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COURT OF APPEALS

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STATE OF WASHINGTON

BY _____
Clerk

NO. 33700-2-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MICHAEL GUILLEN,

Appellant.

BRIEF OF APPELLANT

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ORIGINAL

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court's refusal to exclude prejudicial propensity evidence denied the defendant his right to a fair trial under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment.

2. Trial counsel's failure to object to prejudicial propensity evidence denied the defendant the right to effective assistance of counsel under Washington Constitution, Article 1, § 3 and United States Constitution, Sixth Amendment.

3. The trial court's refusal to allow the defense to cross-examine the state's key witness concerning areas of prejudice and bias denied the defendant his right to confrontation under Washington Constitution, Article 1, § 22 and United States Constitution, Sixth Amendment.

Issues Pertaining to Assignment of Error

1. Does a trial court's refusal to exclude prejudicial propensity evidence deny a defendant the right to a fair trial under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment?

2. Does a trial counsel's failure to object to the admission of prejudicial propensity evidence deny a defendant the right to effective assistance of counsel under Washington Constitution, Article 1, § 3 and United States Constitution, Sixth Amendment when the admission of that evidence affects the outcome of the trial?

3. Does a trial court's refusal to allow the defense to cross-examine the state's key witness concerning areas of prejudice and bias deny the defendant the right to confrontation under Washington Constitution, Article 1, § 22 and United States Constitution, Sixth Amendment when the credibility of the witness was central to the state's case?

STATEMENT OF THE CASE

Factual History

On February 7, 2003, Cowlitz-Wahkiakum County drug task force officers Michael Cowan and Kevin Tate met in the basement of the Cowlitz County Hall of Justice with an informant named Megan Lessard in order to arrange a drug purchase. RP I 50; RP II 37¹. The police had previously arrested Ms. Lessard on a number of charges that would have sent her to prison and she agreed to work as a police informant in order to get these charges dropped. RP I 35-37. By February of 2003, Ms. Lessard had completed her contract with the police and was working for the police as a paid informant. *Id.* The police eventually paid Ms. Lessard a total of over \$5,000.00 in cash for her work. RP I 82. The police apparently never reported the payments to any governmental agencies and neither did Ms. Lessard. *Id.* During her work as an informant, Ms. Lessard was under a contract to refrain from any illegal activity, including the possession and use of illegal drugs. RP I 38-42. On three different occasions Ms. Lessard violated the agreement by using heroin. *Id.*

During the February meeting at the Hall of Justice, the two task force

¹“RP I” refers to the one volume verbatim report of the first day of trial on July 11, 2005. “RP II” refers to the one volume verbatim report of the second day of trial on July 12, 2005. Since the second volume begins again at page 1, the volume designation is included herein.

officers had a female corrections officer do a "pat down" search over Ms. Lessard's clothing. RP I 51-52. This search did not reveal any drugs, money, or contraband. *Id.* The police then gave Ms. Lessard \$120.00 in cash and took her to the parking lot of the Market Place Grocery Store on Ocean Beach Highway in west Kelso. RP I 52-54. Once at the grocery store, Ms. Lessard got out of the officers' car and walked over to a pay phone. RP I 54-55. According to Ms. Lessard she called the defendant's cell phone number but was unable to talk to him. She then called a person by the name of "Pelon," asked to speak with the defendant, and spoke with the defendant, who agreed to sell her \$220.00 worth of heroin. RP 121-123.

Within a few minutes of Ms. Lessard's telephone call she walked over to a teal green Subaru Legacy and entered it. RP I 55. The police could not identify either the driver or the passenger; neither had they seen the vehicle before. RP I 56, 70. The vehicle left the parking lot when Ms. Lessard entered it. RP I 57. During its absence, Officer Cowan made two telephone calls to Ms. Lessard. RP I 58. During the second call he spoke to the driver and told him to either give Ms. Lessard the drugs or return her money. RP I 58-59. About 5 minutes later the Subaru returned to the parking lot and Ms. Lessard out. RP I 61. After the Subaru left, she got into the officer's vehicle and handed them a baggie containing a number of smaller baggies with small amounts of heroin in them. RP I 61-62; RP II 55-63. Ms. Lessard claimed

that the defendant was the passenger and that he had given her the drugs in return for the money she had. RP I 128-129. Once back to the Hall of Justice, a corrections officer searched the Ms. Lessard and did not find any money or contraband on her. RP I 62.

Procedural History

By information filed November 6, 2003, the Cowlitz County Prosecutor charged the defendant Michael Guillen with one count of delivery of heroin. CP 1-2. The case later came on for trial before a jury with the state calling five witnesses: Officers Cowan and Tate, Corrections Officer Jullian Mackin, Megan Lessard, and Jason Dunn, an employee of the State Patrol Crime Law. RP I 24, 96, 101; RP II 8, 33, 55. During the testimony of Officer Cowan the stated elicited the fact that the task force was undertaking a large drug investigation into Hilario Justino Garcia Hernandez, known as “Pelon” and “everybody that worked for him.” RP I 42-43, 50. The court overruled a defense objection that this testimony was irrelevant and inadmissible as propensity evidence. *Id.*

In addition, during cross-examination of Officer Cowan, the defense tried to elicit the fact that the informant had lied to Officer Cowan about her own drug usage in violation of her agreements with the task force. RP I 78. The trial court refused to allow the defense to elicit this evidence. RP I 78-79. In addition, the defense attempted to elicit the fact that the Task Force

had paid Ms. Lessard over \$5,000.00 in cash without the Task Force or Ms. Lessard reporting the payments and income as required under both state and federal law. RP I 82. The court also refused to allow the defense to elicit this evidence. *Id.*

During Ms. Lessard's testimony, the court overruled defense objections when the state elicited claims from Ms. Lessard that (1) "Pedro" was a local drug dealer, (2) that "Pedro" had persons working for him, and (3) that in order to contact the defendant Ms. Lessard would first call "Pedro." RP I 111-115, RP II 8-9. In addition, on two separate occasions Ms. Lessard testified that the defendant had delivered drugs to her and the defense made no objection to this evidence. RP I 103; RP II 21-22.

On the second day of Ms. Lessard's testimony the defense discovered that the task force had paid Ms. Lessard \$50.00 cash for her testimony in this case. RP II 30-31. After finding this out, the defense moved for dismissal under CrR 8.3 arguing that this payment constituted gross governmental misconduct that impinged upon the ability of the defendant to get a fair trial. *Id.* The court later denied the motion. RP 63-70.

Following its last witness, the state rested its case. RP II 70. The defense then rested its case without calling any witnesses and the court instructed the jury without objection or exception taken by either party. RP II 70-72. The parties then presented argument without objection, and the jury

retired for deliberation. RP II 88-124. The jury later returned with a verdict of “guilty.” CP 41. Following sentencing under the DOSA option, the defendant filed timely notice of appeal. CP 47-55, 57.

ARGUMENT

I. THE TRIAL COURT'S REFUSAL TO EXCLUDE PREJUDICIAL PROPENSITY EVIDENCE DENIED THE DEFENDANT HIS RIGHT TO A FAIR TRIAL UNDER WASHINGTON CONSTITUTION, Article 1, § 3 AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT.

While due process does not guarantee every person a perfect trial, *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968), both our state and federal constitutions do guarantee all defendants a fair trial untainted from inadmissible, prejudicial evidence. *State v. Swenson*, 62 Wn.2d 259, 382 P.2d 614 (1963). It also guarantees a fair trial untainted by unreliable, prejudicial evidence. *State v. Ford*, 137 Wn.2d 472, 973 P.2d 472 (1999). This legal principle is also found in ER 403, which states that the trial court should exclude otherwise relevant evidence if the unfair prejudice arising from the admission of the evidence outweighs its probative value.

This rule states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

ER 403.

In weighing the admissibility of evidence under ER 403 to determine whether the danger of unfair prejudice substantially outweighs probative value, a court should consider the importance of the fact that the evidence is

intended to prove, the strength and length of the chain of inferences necessary to establish the fact, whether the fact is disputed, the availability of alternative means of proof, and the potential effectiveness of a limiting instruction. *State v. Kendrick*, 47 Wn.App. 620, 736 P.2d 1079 (1987) . In Graham's treatise on the equivalent federal rule, it states that the court should consider:

the importance of the fact of consequence for which the evidence is offered in the context of the litigation, the strength and length of the chain of inferences necessary to establish the fact of consequence, the availability of alternative means of proof, whether the fact of consequence for which the evidence is offered is being disputed, and, where appropriate, the potential effectiveness of a limiting instruction....

M. Graham, *Federal Evidence* § 403.1, at 180-81 (2d ed. 1986) (quoted in *State v. Kendrick*, 47 Wn.App. at 629).

The decision whether or not to exclude evidence under this rule lies within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. *State v. Baldwin*, 109 Wn.App. 516, 37 P.3d 1220 (2001). An abuse of discretion occurs when the trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Neal*, 144 Wn.2d 600, 30 P.3d 1255 (2001).

For example, in *State v. Acosta*, 123 Wn.App. 424, 98 P.3d 503 (2004), Acosta was charged with first degree robbery, second degree theft, taking a motor vehicle, and possession of methamphetamine. At trial, the

defense argued diminished capacity and called an expert witness to support the claim. The state countered with its own expert, who testified that the defendant suffered from anti-social personality disorder but not diminished capacity. In support of this opinion, the state's expert testified that he relied in part upon the defendant's criminal history as contained in his NCIC. During direct examination of the expert, the court allowed the expert to recite the defendant's criminal history to the jury. Following conviction, Acosta appealed arguing in part that the trial court had erred when it admitted his criminal history because even if relevant it was more prejudicial than probative under ER 403.

On review the Court of Appeals first addressed the issue of the relevance of the criminal history. The court then held:

Testimony regarding unproved charges, and convictions at least ten years old do not assist the jury in determining any consequential fact in this case. Instead, the testimony informed the jury of Acosta's criminal past and established that he had committed the same crimes for which he was currently on trial many times in the past. Dr. Gleyzer's listing of Acosta's arrests and convictions indicated his bad character, which is inadmissible to show conformity, and highly prejudicial. ER 404(a). And the relative probative value of this testimony is far outweighed by its potential for jury prejudice. ER 403.

State v. Acosta, 123 Wn.App. at 426 (footnote omitted).

Turning to the case at bar, the defendant has assigned error to the trial court's admission of statements by the informant and the police officers that

(1) "Pedro" was a local drug dealer, (2) that the task force was running a large investigation of "Pedro," (3) that "Pedro" had persons working for him in his drug business, and (4) that in order to contact the defendant to get drugs Ms. Lessard would first call "Pedro." RP I 111-115, RP II 8-9. The error in admitting this evidence over defense objection is twofold as it was in *Acosta*. First, the evidence has minimal relevance. Rather, it constituted uncharged prior bad acts by an alleged large drug dealer. Second, while only minimally relevant if at all, this evidence was highly prejudicial to the defendant because it created a link between an alleged "large" drug dealer and the defendant, thereby creating an inference of guilt by association in the jury's mind. Put another way, it is likely in this case that the jury convicted the defendant of delivery of heroin not because it believed Ms. Lessard's claims. After all, her credibility was quite tarnished. Rather, it is likely that the jury convicted the defendant of delivery of heroin because it believed the police officer and informant's claims that "Pedro" was a drug dealer and that the defendant must have delivered drugs because he was associated with Pedro. Thus, the admission of the improper propensity evidence denied the defendant his right to a fair trial.

II. TRIAL COUNSEL'S FAILURE TO OBJECT TO PREJUDICIAL PROPENSITY EVIDENCE DENIED THE DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3 AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT.

Under both United States Constitution, Sixth Amendment, and Washington Constitution, Article 1, § 22, the defendant in any criminal prosecution is entitled to effective assistance of counsel. The standard for judging claims of ineffective assistance of counsel under the Sixth Amendment is "whether counsel's conduct so undermined the proper functioning of the adversary process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In determining whether counsel's assistance has met this standard, the Supreme Court has set a two part test.

First, a convicted defendant must show that trial counsel's performance fell below that required of a reasonably competent defense attorney. Second, the convicted defendant must then go on to show that counsel's conduct caused prejudice. *Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct. at 2064-65. The test for prejudice is "whether there is a reasonable probability that, but for counsel's errors, the result in the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Church v. Kinchelse*, 767 F.2d 639, 643 (9th Cir. 1985) (citing *Strickland*, 466 U.S. at

694, 80 L.Ed.2d at 698, 104 S.Ct. at 2068). In essence, the standard under the Washington Constitution is identical. *State v. Cobb*, 22 Wn.App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonably prudent attorney); *State v. Johnson*, 29 Wn.App. 807, 631 P.2d 413 (1981) (counsel's ineffective assistance must have caused prejudice to client).

In the case at bar, the defendant claims ineffective assistance based upon trial counsel's failure to object to the admission of highly prejudicial propensity evidence. This evidence twice came out of the mouth of the police informant on two separate occasions when she testified that the defendant had previously delivered drugs to her. RP I 103; RP II 21-22. This evidence invited the jury to convict the defendant of the current crime based upon the informant's unsubstantiated claims of prior drug deliveries. In other words, this evidence invited the jury to convict the defendant on the current charge based upon a perceived propensity to commit similar acts.'

As propensity evidence, this evidence was inadmissible. Under the appropriate circumstances, trial counsel's failure to object might somehow be fashioned into a tactical move. However, no such argument can rationally be made in the case at bar because on a number of prior occasions the state had elicited similar propensity evidence and the defense had vigorously objected. *See* Argument I. Thus, trial counsel's failure to object fell below the standard of a reasonably prudent attorney. In addition, this failure caused

prejudice because the state's case rested solely upon the testimony of a single informant with questionable credibility. Not only had she used drugs on three different occasions in violation of her agreement with the task force, but she had also apparently lied to the task force about this conduct. Thus, absent the improper propensity evidence, it is likely the jury would have returned a verdict of "not guilty." As a result, trial counsel's failure to object denied the defendant his right to effective assistance of counsel under Washington Constitution, Article 1, § 22 and United States Constitution, Sixth Amendment and the defendant is entitled to a new trial.

III. THE TRIAL COURT'S REFUSAL TO ALLOW THE DEFENSE TO CROSS-EXAMINE THE STATE'S KEY WITNESS CONCERNING AREAS OF PREJUDICE AND BIAS DENIED THE DEFENDANT HIS RIGHT TO CONFRONTATION UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 22 AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT.

Under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, a defendant is entitled to confront the witnesses testifying against her. *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968); *State v. St. Pierre*, 111 Wn.2d 105, 111-12, 759 P.2d 383 (1988). An integral part of this constitutional protection is the right to fully cross examine an accomplice, testifying co-defendant, or informant concerning the extent of any plea bargain the witness

has made with the state. *State v. Redden*, 71 Wn.2d 147, 149-50, 426 P.2d 854 (1967). Under this constitutional protection, a defendant is entitled to cross-examine an accomplice concerning both the fact of the plea bargain as well as the details of the agreement and the fact underlying the agreement in order to fully show the possibility of bias. *State v. Portnoy*, 43 Wn.App. 455, 718 P.2d 805 (1986). The court in *Portnoy* states the principle as follows:

Such cross examination is the price the State must pay for admission of a co-defendant's testimony to that plea. The jury needs to have full information about the witness's guilty plea in order to intelligently evaluate his testimony about the crimes allegedly committed with the defendant. Unfair prejudice is avoided by this opportunity for full cross-examination. *State v. Redden*, 71 Wn.2d 147, 149-50, 426 P.2d 854 (1967) (citing with approval *State v. Long*, 65 Wn.2d at 311, 396 P.2d 990).

State v. Portnoy, 43 Wn. App. at 461.

In addition, since the refusal to allow a defendant to fully cross-examine an accomplice concerning the facts of his or her agreements with the state directly impinges upon the constitutional right to confrontation, this error is presumed prejudicial. *Delaware v. Van Arsdall*, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). Thus, the appellate court must reverse unless the state proves beyond a reasonable doubt that error was harmless. *Davis v. Alaska*, 415 U.S. 308, 318, 94 S.Ct. 1105, 1111, 39 L.Ed.2d 347 (1974). In *Van Arsdall*, the United States Supreme Court states the following concerning the review for prejudice.

Whether such an error [in preventing cross-examination that might reveal bias of a prosecution witness and impeach his credibility] is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Delaware v. Van Arsdall, supra.

For example, in *State v. Brooks*, 25 Wn.App. 550, 611 P.2d 1274 (1980), the defendant was charged with first degree robbery and unlawful possession of a firearm conviction out of a single event. At trial, his accomplice testified for the state, under an agreement in which he had pled to the robbery charge, and the state had agreed to drop a five year deadly weapon enhancement. Although the court did allow the defense to elicit evidence of the agreement on cross-examination, it did not allow him to cross examine the accomplice on the specific legal effect of the state's having dropped the deadly weapon enhancement (the elimination of minimum mandatory five years in prison). Upon conviction, the defendant appealed, arguing that the trial court's refusal to allow him to examine the accomplice concerning the specific effect of dropping the deadly weapon enhancement denied him the constitutional right to confrontation.

The court of appeals agreed and reversed, stating as follows.

Great latitude must be allowed in cross-examining a key prosecution witness, particularly an accomplice who has turned State's witness, to show motive for his testimony. *State v. Tate*, 2 Wn.App. 241, 469 P.2d 999 (1970); *State v. Kimbriel*, 8 Wn.App. 859, 510 P.2d 255 (1973). The right of cross-examination allows more than the asking of general questions concerning bias; it guarantees an opportunity to show specific reasons why a witness might be biased in a particular case. *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974).

Here, the dropping of the deadly weapon allegation pursuant to the plea bargain agreement obviated a mandatory 5-year minimum term for Macklin if he were sentenced to prison. The jury was entitled to consider that evidence in weighing Macklin's credibility.

State v. Brooks, 25 Wn.App. 551-552.

In the case at bar, the police arrested the informant on criminal charges that would have sent her to prison. She had then entered into an agreement to refrain from using illegal drugs, refrain from committing criminal acts, and to then work with the task force. In spite of these promises, the informant had used illegal drugs and had been caught on at least three occasions. In spite of this fact, which the jury did hear, the court refused to allow the defense to elicit the fact that the defendant had repeatedly lied about her drug usage to the police. In addition, in spite of the fact that the informant's credibility was central to the state's case, the court refused to allow the defense to elicit the fact that task force and the informant had repeatedly violated the law by failing to report thousands of dollars of cash payments to the Internal Revenue Service and the Washington State

Department of Revenue. This evidence would have undercut the state's claim that the informant was credible and should be believed. Indeed, the fact of this fraud upon the federal and state governments provided the informant increased motivation to testify exactly as the police desired lest the police report the cash payments and expose her to state and federal prosecution for her willful failure to pay taxes.

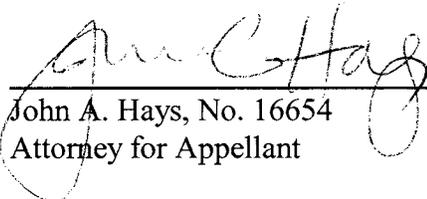
By refusing to allow the defense to fully question the informant's credibility and motives to lie, the court denied the defendant his right to fully confront the witnesses called against him. As a constitutional violation, this court can only sustain the conviction if the state can prove beyond a reasonable doubt that the error was harmless. *See State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002). The state cannot do so in this case because there is a reasonable possibility that absent the error, the informant's credibility would have been damaged that the jury would have refused to return a verdict of guilty. Thus, the defendant is entitled to a new trial.

CONCLUSION

The trial court's admission of prejudicial propensity evidence, along with the trial court's refusal to allow the defense to fully cross-examine the key state's witness denied the defendant his right to a fair trial. In addition, trial counsel's failure to object to further prejudicial propensity evidence denied the defendant the right to effective assistance of counsel. As a result, the defendant is entitled to a new trial.

DATED this 22nd day of May, 2006.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 22**

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

**UNITED STATES CONSTITUTION,
SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

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COURT OF APPEALS
WASHINGTON

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STAT. & COURT DIVISION

BY [Signature]

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

STATE OF WASHINGTON,)
)
 Respondent,)
)
 vs.)
)
 MICHAEL GUILLEN,)
 Appellant.)

NO. 03-1-01565-0
COURT OF APPEALS NO:
33700-2-II

AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
) ss.
 COUNTY OF COWLITZ)

CATHY RUSSELL, being duly sworn on oath, states that on the 22ND day of MAY, 2006, affiant deposited into the mails of the United States of America, a properly stamped envelope directed to:

SUSAN I. BAUR
COWLITZ COUNTY PROSECUTING ATTORNEY
312 S.W. 1ST STREET
KELSO, WA 98626

MICHAEL GUILLEN
4235 CAMPBELL DR., S.E.
SALEM, OR 97301

and that said envelope contained the following:

- 1. BRIEF OF APPELLANT
- 2. AFFIDAVIT OF MAILING

DATED this 22nd day of MAY, 2006.

[Signature]
CATHY RUSSELL

SUBSCRIBED AND SWORN to before me this 22nd day of MAY, 2006.

[Signature]
NOTARY PUBLIC in and for the
State of Washington,
Residing at: Kelso, WA 98626
Commission expires: 10-24-09



AFFIDAVIT OF MAILING

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