

64126-3

64126-3

NO. 64126-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DONALD COCHRANE,

Appellant.

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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED.

1. Whether the defendant's conviction for felony driving under the influence should be dismissed without prejudice where the information failed to allege an essential element of the crime?

2. Whether the evidence of felony driving under the influence was sufficient where the certified court dockets showing prior convictions for driving under the influence, driving while intoxicated and physical control while intoxicated established four prior convictions.

B. STATEMENT OF THE CASE.

1. PROCEDURAL FACTS.

Donald Cochrane was charged by information with felony driving under the influence (hereinafter DUI) and failure to obey a police officer. CP 1-2. Count I, charging felony DUI, alleged that Cochrane had "at least four prior offenses, as defined under RCW 46.61.5055(13)(a)." CP 1. The Prosecutor's Case Summary, which was filed at the same time, detailed five convictions within the past ten years, identifying them by date, charge, court and case number. CP 5.

There was no dispute prior to trial as to whether Cochrane was charged with felony DUI. The defense never objected to the case proceeding in superior court rather than district court. In the defense Motion to Suppress, defense counsel acknowledged that "The Defendant is charged with felony DUI." CP 22.

The defendant waived his right to a jury trial. CP 32. During closing argument, defense counsel challenged the sufficiency of the information, arguing for the first time, and contrary to his prior pleadings, that the defendant had not been charged with a felony. RP 8/26/09 50. The court ruled that the information was sufficient, and found the defendant guilty as charged. RP 8/26/09 58, 60-73; CP 33-37. The court sentenced Cochrane to 60 months of confinement. CP 42-52.

2. FACTS OF THE CRIME.

On January 9, 2009, Seattle Police Officer Jeffrey Thompson saw a car driven by the defendant, Donald Cochrane, almost hit a parked car and then swerve several times over the center line of the roadway. RP 8/25/09 79-81. Officer Thompson followed Cochrane, who then sat through a green light at an intersection and made a right turn after the light turned yellow. RP 8/25/09 82.

Officer Thompson activated his lights and siren to stop Cochrane, but Cochrane continued to drive for three blocks. RP 8/25/09 83. Eventually, Cochrane pulled over, but then sped off as Officer Thompson approached on foot. RP 8/25/09 84-85. Officer Thompson finally caught up with Cochrane as he sped through residential streets. RP 8/25/09 85-87.

When Cochrane exited the car, as ordered by Officer Thompson, he had trouble keeping his balance and was unable to follow simple directions. RP 8/25/09 87-88. His face was flushed, his speech was slurred, and there was a strong odor of alcohol on his breath. RP 8/25/09 89-90. He fell asleep in the patrol car. RP 8/25/09 92. Officer Thompson observed numerous cans and bottles of beer inside Cochrane's car. RP 8/25/09 90.

Cochrane refused a breath alcohol test, so the police transported him to the hospital where a nurse obtained a blood sample. RP 8/25/09 62-64, 102. Cochrane's blood alcohol level was 0.25. RP 8/26/09 30.

3. FACTS REGARDING THE PRIOR CONVICTIONS.

At trial, the State presented certified copies of court dockets showing that Cochrane had four prior convictions for driving under

the influence or physical control within the past ten years. Ex. 12, 13, 14, 15, 16. The defense objected to these dockets as inadmissible hearsay violating Cochrane's right to confrontation and as lacking proper foundation. RP 8/26/09 35. The court overruled the defense objection and admitted the dockets. RP 8/26/09 38.

The certified court dockets reflect that in King County District Court Case No. 295853, Cochrane was found guilty of driving while intoxicated pursuant to RCW 46.61.502, with a violation date of May 30, 1999. Ex. 12. In Seattle Municipal Court Case No. 371777, Cochrane was found guilty of physical control while intoxicated pursuant to Seattle Municipal Code 11.56.020, with a violation date of November 24, 1999. Ex. 13. In Everett Municipal Court Case No. CR0043051, Cochrane was found guilty of driving while intoxicated pursuant to RCW 46.61.502, with a violation date of June 15, 2000. Ex. 14. In Seattle Municipal Court Case No. 424116, Cochrane was found guilty of driving while intoxicated pursuant to Seattle Municipal Code No. 11.56.020, with a violation date of May 11, 2002. Ex. 15. The State also presented a stipulation that Cochrane signed in April of 2008 in Pierce County Cause No. 07-1-03922-0 in which he acknowledged these four prior convictions. Ex. 16.

At sentencing, the State presented evidence of six more alcohol-related driving offenses that were included in Cochrane's offender score of 13. CP 61-63, 43.

C. ARGUMENT.

1. THE CHARGING DOCUMENT FAILED TO ALLEGE AN ESSENTIAL ELEMENT OF THE CRIME; THE REMEDY IS DISMISSAL WITHOUT PREJUDICE.

Cochrane contends that the charging document was fatally defective in that it failed to set forth all essential elements of the crime of felony DUI, and that his conviction should be reversed and remanded for entry of judgment as to the lesser included offense of misdemeanor DUI. Cochrane is partly correct. The information was defective in failing to allege the essential element that the four prior offenses were "within ten years." However, the information was adequate in all other respects. Moreover, the remedy is dismissal without prejudice. The State has the right to refile the charge.

The federal and state constitutions require that the State give notice to the defendant of the charged offense so that he may prepare a defense. State v. Goodman, 150 Wn.2d 774, 784, 83 P.3d 410 (2004). In enforcing the constitutional notice

requirement, the state supreme court has cautioned that reviewing courts should avoid technical rules and tailor their decisions toward the precise evil which the constitutional provisions were designed to prevent -- charging documents that prejudice the defendant's ability to mount an adequate defense by failing to provide sufficient notice. State v. Schaffer, 120 Wn.2d 616, 620, 845 P.2d 281 (1993).

The charging document must allege facts that identify the crime charged and support the elements of the charged offense. State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). It must include all statutory and nonstatutory elements of the charged offense. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). This requirement has been termed the "essential elements" requirement. State v. Williams, 162 Wn.2d 177, 183, 170 P.3d 30 (2007). An "essential element is one whose specification is necessary to establish the very illegality of the behavior" charged. State v. Johnson, 119 Wn.2d 143, 147, 829 P.3d 1078 (1992).

If this Court determines that a challenge involves an essential element, and not simply vagueness, and the defendant challenged the information before verdict, the charging language must be strictly construed and the defendant need not show prejudice. Johnson, 119 Wn.2d at 143. If the challenge is raised

for the first time on appeal, the court applies a liberal test to determine whether the required elements appear in any form in the charging document. Kjorsvik, 117 Wn.2d at 105-06. The test is as follows: (1) do the necessary facts appear in any form by fair construction in the charging document; and if so, (2) can the defendant show that he or she was actually prejudiced by inartful language which caused an actual lack of notice? Id.

RCW 46.61.502(1)(a)-(c) defines the crime of driving under the influence, which contains three alternative means. RCW 46.61.502(6) provides that driving under the influence is a class C felony if "The person has four or more prior offenses within the ten years as defined in RCW 46.61.5055" or the person has been convicted of vehicular homicide or vehicular assault while under the influence. RCW 46.61.502(5) provides that driving under the influence is otherwise a gross misdemeanor. RCW 46.51.5055 is the "penalty schedule" for alcohol-related driving offenses. RCW 46.61.5055(14)(a) defines "prior offense" as used in RCW 46.61.502 as including convictions for violations of RCW 46.61.502 and 46.61.504 or "an equivalent local ordinance." RCW 46.61.5055(c) defines "within ten years" as meaning "the arrest for

a prior offense occurred within ten years of the arrest for the current offense."

In this case, Count I of the information notified Cochrane of the charge as follows:

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse DONALD HARER COCHRANE of the crime of **Felony DUI**, committed as follows:

That the defendant DONALD HARER COCHRANE in King County, Washington, on or about January 9, 2009, drove a vehicle within this state and while driving had an amount of alcohol in his body sufficient to cause a measurement of his blood to register 0.08 percent or more by weight of alcohol within two hours after driving, as shown by analysis of the person's blood; while under the influence or affected by intoxicating liquor or any drug; while under the combined influence of or affected by intoxicating liquor or any drug; having at least four prior offenses, as defined under RCW 46.61.5055(13)(a);

Contrary to RCW 46.61.502 and 46.61.5055, and against the peace and dignity of the State of Washington.

CP 1.

a. Failure To Allege "Within Ten Years."

Cochrane alleges that the State was required to allege that the four prior convictions were "within 10 years" in the information. Cochrane is correct, and this objection was raised at trial. "Within

10 years" is a statutory element set forth in the statute defining what elevates a DUI to a felony DUI. That element cannot be found, by any construction, in the information. The information failed to sufficiently notify Cochrane that the four prior offenses had to be within ten years in order for the State to prove felony DUI. As such, it was constitutionally deficient.

b. Failure To Specify Prior Convictions.

Cochrane alleges that the State was required to specifically allege each prior conviction that the State was relying on to prove felony DUI in the charging document. This claim should be rejected. The details of each prior conviction are not essential elements of the crime.

In light of the above concession, this claim might be considered moot. However, an appellate court will reach the merits of a moot appeal if the case presents a matter of continuing and substantial public interest. State v. Abd-Rahmaan, 120 Wn. App. 284, 288, 84 P.3d 944 (2004), reversed on other grounds, 154 Wn.2d 280, 111 P.3d 1157 (2005). The State does not believe that the details of the prior convictions must be alleged in the charging document, and does not charge the crime of felony DUI in

that manner. Thus, the issue raised here, although technically mooted by the State's concession above, presents an issue of substantial and continuing public importance.

When addressing a challenge to a charging document on appeal, the court must distinguish between a charging document that fails to allege the essential elements of the crime and a charging document that is merely unclear as to the acts upon which the charged crime is based. State v. Leach, 113 Wn.2d 679, 686, 782 P.2d 552 (1989); State v. Holt, 104 Wn.2d 315, 320, 704 P.2d 1189 (1985). When the information contains all elements of the charged crime, but is vague, "the charge is not subject to dismissal unless the prosecuting officials refuse to comply with an order calling for greater particularity." Leach, 113 Wn.2d at 687; State v. Bonds, 98 Wn.2d 1, 17, 653 P.2d 1024 (1982). A defendant may not challenge a charging document for "vagueness" on appeal if he did not request a bill of particulars at trial. Leach, 113 Wn.2d at 687.

Thus, this Court must first determine whether an essential element is missing or whether the true claim of error is that the charging language is vague. For example, in State v. Plano, 67 Wn. App. 674, 679-80, 838 P.2d 1145 (1992), this Court

rejected the defendant's argument that the name of the alleged victim was an essential element of assault in the fourth degree and held that the defendant waived his challenge by not seeking a bill of particulars. Similarly, in State v. Winings, 126 Wn. App. 75, 107 P.3d 141 (2005), the defendant claimed that the information charging second-degree assault was constitutionally defective because it failed to identify the victim and the weapon used. This Court concluded that, although the information might be vague, the defendant waived the issue on appeal by failing to request a bill of particulars. 126 Wn. App. at 85-86.

This claim is raised for the first time on appeal. In closing, defense counsel argued that the charging document was insufficient because it failed to allege "within ten years." RP 8/26/09 51, 53. No objection was made at that time to the State's failure to specify the prior convictions in the charging documents. Thus, the liberal test set forth in Kjorsvik would apply if an element was missing. However, this Court need not apply the Kjorsvik test because the details of the prior convictions are not elements of the crime.

The essential elements of the crime of felony DUI are driving under the influence with an alcohol concentration of 0.08 or higher

or while affected by liquor or drug and having "four or more prior offenses within ten years." Just as the identity of the victim is not an essential element of assault, the specific details of the four prior convictions, such as date and court number, are not essential elements of the crime of felony DUI.

Cochrane's attempt to analogize felony DUI to felony murder falls short. In the case of felony murder, although the underlying felony must be named in the information, the elements of the underlying felony need not be charged. State v. Medlock, 86 Wn. App. 89, 101, 935 P.2d 693 (1997). This Court has reasoned that although the underlying crime is an element of felony murder the defendant is not actually charged with the underlying crime. Id. Thus, the information need not set forth the elements of the underlying crime. Likewise, although the existence of four prior offenses is an element of felony DUI, the defendant is not actually charged with the prior offenses. Thus, the details of the prior convictions, such as date and court, do not need to be set forth in the information. The information was sufficient by apprising Cochrane that the State intended to prove four prior offenses, just as in felony murder the information is sufficient when it apprises the

defendant that the State intends to prove the felony without specifying the facts underlying the felony.

Cochrane's reliance on City of Bothell v. Kaiser, 152 Wn. App. 466, 217 P.3d 339 (2009), is similarly misplaced. In that case, the defendant was charged with violation of a no-contact order, and the charging document failed to identify the order that the defendant was charged with violating. Id. at 469. As this Court explained, the culpable act for that crime is dependent on the scope of the predicate order. Id. at 475. There is no crime without the order. That is not the case for DUI. The culpable act is the driving while intoxicated. The prior convictions go only to the penalty that applies, not the lawfulness of the conduct. In this respect, it is more like bail jumping. In State v. Williams, 162 Wn.2d 177, 183-84, 170 P.3d 30 (2007), the Washington Supreme Court held that although the class of the crime for which the defendant jumped bail affected the penalty classification, the class of the underlying crime was not an element of the crime that needs to be alleged in the information. It is sufficient to allege four prior offenses for felony DUI. The information in this case did not fail to allege an essential element of the crime.

Cochrane's claim is, in fact, a claim that the information was vague with respect to the acts that form the basis for a particular element. As such, he waived his challenge due to his failure to request a bill of particulars. However, it is obvious why he saw no need to request a bill of particulars, since the four prior convictions, including date, case number and court, were listed in the Certification for Determination of Probable Cause.

c. Scrivener's Error In The Statutory Citation To RCW 46.61.5055.

Cochrane contends that the information was fatally flawed due to a scrivener's error in the statutory citation to the subsection of RCW 46.61.5055 that defines "prior offenses." In light of the State's concession, this claim is moot. Even if not moot, Cochrane's claim would be rejected because the scrivener's error was not prejudicial.

An error in a numerical statutory citation is not reversible error unless it prejudiced the accused. State v. Vangerpen, 125 Wn.2d 782, 787-88, 888 P.2d 1177 (1995). See also State v. Borrero, 97 Wn. App. 101, 107, 982 P.2d 1187 (1999). In this case, the mistake in citing RCW 46.61.5055(13) rather than RCW

46.61.5055(14) for the definition of prior offense was understandable, because the statute had just been amended to add a new subsection and renumbering all the following subsections, effective January 1, 2009. Laws of 2008, ch. 282, §§ 14, 23. The information was filed on January 14, 2009. Had the information been filed two weeks earlier, the statutory citation would have been correct.

Cochrane cannot show that he was prejudiced by the mistake in the statutory citation because there was no confusion as to the statutory definition of the prior offense. Subsection (13) pertains to extraordinary medical placement by the jail administrator. There is no reasonable possibility that the defendant would have thought that subsection (13) contained the definition of "prior offenses." Anyone looking at subsection (13) would quickly see that subsection (14) contains the definition of "prior offenses." Moreover, in closing argument, defense counsel argued that the State had failed to establish the date of arrest with the certified court documents, an argument based on the definition set forth in RCW 46.61.5055(14)(c), of which defense counsel was clearly aware. RP 8/26/09 51-54. There is no indication that the statutory citation affected the presentation of Cochrane's defense. Cochrane

has failed to show that he was prejudiced by the scrivener's error in citing to the proper subsection of RCW 46.61.5055 that defines prior offenses.

d. The Remedy Is Dismissal Without Prejudice.

Cochrane argues that the remedy for the State's failure to include an essential element in the charging document is remand for entry of judgment on the lesser included offense of DUI. This remedy was squarely rejected in Vangerpen, 125 Wn.2d 791. In that case, the defendant was charged with attempted murder in the first degree but the State failed to allege premeditation before it rested its case. Id. at 785. The defendant argued on appeal that he should be sentenced to attempted murder in the second degree. The Washington Supreme Court rejected that argument, and held that when a conviction is reversed due to an insufficient charging document, the result is dismissal of the charge without prejudice. Id. at 791. The State is free to refile and retry the offense for which the defendant was convicted, or any lesser included offense. Id. The court concluded by stating, "We could not express it more clearly. The State has a right to refile a proper information." Id. at 793. The remedy in this case is dismissal of the conviction for

felony DUI without prejudice, so that the State has the right to refile and retry Cochrane for felony DUI.

2. THERE WAS SUBSTANTIAL EVIDENCE THAT COCHRANE'S SEATTLE MUNICIPAL COURT CONVICTIONS WERE "PRIOR OFFENSES."

Cochrane contends that the evidence presented at trial was not sufficient to prove four prior convictions for violations of RCW 46.61.502, 46.61.504, or equivalent local ordinances. This claim should be rejected. Viewing the certified court dockets that were admitted in the light most favorable to the State and drawing all reasonable inferences from those dockets, a rational trier of fact could have found the requisite four convictions beyond a reasonable doubt.

In reviewing a challenge to the sufficiency of the evidence, the appellate court must view the evidence in the light most favorable to the State, and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence, and all reasonable inferences must be drawn in favor of the State. State v. Paine, 69 Wn. App. 873, 850 P.2d 1369 (1993).

Therefore, a conviction will not be overturned unless there is no substantial evidence to support it. State v. Galisia, 63 Wn. App. 833, 838, 822 P.2d 303 (1992). The trier of fact may rely on circumstantial evidence alone, even though it is also consistent with innocence. State v. Kovac, 50 Wn. App. 117, 119, 747 P.2d 484 (1987).

Cochrane argues that the evidence was insufficient to support his conviction for felony driving under the influence because there was insufficient evidence of four prior qualifying offenses. Cochrane does not challenge the sufficiency of the King County District Court and Everett Municipal Court prior convictions. Cochrane focuses his argument on the two Seattle Municipal Court convictions, because the dockets reflect that those crimes were charged under Seattle Municipal Code 11.56.020 rather than RCW 46.61.502.

RCW 46.61.5055(14)(a)(i) and (ii) defines "prior offense" for purposes of felony DUI as including "a conviction for a violation of RCW 46.61.502 or an equivalent local ordinance" and "a conviction for a violation of RCW 46.61.504 or an equivalent local ordinance." RCW 46.61.502 defines the crime of "Driving under the influence." RCW 46.61.504 defines the crime of "Physical control of vehicle

while under the influence." The two Seattle Municipal Court dockets reflect that Cochrane was found guilty in those cases of "physical control while intoxicated" and "driving while intoxicated" pursuant to Seattle Municipal Code 11.56.020.¹ Ex. 13, 15. For the first time on appeal, Cochrane contends that the State failed to prove that Seattle Municipal Code 11.56.020 is an equivalent local ordinance. The defense made no argument at trial that Seattle Municipal Code 11.56.020 was not an equivalent local ordinance. If this question had been raised, the court could have taken judicial notice of the ordinance. State v. Martin, 14 Wn. App. 717, 544 P.2d 750 (1976); 5 K. Tegland, Washington Practice, sec. 201.11, at 144 (1999).

The question of whether Seattle Municipal Code 11.56.020 is an equivalent local ordinance is a legal issue that must be raised with the court, not a factual issue to be decided by the trier of fact. The Washington Constitution provides that the court "shall declare

¹ Seattle Municipal Code 11.56.020 defines two crimes, Driving While Intoxicated and Physical Control. See www.clerk.ci.seattle.wa.us/~public/code1.htm.

the law." Const. art. IV, sect. 16; State v. Clausing, 147 Wn.2d 620, 629, 56 P.3d 550 (2002). "Questions of law are for the court, not the jury, to resolve." State v. Miller, 156 Wn.2d 23, 31, 123 P.3d 827 (2005). The Washington Supreme Court was presented with an analogous question in Miller, supra. Miller was convicted of violating a no-contact order. Miller, 156 Wn.2d at 25. The court was asked to decide whether the validity of a no-contact order was an element of the crime that had to be proved to a jury beyond a reasonable doubt. Id. at 24. The court concluded that, while the *existence* of a no-contact order was an element of the crime, the *validity* of the order was a question of law that the trial court should decide as part of its "gate-keeping" function. Id. Likewise, the question of equivalence of a local ordinance is a strictly legal question that would be part of the court's gate-keeping function in a jury trial. Having not raised this issue at trial when the State offered the Seattle Municipal Court dockets, Cochrane cannot now raise it as a sufficiency claim.

Even if this claim is properly viewed as a challenge to the sufficiency of the evidence, viewing the evidence in the light most favorable to the State and drawing all reasonable inferences from that evidence, the trier of fact reasonably concluded beyond a reasonable doubt that the Seattle Municipal Court convictions for "physical control while intoxicated" and "driving while intoxicated" were convictions for a local ordinance equivalent to RCW 46.61.502 and RCW 46.61.504.

State v. Johnson, 33 Wn. App. 534, 656 P.2d 1099 (1982), is instructive. In that case, the defendant was convicted of burglary and possession of stolen property and the jury found that he was a habitual offender under the old habitual offender scheme. Id. at 536. On appeal, Johnson claimed that the State had failed to prove beyond a reasonable doubt that a 1973 burglary conviction was his, although he raised no question of identity at trial. Id. at 538. The appellate court held that the defendant's name on the certified documents was sufficient, viewed in the light most favorable to the State, for a rational trier of fact to find identity beyond a reasonable

doubt. Likewise, the certified dockets admitted here, specifying that Cochrane was convicted of driving while intoxicated and physical control while intoxicated were sufficient, viewed in the light most favorable to the State, for a rational trier of fact to find equivalency beyond a reasonable doubt. Cochrane's claim that there was insufficient evidence to establish four prior convictions should be rejected.²

² If the evidence was insufficient to prove felony DUI, this Court should reverse and remand for entry of judgment on the lesser included offense of DUI. The appellate court may "reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and interest of justice may require." RAP 12.2. When an appellate court reverses a conviction, it may direct the trial court to enter judgment on a lesser offense charged when the lesser offense was necessarily proven at trial. State v. Garcia, 146 Wn. App. 821, 193 P.3d 181 (2008), review denied, 166 Wn.2d 1009 (2009). This remedy may be employed when the greater offense is reversed for insufficient evidence. State v. Bucknell, 144 Wn. App. 524, 530, 183 P.3d 1078 (2008). This remedy has been applied in numerous appellate cases. State v. Miles, 77 Wn.2d 593, 464 P.2d 723 (1970) (second degree assault reversed for insufficiency and remanded for entry of judgment for third degree assault); Garcia, supra, 146 Wn. App. at 829-30 (third degree assault reversed for insufficiency and remanded for entry of judgment for fourth degree assault); Bucknell, supra, 144 Wn. App. at 520 (second degree rape reversed for insufficiency and remanded for entry of judgment for third degree rape); State v. Scherz, 107 Wn. App. 427, 437, 27 P.3d 252 (2001) (first degree robbery reversed for insufficiency and remanded for entry of judgment for second degree robbery); State v. Maganai, 83 Wn. App. 735, 740, 923 P.2d 718 (1996) (attempted first degree rape reversed for insufficiency and remanded for entry of judgment for attempted second degree rape); State v. Atterton, 81 Wn. App. 470, 473, 915 P.2d 535 (1996) (first degree theft reversed based on improper aggregation and remanded for entry of judgment for second degree theft).

D. CONCLUSION.

Cochrane's conviction for felony DUI should be dismissed without prejudice.

DATED this 28th day of May, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

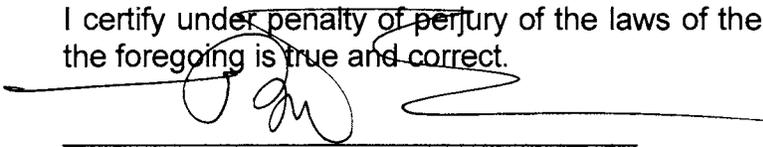
By: 

ANN SUMMERS, WSBA #21509
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Attorneys for Respondent
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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 Vanessa Lee, 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. COCHRANE, Cause No. 64126-3-I, 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.



Name
Done in Seattle, Washington

06/01/10

Date