees and costs on appeal. Williams requests and award of attorneys' fees and costs for this appeal pursuant to RCW 49.48.030 and RCW 49.60.030(2).

V. CONCLUSION

The trial court made appropriate rulings on jury instructions – and any error, had it occurred, was harmless. The court made appropriate evidentiary rulings, admitting relevant evidence under appropriate hearsay exceptions and excluding purely cumulative evidence. The court properly denied a motion for partial directed verdict. The motion was not well-

founded procedurally, was wrong on the law and moreover, the jury's verdict was entirely supported by admissible evidence.

This Court should affirm the judgment of the trial court.

RESPECTFULLY SUBMITTED this 6th day of July, 2009.

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