

NO. 63152-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KIRK SAINTCALLE,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BRUCE HILYER AND GLENNA HALL

BRIEF OF RESPONDENT

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FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

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A. ISSUES PRESENTED.

1. Private searches do not violate the constitution unless they are instigated or encouraged by the police. Here, the trial court found that the police had not instigated or encouraged the actions of the emergency medical technician who found cocaine in Saintcalle's shoe. Did the trial court properly deny the motion to suppress that evidence?

2. The trial court has discretion to deny a motion to proceed pro se that is brought shortly before trial, is accompanied by a motion for continuance, and is brought for purposes of delaying the trial. The trial court found that Saintcalle's motion, brought shortly before trial and accompanied by a motion for continuance, was brought for the purpose of delay. This finding is supported by the record. Did the trial court properly exercise its discretion in denying the motion to proceed pro se?

3. A prosecutor does not commit misconduct by arguing that the State's witnesses have no motive to lie. Did the prosecutor commit misconduct by arguing that the police officers had no motive to lie in response to defense counsel's claim that the officers planted cocaine on Saintcalle?

4. RCW 43.43.7541 mandates imposition of a DNA collection fee for offenders sentenced for a felony after June 12, 2008. Did the trial court properly impose the DNA collection fee?

B. STATEMENT OF THE CASE.

1. PROCEDURAL FACTS.

Kirk Saintcalle was charged with the crime of possession of cocaine. CP 1. During the course of the next five months, Saintcalle attended seven court hearings continuing his case scheduling hearing. Supp CP ___ - ___ (subs 8, 10, 12, 14, 16, 19, 25). At each of these hearings he was represented by counsel Ryan Norwood. On January 29, 2008, Mr. Norwood withdrew as counsel for Saintcalle and John Ostermann became Saintcalle's counsel. Supp CP ___ (sub 27). On February 5, 2008, Saintcalle attended a hearing in which his trial date was set for March 18, 2008, with an expiration date of March 28, 2008. Supp CP ___ (sub 30).

For the first time on March 28, 2008, Saintcalle asked to proceed pro se. 1 RP 4.¹ The court inquired as to why Saintcalle

¹ The Verbatim Report of Proceedings will be referenced in the same manner as in the Brief of Appellant.

wished to represent himself, and Saintcalle answered, "cause I believe I might be able to properly assist myself better." 1 RP 6. Saintcalle clarified that he had no problems with his current lawyer. 1 RP 6. Upon further inquiry, Saintcalle stated that he was 23 years old, had a high school education, and had prior trials but had never represented himself before. 1 RP 7. The court cautioned Saintcalle that it would be awkward and difficult to represent himself. 1 RP 7. Saintcalle responded, "I believe I can handle the situation, sir." 1 RP 7. The court cautioned Saintcalle that it would be "very, very foolish" to represent himself. 1 RP 8.

The following exchange then occurred:

Mr. Saintcalle: I understand that, but I have the time on my side. I have all the time to learn.
Court: Excuse me?
Mr. Saintcalle: I understand that, but I --
Court: What's the trial date?
Mr. Saintcalle: I don't know. The 8th? The 8th, sir. Have to get a continuance.
Court: You're asking for a continuance? Is that what you're saying?
Mr. Saintcalle: Yes.
Court: And why do you need a continuance?
Mr. Saintcalle: To go learn some more stuff and go over some stuff.
Court: Why is it that you're bringing this issue up now as opposed to before?
Mr. Saintcalle: Because before I wasn't really considering. I just, it was going through my mind. I just --

1 RP 8-9. The court denied the request to proceed pro se, concluding that Saintcalle's waiver of counsel was not knowing, voluntary and intelligent, and that the motion was made to delay the trial. 1 RP 9; CP 4. A jury convicted Saintcalle of the crime charged. CP 44. On February 9, 2009, he received a standard range sentence of 12 months plus one day confinement. CP 50-51. The court imposed a \$100 DNA collection fee, finding that mandatory fee applied as of the date of sentencing. CP 50; 3 RP 6.

2. FACTS PERTAINING TO MOTION TO SUPPRESS.

Saintcalle moved to suppress cocaine that an Emergency Medical Technician (EMT) found in a plastic bag sticking out of his shoe, contending that the EMT was acting as a state agent when he seized the bag. CP 5-8. Officer Dan Butenschoen of the Kent Police Department testified that he was on patrol on April 4, 2006, when he responded to a report of a possible burglary at the Royal Firs apartment complex. 2 RP 8-10. The description of the burglar was a light-skinned black male in his early 20's with a heavy build that appeared to be under the influence. 2 RP 10. When he arrived, the officer found Saintcalle, who matched the description of the suspect to some extent, sitting outside the apartment of the

911 caller. 2 RP 11. Saintcalle was lethargic, sweating profusely, and was unable to respond to the officer's questions. 2 RP 13. Officer Butenschoen and two other officers who responded to the scene decided to have Saintcalle transported to the hospital. 2 RP 15. They called the fire department. 2 RP 15.

The officers carried Saintcalle down a flight of stairs because he could not walk. 2 RP 16. Officer Butenschoen could not recall whether any of the officers searched Saintcalle for weapons or whether he was handcuffed. 2 RP 18. Once Saintcalle was placed on the ambulance gurney, Officer Butenschoen stayed in the vicinity while the fire and medical crews treated Saintcalle. 2 RP 19. Officer Butenschoen testified that the City of Kent contracts with American Medical Response and other private companies to provide ambulance services in emergency situations. 2 RP 22.

EMT Marshall Lineberger testified that he was working for American Medical Response on April 4, 2006, when he was dispatched to the Royal Firs apartment complex. 2 RP 25-27. The ambulance was staffed by himself and another EMT. 2 RP 28. The fire department had checked Saintcalle's vital signs and Lineberger's job was to load Saintcalle onto the ambulance gurney

and into the ambulance. 2 RP 34. He could not remember if Saintcalle was handcuffed, although to the best of his memory he was. 2 RP 35, 45. It is standard procedure to use ankle and wrist restraints when transporting an intoxicated person to the hospital. 2 RP 30-32. Saintcalle was loaded onto the gurney and Lineberger fastened the restraints without any difficulty. 2 RP 36. As he was fastening the restraint on Saintcalle's left ankle, he saw a small plastic bag hanging out of Saintcalle's shoe. 2 RP 38. He pulled the bag out of the shoe and saw that it contained a white rock-like substance. 2 RP 38. He testified that in his four years as an EMT he had never seen a plastic bag sticking out of a patient's shoe, and he wanted to see if the bag was relevant to Saintcalle's condition. 2 RP 26, 40. Lineberger handed the bag to one of the police officers. 2 RP 42. The police officers had not instructed him to pull the bag out of the shoe, and to his knowledge had not seen the bag before Lineberger handed it to them. 2 RP 41-42. No further search of Saintcalle was conducted. 2 RP 42.

The court found that Lineberger had removed the baggie on his own, without consulting with the officers. CP 46. The court found that the search was not encouraged or instigated by the police officers and that Lineberger was not acting as a state agent.

CP 46. The court denied the motion to suppress. CP 46; 2 RP 60-62.

3. FACTS AND ARGUMENT PRESENTED TO THE JURY.

Kent Police Officers Butenschoen and Graff testified that on April 4, 2006, at approximately 4 a.m., they responded to a call at the Royal Firs apartment complex. 2 RP 89, 91-92, 107-09. They found Saintcalle sitting on an outside stairway, lethargic, sweating profusely and mumbling incoherently. 2 RP 94-95, 111. They decided to have him transported to a hospital, and called the fire department. 2 RP 95. The officers carried Saintcalle down the stairs, and neither officer recalled searching Saintcalle for weapons or handcuffing him. 2 RP 96, 99, 113, 119.

EMT Lineberger testified that when Saintcalle was placed on the ambulance gurney, he placed restraints on Saintcalle's ankles and wrists and in the process found a small plastic bag containing a white rock-like substance sticking out of Saintcalle's shoe. 2 RP 128-30. Lineberger removed the bag and gave it to Officer Graff. 2 RP 116, 130. Saintcalle was transported to the hospital. 2 RP 131. Ray Kusumi of the Washington State Patrol Crime

Laboratory tested the substance in the plastic bag and found that it contained cocaine. 2 RP 151.

In the prosecutor's brief closing argument, she focused on the elements of the crime and argued that Saintcalle was guilty of possessing cocaine. 2 RP 158-61. In the defense closing argument, defense counsel argued that the testimony "raised real questions about what the police were doing and what the police were thinking." 2 RP 166. Counsel then argued that the police knew the baggie was in Saintcalle's shoe because "they put it there." 2 RP 168. Counsel concluded that "the police had every opportunity to make a very small act, to put away a guy that they're tired of dealing with." 2 RP 174.

The prosecutor began her rebuttal argument by stating: "It appears that the defense's theory is that these Kent police officers are lying, that the defendant was so out of it that they planted drugs on him." 2 RP 175. The prosecutor argued that there were no facts to support the defense theory. 2 RP 175. The prosecutor then focused on the police officers' credibility, and argued as follows:

These officers have absolutely no motive to lie. Ask yourselves, why would they make this up? What do they gain from this situation? Why would they go

through the effort of at 3:30, 4 in the morning responding to a 911 call at this apartment complex, contacting the defendant, who is obviously in a state that's not normal. He doesn't look good. They're concerned about him. And then they're going to go through the effort to plant the drugs at some point so then the EMT finds them?

Why would they go through that effort? Why wouldn't they just say they found them if that's what really happened? Why go through all these steps? What do they have to gain by any of this? Why come in here after writing all their reports, going through it with all of the officers, the fire department, the EMT, everyone that was involved in this, and then come in here and make it up still? Why would they do that? They have absolutely no motive to lie. They have nothing to gain. There is no evidence and no facts that support any suggestion that those officers put any drugs on the defendant.

2 RP 175-76. Defense counsel made no objection to the State's argument. 2 RP 175-76.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY DENIED THE MOTION TO SUPPRESS BECAUSE THE EMERGENCY MEDICAL TECHNICIAN WAS NOT ACTING AS A STATE AGENT.

Saintcalle contends that the trial court erred in denying his motion to suppress the cocaine the EMT found in the plastic bag in his shoe. He contends that the trial court erred in concluding that the EMT was not acting as a state agent when he seized the plastic

bag. Saintcalle's claim is without merit. The EMT was employed by a private company, American Medical Response. The trial court's unchallenged finding that the EMT acted without any directions or encouragement from the police is supported by substantial evidence. The trial court's conclusion that the EMT was not acting as a state agent should be affirmed.

The federal and state constitutional prohibitions against unreasonable searches and seizures protect only against governmental actions. City of Pasco v. Shaw, 161 Wn.2d 450, 459, 166 P.3d 1157 (2007). These constitutional provisions are not violated by private searches unless the person who conducts the search is acting as a state agent. Id. In other words, a wrongful search by a private person does not violate the constitution.

The defendant bears the burden of proving that a private person was acting as a state agent. City of Pasco, 161 Wn.2d at 460; State v. Swenson, 104 Wn. App. 744, 754, 9 P.3d 933 (2000). The mere fact that there are contacts between the police and the private person does not make the person a state agent. State v. Walter, 66 Wn. App. 862, 833 P.2d 440 (1992); State v. Clark, 48 Wn. App. 850, 856, 743 P.2d 822 (1987). Similarly, the fact that the private person intends to help the police does not make the

person a state agent. Clark, 48 Wn. App. at 857. Courts have consistently held that the police must in some way encourage, instigate, direct, counsel, control, coordinate or acquiesce in the search by the private person in order for that person to be a state agent. Swenson, 104 Wn. App. at 755; Walter, 66 Wn. App. at 443; Clark, 48 Wn. App. at 856; State v. Ludvik, 40 Wn. App. 257, 263, 698 P.2d 1064 (1985). See also United States v. Walther, 652 F.2d 788, 791 (9th Cir. 1981) (stating, "the government must be involved either directly as a participant or indirectly as an encourager of the private citizen's action before we deem the citizen to be an instrument of the state").

In State v. McWatters, 63 Wn. App. 911, 914, 822 P.2d 787 (1992), Division III of this Court found that a paramedic who was treating the defendant at the scene of a traffic accident was not acting as a state agent when he collected items found in the defendant's clothing and gave them to a nearby police officer. The McWatters court focused on the fact that the paramedic's actions were not encouraged or instigated by the police. Id. It also noted that the paramedic's belief that the evidence could be helpful to police did not convert the paramedic into a state agent. Id. at 914-15.

In the present case, the trial court found that the EMT removed the plastic bag from Saintcalle's shoe on his own, "without consulting or discussing" the matter with the officers. CP 46. The appellate court reviews the trial court's findings of fact in regard to a motion to suppress under the substantial evidence standard. State v. Hill, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994). Saintcalle has not assigned error to the trial court's findings, and thus they should be accepted as verities on appeal. Id.

The trial court's unchallenged finding is supported by substantial evidence. There is no evidence in the record that the officers knew anything about the bag before the EMT handed it to them. There is no evidence that the police officers directed, counseled, instigated, encouraged or acquiesced in the search.

Saintcalle attempts to rely on the fact that American Medical Response had a contract with the city of Kent to argue that any of his actions would therefore be those of a state agent. However, no case law supports this position. In McWatters, the paramedic was employed by the Spokane Fire Department. McWatters, 63 Wn. App. at 789. Yet, his actions in medically treating the defendant were deemed to be private, not the actions of a state agent for purposes of Fourth Amendment analysis.

Moreover, even if the EMT was a state agent, the search of an unconscious person in order to determine identity or possible information about the person's medical condition is not constitutionally unreasonable. State v. Jordan, 79 Wn.2d 480, 484, 487 P.2d 617 (1971). In Jordan, police officers responding to an emergency call entered the defendant's motel room and found him unconscious. Id. at 481. While looking for identification, they found a controlled substance in the pocket of his coat. Id. The state supreme court held that the search was reasonable under the circumstances. Id. at 484. Likewise, in the present case, the EMT's seizure of the plastic bag, which he testified he believed might be relevant to Saintcalle's unconscious condition, would be considered reasonable even if the EMT had been a state agent.

Having found that the police officers had no direct or indirect participation in the search, the trial court properly concluded that the EMT was not acting as a state agent. CP 46. As such, the EMT's seizure of the plastic bag from Saintcalle's shoe did not violate either the federal or state constitution. The trial court properly denied the motion to suppress the cocaine.

2. THE COURT PROPERLY DENIED SAINTCALLE'S MOTION TO PROCEED PRO SE.

Saintcalle contends that the trial court abused its discretion in denying his motion to represent himself. This claim is without merit. The trial court found that Saintcalle made the motion, which was brought shortly before trial was set to commence, and accompanied by a request for a continuance, for the purpose of delaying the trial. As such, the trial court had discretion to deny the motion.

Criminal defendants have a constitutional right to represent themselves. State v. Woods, 143 Wn.2d 561, 585, 23 P.3d 1046 (2001). However, a criminal defendant's request to proceed pro se must be both unequivocal and timely. Id. at 586. The appellate court reviews a denial of a request for self-representation for abuse of discretion. State v. Breedlove, 79 Wn. App. 101, 107, 900 P.2d 586 (1995). Discretion is abused if the trial court's decision is manifestly unreasonable or is based on untenable grounds. State v. Vermillion, 112 Wn. App. 844, 855, 51 P.3d 188 (2002).

If an unequivocal demand for self-representation is made well before trial and is not accompanied by a motion for a continuance, it should be granted. State v. Barker, 75 Wn. App.

236, 241, 881 P.2d 1051 (1994). If the demand is made shortly before the trial is about to commence and is accompanied by a motion for continuance, the decision whether to grant the motion lies in the court's discretion. Breedlove, 79 Wn. App. at 107. In Breedlove, the defendant's request to proceed pro se made twelve days before the scheduled trial date was considered by this Court to have been made shortly before trial. Id. at 104, 107. The court may deny a request to proceed pro se if the motion is made for the purpose of delaying the trial. Id. at 108.

A trial court's finding that the motion to proceed pro se was brought for purposes of delay is necessarily a factual finding based partly upon the credibility of the defendant's answers to the court. A trial court's findings of fact are reviewed under a clearly erroneous standard, and will be reversed only if not supported by substantial evidence. State v. Grewe, 117 Wn.2d 211, 218, 813 P.2d 1238 (1991). Great deference is given to the trial court's factual findings. State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

In the present case, the trial court found that Saintcalle's motion was made for purposes of delaying the trial. The record supports that finding. Saintcalle had attended seven court hearings

between the time he was charged in August of 2007 and March 2008 in which he never expressed any interest in representing himself. It was not until after the trial date had been set for March 18, and continued to April 8, that Saintcalle made his motion to proceed pro se on March 28. Supp CP __ (sub 30); 1 RP 9. Saintcalle stated that he would need a continuance in order to represent himself so that he could "go learn more stuff." 1 RP 9. He had no explanation for why he had not brought his motion earlier, stating that he "wasn't really considering it" before. 1 RP 9. Saintcalle expressed no dissatisfaction with his counsel. 1 RP 6.

The court's finding that the motion--brought only eleven days before trial was scheduled to begin and ten days *after* the trial had initially been scheduled to begin--was made for purposes of delay is supported by the record and is not clearly erroneous. Because the record supports the trial court's finding that Saintcalle brought his motion for purposes of delay, the trial court's denial of the motion to proceed pro se was not an abuse of discretion. The trial court has discretion to deny a motion to proceed pro se that is brought shortly before trial, that is accompanied by a motion for a continuance, and that is made for purposes of delay. The trial court

properly exercised its discretion in denying Saintcalle's motion to proceed pro se.

3. THE PROSECUTOR COMMITTED NO MISCONDUCT IN CLOSING ARGUMENT.

Saintcalle contends that the prosecutor committed flagrant and ill-intentioned misconduct in rebuttal argument when, in response to defense counsel's allegation that the police planted drugs on the defendant, the prosecutor argued that the police officers had no motive to lie. Saintcalle's claim is frivolous. The prosecutor's argument was a proper and necessary response to defense counsel's accusation that the police officers had fabricated their testimony.

The appellate court reviews a prosecutor's allegedly improper remarks in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the instructions given to the jury. State v. Russell, 125 Wn.2d 24, 85-86, 882 P.2d 747 (1994). In determining whether prosecutorial misconduct occurred, the court first evaluates whether the prosecutor's comments were improper. State v. Reed, 102 Wn.2d 140, 145, 684 P.2d 699 (1984). If the defense does not make a

timely objection and request for a curative instruction, the misconduct is waived unless the comment was so flagrant or ill-intentioned that an instruction could not have cured the prejudice. State v. Charlton, 90 Wn.2d 657, 661, 585 P.2d 142 (1978). In the present case, the defense raised no objection to the State's argument.

It is not misconduct for the prosecutor to argue that the evidence does not support the defense theory. State v. Brown, 132 Wn.2d 529, 566, 940 P.2d 546 (1997). The prosecuting attorney is entitled to make a fair response to the arguments of defense counsel. Id.

It is misconduct for the prosecutor to argue that in order to *acquit* the defendant, the jury must find that the State's witnesses are lying. State v. Barrow, 60 Wn. App. 869, 874-75, 809 P.2d 209 (1991). Such an argument misstates the jury's duty, because it need only entertain a reasonable doubt as to the State's evidence in order to acquit the defendant. Id. at 875-76. It is also misconduct for the prosecutor to argue that in order to believe a defendant's testimony it must find the State's witnesses are lying. State v. Wright, 76 Wn. App. 811, 826, 888 P.2d 1214 (1995). However, this Court explained in Wright that "where, as here, the

parties present the jury with conflicting versions of the facts and the credibility of witnesses is a central issue, there is nothing misleading or unfair in stating the obvious: that if the jury accepts one version of the facts it must necessarily reject the other." Id. at 825. In that case, this Court concluded that the prosecutor's argument that, in order to believe the defendant, the jury had to believe the police "got it wrong," was not misconduct.

In the present case, the defense theory in closing was, explicitly, that the police officers were lying and had planted the cocaine on Saintcalle. There was absolutely nothing improper about the prosecutor's argument that there was no evidence that the police had any motive to lie. Saintcalle's claim of misconduct must be rejected. The argument was not misconduct at all, let alone flagrant and ill-intentioned misconduct.

4. THE TRIAL COURT PROPERLY IMPOSED THE MANDATORY DNA COLLECTION FEE.

Saintcalle contends that the trial court erred in imposing the DNA collection fee as a mandatory fee because the fee was not mandatory at the time he committed his crime in April of 2006. The claim should be rejected. The statutory scheme mandates

imposition of the DNA collection fee for everyone sentenced for a felony after June 12, 2008.

Currently, RCW 43.43.7541 mandates a \$100 DNA collection fee for every felony sentence. Prior to June 12, 2008, the court had discretion not to impose the fee if it found that it would "result in undue hardship on the offender." Former RCW 43.43.7541 (2002). Saintcalle argues that the 2006 version of RCW 43.43.7541 must be applied to his conviction. He relies on RCW 9.94A.345, which provides that "any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed."

Generally, criminal statutes operate prospectively in order to give fair notice that a violation carries specific consequences. State v. Pillatos, 159 Wn.2d 459, 470, 150 P.3d 1130 (2007). However, if changes to a criminal statute are procedural and do not alter the consequences of the crime, then the presumption is not applicable. Id. The change at issue here, making the DNA collection fee mandatory rather than discretionary, is procedural. There is no presumption that it operates prospectively only.

In Pillatos, 159 Wn.2d at 472, the defendants argued that RCW 9.94A.345 did not allow a new exceptional sentence

procedure to be applied to crimes that were committed before the procedure was enacted. The state supreme court rejected that claim, concluding that the purpose of RCW 9.94A.345 was to make clear that defendants have no vested rights in prior, more lenient, offender score calculation statutes. Id. at 473. The court held that changes in procedure do not violate the letter or purpose of RCW 9.94A.345. Id. Thus, applying the new exceptional sentence procedure to crimes committed before the procedure was enacted was not contrary to RCW 9.94A.345. Id. Likewise, in the present case, changing the DNA collection fee from a discretionary fee to a mandatory fee does not violate the letter or purpose of RCW 9.94A.345.

Moreover, a review of the legislative scheme enacted for the collection of DNA establishes that the fee was intended to be mandatory for all offenders sentenced after the effective date of June 12, 2008. RCW 43.43.754 sets forth the persons who are required to provide DNA samples for the DNA database. RCW 43.43.7541 provides that the \$100 DNA collection fee is mandatory for every person sentenced who is required to provide a

DNA sample pursuant to RCW 43.43.754. The persons specified in RCW 43.43.754(6)(b)(i)-(iii), as amended, include every person convicted of a felony on or after June 12, 2008, every person convicted prior to June 12, 2008, who is still incarcerated, and every person required to register as a sex offender.

Applying these two statutes to Saintcalle, he was convicted by the jury before June 12, 2008, but was still incarcerated on June 12, 2008. Thus, RCW 43.43.754 mandated that a sample of Saintcalle's DNA be collected. RCW 43.43.7541 mandated that a \$100 collection fee be imposed when Saintcalle was sentenced after June 12, 2008. The trial court properly imposed the DNA collection fee. See also State v. Bennett, ___ Wn. App. ___, ___ P.3d ___, 2010 WL 162028 (January 19, 2010) (imposition of mandatory DNA collection fee to crimes committed before fee became mandatory does not violate ex post facto prohibition); State v. Brewster, 152 Wn. App. 856, 218 P.3d 249 (2009) (imposition of mandatory DNA collection fee to crimes committed before fee became mandatory did not conflict with savings statute).

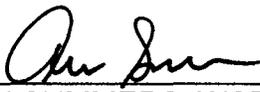
D. CONCLUSION.

Saintcalle's conviction and imposition of the DNA collection fee should be affirmed.

DATED this 2nd day of February, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

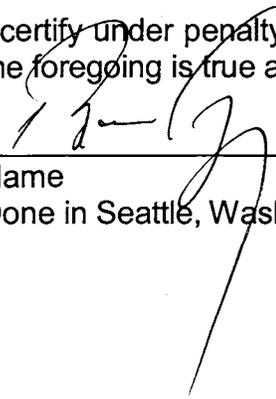
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Lila Silverstein, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. SAINTCALLE, Cause No. 63152-7-1, 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.



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Done in Seattle, Washington

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