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Pierce County  
11-1-03272

Court of Appeals  
70341-20

IN THE ~~SUPREME~~ COURT OF APPEALS  
THE STATE OF WASHINGTON, Division one

STATE OF WASHINGTON, Respondent  
v.

Mr. Robert Hill, Petitioner

Petition for Review

COURT OF APPEALS  
STATE OF WASHINGTON  
2013 AUG 28 PM 11:43

**FILED**

OCT 11 2013

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

CF

Mr. Robert Hill  
910 Tacoma Ave South  
Tacoma WA 98402

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 → July 29, 2013 Court of appeals unpublished decision affirming conviction (division one, transferred from #two)

COURT OF APPEALS  
 STATE OF MISSISSIPPI  
 2013 AUG 28 11:11:41

# TABLE OF AUTHORITIES

## > table of cases

	1.	State v. McFarland, 127 Wn.2d 722	(1995)
	2.	State v. Weber, 137 Wash. App. 852	(2002)
	3.	State v. Davis, 152 Wn.2d 742	(2004)
	4.	State v. Maurin, 128 Wn.2d 918	(1996)
	5.	State v. Summers, 60 Wn.2d 702	(1962)
	6.	State v. Edmonds, 68 Wn.2d 246	(1966)
INTENT	7.	State v. Jones, 34 Wash. App. 848	(1983)
INTENT	8.	State v. Finley, 97 Wash. App. 129	(1991)

## > constitutional provisions Article I, § 22

## > statutes

1891 c 28 § 69; 1915 c 83 § 1;  
1969 c 45 c 143 § 1; 1984 c 76 § 17

## > rules

ETR 901

## > other authorities

- RCW 9A.16.090 - Intoxication defense
- RCW 10.46.050 - Superior Court trial
- RCW 10.52.040 - Witnesses (generally)

Mr. Robert Hill

70341-2

- A) I, Robert Hill, am the petitioner.
- B) I am challenging the July 29, 2013 decision one court of appeals decision ("Unpublished Opinion")  
"affirming judgment and conviction for one count of intimidating a judge."
- C) Issue #1 → appeals court did not address my S.A.C. issue of the two discs ("CDs") being authenticated prior to the authentication of the sounds or files on the discs.  
Issue #2 → appeals court failed to uphold my right to have a critical witness subpoenaed by my public defender, by ignoring my meritorious assistance of counsel arguments.
- D) Defendant was charged in Superior Court on Sept. 14, 2011. Two people claimed to have phone recordings of me: Derek Young & Erik Finer. A Sheriff's ~~copy~~<sup>Sgt.</sup> took the Young disc and relayed all of it to the alleged victim, Tacoma Municipal Court Commissioner Randall Hansen.

Mr. Robert Hill  
70341-2

My attorney objected to the admitting of the discs in addition to the playing of the three messages. My attorney, Robert Mason Quillion, convinced me to waive jury trial; he also didn't want to file Affidavit of Prejudice after Colpepper mentioned being friends with Hansen.

Trial testimony did not affirmatively lock in the times, or even days, of the messages. There was no mention of even what phone numbers I might have used.

My attorney did preliminary research to determine the name of the inmate, "Dominic Terber," who was released with me from jail (the "2A" unit), who provided me the name of the daughter of Commissioner Hansen — "Jodie" (or Jodi/Jody). Mr. Terber did not indicate the name or sex of the child he had with Hansen's daughter.

The person who burned the disc allegedly made by Derek Young was not called to testify by Prosecutor.

The person who burned the disc allegedly containing what Flinn heard was not called to testify.

My alibi witness, Terber, was not called.

My attorney fails to make an offer of proof of what Terber would say. Judge Culpeper, in his ruling for conviction specifically says, "It would be one of the great coincidences in Pierce County history," if Hill's story [about coming up with the name of "Jody"] from the inmate "was believed." He found it "much more likely Hill did research," which I didn't. My attorney failed to subpoena the T.M.C. judicial assistant who overheard the alleged conversation on Friday Sept. Ninth ~~about~~ <sup>perceived by</sup> <sup>July 29th</sup> <sup>Opinion</sup> → "Hill approached Furer claiming that his bail was only increased because Hill knew about the commissioner's incestuous relationship with his daughter." I didn't say that on Sept. Ninth.

E) ① ERL 901 relates to authenticity of recordings. It also addresses admitting items which contain those files or recordings. It is a corruption of the judicial process to not present the individuals whom the State believes created the CDs. They can describe what they did with the originals, and when. Defendant can cross-examine as to whether cutting & pasting was done from digital files, or

other modifications. It could only have been a 5 to 10 minute presence on the stand - unless irregularities were elicited. There was significant argument over when each message was allegedly left, assumable by the possessor of the original alleged recording. I mailed two envelopes from Shelton DOC for my S.A.G.

② Although State v. McFarland sets the standards for ineffective assistance of counsel claim, if an attorney fails to meet minimum standard(s), a Defendant's constitutional right to have witnesses subpoenaed may be addressed: State v. Weber 137 Wash App 852  
State v. Davis 152 Wn.2d 947.

WA Constitution Art I, §22

My attorney failed to subpoena Dominic Terba, an alibi witness, which would have probably prevented Culpepper from making his "greatest coincidence" statement. I told Quilliam six weeks before trial. My family hired two investigators to finally talk to the guy, Terba. This testimony would be very relevant State v. Martin, 128 Wn.2d 918.

F) A new fair trial should be ordered with all FOUR witnesses present:

- CD #1 - CD #2 - Terba - court J.A. lady

AMRH

DATED: Monday  
August 14, 2013, S.A.G.  
A.D. 7013

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Mr Robert Hill

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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 ROBERT JESSE HILL, )  
 )  
 Appellant. )

No. 70341-2-1  
DIVISION ONE  
UNPUBLISHED OPINION  
FILED: July 29, 2013

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2013 JUL 29 PM 12:04

GROSSE, J. — To be admitted into evidence, a telephone recording need not be identified by the recipient of the message, but may be authenticated and identified by someone familiar with the caller's voice. Here, the police officer identified the recorded messages as those obtained from the recipient and testified that he recognized the defendant's voice as he was familiar with it from past conversations with the defendant. Further, the defendant identified himself in one of the two messages he left. Under these circumstances, the trial court did not abuse its discretion in admitting the recorded telephone messages.

Defendant Robert Hill also filed a statement of additional grounds for review asserting ineffective assistance of counsel. We find no merit in these assertions and accordingly affirm the judgment and conviction for one count of intimidating a judge.

Erik Furer, assistant city prosecuting attorney for Tacoma, requested an increase in the bail for Hill, who had already posted a booking bail on earlier charges. The court commissioner increased the bail to \$5,000 for each of the three counts, setting bail at \$15,000. Hill was taken into custody that day, September 8, 2011. Hill posted bail and the next day appeared in the commissioner's courtroom during the calendar. At the end

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of the calendar, when the commissioner had left the bench, an agitated Hill approached Furer claiming that his bail was only increased because Hill knew about the commissioner's incestuous relationship with his daughter. Hill demanded that Furer and he both confront the commissioner to get the bail reduced. Furer told Hill that he was not on the calendar and that no motion or reconsideration could be heard. Hill eventually left the courtroom and court personnel locked the door. Furer informed the commissioner about Hill and his remarks and suggested that he be cautious and inform the other commissioner and judges.

On September 12, 2011, Furer retrieved a message that Hill left on his work telephone answering machine. In that message, Hill identified himself and then alluded to the comments he had made in the courtroom. Hill left his telephone number for a return call to get the commissioner to change the bail. Furer testified that he was familiar with Hill and he recognized his voice. Furer gave a recording of the message to Jesus Villahermosa, a sergeant with the Pierce County Sheriff's Department assigned to court security.

Hill also left two telephone messages for Derek Young, the author of a Tacoma news blog entitled Exit 133. On September 12, 2011, Young notified the police of two messages he had received from an individual who had identified himself as "Mr. Hill" in one of the messages. That same day, Sergeant Villahermosa retrieved a compact disc recording of the two telephone messages Young had received. Villahermosa listened to both recordings and recognized Hill's voice based on his prior contact with him and the statements made in the recordings themselves. Villahermosa testified that he had had multiple conversations with Hill both personally and by telephone. Villahermosa

identified the transcripts from the two recordings as having been taken from the recordings he retrieved from Young's office. Villahermosa also listened to the recorded message left for Erik Furer. He recognized Hill's voice and noted that the telephone number left on Furer's message was the same as the telephone number left on one of Young's messages.

Hill objected to the admission of all three messages. Finding sufficient foundation and authentication, the trial court admitted the recorded messages. At a bench trial, the court found Hill guilty of one count of intimidating a judge. In reaching its decision, the court relied on the threats that were contained in the three messages. Hill appeals, contending that the trial court erred in admitting the recordings of the messages.

Hill's principal contention is that the trial court erred in admitting the recording of the telephone calls made to Young because Young did not testify and therefore there was no foundation or authentication for those calls. A trial court's decision regarding the admissibility of evidence is reviewed for an abuse of discretion.<sup>1</sup> "A trial court abuses its discretion when its decision is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."<sup>2</sup> Evidence Rule (ER) 901 provides that evidence is authenticated when there is sufficient evidence to support that the recording is what it is claimed to be.<sup>3</sup> ER 901 provides a non-exclusive list of illustrations that conform to this rule.<sup>4</sup> "A sound recording, in particular, need not be authenticated by a witness with

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<sup>1</sup> State v. Payne, 117 Wn. App. 99, 110, 69 P.3d 889 (2003).

<sup>2</sup> State v Williams, 136 Wn. App. 486, 499, 150 P.3d 111 (2007).

<sup>3</sup> ER 901(a).

<sup>4</sup> ER 901 provides illustrations of authentication or identification methods in determining prima facie the authenticity of proffered evidence. This includes, but is not limited to

personal knowledge of the events recorded. Rather, the trial court may consider any information sufficient to support the prima facie showing that the evidence is authentic.”<sup>5</sup> When determining the authenticity of evidence a trial court may rely upon lay opinions, hearsay, or the proffered evidence itself; the information supporting the determination need not be admissible but must be reliable.<sup>6</sup> Here, the police officer testified that the recording he retrieved from Young was the recording that Young had given him. Sergeant Villahermosa also stated that he was intimately familiar with Hill’s voice from both face-to-face conversations and telephone conversations, and based on that knowledge, identified the caller as Hill. These factors formed a reasonable basis from which to testify to the identification of the speaker on the recordings. Thus, the trial court did not err in admitting those recordings.

Although Hill’s appeal does not directly address the recorded message left for Furer, its admission was likewise proper for the same reasons set forth above.

#### Statement of Additional Grounds

In a statement of additional grounds, Hill argues ineffective assistance by trial counsel. Hill argues that counsel failed to adequately cross-examine the court commissioner and introduce defense witnesses. To establish ineffective assistance of counsel, a defendant must show both deficient performance and resulting prejudice.<sup>7</sup> Decisions to call witnesses or ask certain questions are generally tactical or concern

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voice identification: “Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.” ER 901(b)(5).

<sup>5</sup> Williams, 136 Wn. App. at 500.

<sup>6</sup> Williams, 136 Wn. App. at 500-01.

<sup>7</sup> State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).

matters outside the record and will not support an ineffective assistance claim.<sup>8</sup> Additionally, because much of the evidence that Hill relies on to support his ineffective assistance of counsel claims is outside of the record and thus cannot be considered on a direct appeal, there is no error.<sup>9</sup>

Affirmed.

Grew

WE CONCUR:

Steinbock

Becker

<sup>8</sup> State v. Jones, 33 Wn. App. 865, 872, 658 P.2d 1252 (1983); State v. Statler, 160 Wn. App. 622, 641, 248 P.3d 165 (2011).

<sup>9</sup> McFarland, 127 Wn.2d at 335 (the court will not review matters outside of the trial record on direct appeal).