Supreme Court No. _____
Court of Appeals No. 30256-3-III

91006-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

VANCE L. BAKER,

Defendant/Petitioner.

PETITION FOR REVIEW

DAVID N. GASCH
WSBA No. 18270
P. O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
Attorney for Defendant/Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions and Statutes

Court Rules

Other Resources

I. IDENTITY OF PETITIONER.

Petitioner, Vance L. Baker, asks this Court to accept review of the Court of Appeals decision terminating review, designated in Part II of this petition.

II. COURT OF APPEALS DECISION.

Petitioner seeks review of the Court of Appeals Opinion filed July 22, 2014, affirming his convictions. A copy of the Court's unpublished opinion is attached as Appendix A. A copy of the Court's Order Denying Motion for reconsideration filed October 7, 2014, is attached as Appendix B. This petition for review is timely.

III. ISSUES PRESENTED FOR REVIEW.

1. Should the conviction for second degree child molestation (count 2) be dismissed because the jury did not find the defendant guilty of the crime as charged in the information?

2. Did the trial court abuse its discretion in excluding evidence of L.L.B. calling the police and falsely reporting burglary and rape when such evidence was relevant to the defense theory of the case?

3. In a criminal trial, does a "to-convict" instruction, which informs the jury it has a duty to return a verdict of guilty if it finds the elements have been proven beyond a reasonable doubt, violate a defendant's right to a jury trial, when there is no such duty under the state and federal Constitutions?

IV. STATEMENT OF THE CASE.

Vance Baker was convicted by a jury of two counts of first degree child molestation (Counts 3 & 4) and one count of second degree child molestation (Count 2). CP 265-67. The third and final amended information charged in Count 2 that Mr. Baker "during the time intervening between the 25th day of May, 2004, and the 24th day of May, 2007, in violation of RCW 9A.44.086, did engage in sexual contact with and was at least thirty-six months older than L.L.B. (DOB 5-25-1995), a person who was at least twelve years of age but less than fourteen years of age and not married to the accused . . ." CP 148.

The jury was instructed on count 2 in pertinent part:

> To convict the defendant of the crime of child molestation in the second degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That between May 25, 2007 and November 1, 2008, the defendant had sexual contact with [L.L.B.];
>
> (2) That [L.L.B.] was at least twelve years old but less than fourteen years old at the time of the sexual contact and was not married to the defendant;
>
> CP 253.

During the trial Mr. Baker requested permission to cross examine L.L.B. about an incident in February 2008, where she called the police and falsely

reported somebody was trying to break into her house and rape her. RP[1] 173, 175. Before issuing its ruling the trial court allowed defense counsel to question L.L.B. outside the presence of the jury. RP 175. L.L.B. admitted calling the police and admitted that the rape report was false. RP 175, 176-77. The Court excluded the evidence from the jury finding it had only slight probative value. RP 181.

The jury was given "to convict" instructions containing the language, "If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty." CP 253, 255, 256.

This appeal followed. CP 308-09.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

The considerations which govern the decision to grant review are set forth in RAP 13.4(b). Petitioner believes that this court should accept review of these issues because the decision of the Court of Appeals is in conflict with other decisions of this court and the Court of Appeals (RAP 13.4(b)(1) and (2)), and/or involves a significant question of law under the Constitution of the United States and state constitution (RAP 13.4(b)(3)), and/or involves issues of substantial public interest that should be determined by the Supreme Court (RAP 13.4(b)(4)).

[1] RP refers to the three volumes of trial transcript reported by John McLaughlin held May 16-20,

Issue No. 1. The conviction for second degree child molestation (count 2) should be dismissed because the jury did not find the defendant guilty of the crime as charged in the information.

The Washington Supreme Court has held that a criminal defendant may be held to answer for only those offenses contained in the indictment or information." State v. Porter, 150 Wash. 2d 732, 735-36, 82 P.3d 234 (2004) (citing State v. Fernandez–Medina, 141 Wash.2d 448, 453, 6 P.3d 1150 (2000) (quoting Schmuck v. United States, 489 U.S. 705, 717–18, 109 S.Ct. 1443, 103 L.Ed.2d 734 (1989)). "Consistent with that notion, Wash. Const. art. I, § 22 preserves a defendant's 'right to be informed of the charges again him and to be tried only for offenses charged.' " *Id.* (quoting State v. Peterson, 133 Wash.2d 885, 889, 948 P.2d 381 (1997)).

Turning then to the facts of the present case, RCW 9A.44.086 provides in pertinent part:

> (1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

RCW 9A.44.086(1)

2011.

The jury was instructed on count 2 in pertinent part:

> To convict the defendant of the crime of child molestation in the second degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That *between May 25, 2007 and November 1, 2008*, the defendant had sexual contact with [L.L.B.];
>
> (2) That [L.L.B.] was at least twelve years old but less than fourteen years old at the time of the sexual contact and was not married to the defendant;
>
> CP 253 (emphasis added).

But the information charged that Mr. Baker engaged in sexual contact with L.L.B, who was at least twelve years of age but less than fourteen years of age, "during the time intervening *between the 25th day of May, 2004, and the 24th day of May, 2007*." CP 148 (emphasis added). Since the dates in the jury instruction differ from those in the information by as much as four years, the jury did not find Mr. Baker guilty of the crime as charged in the information. The time of the offense is a material element to the charge of child molestation in the second degree, since the victim must be between the ages of twelve and fourteen.

The Court of Appeals found this discrepancy immaterial, citing State v. Hayes, 81 Wn. App. 425, 432-33, 914 P.2d 788 (1996) for the principle that time is not an essential element of child molestation, so long as there is no defense of alibi. Slip Op. p 6. However, the facts of the present case are much different from those in Hayes.

In Hayes, the victim testified the offense occurred about June 4, 1992, while the charging document has a charging period of "on or about the 1st day of July, 1990 through the 31st day of May, 1992." Hayes, 81 Wash. App. at 432, 914 P.2d 788. The Court held the charging language "on or about ... the 31st day of May, 1992." should be construed to include the June 4, 1992 incident. *Id.* In that context, the Court found time was not a material element of the charged crime, since the language "on or about" was sufficient to admit proof of the act at any time within the statute of limitations, so long as there is no defense of alibi. *Id.*

By contrast, in the present case the alleged offense dates in the jury instruction differ from those in the information by as much as four years. Moreover, the information does not contain any "on or about" language. Instead, the amended information charged that Mr. Baker engaged in sexual contact with L.L.B, who was at least twelve years of age but less than fourteen years of age, "*during the time intervening between the 25th day of May, 2004, and the 24th day of May, 2007.*" CP 148 (emphasis added).

Significantly, LLB would *not* have been between twelve and fourteen years old during the time period alleged in the information, which means Mr. Baker could not be guilty of child molestation in the second degree during that time. There can be no dispute that the age of the alleged victim is a material element to this offense. Therefore, in this case the time of the offense is likewise a material

element, since the victim must be between the ages of twelve and fourteen. In this context, the presence of an alibi defense is immaterial.

Issue No. 2. The trial court abused its discretion in excluding evidence of L.L.B. calling the police and falsely reporting burglary and rape when such evidence was relevant to the defense theory of the case.

Mr. Baker's defense at trial was that he did not touch L.L.B. inappropriately and that L.L.B. fabricated the allegations of child molestation. See RP 345, 383-89. Mr. Baker sought to support his defense with a specific instance of similar fabrication where L.L.B. called the police and falsely reported somebody was trying to break into her house and rape her. This evidence was relevant to the defense and should have been admitted under ER 402.

Character evidence is generally inadmissible for the purposes of proving action in conformity therewith, subject to certain exceptions. ER 404(a); c.f., ER 404(a)(2) (making admissible "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused..."), State v. O'Connor, 155 Wn.2d 335, 349, 119 P.3d 806 (2005) (quoting ER 608(b)) ("specific instances of a witness's conduct, introduced for the purpose of attacking his or her credibility, may not be proved by extrinsic evidence, but may 'in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness ... concerning the witness' character for truthfulness or untruthfulness.'") In sum,

this analysis under ER 608(b) considers whether the instance of misconduct is relevant to the witness' veracity on the stand and whether it is germane or relevant to the issues presented at trial. O'Connor, 155 Wn.2d at 349.

"As a general rule, evidence tending to establish the defendant's theory of the case, or to qualify or disprove the State's theory, is normally relevant and admissible." State v. Sheets, 128 Wn. App. 149, 156, 115 P.3d 1004 (2005), *review denied*, 156 Wn.2d 1014 (2006) (citing State v. Harris, 97 Wn. App. 865, 872, 989 P.2d 553 (1999) ("Evidence tending to establish a party's theory, or to qualify or disprove the testimony of an adversary, is always relevant and admissible.") To that end, the defendant must demonstrate the relevance of the evidence for it to be admitted. Harris, 97 Wn. App. at 872; ER 402. "Evidence is relevant and thus probative if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." State v. Cochran, 102 Wn. App. 480, 486, 8 P.3d 313 (2000) (quoting ER 401)).

Here, Mr. Baker's defense was that no inappropriate touching occurred and that there was reason to doubt L.L.B.'s accusations. There were numerous inconsistencies in L.L.B.'s accounts to various people of what occurred that were brought out by defense counsel during the testimony and in closing argument. See e.g. RP 148-54, 200-01, 315-16. The evidence of L.L.B.'s false report of rape and

burglary was relevant to support the defense theory of the case. Contrary to the trial court's ruling, the probative value was not insignificant. Moreover, the incident of false reporting in February 2008 occurred during the same timeframe as the current offense. Accordingly, the trial court erred in refusing to admit this evidence.

At page 8 of its opinion, this Court states, "Mr. Baker's argument fails because the record does not support his claim that L.L.B. made a false report of rape." Slip Op. p 8. This statement is incorrect. During questioning outside the presence of the jury, L.L.B. admitted calling the police and admitted that the rape report was false. RP 175, 176-77. This statement by L.L.B. is as much a part of the record as the rest of L.L.B.'s testimony and cannot be ignored in this manner.

3. Mr. Baker' constitutional right to a jury trial was violated by the court's instructions, which affirmatively misled the jury about its power to acquit.

As part of the "to-convict" instructions used to convict Mr. Baker, the trial court instructed the jury as follows: "If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty." CP 253, 255, 256. This is standard language from the pattern instructions. *See* WPIC 28.02, WPIC 35.23.02. Mr. Baker contends there is no constitutional "duty to convict" and that the instruction

accordingly misstates the law. The instruction violated Mr. Baker's right to a properly instructed jury. [2]

a. Standard of review. Constitutional violations are reviewed *de novo*. Bellevue School Dist. v. E.S., 171 Wn.2d 695, 702, 257 P.3d 570 (2011). Jury instructions are reviewed *de novo*. State v. Bennett, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). Instructions must make the relevant legal standard manifestly apparent to the average juror. State v. Kyllo, 166 Wn.2d 856, 864, 215 P.3d 177 (2009).

b. The United States Constitution. In criminal trials, the right to jury trial is fundamental to the American scheme of justice. It is thus further guaranteed by the due process clauses of the Fifth and Fourteenth Amendments. Duncan v. Louisiana, 391 U.S. 145, 156, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968); Pasco v. Mace, 98 Wn.2d 87, 94, 653 P.2d 618 (1982).

c. Washington Constitution. The Washington Constitution provides greater protection to its citizens in some areas than does the United States Constitution. State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986). Under the Gunwall analysis, it is clear that the right to jury trial is such an area. Pasco v. Mace, *supra*;

---

[2] The Court of Appeals rejected the arguments raised here in its decision in State v. Meggyesy, 90 Wn. App. 693, 958 P.2d 319, *rev denied*, 136 Wn.2d 1028 (1998), *abrogated on other grounds by* State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005); *accord* State v. Brown, 130 Wn. App. 767, 124 P.3d 663 (2005); State v. Wilson, 176 Wn. App. 147, 151,307 P.3d 823 (2013), *review denied*.179 Wn.2d 1012 (2014). Counsel respectfully contends Meggyesy was incorrectly decided.

Sofie v. Fiberboard Corp., 112 Wn.2d 636, 656,771 P.2d 711, 780 P.2d 260 (1989).

i. The textual language of the state constitution.

The drafters of our state constitution not only granted the right to a jury trial, Const. art. 1, § 22,[3] they expressly declared it "shall remain inviolate." Const. art. 1, § 21.[4] Article 1, section 21 "preserves the right [to jury trial] as it existed in the territory at the time of its adoption." Pasco v. Mace, 98 Wn.2d at 96; State v. Strasburg, 60 Wash. 106, 115, 110 P. 1020 (1910). The right to trial by jury "should be continued unimpaired and inviolate." Strasburg, 60 Wash. at 115.

The difference in language suggests the drafters meant something different from the federal Bill of Rights. See Hon. Robert F. Utter, Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491, 515 (1984) (Utter).

While the Court in State v. Meggyesy may have been correct when it found there is no specific constitutional language that addresses this precise issue, the language that *is* there indicates the right to a jury trial is so fundamental that any infringement violates the constitution.

---

[3] Rights of Accused Persons. In criminal prosecutions, the accused shall have the right ... to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed ... .

[4] "The right of trial by jury shall remain inviolate ... ."

ii. An independent analysis is warranted.

All six Gunwall factors favor an independent application of Article I, Sections 21 and 22 of the Washington Constitution in this case. The state constitution provides greater protection than the federal constitution, and prohibits a trial court from affirmatively misleading a jury about its power to acquit. State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986).

d. Jury's power to acquit. A court may never direct a verdict of guilty in a criminal case. United States v. Garaway, 425 F.2d 185 (9th Cir. 1970) (directed verdict of guilty improper even where no issues of fact are in dispute); State v. Holmes, 68 Wash. 7, 12-13, 122 Pac. 345 (1912). If a court improperly withdraws a particular issue from the jury's consideration, it may deny the defendant the right to jury trial. United States v. Gaudin, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995) (improper to withdraw issue of "materiality" of false statement from jury's consideration); *see* Neder v. United States, 527 U.S. 1, 8, 15-16, 119 S. Ct. 1827, 144 L.Ed.2d 35 (1999) (omission of element in jury instruction subject to harmless error analysis).

Also well-established is "the principle of noncoercion of jurors," established in Bushell's Case, Vaughan 135, 124 Eng. Rep. 1006 (1671). Edward Bushell was a juror in the prosecution of William Penn for unlawful assembly and disturbing the peace. When the jury refused to convict, the court fined the jurors for disregarding

the evidence and the court's instructions. Bushell was imprisoned for refusing to pay the fine. In issuing a writ of habeas corpus for his release, Chief Justice Vaughan declared that judges could neither punish nor threaten to punish jurors for their verdicts. *See generally* Alschuler & Deiss, A Brief History of the Criminal Jury in the United States, 61 U. Chi. L. Rev. 867, 912-13 (1994).

If there is no ability to review a jury verdict of acquittal, no authority to direct a guilty verdict, and no authority to coerce a jury in its decision, there can be no "duty to return a verdict of guilty." Indeed, there is no authority in law that suggests such a duty.

> We recognize, as appellants urge, the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence... .If the jury feels that the law under which the defendant is accused is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic or passion, the jury has the power to acquit, and the courts must abide by that decision.

United States v. Moylan, 417 F.2d 1002, 1006 (4th Cir. 1969), *cert. denied*, 397 U.S. 910 (1970).

Under Washington law, juries have always had the ability to deliver a verdict of acquittal that is against the evidence. Hartigan v. Washington Territory, 1 Wash.Terr. 447 (1874). A judge cannot direct a verdict for the state because this would ignore "the jury's prerogative to acquit against the evidence, sometimes referred to as the jury's pardon or veto power." State v. Primrose, 32 Wn. App. 1,

4, 645 P.2d 714 (1982). *See also* State v. Salazar, 59 Wn. App. 202, 211, 796 P .2d 773 (1990) (relying on jury's "constitutional prerogative to acquit" as basis for upholding admission of evidence). An instruction telling jurors that they *may not* acquit if the elements have been established affirmatively misstates the law, and deceives the jury as to its own power. Such an instruction fails to make the correct legal standard manifestly apparent to the average juror. Kyllo, 166 Wn.2d at 864.

This is not to say there is a right to instruct a jury that it may disregard the law in reaching its verdict. *See, e.g.*, United States v. Powell, 955 F.2d 1206, 1213 (9th Cir. 1991) (reversing conviction on other grounds). However, if the court may not tell the jury it may disregard the law, it is at least equally wrong for the court to direct the jury that it has a duty to return a verdict of guilty if it finds certain facts to be proved.

e. Scope of jury's role re: fact and law. Although a jury may not strictly determine what the law is, it does have a role in applying the law of the case that goes beyond mere fact-finding. In Gaudin, the Court rejected limiting the jury's role to merely finding facts. Gaudin, 515 U.S. at 514-15. Historically the jury's role has never been so limited: "[O]ur decision in no way undermine[s] the historical and constitutionally guaranteed right of a criminal defendant to demand that the jury decide guilt or innocence on every issue, which includes application of

the law to the facts." Gaudin, 515 U.S. at 514. *See also* John H. Wigmore, "A Program for the Trial of a Jury", 12 Am. Jud. Soc. 166 (1929).

Furthermore, if such a "duty" to convict existed, the law lacks any method of enforcing it. If a jury acquits, the case is over, the charge dismissed, and there is no further review. In contrast, if a jury convicts when the evidence is insufficient, the court has a legally enforceable duty to reverse the conviction or enter a judgment of acquittal notwithstanding the verdict. Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980); State v. Carlson, 65 Wn. App. 153, 828 P.2d 30, *rev. denied*, 119 Wn.2d 1022 (1992).

Thus, a legal "threshold" exists before a jury may convict. A guilty verdict in a case that does not meet this evidentiary threshold is contrary to law and will be reversed. The "duty" to return a verdict of not guilty, therefore, is genuine and enforceable by law. A jury must return a verdict of not guilty if there is a reasonable doubt; however, it may return a verdict of guilty if, and only if, it finds every element proven beyond a reasonable doubt.

f. Contrary case law is based on a poor analysis; this Court should decide the issue differently.[5] In State v. Meggyesy, the appellant challenged the WPIC's "duty to return a verdict of guilty" language. The court held the federal and state

constitutions did not "preclude" this language, and so affirmed. Meggyesy, 90 Wn. App. at 696.

In its analysis, Division One of the Court of Appeals characterized the alternative language proposed by the appellants—"you *may* return a verdict of guilty"—as "an instruction notifying the jury of its power to acquit against the evidence." 90 Wn. App. at 699. The court spent much of its opinion concluding there was no legal authority requiring it to instruct a jury it had the power to acquit against the evidence.

Divisions Two and Three have followed the Meggyesy holding. State v. Bonisisio, 92 Wn. App. 783, 964 P.2d 1222 (1998), *rev. denied*, 137 Wn.2d 1024 (1999); State v. Brown, 130 Wn. App. 767, 124 P.3d 663 (2005); State v. Wilson, 176 Wn. App. 147, 151, 307 P.3d 823 (2013), *review denied,* 179 Wn.2d 1012 (2014).

Appellant respectfully submits the Meggyesy analysis addressed a different issue. "Duty" is the challenged language herein. By focusing on the proposed remedy, the Meggyesy court side-stepped the underlying issue raised by its appellants: the instructions violated their right to trial by jury because the "duty to return a verdict of guilty" language required the juries to convict if they found that the State proved all of the elements of the charged crimes.

---

[5] A decision is incorrect if the authority on which it relies does not support it. State v. Nunez,

However, portions of the Meggyesy decision are relevant. The court acknowledged the Supreme Court has never considered this issue. 90 Wn. App. at 698. It recognized that the jury has the power to acquit against the evidence: "This is an inherent feature of the use of general verdict. But the power to acquit does not require any instruction telling the jury that it may do so." Id. at 700 (foot notes omitted). The court also relied in part upon federal cases in which the approved "to-convict" instructions did *not* instruct the jury it had a "duty to return a verdict of guilty" if it found every element proven. *See,* Meggyesy, 90 Wn. App. at 698 fn. 5.[6, 7] These concepts support Mr. Baker's position and do not contradict the arguments set forth herein.

The Meggyesy court incorrectly stated the issue. The question is not whether the court is required to tell the jury it can acquit despite finding each element has been proven beyond a reasonable doubt. The question is whether *the law* ever requires the jury to return a verdict of guilty. If the law never requires the jury to return a verdict of guilty, it is an incorrect statement of the law to instruct the jury it does. And an instruction that says it has such a duty

---

174 Wn.2d 707, 719, 285 P.3d 21 (2012).

[6] E.g., United States v. Powell, 955 F.2d 1206, 1209 (9th Cir.1991) ("In order for the Powells to be convicted, the government must have proved, beyond a reasonable doubt, that the Powells had failed to file their returns.").

[7] Indeed, the federal courts do not instruct the jury it "has a duty to return a verdict of guilty" if it finds each element proven beyond a reasonable doubt. *See* Ninth Circuit Model Criminal Jury Instructions: "In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt: ..."

impermissibly directs a verdict. Sullivan v. Louisiana, 508 U.S. 275, 124 L.Ed.2d 182, 113 S.Ct. 2078 (1993).

Unlike the appellant in Meggyesy,[8] Mr. Baker does not ask the court to approve an instruction that affirmatively notifies the jury of its power to acquit. Instead, he argues that jurors should not be affirmatively misled. This question was not addressed in either Meggyesy or Bonisisio; thus the holding of Meggyesy should not govern here. The Brown court erroneously found that there was "no meaningful difference" between the two arguments. Brown, 130 Wn. App. at 771. Meggyesy and its progeny should be reconsidered, and the issue should be analyzed on its merits.

g. The court's instructions in this case affirmatively misled the jury about its power to acquit even if the prosecution proved its case beyond a reasonable doubt. The instruction given in Mr. Baker's case did not contain a correct statement of the law. The court instructed the jurors that it was their "duty" to accept the law, and that it was their "duty" to convict the defendant if the elements were proved beyond a reasonable doubt. RP 163, 166, 168. A duty is "[a]n act or a course of action that is required of one by... law." *The American Heritage Dictionary* (Fourth Ed., 2000, Houghton Mifflin Company). The court's use of the word "duty" in the "to-convict" instruction conveyed to the jury that it *could*

[8] And the appellant in Bonisisio.

not acquit if the elements had been established. This misstatement of the law provided a level of coercion for the jury to return a guilty verdict, deceived the jurors about their power to acquit in the face of sufficient evidence, and failed to make the correct legal standard manifestly apparent to the average juror. Kyllo, 166 Wn.2d at 864. By instructing the jury it had a duty to return a verdict of guilty based merely on finding certain facts, the court took away from the jury its constitutional authority to apply the law to the facts to reach its general verdict.

The instruction creating a "duty" to return a verdict of guilty was an incorrect statement of law. The error violated Mr. Baker's state and federal constitutional right to a jury trial. Accordingly, his convictions must be reversed and the case remanded for a new trial. Hartigan, *supra.*

VI. CONCLUSION.

For the reasons stated herein, Defendant/Petitioner respectfully asks this Court to grant the petition for review and reverse the decision of the Court of Appeals.

Respectfully submitted November 3, 2014,

s/David N. Gasch
Attorney for Petitioner
WSBA #18270

PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on November 3, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of the brief of appellant:

Vance L. Baker
#349587
PO Box 2049
Airway Heights WA 99001

prosecuting@co.benton.wa.us
Andrew Kelvin Miller
Benton County Prosecutors Office
7122 W. Okanogan Place, Bldg. A
Kennewick WA 99336-2359

s/David N. Gasch, WSBA #18270
Gasch Law Office
P.O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
FAX: None
gaschlaw@msn.com

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

July 22, 2014

E-mail
Anita Isabelle Petra
Andrew Kelvin Miller
Benton County Prosecutors Office
7122 W Okanogan Ave Ste G
Kennewick, WA 99336-2341

David N. Gasch
Gasch Law Office
PO Box 30339
Spokane, WA 99223-3005
gaschlaw@msn.com

CASE # 302563
State of Washington v. Vance Lynn Baker
BENTON COUNTY SUPERIOR COURT No. 081011520

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:pb
Enc.

c: **E-mail** Hon. Vic Vanderschoor
c: Vance Lynn Baker
#349587
PO Box 2049
Airway Heights, WA 99001-2049

FILED
JULY 22, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. VANCE LYNN BAKER, Appellant.	)	No. 30256-3-III UNPUBLISHED OPINION

PRICE, J.* — Vance Baker appeals his convictions for one count of child molestation in the second degree and two counts of child molestation in the first degree, contending the State failed to prove a crime charged in the amended information. He also maintains that the trial court (1) improperly excluded evidence that one of the victims made a false report to police, (2) incorrectly instructed the jury that it had a duty to convict if the State proved its case beyond a reasonable doubt, and (3) erred in imposing a variable term of community custody. In his pro se statement of additional grounds for review (SAG), Mr. Baker asserts additional errors.

---

* Judge Michael Price is serving as judge pro tempore of the Court of Appeals pursuant to RCW 2.06.150.

We affirm Mr. Baker's convictions, but remand for resentencing.

FACTS

During October 2008, 13-year-old L.L.B. disclosed to family that her uncle, Vance Baker, had been sexually molesting her. Detectives subsequently interviewed L.L.B. and she disclosed multiple incidents of sexual abuse by Mr. Baker. After additional disclosures of sexual abuse from Mr. Baker's daughter, M.J.B., the State filed a third amended information charging Mr. Baker with one count of first degree rape of a child, one count of child molestation in the second degree, and two counts of child molestation in the first degree.

Before trial, the State moved to exclude references to a 911 telephone call made to police by a male reporting that L.L.B. was the victim of a rape at her home. The State asked that the defense make an offer of proof outside the presence of the jury to address the issue. During a sidebar, defense counsel argued that the court should allow evidence that L.L.B. had made a false report about being raped. The prosecutor responded that there was no record of any report or of police taking a rape report from L.L.B.

When questioned about the alleged incident, L.L.B. could not recall the details of the telephone call. During cross-examination, she stated that she had told a friend, D., about her uncle's sexual abuse, and that D. called the police, mistakenly believing L.L.B.

was in danger of being raped. She explained, "[I]t was completely misunderstood. It was in terms of like taking [sic] as if I was saying if it was happening but it was taken as I was saying this is happening right now and the cops came to my house." Report of Proceedings (RP) at 177. Defense counsel questioned L.L.B. as follows:

> Q Police responded [to] the house because you told them on the telephone that you were being raped?
> A I wasn't on the telephone. It wasn't like I was being raped. It was speaking like—I can't explain. It was—
> . . . .
> Q Was [D.] in your house?
> A No.
> Q Then how would have [D.] called the police? How would he have known to call the police?
> A I was talking to him on the computer.
> Q You informed him that you were being raped and needed help?
> A I didn't say I was being raped and I need help but I don't recall saying any of that. Like I said, I don't remember hardly any of that night.

RP at 178.

The trial court granted the State's motion to exclude the evidence, ruling it had "very limited probative value with regard to credibility." RP at 181.

At trial, L.L.B. and M.J.B. testified that Mr. Baker touched their vaginas multiple times over the course of many years. Mr. Baker's defense was that L.L.B. and M.J.B. fabricated the allegations of abuse because of a pending divorce from M.J.B.'s mother.

The jury returned a verdict of guilty of two counts of first degree child molestation and one count of second degree child molestation. In addition to 120 months' confinement, the judgment and sentence ordered Mr. Baker to serve "the longer of" the period of early release or 48 months of community custody. Clerk's Papers (CP) at 299.

ANALYSIS

Crime Charged Versus Crime Proved. Mr. Baker first contends that the State failed to prove the crime it charged. He points out that count II (child molestation in the second degree) of the third amended information charged Mr. Baker with engaging in sexual contact with L.L.B. between May 25, 2004, and May 24, 2007, yet the jury was instructed that the State had to prove the sexual contact occurred between May 25, 2007, and November 1, 2008.

Whether the State proved something other than what it charged is a question of law that we will review de novo. *State v. Porter*, 150 Wn.2d 732, 735, 82 P.3d 234 (2004).

RCW 9A.44.086(1) defines child molestation in the second degree:

> A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

The third amended information charged in part:

> That the said **VANCE LYNN BAKER** in the County of Benton, State of Washington, during the time intervening between the 25th day of May, 2004, and the 24th day of May, 2007, in violation of RCW 9A.44.073, did engage in sexual intercourse with and was at least twenty four months older than L.L.B. (D.O.B.: DOB 5-25-1995), a person who was less than twelve years of age and not married to the defendant.

CP at 147.

The State concedes that the date provided in the third amended information is in error because L.L.B. turned 12 on May 25, 2007, and the charge of second degree child molestation requires that the victim be older than 12 at the time of the crime. However, it contends that time is not a material element of the crime and that Mr. Baker was apprised of all the elements of the crime.

A review of the charging documents related to the second degree child molestation charge confirms that the date given in the third amended information was an error. The previous informations provided date ranges of May 25, 2007, to May 25, 2008. In view of the correct dates in the previous charging documents, the incorrect date in the third amended information appears to be a clerical error.

The issue before us is whether this mistaken date in the charging document is fatal to the conviction predicated upon that document. Relying on *State v. Goldsmith*, 147 Wn. App. 317, 195 P.3d 98 (2008), Mr. Baker maintains that because the dates in the "to

convict" jury instruction differ from those in the information by as much as four years, the jury did not find Mr. Baker guilty of the crime charged in the information.

In *Goldsmith*, we held that double jeopardy prohibited further prosecution for child molestation based on the same events where the trial court vacated a conviction after the State charged one means of committing child molestation but proved another means of committing the crime. *Id.* at 326. We held the State must prove the crime it charged even when through inadvertence it charges one crime but proves another. *Id.* at 322.

This case is distinguishable from *Goldsmith*. The State here did not charge one means and prove another. In *Goldsmith*, the State first charged Mr. Goldsmith only with committing child molestation by one of two alternative means. *Id.* Contrary to Mr. Baker's assertion, the incorrect time frame in the third amended information does not render the crime a legally distinct one from that which was provided.

The information provided all the essential elements of the crime. Time is not an essential element of child molestation, so long as there is no defense of alibi. *State v. Hayes*, 81 Wn. App. 425, 432-33, 914 P.2d 788 (1996). RCW 10.37.050(5) and (7) provide that an information is sufficient if it indicates that the crime was committed before the information was filed and within the statute of limitations, and the crime is stated with enough certainty for the court to pronounce judgment upon conviction.

Here, the State was only required to prove that the defendant knowingly had sexual contact with the victim, who was not his wife, when the victim was at least 12 years old but less than 14 years old. RCW 9A.44.086(1). The State proved these elements. Finally, Mr. Baker did not rely on an alibi defense. Rather, he attacked L.L.B.'s credibility and defended against the charge by presenting evidence that L.L.B. fabricated the allegations.

The State proved the crime charged in the information.

Exclusion of L.L.B.'s Alleged False Report to Police. Mr. Baker next contends that the trial court erroneously excluded evidence of L.L.B.'s alleged false report of a rape. He contends the evidence should have been admitted because it was relevant to his defense that L.L.B. fabricated the allegations of child molestation.

Citing ER 608, the trial court excluded the evidence as irrelevant for impeachment purposes. We review a trial court's decision on the admissibility of evidence for an abuse of discretion. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). A trial court's determination to exclude evidence may be sustained on any proper basis in the record. *State v. Markle*, 118 Wn.2d 424, 438, 823 P.2d 1101 (1992).

Evidence tending to establish a party's theory is always relevant. *State v. Harris*, 97 Wn. App. 865, 872, 989 P.2d 553 (1999). Under ER 402, all relevant evidence is admissible unless a constitutional requirement, statute, rule, or regulation limits its admission. ER 608(b) provides:

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility . . . may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness.

Mr. Baker's argument fails because the record does not support his claim that L.L.B. made a false report of rape. During the questioning detailed above, L.L.B. utterly denied making a telephone call to police, but otherwise could not recall much detail regarding the alleged false report. At most, it appears that L.L.B.'s friend called the police, mistakenly believing that L.L.B. was being raped. Accordingly, the court did not abuse its discretion in concluding that this evidence was of marginal relevance to impeach L.L.B.'s credibility.

The trial court did not abuse its discretion in excluding evidence of L.L.B.'s alleged false report of rape.

Instructional Error. Mr. Baker next contends that the court erred by instructing the jury as follows: "If you find from the evidence that each of these elements has been

proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty." CP at 253, 255, 256. The language of this instruction is from the Washington pattern jury instructions (criminal). Mr. Baker contends that under Washington law, juries never have a duty to return a verdict of guilty and that the instruction violates article I, sections 21 and 22 of the Washington Constitution. According to Mr. Baker, the court should have instructed the jury that it "may" convict because there is no "duty to convict" under Washington law. Citing *Leonard v. Territory*, 2 Wash. Terr. 381, 7 P. 872 (1885), he argues the instruction affirmatively misled the jury about its historical power to acquit against the evidence.

The rationale that underlies Mr. Baker's challenge has been rejected by all three Divisions of this court. In *State v. Meggyesy*, Division One of this court upheld an identical instruction, holding that it did not violate the federal or state constitutions. *State v. Meggyesy*, 90 Wn. App. 693, 701-04, 958 P.2d 319 (1998), *overruled on other grounds in State v. Recuenco*, 154 Wn.2d 156, 110 P.3d 188 (2005); *State v. Bonisisio*, 92 Wn. App. 783, 793-94, 964 P.2d 1222 (1998).

Division Two of this court followed suit in *Bonisisio*, and more recently in *State v. Brown*, 130 Wn. App. 767, 124 P.3d 663 (2005). In *Brown*, the defendant asserted that the same "duty to convict" instruction violated his right to a jury trial because the jury

instruction misled the jury into believing that it lacked the power to nullify. In rejecting the defendant's argument, the *Brown* court held that the "duty" instruction does not misstate the law, and thus no constitutional violation occurred. *Id.* at 770-71.

This court agreed with the reasoning of *Meggyesy* and *Brown* in *State v. Wilson*, 176 Wn. App. 147, 307 P.3d 823 (2013), *review denied*, 179 Wn.2d 1012 (2014), and held that the "duty to convict" instruction at issue in that case did not violate the defendant's constitutional right to a jury trial. *Id.* at 151.

Mr. Baker provides no persuasive argument to reverse these cases. The purpose of a jury instruction is to provide the jury with the applicable law. *State v. Kennard*, 101 Wn. App. 533, 536-37, 6 P.3d 38 (2000) (quoting *State v. Tili*, 139 Wn.2d 107, 126, 985 P.2d 365 (1999)). The power of what amounts to jury nullification is not applicable law here. Accordingly, we find the jury was properly instructed.

Community Custody. Finally, Mr. Baker contends that the court did not have the statutory authority to impose a 48-month variable term of community custody contingent upon the amount of early release time. The State concedes that 48 months is an incorrect term of community custody, but asserts that the court should apply the sentencing laws in effect when the crimes were committed.

The State is correct. Courts must correct an erroneous sentence upon discovery. *In re Pers. Restraint of Call*, 144 Wn.2d 315, 331-32, 28 P.3d 709 (2001). A trial court may only impose a sentence authorized by statute. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 604 P.2d 1293 (1980). Any sentence imposed under the authority of the Sentencing Reform Act of 1981, chapter 9.94A RCW, must be in accordance with the law in effect at the time the offense was committed. RCW 9.94A.345; *State v. Harvey*, 109 Wn. App. 157, 163, 34 P.3d 850 (2001), *overruled on other grounds in State v. Thomas*, 150 Wn.2d 666, 80 P.3d 168 (2003)). Whether the challenged aspects of a sentence were imposed with the requisite statutory authority is a question of law, reviewed de novo. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Mr. Baker was convicted of crimes that took place between 1996 and 2008. The community custody statutes in effect at the dates of the offenses are governed by separate provisions. First, when a court sentences a person for a sex offense committed between July 1, 1990, and June 6, 1996, former RCW 9.94A.120(9)(b) (1996) requires that it impose "community placement for two years or up to the period of earned early release . . . whichever is longer." Here, the two first degree child molestation offenses occurred prior to June 6, 1996, so the sentencing court should have imposed two years of community placement.

As to crimes committed in 2007, former RCW 9.94A.715 (2006) provided for a variable term of community custody. Under former RCW 9.94A.715, a sentencing court was required to sentence an offender "to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer." WAC 437-20-010 provided that the appropriate term of community custody for a sex offense was 36 to 48 months. Accordingly, we vacate the community custody portion of Mr. Baker's sentence and remand for imposition of community placement consistent with the law in effect between 1996 and 2008.

Additional Grounds for Review. In his pro se SAG, Mr. Baker claims that we should consider a letter from Sharon Skinner, in which she stated in part:

> During the trial I heard the Judge tell Attorney Holt that if [L.L.B.] admitted she had lied about being raped by someone in her home, which resulted in a Swat Team being sent to her house, that he (the Judge) would allow this information to be presented to the Jury. I, along with the Judge, the Attorney and others in the Courtroom, heard [L.L.B.] admit that she had lied about the rape.

Suppl. SAG at 3.

Mr. Baker also alleges that Jennifer L. Johnson, a former prosecutor in his case, was allowed to be a juror in his trial in violation of his due process right to a fair trial. Mr. Baker attaches handwritten copies of the initial information and a motion for arrest

signed by a "Jennifer L. Johnson" and a juror questionnaire signed by "Jennifer Johnson," claiming they are the same person.

These claims either involve matters outside the record, *State v. McFarland*, 127 Wn.2d 322, 335, 338 n.5, 899 P.2d 1251 (1995) (matters outside record must be raised in a personal restraint petition), or are insufficiently argued. RAP 10.10(c). Although RAP 10.10(c) states that citation to authorities is not required in statements of additional grounds for review, the rule also states that the appellate court will not consider the SAG for review if it does not inform the court of the nature and occurrence of the alleged errors. Here, Mr. Baker fails to adequately describe the nature and occurrence of any alleged errors as required by RAP 10.10(c). Accordingly, we are unable to address his claims.

Moreover, both claims would require us to consider affidavits and other evidence outside the record below and on appeal. RAP 9.2(b). If Mr. Baker wishes to raise issues of facts and evidence outside the record, he must raise them in a personal restraint petition. *McFarland*, 127 Wn.2d at 335.

We vacate the terms of community custody and remand for resentencing. We otherwise affirm the judgment and sentence.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Price, J.P.T.

WE CONCUR:

Korsmo, J.

Siddoway, C.J.

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

October 7, 2014

E-mail
Anita Isabelle Petra
Andrew Kelvin Miller
Benton County Prosecutors Office
7122 W Okanogan Ave Ste G
Kennewick, WA 99336-2341

David N. Gasch
Gasch Law Office
PO Box 30339
Spokane, WA 99223-3005
gaschlaw@msn.com

CASE # 302563
State of Washington v. Vance Lynn Baker
BENTON COUNTY SUPERIOR COURT No. 081011520

Counsel:

Enclosed is a copy of the Order Denying Motion for Reconsideration.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a Petition for Review, an original and a copy of the Petition for Review in this Court within 30 days after the Order Denying Motion for Reconsideration is filed (may be filed by electronic facsimile transmission). RAP 13.4(a). The Petition for Review will then be forwarded to the Supreme Court.

If the party opposing the petition wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service.

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:pb
Enc.

FILED
OCTOBER 7, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 30256-3-III**
	)	
Respondent,	)	
	)	**ORDER DENYING**
v.	)	**MOTION FOR**
	)	**RECONSIDERATION**
VANCE LYNN BAKER,	)	
	)	
Appellant.	)	

The court has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED that the motion for reconsideration of this court's decision of July 22, 2014, is hereby denied.

DATED: October 7, 2014

PANEL: Judge Pro Tempore Price, Judge Korsmo, and Judge Siddoway

FOR THE COURT:

Laurel H. Siddoway, CJ

LAUREL H. SIDDOWAY
CHIEF JUDGE

GASCH LAW OFFICE

November 03, 2014 - 11:15 AM

Transmittal Letter

Document Uploaded:	302563-Baker, Vance Petition4Review 11-3-14.pdf
Case Name:	State v. Vance Baker
Court of Appeals Case Number:	30256-3
Party Respresented:	appellant
Is This a Personal Restraint Petition?	☐ Yes ☑ No
	Trial Court County: ____ - Superior Court # ____

Type of Document being Filed:

- ☐ Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☐ Motion: ____
- ☐ Response/Reply to Motion: ____
- ☐ Brief
- ☐ Statement of Additional Authorities
- ☐ Affidavit of Attorney Fees
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ____ Hearing Date(s): _____
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☑ Other: petition for review

Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to prosecuting@co.benton.wa.us.

Sender Name: David N Gasch - Email: gaschlaw@msn.com

GASCH LAW OFFICE

November 03, 2014 - 11:16 AM

Transmittal Letter

Document Uploaded:	302563-COA Opinion 7-22-14.pdf
Case Name:	State v. Vance Baker
Court of Appeals Case Number:	30256-3
Party Respresented:	appellant
Is This a Personal Restraint Petition?	☐ Yes ☑ No

Trial Court County: ____ - Superior Court # ____

Type of Document being Filed:

- ☐ Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☐ Motion: ____
- ☐ Response/Reply to Motion: ____
- ☐ Brief
- ☐ Statement of Additional Authorities
- ☐ Affidavit of Attorney Fees
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ____ Hearing Date(s): _____
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☑ Other: petition for review Appendix A

Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to prosecuting@co.benton.wa.us.

Sender Name: David N Gasch - Email: gaschlaw@msn.com

GASCH LAW OFFICE

November 03, 2014 - 11:17 AM

Transmittal Letter

Document Uploaded:	302563-COA denies mtn 4 reconsideration 10-7-14
Case Name:	State v. Vance Baker
Court of Appeals Case Number:	30256-3
Party Respresented:	appellant
Is This a Personal Restraint Petition?	☐ Yes ☑ No
	Trial Court County: ___ - Superior Court # ___

Type of Document being Filed:

- ☐ Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☐ Motion: ___
- ☐ Response/Reply to Motion: ___
- ☐ Brief
- ☐ Statement of Additional Authorities
- ☐ Affidavit of Attorney Fees
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ___ Hearing Date(s): _____
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☑ Other: petition for review Appendix B

Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to prosecuting@co.benton.wa.us.

Sender Name: David N Gasch - Email: gaschlaw@msn.com