

31323-9-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

DANIEL L. BROWN, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

BRIEF OF RESPONDENT

---

STEVEN J. TUCKER  
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Andrew J. Metts  
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I.

ASSIGNMENT OF ERROR

1. The Superior Court erroneously held Daniel Brown, defendant in a pending criminal case, is financially responsible for and must independently acquire material evidence the State intends to use against him at trial.

II.

ISSUE

1. Can a defendant demand that the State supply, at the State's expense, copies of any discovery demanded by the defendant?

III.

STATEMENT OF THE CASE

Prior to trial, the defendant filed a request for discretionary review, which this court granted. The defendant filed his appellant's brief on March 28, 2013.

#### IV.

#### ARGUMENT

- A. THE DEFENDANT IS ENTITLED TO OBSERVE OR OBTAIN COPIES OF EVIDENCE THE STATE PLANS TO USE AT TRIAL BUT NOT RECEIVE COPIES OF PHYSICAL 911 RECORDINGS AT THE STATE'S EXPENSE.

The “gist” of the defendant’s arguments is the insistence that the State must pay for and provide copies of all discovery.

The defendant cites to *State v. Boyd*, 164 Wn.2d 424 (2007) [sic]. *Boyd* does not specifically address the issues raised by the defendant. The Court in *Boyd* held that the State needed to provide a “mirror” copy of the defendant’s computer hard drive. *State v. Boyd*, 160 Wn.2d 424, 158 P.3d 54 (2007). That is not the issue here. In the case at bar, the State has never said that the defendant cannot have a copy of the audio tape in question. The real issue is the one the defendant skirts around: is the defendant entitled to get anything he wants for free? The defendant is clearly not impecunious. He has private counsel.

In *Boyd*, the Court had no problem with the defendant paying the costs of duplication. *State v. Boyd*, 160 Wn.2d at 438.

In this case, the issue is a 911 audio tape. The defendant has been advised that he could come and listen to the tape. The prosecutor noted at the hearing that the defendant could bring an audio recorder and record the

911 calls. RP 8. The original recording was reproduced on a digital disk format. There has been no claim raised that there is something “special” about this 911 recording that requires some sort of expert. At the hearing, the defendant noted that he was concerned that the recordings might be altered somehow. The defendant also wanted to listen to the 911 calls whenever he chose. All of those issues are addressed by the defendant bringing an audio recorder to a meeting with the prosecutor and recording what the State has. The defendant can listen to, record and take notes at an agreed upon meeting. That answer was not satisfactory to the defendant.

The defendant is attempting to make a broader point. The purpose of this “appeal” is simply for the purposes of setting a precedent that defendants must be supplied copies of all discovery at the State’s expense. The bottom line in all of this is that the defendant has no desire to work out any sort of compromise. The defendant is trying to make a point.

The Court in *Boyd* permits assessing costs to the State only in limited circumstances.

Similarly, *State v. Grenning* is of little help as it does not address costs. *State v. Grenning*, 169 Wn.2d 47, 234 P.3d 169 (2010).

The bottom line (when all of the cases are read as a whole) is that the State must provide copies in certain circumstances. None of the cases state that the State has to pay for the copies. The defendant has made his arguments based on an unrelated set of cases and no caselaw supports his demand that the State pay for copies of anything the defendant might wish to examine.

The defendant has not, and cannot, claim that the State has refused to allow the defendant to listen to the 911 recording in this case. The State has met its obligation to disclose and make available to the defendant, all discovery the State intends to use at trial. The defendant is not satisfied with being given access to the 911 tape in the possession of the State.

The trial court heard the defendant's arguments and properly rejected them. If the defendant were to prevail on having the State pay for his audio tape copies, how far does this logic extend? As with all such attempts to force a point, the defendant reveals how unworkable his arguments are. The trial court was correct and this appeal should be summarily dismissed.




V.

CONCLUSION

For the reasons stated above, respondent requests that the court dismiss the defendant's request that the State pay for his discovery.

Dated this 7<sup>th</sup> day of May, 2013.

STEVEN J. TUCKER  
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,            )  
  )  
                                  Respondent,    )       NO. 31323-9-III  
                                  v.                )  
  )  
  )  
DANIEL L. BROWN,                )  
  )  
                                  Appellant,    )       CERTIFICATE OF MAILING

---

I certify under penalty of perjury under the laws of the State of Washington, that on May 7, 2013, I mailed a copy of the Respondent's Brief in this matter, addressed to:

Douglas Phelps  
Attorney at Law  
2903 North Stout Rd  
Spokane WA 99206

and to:

Daniel L. Brown  
8928 North Wood Rd  
Reardan WA 99029

5/7/2013  
(Date)

Spokane, WA  
(Place)

  
(Signature)